District of Columbia Code

1967 EDITION

TITLE 1—ADMINISTRATION

TO

TITLE 17—REVIEW

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ANNOTATED

1967 EDITION

CONTAINING THE LAWS, GENERAL AND PERMANENT IN THEIR NATURE, RELATING TO OR IN FORCE IN THE DISTRICT OF COLUMBIA (EXCEPT SUCH LAWS AS ARE OF APPLICATION IN THE DISTRICT OF COLUMBIA BY REASON OF BEING GENERAL AND PERMANENT LAWS OF THE UNITED STATES), IN FORCE ON JANUARY 9, 1967

NOTES TO DECISIONS THROUGH DECEMBER 1966



PROPERTY
OF THE
DISTRICT
OF
COLUMBIA

VOLUME ONE

TITLE 1—ADMINISTRATION
TO
TITLE 17—REVIEW

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* This title has been enacted as law.

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PREFACE

This is the fifth edition of the Code of Laws of the District of Columbia prepared and published pursuant to Title 1 U.S. Code, section 202. This edition contains all the general and permanent laws relating to or in force in the District of Columbia, on January 9, 1967, except such laws as are of application in the District of Columbia by reason of being laws of the United States general and permanent in their nature. The Code was originally adopted as prima facie evidence of existing law. However, Part II, Judiciary and Judicial Procedure, comprising Titles 11–17, Part III, Decedents' Estates and Fiduciary Relations, comprising Titles 18–21, and Title 28, Commercial Instruments and Transactions (containing the Uniform Commercial Code), have since been enacted as law.

Many new features and improvements were incorporated in the 1940 edition, reflecting, as far as practicable, the preferences of the users of the Code who responded to a questionnaire sent out by the Committee on Revision of the Laws to several thousand attorneys and Government officers and employees within the District of Columbia. An entirely new arrangement of subject matter was adopted.

The 1940 edition was the first official Code containing the annotations of the court decisions interpreting these laws. Numerous cross references and historical notes have been added to increase the usefulness of this Code. These annotations, cross references and historical notes are brought up to the end of 1966 in this edition and will be kept current in the future annual supplements.

The work of preparing this edition was done by the Committee on the Judiciary of the House of Representatives with the assistance of the Equity Publishing Corporation under the supervision of Dr. Charles J. Zinn, law revision counsel for the Committee. Acknowledgement is also made to the numerous officials of the District and Federal governments and the members of the bench and bar of the District whose suggestions have been most helpful.

The Committee invites all criticisms and suggestions looking to the improvement of the Code.

Emanuel Celler

Chairman.

E. E. Willis

Chairman, Subcommittee No. 3.

WASHINGTON, D.C., *January 1967*

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HISTORICAL[1]

All of the many previous efforts to compile the laws relating to the District of Columbia were balked by the difficulty of determining and setting forth the laws of Great Britain and the early laws of the State of Maryland still in force in the District by virtue of the acts of February 27, 1801, and March 3, 1901 (2 Stat. L. 103, ch. 15, sec. 2, and 31 Stat. L. 1189, respectively). Yet these laws, access to which is through a labyrinth of toil and uncertainty, have been found pertinent by the courts of the District on no less than 127 reported occasions. The task was further complicated by the fact that much of the legislation affecting the District of Columbia was buried in appropriation acts. A summary of the situation was made by an eminent member of the District bar, Mr. James S. Easby-Smith, before the committee at a hearing on July 12, 1926. An excerpt from his statement is quoted:

> The District of Columbia was created and became a Federal district in the year 1800 (1 Stat. L. 130; and 2 Stat. L. 103). The District of Columbia, as created by the First Congress, was composed of a portion of Virginia and a portion of Maryland, the same being 10 miles square. That portion of the District of Columbia which was ceded by the State of Maryland was known as the county of Washington, District of Columbia; that portion which was ceded by the State of Virginia was known as the county of Alexandria, District of Columbia. At first there was a city organized and laid out called the city of Washington, while the remaining portion of that part of Maryland which had been ceded was called the county of Washington. That portion included the city also.
>
> Now, the organic act (2 Stat. L. 103), provided that the laws governing that portion of the District of Columbia ceded by Virginia should be the Virginia statutes not locally inapplicable, the acts of Congress, and the acts of the Virginia Legislature. That applied in and for the county of Alexandria, and the organic act provided that the laws in force in the county of Washington, District of Columbia, which was that portion taken from Maryland, were, first, the principles and maxims of equity as they existed in England, and in the colonies in the year 1776, the common law of England, and the statutes of the British Parliament which were in effect in the colonies in 1776, and which were not locally inapplicable. I think that the last British statute which is applicable to the District of Columbia was passed about 1771. I think that there were no statutes which were locally applicable after that year.
>
> Therefore,
>
> First, we have the maxims and principles of equity as developed in the court of chancery.
>
> Second, the common law as it existed in 1776.
>
> Third, the British statutes in effect in 1776.
>
> Fourth, all the laws of the legislature, not only of the State of Maryland, from 1776 to 1800, but the laws of the colonial Maryland government up to the year 1800, together with such acts of Congress as had been passed, or might thereafter be passed, for the District of Columbia, or that were applicable to the District of Columbia.
>
> We have that great body of law here. In other words, in the State of Virginia and the State of Maryland, the State courts administer the State laws, while the Federal courts administer the Federal laws, but all of those laws are embraced in the jurisdiction of the courts here. . . .
>
> ALEXANDRIA COUNTY HAVING BEEN RE-CEDED TO VIRGINIA, THAT FEATURE OF THE COMPLICATION NO LONGER EXISTS. (Act of retrocession: July 9, 1846, 9 Stat. 35.)

An outline of previous compilations and their scope is as follows:

1. Code of Laws for the District of Columbia: prepared under the authority of the Act of Congress of the 29th of April, 1816. Preface signed by W. Cranch, November 19, 1818. Washington, 1819, 575 pages.

   This code was obviously designed for enactment by Congress, but no official action was taken with respect to it. It is drawn from old British statutes and acts of Maryland and Virginia, as well as from acts of Congress relating to the District of Columbia; it apparently includes all subjects of legislation except provisions relating to the municipal government of Washington, etc.

2. The Acts of Congress, in relation to the District of Columbia, 1790–1831, and of the Legislatures of Virginia and Maryland, passed especially in regard to that District. By William A. Davis. Washington City, 1831, 575 pages.

   This is merely an unofficial compilation of separate acts, with no attempt at arrangement by subject.

3. The Revised Code of the District of Columbia, prepared under the authority of the Act of Congress . . . approved March 3, 1855. Preface signed by Robt. Ould and Wm. B. B. Cross, November, 1857. Washington, 1857, 699 pages.

   The act of March 3, 1855 (10 Stat. 642–643), provided for a vote by the people of the District of Columbia as to the adoption of the code as published. The vote was adverse, according to Wilhelmus Bogart Bryan, in his History of the National Capital (v. 2, p. 439).

4. An Analytical Digest of the Laws of the District of Columbia. By M. Thompson. Washington City, 1863, 454 pages.

   This digest is entirely unofficial. It aims to give all the law in force, with a few annotations. It is not clear whether the laws have been copied verbatim, or the substance given in other words. Provisions relating to municipal government of Washington, etc., are not included.

5. Compilation of the Laws in Force in the District of Columbia, April 1, 1868. Washington, Government Printing Office, 1868, 494 pages.

   This compilation contains no preface or explanation of its scope. It gives the text of the laws, arranged by subjects. Provisions relating to the municipal government of Washington, etc., are not at all completely included.

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[1] Reprinted from 1929 edition of the Code.

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6. Statutes in force in the District of Columbia. Washington, 1872. 639 pages. House Miscellaneous Document No. 25—42d Congress, 3d session.

   This compilation was prepared under the direction of the Legislative Assembly of the District of Columbia. While purporting to be a compilation only, it includes many innovations. It was transmitted by the Governor of the District of Columbia to the House of Representatives, but was never adopted.

7. Revised Statutes of the United States relating to the District of Columbia. Washington, 1875, 201 pages.

   This revision was enacted by Congress and approved June 22, 1874. It covers all subjects of Federal legislation relating to the District, except local (i. e., portions of the District only) and private matters.

8. The Compiled Statutes in force in the District of Columbia, including the Acts of . . . 1887–'89. Compiled by William Stone Abert and Benjamin G. Lovejoy. Washington, Government Printing Office, 1894, 730 pages.

   This compilation, prepared pursuant to the act of March 2, 1889 (25 Stat. 872, ch. 392), includes acts of Congress, of Maryland, of Great Britain, and of the District of Columbia legislative assembly, with a few annotations. It covers all subjects of legislation except local and private matters. This compilation is wholly unofficial, in that the completed work never received legislative sanction.

9. The District of Columbia Code, approved March 3, 1901 (31 Stat. 1189–1436).

   This code does not include provisions relating to the government of the District and contains British statutes and Maryland acts by reference only. It repeals all prior legislation, with numerous exceptions.

10. The Code of Law for the District of Columbia. Indexed under the direction of the Senate Committee on the District of Columbia by Edwin C. Brandenburg. Washington, 1901, 334 pages.

    Merely the text of the act of March 3, 1901, with an index.

11. Code of Laws enacted March, 1901. Amended and approved January and June, 1902. Compiled by Charles Moore. Indexed by Edwin C. Brandenburg. Washington, 1902, 386 pages. (Unofficial.)
12. The Code of Law for the District of Columbia, enacted March 3, 1901; amended . . . to and including March 3, 1905. Compiled by Charles Moore. Indexed by Edwin C. Brandenburg. Recompiled and indexed to March 3, 1905, by Daniel E. Garges. Washington, 1906, 394 pages. (Unofficial.)
13. The Code of Law for the District of Columbia, enacted March 3, 1901; amended . . . to and including June 9, 1910. Annotated and indexed by Richard A. Ford. Washington, 1910, 448 pages. (Unofficial.)

    Appendix contains acts relating to the District not expressed as amendments of the code.

14. The Code of Law for the District of Columbia, enacted March 3, 1901; amended . . . to and including March 4, 1911. Recompiled . . . by William F. Meyers. Washington, 1911, 544 pages. (Unofficial.)
15. The Code of Law for the District of Columbia enacted March 3, 1901; amended . . . to and including March 4, 1919. Ed. by Wm. S. Torbert. Washington, 1919, 545 pages. (Unofficial.)
16. District of Columbia Code . . . as amended up to and including June 7, 1924. Washington, 1925, 711 pages. Senate Document 155—68th Congress.

    This code was prepared under the direction of the Committee on Printing of the Senate. The appendix contains many acts applicable to the District of Columbia not expressed as amendments to the code.

On December 5, 1898, Mr. Justice Walter S. Cox, of the Supreme Court of the District of Columbia, delivered an address before the Columbia Historical Society relative to the various efforts that had been made to obtain a code of laws for the District of Columbia, from which the following excerpts are taken:

I have been requested to give some account of the efforts made in or out of Congress to procure and establish a code of laws for the District of Columbia.

That part of what was designated in some of the old statutes as the Territory of Columbia, lying in the State of Maryland, and that part lying within Virginia, having been respectively ceded by those States to the United States, Congress commenced its legislation, in relation to the District, by an act of February 27, 1801, which provided, first, that the laws of Virginia, "as they now exist," shall be and continue in force in that part of the District of Columbia which was ceded by said State to the United States and by them accepted for the permanent seat of government; and that the laws of the State of Maryland, "as they now exist," shall be and continue in force in that part of the District which was ceded by that State to the United States and accepted as aforesaid, and that said District shall be divided into two counties; one county shall contain all that part which lies on the east side of the river Potomac and shall be called the county of Washington; the other county shall contain all that part of the District which lies on the west side of the said river and shall be called the county of Alexandria.

At the same time the act created a court, to be called the Circuit Court of the District of Columbia, which was to hold several sessions annually in each of the two counties. It also created an orphans court for each county.

Thus the anomalous condition was presented of two contiguous counties, under the same legislative jurisdiction, governed by different systems of statutory law, to be administered by the same court.

One would naturally expect that Congress would speedily take steps to remedy this state of affairs and enact a uniform system of law for the entire District. But such was not the case. On the contrary, what little legislation took place for years afterward only recognized and perpetuated the distinction between the counties, by sporadic measures affecting them separately.

For some 16 years following, the laws passed by Congress affecting the District related principally to the charters of Washington, Georgetown, and Alexandria, to the militia, to insolvent debtors, and to the incorporation of banks, improvement companies, and other private organizations, and very little to the improvement of judicial proceedings. . . .

On the 29th of April, 1816, an act was passed authorizing the judges of the circuit court and the district attorney to prepare a code of laws for the District. The judges at that time were Judges Cranch, Morsell, and Thurston. . . . The district attorney at the time was Walker Jones.

In November, 1818, Judge Cranch reported to Congress a code prepared by himself, and stated that the other gentlemen named in the act of Congress, in consequence of their engagements, had not been able to assist him.

In this code he grouped together, apparently without any system, the different statutes of Virginia and Maryland and the English statutes supposed to have been in force in Maryland, which he supposed, would be properly applicable to the whole District, with all their antiquated phraseology and long-since obsolete remedial provisions, giving marginal references indicating to which class each statute belonged. The statutes are given as separate laws, each with a separate enacting clause. Occasionally appears one which seems to be original and must have been devised by Judge Cranch himself, but these are few and unimportant. There was no attempt by him to introduce any material changes in judicial proceedings and remedies; and, in fact, the spirit of reform and improvement in this direction can hardly be said to have been aroused, at this early period in our history, in the country generally. This code, therefore, if it had been adopted, would have advanced us very little. It was, however, not acted upon by Congress, and the whole subject was allowed to sleep for some 12 years, when a committee of the House of Representatives, who had been directed to inquire into the expediency of providing for the appointment of commissioners to digest and form a code of civil and criminal law for the District, etc., made a report.

They had addressed a circular, with a number of questions, to sundry citizens and members of the bar, and returned with their report the answers of the persons so addressed. Among these were Judge Cranch, Messrs. Richard S. Coke, Joseph H. Bradley, Francis Key, long the district attorney in General Jackson's time, and the well-known author of the Star-Spangled Banner, and James Dunlop, afterwards chief justice of the circuit court until its abolition.

The committee go into the history of the cession of the District to the United States and express regret that it ever was withdrawn from the legislative jurisdiction of the States. They dwell on the fact that even at that date Congress had not made many essential changes in the general laws of the District nor in their administration; that the laws then in force had been accumulating for generations, many of the sanctions of which were only suited for barbarous ages, which they illustrated by reference to the criminal statutes of Maryland prescribing capital punishment for a dozen offenses, such as arson, breaking into a shop and stealing 5 shillings' worth of goods, stealing a boat, or the case of a negro burning tobacco or stealing a horse, etc. They dwell on the complicated character of the business of the circuit court, causing interminable delays in the administration of justice, the great abuses in the practice of justices of the peace, the absence of laws to restrain gaming, the sale of ardent spirits, and various other evils unnecessary to mention. They discuss the question whether the District can be retroceded to the States of Virginia and Maryland and whether a local legislature can be established, but conclude that the best remedy which they can recommend is the appointment of capable and efficient commissioners authorized to prepare and report to Congress such a code of laws as will be best suited to the wants, habits, and feelings of the people, and which shall make little innovation upon the common and statute law and be rather a revision than a new code. They also suggest the propriety of allowing the District to be represented by a Delegate in the House of Representatives, in the same manner as the Territories.

In pursuance of this report a joint committee of the two Houses was appointed to prepare and report a system of law, civil and criminal, for the District, and this committee did report such a system at the first session of the Twenty-second Congress, in February, A. D. 1832.

In this report they say they are satisfied from their inquiries and from previous documents that the inhabitants of the District cherish an affection for the great body of the law under which they have lived and deprecate any attempt to form an entire new system—which is not a mere prejudice, but an inclination founded in nature and reason. The report of the committee on the District which led to their appointment, they say, recommended that there should be as little innovation upon the common and statute law of the District as might be consistent with a complete, simple, and uniform system, and the like principle seems in a great degree to have directed the previous compilation prepared by the chief justice of the District under the order of Congress. Looking to these sources for a sound exposition of their duty and authority, they say that they have followed the leading principles of the common law, have embodied as much of the laws of Virginia and Maryland as could be blended and harmonized, selecting the best where they could not be united, adding such improvements as either State had made since the cession, and rendering the whole consistent, uniform, and adapted to the entire District; and correcting the vices, as far as possible, of the existing legislation, and deriving aid from the code heretofore prepared by Judge Cranch and the criminal code proposed to Congress by Mr. Edward Livingston.

The proposed code puts into statutory shape the common-law rules of practice which then prevailed in the two States and the ordinary rules of practice in equity causes and introduced a few changes, in the way of improvement, in the laws regulating private rights; but a considerable part of it is taken up with matters now obsolete, such as holding to bail and imprisonment for debt, a very elaborate and unwieldy judicial organization, regulations respecting slaves and free negroes, etc. A remarkable feature of it is, first, that it contains no law of descent, and, next, that out of 685 pages, 385—largely more than one-half—are taken up with a penal code, code of criminal procedure, and code of prison discipline, which seem to have been taken from the work of Edward Livingston, before referred to. His introduction to said work is printed with the report of the committee.

. . . It is very detailed and minute, and abounds in forms of indictment for every conceivable offense. When proposed for the United States generally, it does not seem to have received favorable consideration, and when thus embodied in a code for the District it met with as little favor, for there seems to have been no congressional action at all upon the report of this committee.

I think there was a good deal of truth in the view taken by the committee as to the sentiments of the people of the District and their preference for the legal system to which they had been accustomed and their indisposition to welcome any great novelties, of which, I think, a proof was furnished somewhat later on. The committee were therefore quite conservative in the system which they proposed. . . .

For a long time there was no separate publication of laws relating to the District, but one was compelled to search in the statutes at large for such legislation.

One or two private efforts were made to remedy this inconvenience. In 1823 Mr. Samuel Burch, at one time, I believe, Secretary of the Senate, published a digest of the laws of the corporation of Washington, and in an appendix published the laws of Maryland and Virginia relating to the cities of Washington, Georgetown, and Alexandria and the cession of the counties to the United States and the acts of Congress relating to the District down to that date.

In 1831 Mr. William A. Davis, of Washington, published a collection of the acts of Congress in relation to the District, from July, 1790, to March, 1831, and of the acts of Maryland and Virginia relating to the cession of the District. He states, in his preface, that the acts of Congress in relation to District affairs had been excluded from the general edition of the laws of the United States published under authority of Congress a few years previously, and it had been difficult to ascertain the course of legislation respecting the District. He refers also to laws of Maryland and Virginia in relation to the District not to be found in subsequent editions or collections of their laws, and therefore difficult to be got at, but which it is very important to compile for convenience of reference, both for Congress and the people of the District.

This collection gives all the acts of incorporation, amendments to charters of the cities, as well as all private charters and all the legislation affecting private rights and remedies down to the date of its publication. Neither this nor Burch's digest had any authentic or official character or received any recognition from Congress; but inasmuch as we had no collection of laws so recognized these publications were of great utility in legal proceedings and were relied on as correct expositions of the laws in force and were fully cited in the courts as the law of the District whenever questions arose as to the meaning or effect of statute law.

Between 1831 and 1835 efforts were made in Congress to have commissioners appointed to prepare a code for the District, but it seemed impossible to arouse a sufficient interest in the subject in Congress to procure any action. In 1846 the county of Alexandria was retroceded to Virginia and the District thus reduced in extent. In 1855 an act was passed which authorized the appointment by the President of a commission to revise, simplify, digest, and codify the laws of the District. The author of this bill was Mr. Henry May, then a Member from Baltimore. He had been a citizen of Washington and a prominent member of our bar and was acquainted with the defects of our system. It was just about this time, too, as the dates of laws in Maryland indicate, that reforms in the old system common to Maryland and the District were being agitated in that State.

Mr. Robert Ould and Mr. William B. Cross were appointed commissioners for the object. Mr. Ould was a native of Georgetown, who had been a member of the bar for some 10 years. He was district attorney afterward under Mr. Buchanan, and after the commencement of the Civil War went South and remained in Richmond until his death. Mr. Cross was also a practitioner at our bar, the son of Colonel Cross, one of the first victims of the Mexican War.

They completed a code in 1857. The law authorizing it required it to be submitted to a popular vote, and Mr. Buchanan ordered such vote to be taken on the 15th day of February, 1858. The result of this vote just illustrated what I before referred to, viz, the disinclination of the people of the District to welcome fundamental change and novelties in their system of law.

This code abounded in these features: It swept away the whole course of common-law pleadings, in which the whole bar had been educated and trained, and substituted for it a system of informal complaints and answers which must have been borrowed from some one of the radical new States, all which was utterly repugnant to the tastes of the legal profession here. It made changes in the nature of estates, abolishing the rules growing out of the necessity of livery of seisin, which would have been a very useful change. It introduced a law of divorce which was very contrary to the public sentiment at that time. It introduced some very useful reformations as we would consider them now, but they were entirely in conflict with the tastes and sentiments of the lawyers trained in the old common law. It was not free also from some glaring mistakes. For instance, it declared that law should lie in grant as well as in livery, which was equivalent to saying that it might be conveyed either by deed or the obsolete formality of livery of seisin. It also declared that estates tail might be created as theretofore, which had been virtually obsolete for at least half a century. It is no wonder, therefore, that when a vote was taken on the code only 1,138 were cast in favor of it and 3,110 against it.

In 1862 a bill was passed authorizing the President to appoint three suitable persons to codify the laws, who were to be confirmed by the Senate. Mr. Lincoln nominated Messrs. Richard S. Coxe, John A. Wells, and Philip R. Fendall to the office, but Congress adjourned before the nomination could be acted upon.

The subject was revived, however, in the act to reorganize the courts of the District which was passed in 1863, and which prescribed that the President should appoint a suitable person to revise and codify the laws. The President appointed for this purpose Mr. Return J. Meigs, who was the clerk of the newly established Supreme Court of the District. Mr. Meigs was an old Tennessee lawyer, thoroughly trained in the old common law, and very well qualified for the task assigned him. I have been unable to find a copy of a code prepared by him, but I understand from his family that it was a small affair, of limited scope, consisting of some 200 pages only, and very few copies were printed. No action was had upon it in Congress.

At the first session of the Thirty-eighth Congress a resolution was passed authorizing the District Committees of the two Houses to revise the code prepared in pursuance of the act of 1855. The matter, however, dragged along and nothing further was heard of it.

In 1872 the Legislative Assembly of the District passed an act under which George P. Fisher, one of the judges of the Supreme Court of the District of Columbia, and Hugh Caperton, Samuel L. Phillips, E. C. Ingersoll, and R. D. Mussey, all members of our bar, prepared a report on the statutes in force in the District. It commences with the Declaration of Independence, the Articles of Confederation, and Constitution of the United States, and then gives the acts of Maryland and Virginia relating to the cession of the District. It gives the act of Congress establishing the District Territorial government and the acts of Congress relating to District affairs and acts of the District Legislature, without any distinction between them, so that it is impossible to tell what is their authority. It appears to include a good deal of the legislation of the District which is not of a municipal character and which, therefore, according to a decision rendered by our court long ago, would not be constitutionally valid. When, however, it comes to treat of real estate and titles, it does embody some modern ideas, in advance of the old common-law rules that I have before adverted to, which were evidently borrowed from the codes of some of the States and were not contained in any of the statutes in force in the District. It had no marginal notes indicating the source from which its varied provisions were derived, although it professed to be simply a compilation of existing statutes. It had no index or table of contents. . . . In December, 1872, Governor Cooke reported this code to the Speaker of the House of Representatives and it was placed on the files, but no action was had upon it.

In the fourth session of the Forty-fourth Congress, about 1877, a bill was reported in the Senate providing for a revision of the laws relating to the District, but it was recommitted, and nothing further was heard of it.

. . . Between 1861 and 1874 there was more legislation relating directly to our affairs than there had been for half a century before.

Slavery was abolished, the old circuit court and criminal court were abolished, and the present supreme court was established, modeled somewhat after the courts of New York, and a new judicial system was established, of which the principal author was a Senator from New York, without the least consultation with the people or the legal profession of the District, entirely foreign to our tastes and habits, and which it took us many years to understand. A general incorporation law was passed, the Metropolitan police created, a new law as to limited partnerships introduced and divorces authorized, the rights of married women to control their own property recognized—a complete novelty—the police court established, the jurisdiction of justices of the peace increased, new punishments prescribed for crimes, and new enactments made as to judicial proceedings, as, for instance, with reference to actions of replevin and the defenses of set-off, usury, etc., and, most important of all, a Territorial government for the District was created, and the old corporations of Washington and Georgetown and the old levy court of the county were abolished, except for the purpose of enforcing against them existing obligations.

In June, 1866, an act was passed authorizing the President to appoint three commissioners to revise and bring together all the statutes and parts of statutes which ought to be brought together, omitting redundant or obsolete enactments, and making such alterations as may be necessary to reconcile contradictions, supply the omissions, and mend the imperfections of the original text.

The act does not seem, in terms, to allude to the District of Columbia, or even embrace it.

Such commissioners were appointed and proceeded with their work, which was not completed for seven years. Without having any express authority to do so, they made

a separate revision and collection of the acts of Congress relating to the District, besides the collection of general statutes relating to whole United States. Each collection was reported to Congress, to be approved and enacted into law. The concluding paragraphs of each virtually repeal every part of any act of Congress passed before December, 1873, which is not included in this collection, and the whole is enacted into law, as the body of the statute law of the United States, under the title of "Revised Statutes," as of the date June 22, 1874.

The laws relating to the District begin with the one establishing the Territorial government, of February 21, 1871, and the whole collection occupies only 149 pages in the authorized publication. This is the first collection of statute law that ever received congressional approbation. Every law previously passed was an individual act, called for by some emergency, or supposed so to be, without the least consideration of its consistency with other existing laws or its fitness to be part of a system.

But this collection of Revised Statutes in no sense deserves the name of a code. In the first place it does not even purport to give or contain all the statutory law in force in the District. The old British statutes which were in force in Maryland at the time of the cession of the District and the Maryland statutes of over a century, also in force in the territory ceded, and which were expressly continued in force, in general terms, by the act of Congress assuming jurisdiction over the District, of February 27, 1801, are not included in this collection or even alluded to. The general collection might perhaps be considered, in a limited sense, as a code for the United States, as it embraced all the laws affecting the whole United States, within the constitutional legislative jurisdiction of Congress, but there could be no complete code for the entire United States, because the subjects which would be proper to be regulated by a code in the States are entirely outside the legislative authority of Congress. But the collection of the statutes in force in the District did not profess or pretend to provide for such subjects here, even by reenacting laws already in force. And in addition to this there was a total failure to introduce any new features in the way of reform or improvement, and those changes in the law which were embraced in the proposed codes that I have already referred to were entirely wanting.

It is well known that in the very same year in which this collection was published by authority of Congress, containing the law establishing the Territorial government of the District, an act was passed abolishing that government and establishing a board of commissioners for governing temporarily the financial affairs of the District.

In 1878 the present permanent form of government for the District was established, by act of June 11 of that year, and this act provided that the commissioners to be appointed thereunder should report a draft of such additional laws or amendments to existing laws as, in their opinion, are necessary for the harmonious working of the system thereby adopted. And there was an appropriation in March, 1879, for that object, among those for the civil expenses of the Government.

In December, 1879, Mr. Dent, in the name of the commissioners, of whom he was the president, reported to the Senate a code of law and procedure for the District which had been prepared by Mr. Edward Chase Ingersoll, a member of the bar of our court, under the direction, as it was said, of Mr. N. G. Riddle, then attorney for the District. Mr. Ingersoll was a member of our bar of no special prominence, but he certainly exhibited remarkable industry in the preparation of this code. It was, however, a very singular production. It appeared to be an effort to codify the whole body of the common law and contained one treatise after another of the most abstract definitions and propositions. . . . It resembles an elementary work on law, such as would be put into the hands of students. In some places there are valuable new provisions taken from the laws of Massachusetts and New York and the code of Maryland, but they are so overlaid with the kind of matter that I have alluded to that it is a task to search them out. This is not the style in which a code should be prepared. It should consist of practical enactments, concise and brief. Dudley Field, of New York, prepared a code for that State which professed to embody the whole common law. It was not favorably received and proved to be wholly useless. The code prepared by Mr. Ingersoll met with a similar fate. It was placed on file, but no action was taken upon it.

At the second session of the Forty-sixth Congress the House District Committee reported a bill to revise the acts of Congress relating to the District, and the acts of the corporation and the levy court. It was passed in the House and reported in the Senate but did not pass.

In the Forty-seventh Congress Mr. Conners introduced a bill in the House to establish a municipal code, but it did not pass. A similar bill was introduced in the Senate, but no action was taken on it.

Senator Cameron, of Wisconsin, introduced a bill to compile and revise the statutes relating to the District, but no action was had on it.

In the first session of the Forty-seventh Congress Mr. McComas, now one of the justices of the Supreme Court of the District of Columbia, introduced a bill in the House to provide for a criminal code for the District and to appoint a person to prepare it. It was passed at the next session and was reported by the Senate Committee on the District and placed on the calendar, and that was the last of it.

In the Forty-ninth Congress Mr. Ingalls introduced a bill in the Senate to establish a municipal code, but no action was taken on it.

In the same Congress Mr. McComas again introduced his bill, which had failed at the previous session, but again no action was taken.

At the second session of the Forty-ninth Congress Mr. Hemphill, from the District Committee, introduced a bill providing for the compilation of the District laws by three commissioners. It passed the House, was reported in the Senate in the middle of February, 1887, but Congress adjourned before any action could be taken.

All this shows a remarkable interest in this subject on the part of the friends of the District in Congress, and at the same time a remarkable indifference in Congress, as the legislature of the District, about bringing its laws up to the standard recognized among the States as suitable for the progress of the age and the advanced conditions of business dealings.

In the Fiftieth Congress Mr. Hemphill, from the House Committee on the District, reported a bill providing that the Supreme Court of the District should appoint two persons to compile, arrange, and classify, with a proper index, all statutes and parts of statutes in force in the District, including acts of the second session of the Fiftieth Congress and relating to all such matters as would come properly within the scope of a civil and criminal code, the commissioners to receive a certain compensation upon the completion of the work and its approval by the court.

The court appointed Mr. William Stone Abert and Mr. B. F. Lovejoy commissioners, but Mr. Lovejoy died shortly afterwards and Mr. Reginald Fendall was appointed in his place. Mr. Fendall, however, took no part in the work, and it was prosecuted entirely by Mr. Abert. He pursued this work with marvelous patience and industry. It covered a vast field and was not completed until 1894. Mr. Abert included in his compilation the old English statutes in force in the Colonies, including Maryland, or supposed by him to be so, from Magna Charta to the thirteenth of George III, in the year 1773, and all the statutes of Maryland from the year 1704 to February 27, 1801, which had not been repealed and were declared to be in force in the District by the act of Congress of the last date, and the revised acts of Congress before referred to, reenacted in 1874, and also the acts of the Legislative Assembly of the District passed during its brief existence from June 2, 1871, to June 26, 1873, which were supposed to continue in force. The work abounds in marginal references to the various statutes and also to judicial decisions upon their meaning and effect.

The old English statutes and some of the old Maryland statutes abound in antiquated English and redundant verbiage, which it was unnecessary to reenact, and many provisions in them are now inapplicable and obsolete by reason of changes in the practice of the courts and social and political conditions, but it was historically correct to print the entire statutes containing them. The compilation was thereby rendered quite voluminous, but

is invaluable as a collection of existing law and was extremely useful to me in a work which I undertook, and will speak of presently. It did not, however, profess to introduce anything new and can not, therefore, be treated as a code in the sense in which I employ that term. It was approved by the court, as the statute required, simply because it was considered a correct compilation, and no errors were pointed out, but it never received any recognition, approval, or indorsement by Congress, like the Revised Statutes of 1874; so that it is nothing more as authority than the work of a private compiler of existing laws and is not reenacted by Congress as the existing law. Of course Congress could not delegate to the court authority to pass a law and the mere approval of the work by the court did not make the compilation a law or a code of laws.

I am not aware of any other efforts in Congress to promote the passage of a code of laws for the District.

In November, 1895, the Board of Trade of Washington extended an invitation to me to undertake the preparation of a code based upon the existing code of Maryland. The bar association seconded this application.

I did not see how such an undertaking was possible to me at that time, burdened as I was with my judicial duties and the work of the law school of Columbian University, but I accepted the invitation with the qualification that I could not do more than collect materials for doing the work at a future time when I might be entitled to retire from the bench of our court, which time would arrive in a year. I did not take that step in the fall of 1896, as I might have done, but determined to commence the work of preparing a code very gradually in the intervals between my other engagements. . . .

It appears, then, that five codes—those of Judge Cranch, the congressional committee of 1821, of Mr. Return J. Meigs, of Messrs. Fisher and others, and of Mr. Ingersoll—have been formally submitted to Congress, but simply ignored, and that prepared by Messrs. Ould and Cross was voted down by the citizens. This does not give much encouragement for new efforts, but there seems to be such an earnest desire now on the part of the bar and the Board of trade, which is a very influential representative of public sentiment in the District, that either at the present or the next session of Congress a favorable result may be hoped for.

Judge Cox spent between four and five years preparing the code to which he last referred. The code was in two parts, the first relating to the general laws and the second consisting of the laws applicable to the municipality of the District of Columbia as such.

At the request of the judges of the Supreme Court of the District of Columbia, the Bar Association appointed a committee to consider the draft, and to work in conjunction with Judge Cox, with a view to proposed changes or amendments.

The committee consisted of:

A. S. Worthington, chairman.
William F. Mattingly.
R. Ross Perry.
Nathaniel Wilson.
J. J. Darlington.
George E. Hamilton.
A. A. Birney.
Leon Tobriner.
W. G. Johnson.

The committee served without compensation over a period of nearly three months, during which time they were excused by the court from all trial work in order that they might give their entire attention to the subject. The cost of stenographic services, printing, etc., was paid by voluntary contributions by members of the committee and of the bar.

The committee allotted among its members the various chapters of the code of general laws and extended an invitation to the profession in general to submit suggestions or to appear before the committee and express their views.

The various members of the committee reported to the whole committee, who, in conjunction with Judge Cox, agreed upon a proposed code of general laws to be reported to the Supreme Court of the District of Columbia. The municipal code prepared by Judge Cox was not acted on by the committee.

The court thereupon adjourned for about two weeks, except for a short morning session for emergency matters, and after conferring with the Bar Association committee approved the code with very slight changes.

One of the members of the committee, in speaking of the services of Judge Cox, said: "Judge Cox did not retire from active participation in the making of the code when he submitted his draft. He continued to work with the committee. When the reports of the various members of the committee were submitted, and general sessions were held, Judge Cox was with us all the time, aiding, suggesting, and advising. I never saw a man so liberal in his efforts to carry through a work of this kind. I have always thought that the great credit for the preparation of the code was due to the thought, consideration, patience, and laborious efforts of Judge Cox. I think he was undoubtedly the one man whose efforts and ability made it possible for the members of the bar committee to get in shape the code as it went through."

The proposed code was introduced in the House of Representatives on March 21, 1900, by the Honorable John J. Jenkins of Wisconsin. It was reported to the House on April 14, 1900, and was passed on May 28, 1900. It was reported in the Senate on December 15, 1900, by Senator Pritchard, and passed that body on March 2, 1901. It was approved by the President on March 3, 1901.

The Committee is indebted to George E. Hamilton, Esq., and Leon Tobriner, Esq., the surviving members of the Bar Association committee, for the data from which the foregoing résumé of the activities of the Bar committee has been prepared.

ACTS RELATING TO THE ESTABLISHMENT OF THE DISTRICT OF COLUMBIA AND ITS VARIOUS FORMS OF GOVERNMENTAL ORGANIZATION

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CONSTITUTION OF THE UNITED STATES

Article 1, Section 8

The Congress shall have power—* * *

To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States * * *

THE CHARTER OF MARYLAND

Charles, by the Grace of God, of England, Scotland, France and Ireland, King, Defender of the Faith, &c. To all to whom these presents shall come, Greeting.

II. Whereas our well beloved and right trusty subject Cæcilius Calvert, baron of Baltimore, in our kingdom of Ireland, son and heir of George Calvert, knight, late baron of Baltimore, in our said kingdom of Ireland, treading in the steps of his father, being animated with a laudable and pious zeal for extending the christian religion, and also the territories of our empire, hath humbly besought leave of us, that he may transport, by his own industry and expence, a numerous colony of the English nation, to a certain region, herein after described, in a country hitherto uncultivated, in the parts of America, and partly occupied by savages, having no knowledge of the Divine Being, and that all that region, with some certain privileges and jurisdictions, appertaining unto the wholesome government, and state of his colony and region aforesaid, may by our royal highness be given, granted, and confirmed unto him, and his heirs.

III. Know ye therefore, that we, encouraging with our royal favour, the pious and noble purpose of the aforesaid barons of Baltimore, of our special grace, certain knowledge, and mere motion, have given, granted and confirmed, and by this our present charter, for us, our heirs and successors, do give, grant and confirm, unto the aforesaid Cæcilius, now baron of Baltimore, his heirs and assigns, all that part of the peninsula, or chersonese, lying in the parts of America, between the ocean on the east, and the bay of Chesopeake on the west, divided from the residue thereof by a right line drawn from the promontory, or head-land, called Watkin's Point, situate upon the bay aforesaid, near the river of Wighco, on the west, unto the main ocean on the east; and between that boundary on the south, unto that part of the bay of Delaware on the north, which lieth under the fortieth degree of north latitude from the æquinoctial, where New England is terminated: And all the tract of that land within the metes underwritten (that is to say,) passing from the said bay, called Delaware bay, in a right line, by the degree aforesaid, unto the true meridian of the first fountain of the river of Pattowmack, thence verging towards the south, unto the further bank of the said river, and following the same on the west and south, unto a certain place called Cinquack, situate near the mouth of the said river, where it disembogues into the aforesaid bay of Chessopeake, and thence by the shortest line unto the aforesaid promontory or place, called Watkin's Point; so that the whole tract of land, divided by the line aforesaid, between the main ocean, and Watkin's Point, unto the promontory called Cape Charles, and every the appendages thereof, may entirely remain excepted for ever to us, our heirs and successors.

IV. Also we do grant, and likewise confirm unto the said baron of Baltimore, his heirs and assigns, all islands and islets within the limits aforesaid, all and singular the islands and islets, from the eastern shore of the aforesaid region, towards the east, which have been, or shall be formed in the sea, situate within ten marine leagues from the said shore; with all and singular the ports, harbours, bays, rivers, and straits, belonging to the region or islands aforesaid, and all the soil, plains, woods, mountains, marshes, lakes, rivers, bays, and straits, situate, or being within the metes, bounds and limits aforesaid, with the fishings of every kind of fish, as well as of whales, sturgeons, and other royal fish, as of other fish, in the sea, bays, straits or rivers, within the premisses, and the fish there taken: And moreover all veins, mines, and quarries, as well opened as hidden, already found, or that shall be found within the region, islands or limits aforesaid, of gold, silver, gems and precious stones, and any other whatsoever, whether they be of stones, or metals, or of any other thing or matter whatsoever: And furthermore the patronages, and advowsons of all churches which (with the increasing worship and religion of Christ) within the said region, islands, islets and limits aforesaid, hereafter shall happen to be built, together with licence and faculty of erecting and founding churches, chapels, and places of worship, in convenient and suitable places, within the premisses, and of causing the same to be dedicated and consecrated according to the ecclesiastical laws of our kingdom of England, with all, and singular such, and as ample rights, jurisdictions, privileges, prerogatives, royalties, liberties, immunities, and royal rights, and temporal franchises whatsoever, as well by sea as by land, within the region, islands, islets and limits aforesaid, to be had, exercised, used and enjoyed, as any bishop of Durham, within the bishoprick or county palatine of Durham in our kingdom of England, ever heretofore hath had, held, used or enjoyed, or of right could, or ought to have, hold, use or enjoy.

V. And we do by these presents, for us, our heirs and successors, make, create, and constitute him, the now baron of Baltimore, and his heirs, the true and absolute lords and proprietaries of the region aforesaid, and of all other the premisses, (except the before excepted,) saving always the faith and allegiance and sovereign dominion due to us, our heirs and successors, to have, hold, possess and enjoy, the aforesaid region, islands, islets, and other the premisses, unto the aforesaid now baron of Baltimore, and to his heirs and assigns, to the sole and proper behoof and use of him, the now baron of Baltimore, his heirs and assigns, forever: To hold of us, our heirs and successors, kings of England, as of our castle of Windsor, in our county of Berks, in free and common soccage, by fealty only for all services, and not *in capite,* nor by knight's service, yielding therefore unto us, our heirs, and successors two Indian arrows of those parts, to be delivered at the said castle of Windsor, every year, on Tuesday in Easter-week; and also the fifth part of all gold and silver ore, which shall happen from time to time, to be found within the aforesaid limits.

VI. Now, that the aforesaid region, thus by us granted and described, may be eminently distinguished above all other regions of that territory, and decorated with more ample titles, know ye, that we, of our more especial grace, certain knowledge, and mere motion, have thought fit that the said region and islands be erected into a province, as out of the plentitude of our royal power and prerogative, we do, for us, our heirs and successors, erect and incorporate the same into a province, and nominate the same Maryland, by which name we will that it shall from henceforth be called.

VII. And forasmuch as we have above made and ordained the aforesaid now baron of Baltimore, the true

lord and proprietary of the whole province aforesaid, Know ye therefore further, that we, for us, our heirs and successors, do grant unto the said now baron, (in whose fidelity, prudence, justice, and provident circumspection of mind, we repose the greatest confidence,) and to his heirs, for the good and happy government of the said province, free, full, and absolute power, by the tenor of these presents, to ordain, make, and enact laws, of what kind soever, according to their sound discretions, whether relating to the public state of the said province, or the private utility of individuals, of and with the advice, assent, and approbation of the free-men of the same province, or of the greater part of them, or of their delegates or deputies, whom we will shall be called together for the framing of laws, when, and as often as need shall require, by the aforesaid now baron of Baltimore, and his heirs, and in the form which shall seem best to him or them, and the same to publish under the seal of the aforesaid now baron of Baltimore, and his heirs, and duly to execute the same upon all persons, for the time being, within the aforesaid province, and the limits thereof, or under his or their government and power, in sailing towards Maryland, or thence returning, outward bound, either to England, or elsewhere whether to any other part of our, or of any foreign dominions, wheresoever established, by the imposition of fines, imprisonment, and other punishment whatsoever; even if it be necessary, and the quality of the offence require it, by privation of member, or life, by him the aforesaid now baron of Baltimore, and his heirs, or by his or their deputy, lieutenant, judges, justices, magistrates, officers and ministers, to be constituted and appointed according to the tenor and true intent of these presents, and to constitute and ordain judges, justices, magistrates and officers, of what kind, for what cause, and with what power soever, within that land, and the sea of those parts, and in such form as to the said now baron of Baltimore, or his heirs, shall seem most fitting: And also to remit, release, pardon and abolish, all crimes and offences whatsoever against such laws, whether before, or after judgment passed; and to do all and singular other things belonging to the completion of justice, and to courts, prætorian judicatories, and tribunals, judicial forms and modes of proceeding, although express mention thereof in these presents be not made; and, by judges by them delegated, to award process, hold pleas, and determine in those courts, prætorian judicatories, and tribunals, in all actions, suits, causes, and matters whatsoever, as well criminal as personal, real and mixed, and prætorian: Which said laws, so to be published as abovesaid, we will, enjoin, charge and command, to be most absolute and firm in law, and to be kept in those parts by all the subjects and liege-men of us, our heirs and successors, so far as they concern them, and to be inviolably observed under the penalties therein expressed, or to be expressed. So nevertheless, that the laws aforesaid be consonant to reason, and be not repugnant or contrary, but (so far as conveniently may be) agreeable to the laws, statutes, customs and rights of this our kingdom of England.

VIII. And forasmuch as, in the government of so great a province, sudden accidents may frequently happen, to which it will be necessary to apply a remedy, before the freeholders of the said province, their delegates or deputies, can be called together for the framing of laws; neither will it be fit that so great a number of people should immediately, on such emergent occasion, be called together, we therefore, for the better government of so great a province, do will and ordain, and by these presents, for us, our heirs and successors, do grant unto the said now baron of Baltimore, and to his heirs, that the aforesaid now baron of Baltimore, and his heirs, by themselves, or by their magistrates and officers, thereunto duly to be constituted as aforesaid, may, and can make and constitute fit and wholesom ordinances from time to time, to be kept and observed within the province aforesaid, as well for the conservation of the peace, as for the better government of the people inhabiting therein, and publicly to notify the same to all persons whom the same in any wise do or may affect. Which ordinances we will to be inviolably observed within the said province, under the pains to be expressed in the same: So that the said ordinances be consonant to reason, and be not repugnant nor contrary, but (so far as conveniently may be done) agreeable to the laws, statutes, or rights of our kingdom of England: And so that the same ordinances do not, in any sort, extend to oblige, bind, charge, or take away the right or interest of any person or persons, of, or in member, life, freehold, goods or chattels.

IX. Furthermore, that the new colony may more happily increase by a multitude of people resorting thither, and at the same time may be more firmly secured from the incursions of savages, or of other enemies, pirates and ravagers: We therefore, for us, our heirs and successors, do by these presents give and grant power, licence and liberty, to all the liege-men and subjects, present and future, of us, our heirs and successors, except such to whom it shall be expressly forbidden, to transport themselves and their families to the said province, with fitting vessels, and suitable provisions, and therein to settle, dwell and inhabit; and to build and fortify castles, forts, and other places of strength, at the appointment of the aforesaid now baron of Baltimore, and his heirs, for the public and their own defence; the statute of fugitives, or any other whatsoever to the contrary of the premisses in any wise notwithstanding.

X. We will also, and of our more abundant grace, for us, our heirs and successors, do firmly charge, constitute, ordain and command, that the said province be of our allegiance; and that all and singular the subjects and liege-men of us, our heirs and successors, transplanted, or hereafter to be transplanted into the province aforesaid and the children of them and of others their descendants whether already born there or hereafter to be born be and shall be natives and liege-men of us, our heirs and successors, of our kingdom of England and Ireland; and in all things shall be held, treated, reputed, and esteemed as the faithful liege-men of us, and our heirs and successors, born within our kingdom of England; also lands, tenements, revenues, services, and other hereditaments whatsoever, within our kingdom of England, and other our dominions, to inherit, or otherwise purchase, receive, take, have, hold, buy and possess, and the same to use and enjoy, and the same to give, sell, alien and bequeath; and likewise all privileges, franchises and liberties of this our kingdom of England, freely, quietly, and peaceably to have and possess, and the same may use and enjoy in the same manner as our liege-men born, or to be born within our said kingdom of England, without impediment, molestation, vexation, impeachment, or grievance of us, or any of our heirs or successors; any statute, act, ordinance or provision, to the contrary thereof notwithstanding.

XI. Furthermore, that our subjects may be incited to undertake this expedition with a ready and chearful mind: Know ye, that we, of our especial grace, certain knowledge, and mere motion, do, by the tenor of these presents, give and grant, as well to the aforesaid baron of Baltimore, and to his heirs, as to all other persons who shall from time to time repair to the said province, either for the sake of inhabiting, or of trading with the inhabitants of the province aforesaid, full license to ship and lade in any the ports of us, our heirs and successors, all and singular their goods, as well moveable as immoveable, wares and merchandises, likewise grain of what sort soever, and other things whatsoever necessary for food and cloathing, by the laws and statutes of our kingdoms and dominions, not prohibited to be transported out of the said kingdoms; and the same to transport, by themselves, or their servants or assigns, into the said province, without the impediment or molestation of us, our heirs or successors, or of any officers of us, our heirs or successors, (saving unto us, our heirs and successors, the impositions, subsidies, customs, and other dues payable for the same goods and merchandises), any statute, act, ordinance, or other thing whatsoever to the contrary notwithstanding.

XII. But because, that in so remote a region, placed among so many barbarous nations, the incursions as well of the barbarians themselves, as of other enemies, pirates and ravagers, probably will be feared, therefore, we have given, and for us, our heirs and successors, do give by these presents, as full and unrestrained power, as any captain-general of an army ever hath had, unto the aforesaid now baron of Baltimore, and to his heirs and assigns, by themselves, or by their captains, or other officers, to

summon to their standards, and to array all men, of whatsoever condition, or wheresoever born, for the time being, in the said province of Maryland, to wage war, and to pursue, even beyond the limits of their province, the enemies and ravagers aforesaid, infesting those parts by land and by sea, and (if God shall grant it) to vanquish and captivate them, and the captives to put to death, or, according to their discretion, to save, and to do all other and singular the things which appertain, or have been accustomed to appertain unto the authority and office of a captain-general of an army.

XIII. We also will, and by this our charter, do give unto the aforesaid now baron of Baltimore, and to his heirs and assigns, power, liberty and authority, that in case of rebellion, sudden tumult, or sedition, if any (which God forbid) should happen to arise, whether upon land within the province aforesaid, or upon the high sea in making a voyage to the said province of Maryland, or in returning thence, they may, by themselves, or by their captains, or other officers, thereunto deputed under their seals (to whom we for us, our heirs and successors, by these presents, do give and grant the fullest power and authority) exercise martial law as freely, and in as ample manner and form, as any captain-general of an army, by virtue of his office may, or hath accustomed to use the same, against the seditious authors of innovations in those parts, withdrawing themselves from the government of him or them, refusing to serve in war, flying over to the enemy, exceeding their leave of absence, deserters, or otherwise howsoever offending against the rule, law, or discipline of war.

XIV. Moreover, left in so remote and far distant a region, every access to honours and dignities may seem to be precluded, and utterly barred, to men well born, who are preparing to engage in the present expedition, and desirous of deserving well, both in peace and war, of us, and our kingdoms; for this cause, we, for us, our heirs and successors, do give free and plenary power to the aforesaid now baron of Baltimore, and to his heirs and assigns, to confer favours, rewards and honours, upon such subjects, inhabiting within the province aforesaid, as shall be well deserving, and to adorn them with whatsoever titles and dignities they shall appoint; (so that they be not such as are now used in England) also to erect and incorporate towns into boroughs, and boroughs into cities, with suitable privileges and immunities, according to the merits of the inhabitants, and convenience of the places; and to do all and singular other things in the premises, which to him or them shall seem fitting and convenient; even although they shall be such as, in their own nature, require a more special commandment and warrant than in these presents may be expressed.

XV. We will also, and by these presents do, for us, our heirs and successors, give and grant license by this our charter, unto the aforesaid now baron of Baltimore, his heirs and assigns, and to all persons whatsoever, who are, or shall be residents and inhabitants of the province aforesaid, freely to import and unlade, by themselves, their servants, factors or assigns, all wares and merchandises whatsoever, which shall be collected out of the fruits and commodities of the said province, whether the product of the land or the sea, into any the ports whatsoever of us, our heirs and successors, of England or Ireland, or otherwise to dispose of the same there; and, if need be, within one year, to be computed immediately from the time of unlading thereof, to lade the same merchandises again, in the same, or other ships, and to export the same to any other countries they shall think proper, whether belonging to us, or any foreign power which shall be in amity with us, our heirs or successors: *Provided always,* That they be bound to pay for the same to us, our heirs and successors, such customs and impositions, subsidies and taxes, as our other subjects of our kingdom of England, for the time being, shall be bound to pay, beyond which we will that the inhabitants of the aforesaid province of the said land, called Maryland, shall not be burthened.

XVI. And furthermore, of our more ample special grace, and of our certain knowledge, and mere motion, we do, for us, our heirs and successors, grant unto the aforesaid now baron of Baltimore, his heirs and assigns, full and absolute power and authority to make, erect and constitute, within the province of Maryland, and the islands and islets aforesaid, such, and so many sea-ports, harbours, creeks, and other places of unlading and discharge of goods and merchandises out of ships, boats, and other vessels, and of lading in the same, and in so many, and such places, and with such rights, jurisdictions, liberties, and privileges, unto such ports respecting, as to him or them shall seem most expedient: And, that all and every the ships, boats, and other vessels whatsoever, coming to, or going from the province aforesaid, for the sake of merchandising, shall be laden and unladen at such ports only as shall be so erected and constituted by the said now baron of Baltimore, his heirs and assigns, any usage, custom, or any other thing whatsoever to the contrary notwithstanding. Saving always to us, our heirs and successors, and to all the subjects of our kingdoms of England and Ireland, of us, our heirs and successors, the liberty of fishing for sea-fish, as well in the sea, bays, straits, and navigable rivers, as in the harbours, bays, and creeks of the province aforesaid; and the privilege of salting and drying fish on the shores of the same province; and, for that cause, to cut down and take hedging-wood and twigs there growing, and to build huts and cabins, necessary in this behalf, in the same manner as heretofore they reasonably might, or have used to do. Which liberties and privileges, the said subjects of us, our heirs and successors, shall enjoy, without notable damage or injury in any wise to be done to the aforesaid now baron of Baltimore, his heirs or assigns, or to the residents and inhabitants of the same province in the ports, creeks, and shores aforesaid, and especially in the woods and trees there growing. And if any person shall do damage or injury of this kind, he shall incur the peril and pain of the heavy displeasure of us, our heirs and successors, and of the due chastisement of the laws, besides making satisfaction.

XVII. Moreover, we will, appoint, and ordain, and by these presents, for us, our heirs and successors, do grant unto the aforesaid now baron of Baltimore, his heirs and assigns, that the same baron of Baltimore, his heirs and assigns, from time to time, for ever, shall have, and enjoy the taxes and subsidies payable, or arising within the ports, harbours, and other creeks and places aforesaid, within the province aforesaid, for wares bought and sold, and things there to be laden or unladen, to be reasonably assessed by them, and the people there as aforesaid, on emergent occasion; to whom we grant power by these presents, for us, our heirs and successors, to assess and impose the said taxes and subsidies there, upon just cause, and in due proportion.

XVIII. And furthermore, of our special grace, and certain knowledge, and mere motion, we have given, granted and confirmed, and by these presents, for us, our heirs and successors, do give, grant and confirm, unto the aforesaid now baron of Baltimore, his heirs and assigns, full and absolute licence, power and authority, that he, the aforesaid now baron of Baltimore, his heirs and assigns, from time to time hereafter, for ever, may and can. at his or their will and pleasure, assign, alien, grant, demise, or enfeoff so many, such, and proportionate parts and parcels of the premises, to any person or persons willing to purchase the same, as they shall think convenient, to have and to hold to the same person or persons willing to take or purchase the same, and his and their heirs and assigns, in fee-simple, or fee-tail, or for term of life, lives or years; to hold of the aforesaid now baron of Baltimore, his heirs and assigns, by so many, such, and so great services, customs and rents, of this kind, as to the same now baron of Baltimore, his heirs and assigns, shall seem fit and agreeable, and not immediately of us, our heirs or successors. And we do give, and by these presents, for us, our heirs and successors, do grant to the same person and persons, and to each and every of them, licence, authority and power, that such person and persons, may take the premisses, or any parcel thereof, of the aforesaid now baron of Baltimore, his heirs and assigns, and hold the same to them and their assigns, or their heirs. of the aforesaid baron of Baltimore, his heirs and assigns, of what estate of inheritance soever, in fee-simple or fee-tail, or otherwise, as to them and the now baron of Baltimore, his heirs and assigns, shall seem expedient; the statute made in the

parliament of lord Edward, son of king Henry, late king of England, our progenitor, commonly called the *"Statute quia emptores terrarum,"* heretofore published in our kingdom of England, or any other statute, act, ordinance, usage, law, or custom, or any other thing, cause or matter, to the contrary thereof, heretofore had, done, published, ordained, or provided to the contrary thereof notwithstanding.

XIX. We also, by these presents, do give and grant licence to the same baron of Baltimore, and to his heirs, to erect any parcels of land within the province aforesaid, into manors, and in every one of those manors, to have and to hold a court-baron, and all things which to a court-baron do belong; and to have and to keep view of frank-pledge, for the conservation of the peace and better government of those parts, by themselves and their stewards, or by the lords, for the time being to be deputed, of other of those manors when they shall be constituted, and in the same to exercise all things to the view of frank-pledge belonging.

XX. And further we will, and do, by these presents, for us, our heirs and successors, covenant and grant to, and with the aforesaid now baron of Baltimore, his heirs and assigns, that we, our heirs and successors, at no time hereafter, will impose, or make or cause to be imposed, any impositions, customs, or other taxations, quotas or contributions whatsoever, in or upon the residents or inhabitants of the province aforesaid for their goods, lands, or tenements within the same province, or upon any tenements, lands, goods or chattels within the province aforesaid, or in or upon any goods or merchandises within the province aforesaid, or within the ports or harbours of the said province, to be laden or unladen: And we will and do, for us, our heirs and successors, enjoin and command that this our declaration shall, from time to time, be received and allowed in all our courts and prætorian judicatories, and before all the judges whatsoever of us, our heirs and successors, for a sufficient and lawful discharge, payment, and acquittance thereof, charging all and singular the officers and ministers of us, our heirs and successors, and enjoining them, under our heavy displeasure, that they do not at any time presume to attempt any thing to the contrary of the premisses or that may in any wise contravene the same, but that they, at all times, as is fitting, do aid and assist the aforesaid now baron of Baltimore, and his heirs, and the aforesaid inhabitants and merchants of the province of Maryland aforesaid, and their servants and ministers, factors and assigns, in the fullest use and enjoyment of this our charter.

XXI. And furthermore we will, and by these presents, for us, our heirs and successors, do grant unto the aforesaid now baron of Baltimore, his heirs and assigns, and to the freeholders and inhabitants of the said province, both present and to come, and to every of them, that the said province, and the freeholders or inhabitants of the said colony or country, shall not henceforth be held or reputed a member or part of the land of Virginia, or of any other colony already transported, or hereafter to be transported, or be dependent on the same, or subordinate in any kind of government, from which we do separate both the said province, and inhabitants thereof, and by these presents do will to be distinct, and that they may be immediately subject to our crown of England, and dependent on the same for ever.

XXII. And if, peradventure, hereafter it may happen, that any doubts or questions should arise concerning the true sense and meaning of any word, clause or sentence, contained in this our present charter, we will, charge and command, that interpretation to be applied, always, and in all things, and in all our courts and judicatories whatsoever, to obtain which shall be judged to be the more beneficial, profitable, and favourable to the aforesaid now baron of Baltimore, his heirs and assigns: *Provided always,* That no interpretation thereof be made, whereby God's holy and true christian religion, or the allegiance due to us, our heirs and successors, may in any wise suffer by change, prejudice, or diminution; although express mention be not made in these presents of the true yearly value or certainty of the premisses, or of any part thereof, or of other gifts and grants made by us, our heirs and predecessors, unto the said now lord Baltimore, or any statute, act, ordinance, provision, proclamation or restraint, heretofore had, made, published, ordained or provided, or any other thing, cause, or matter whatsoever, to the contrary thereof in any wise notwithstanding.

XXIII. In witness whereof we have caused these our letters to be made patent. Witness ourself at Westminster, the twentieth day of June. in the eighth year of our reign. (Kilty's Digest.)

ORIGINAL DECLARATION OF RIGHTS OF THE STATE OF MARYLAND

The parliament of Great Britain, by a declaratory act, having assumed a right to make laws to bind the colonies in all cases whatsoever, and in pursuance of such claim endeavoured by force of arms to subjugate the United Colonies to an unconditional submission to their will and power, and having at length constrained them to declare themselves independent states, and to assume government under the authority of the people, Therefore, we, the Delegates of Maryland, in free and full convention assembled, taking into our most serious consideration, the best means of establishing a good constitution in this state, for the surer foundation, and more permanent security thereof, declare,

1. That all government of right originates from the people, is founded in compact only. and instituted solely for the good of the whole.

2. That the people of this state ought to have the sole and exclusive right of regulating the internal government and police thereof.

3. That the inhabitants of Maryland are entitled to the common law of England, and the trial by jury according to the course of that law, and to the benefit of such of the English statutes as existed at the time of their first emigration, and which by experience have been found applicable to their local and other circumstances, and of such others as have been since made in England or Great Britain, and have been introduced, used, and practised by the courts of law or equity; and also to all acts of assembly in force on the first of June, seventeen hundred and seventy-four, except such as may have since expired, or have been, or may be altered by acts of convention, or this declaration of rights; subject nevertheless to the revision of, and amendment or repeal by the legislature of this state; and the inhabitants of Maryland are also entitled to all property derived to them from or under the charter granted by his majesty Charles the first, to Cæcilius Calvert, baron of Baltimore.

4. That all persons invested with the legislative or executive powers of government are the trustees of the public, and as such accountable for their conduct; wherefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought, to reform the old, or establish a new government; the doctrine of non-resistance against arbitrary power and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.

5. That the right in the people to participate in the legislature is the best security of liberty, and the foundation of all free government; for this purpose elections ought to be free and frequent, and every man having property in, a common interest with, and an attachment to the community, ought to have a right of suffrage.

6. That the legislative, executive, and judicial powers of government, ought to be for ever separate and distinct from each other.

7. That no power of suspending laws, or the execution of laws, unless by or derived from the legislature, ought to be exercised or allowed.

8. That freedom of speech and debates or proceedings in the legislature, ought not to be impeached in any other court of judicature.

9. That a place for the meeting of the legislature ought to be fixed, the most convenient to the members thereof, and to the depository of the public records; and the legislature ought not to be convened or held at any other place but from evident necessity.

10. That for the redress of grievances, and for amending, strengthening and preserving the laws, the legislature ought to be frequently convened.

11. That every man hath a right to petition the legislature for the redress of grievances in a peaceable and orderly manner.

12. That no aid, charge, tax, burthen, fee or fees, ought to be set, rated or levied, under any pretence, without the consent of the legislature.

13. That the levying taxes by the poll is grievious and oppressive, and ought to be abolished; that paupers ought not to be assessed for the support of government, but every other person in the state ought to contribute his proportion of public taxes, for the support of government, according to his actual worth in real or personal property within this state; yet fines, duties or taxes, may properly and justly be imposed or laid with a political view for the good government and benefit of the community.

14. That sanguinary laws ought to be avoided, as far as is consistent with the safety of the state; and no law to inflict cruel and unusual pains and penalties ought to be made, in any case, or at any time hereafter.

15. That retrospective laws, punishing facts committed before the existence of such laws, and by them only declared criminal, are oppressive, unjust and incompatible with liberty; wherefore no expost facto law ought to be made.

16. That no law to attaint particular persons of treason or felony, ought to be made in any case or at any time hereafter.

17. That every free man, for any injury done to him in his person, or property, ought to have remedy by the course of the law of the land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the law of the land.

18. That the trial of facts where they arise, is one of the greatest securities of the lives, liberties, and estate of the people.

19. That in all criminal prosecutions, every man hath a right to be informed of the accusation against him; to have a copy of the indictment, or charge, in due time, (if required,) to prepare for his defence; to be allowed counsel; to be confronted with the witnesses against him; to have process for his witnesses; to examine the witnesses for and against him on oath, and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty.

20. That no man ought to be compelled to give evidence against himself in a court of common law, or in any other court, but in such cases as have been usually practised in this state, or may hereafter be directed by the legislature.

21. That no freeman ought to be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the law of the land.

22. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted by the courts of law.

23. That all warrants without oath, or affirmation, to search suspected places, or to seize any person, or property, are serious and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal and ought not to be granted.

24. That there ought to be no forfeiture of any part of the estate of any person for any crime except murder, or treason against the state, and then only on conviction and attainder.

25. That a well regulated militia is the proper and natural defence of a free government.

26. That standing armies are dangerous to liberty, and ought not to be raised or kept up without consent of the legislature.

27. That in all cases and at all times the military ought to be under strict subordination to, and control of, the civil power.

28. That no soldier ought to be quartered in any house in time of peace without the consent of the owner, and in time of war in such manner only as the legislature shall direct.

29. That no person except regular soldiers, mariners and marines, in the service of this state, or militia when in actual service, ought in any case to be subject to, or punishable by martial law.

30. That the independency and uprightness of judges are essential to the impartial administration of justice, and a great security to the rights and liberties of the people; wherefore, the chancellor and all judges ought to hold commissions during good behaviour; and the said chancellor and judges shall be removed for misbehavior, on conviction in a court of law, and may be removed by the governor, upon the address of the general assembly: *Provided,* That two-thirds of all the members of each house concur in such address. That salaries, liberal, but not profuse, ought to be secured to the chancellor and the judges during the continuance of their commissions, in such manner and at such time, as the legislature shall hereafter direct, upon consideration of the circumstances of this state. No chancellor or judge ought to hold any other office, civil or military, or receive fees or perquisites of any kind.

31. That a long continuance in the first executive departments of power or trust, is dangerous to liberty; a rotation, therefore, in those departments, is one of the best securities of permanent freedom.

32. That no person ought to hold, at the same time, more than one office of profit, nor ought any person in public trust to receive any present from any foreign prince or state, or from the United States, or any of them, without the approbation of this state.

33. That, as it is the duty of every man to worship God in such manner as he thinks most acceptable to him, all persons professing the christian religion are equally entitled to protection in their religious liberty; wherefore, no person ought by any law to be molested in his person or estate, on account of his religious persuasion or profession, or for his religious practice; unless, under colour of religion, any man shall disturb the good order, peace, or safety of the state, or shall infringe the laws of morality, or injure others in their natural, civil or religious rights; nor ought any person to be compelled to frequent or maintain, or contribute, unless on contract, to maintain any particular place of worship, or any particular ministry. Yet the legislature may, in their discretion, lay a general and equal tax for the support of the christian religion, leaving to each individual the power of appointing the payment over of the money collected from him, to the support of any particular place of worship or minister, or for the benefit of the poor of his own denomination, or the poor in general of any particular county; but the churches, chapels, glebes, and all other property now belonging to the church of England, ought to remain to the church of England for ever. And all acts of assembly lately passed for collecting moneys for building or repairing particular churches or chapels of ease, shall continue in force and be executed, unless the legislature shall by act supersede or repeal the same; but no county court shall assess any quantity of tobacco or sum of money hereafter, on the application of any vestrymen or churchwardens; and every incumbent of the church of England, who hath remained in his parish and performed his duty, shall be entitled to receive the provision and support established by the act, entitled, An act for the support of the clergy of the church of England in this province, till the November court of this present year to be held for the county in which his parish shall lie, or partly lie, or for such time as he hath remained in his parish and performed his duty.

34. That every gift, sale, or devise of lands, to any minister, public teacher, or preacher of the gospel, as such, or to any religious sect, order or denomination, or to or for the support, use or benefit of, or in truth for, any minister, public teacher, or preacher of the gospel, as such, or any religious sect, order or denomination; and every gift or sale of goods or chattels, to go in succession, or to take place after the death of the seller or donor, to or for such support, use or benefit; and also every devise of goods or chattels to, or to or for the support, use or benefit of, any minister, public teacher, or preacher of the gospel, as such, or any religious sect, order or denomination, with-

out the leave of the legislature, shall be void; except always any sale, gift, lease, or devise, of any quantity of land not exceeding two acres, for a church, meeting, or other house of worship, and for a burying ground, which shall be improved, enjoyed or used, only for such purpose, or such sale, gift, lease or devise, shall be void.

35. That no other test or qualification ought to be required, on admission to any office of trust or profit, than such oath of support and fidelity to this state, and such oath of office, as shall be directed by this convention or the legislature of this state, and a declaration of a belief in the christian religion.

36. That the manner of administering an oath to any person ought to be such as those of the religious persuasion, profession, or denomination, of which such person is one, generally esteem the most effectual confirmation by the attestation of the Divine Being; and that the people called quakers, those called tunkers, and those called menonists, holding it unlawful to take an oath, on any occasion, ought to be allowed to make their solemn affirmation in the manner that quakers have been heretofore allowed to affirm, and to be of the same avail as an oath, in all such cases as the affirmation of quakers hath been allowed and accepted within this state instead of an oath. And further, on such affirmation warrants to search for stolen goods, or the apprehension or commitment of offenders, ought to be granted, or security for the peace awarded, and quakers, tunkers, or menonists, ought also, on their solemn affirmation as aforesaid, to be admitted as witnesses in all criminal cases not capital.

37. That the city of Annapolis ought to have all its rights, privileges and benefits, agreeable to its charter and the acts of assembly confirming and regulating the same; subject, nevertheless, to such alterations as may be made by this convention or any future legislature.

38. That the liberty of the press ought to be inviolably preserved.

39. That monopolies are odious, contrary to the spirit of a free government, and the principles of commerce, and ought not to be suffered.

40. That no title of nobility, or hereditary honour, ought to be granted in this state.

41. That the subsisting resolves of this and the several conventions held for this colony, ought to be in force as laws, unless altered by this convention, or the legislature of this state.

42. That this declaration of rights, or the form of government to be established by this convention, or any part of either of them, ought not to be altered, changed, or abolished by the legislature of this state but in such manner as this convention shall prescribe and direct. (Kilty's Digest; see also 1 Dorsey's Laws of Maryland, xxv; for declaration as amended to date see 1 Md. Ann. Code (1924) 43).

ACT OF CESSION FROM THE STATE OF VIRGINIA

AN ACT For the cession of ten miles square, or any lesser quantity of territory within this State, to the United States, in Congress assembled, for the permanent seat of the General Government

[Passed December 3, 1789]

I. Whereas the equal and common benefits resulting from the administration of the General Government will be best diffused, and its operations become more prompt and certain, by establishing such a situation for the seat of the said Government as will be most central and convenient to the citizens of the United States at large; having regard as well to population, extent of territory, and a free navigation to the Atlantic Ocean, through the Chesapeake Bay, as to the most direct and ready communication with our fellow-citizens on the western frontier; and whereas it appears to this assembly that a situation combining all the considerations and advantages before recited may be had on the banks of the river Potomac, above tidewater, in a country rich and fertile in soil, healthy and salubrious in climate, and abounding in all the necessaries and conveniences of life, where, in a location of ten miles square, if the wisdom of Congress shall so direct, the States of Pennsylvania, Maryland, and Virginia, may participate in such location:

II. *Be it therefore enacted by the general assembly,* That a tract of country not exceeding ten miles square, or any lesser quantity, to be located within the limits of the State, and in any part thereof, as Congress may by law direct, shall be, and the same is hereby forever ceded and relinquished to the Congress and Government of the United States, in full and absolute right, and exclusive jurisdiction, as well of soil as of persons residing or to reside thereon, pursuant to the tenor and effect of the eighth section of the first article of the Constitution of the Government of the United States.

III. *Provided,* That nothing herein contained shall be construed to vest in the United States any right of property in the soil, or to affect the rights of individuals therein, otherwise than the same shall or may be transferred by such individuals to the United States.

IV. *And provided also,* That the jurisdiction of the laws of this commonwealth over the persons and property of individuals residing within the limits of the cession aforesaid, shall not cease or determine until Congress, having accepted the said cession, shall, by law, provide for the government thereof, under their jurisdiction, in manner provided by the articles of the Constitution before recited (Burch's Digest, p. 213.)

ACT AUTHORIZING CESSION FROM STATE OF MARYLAND

AN ACT To cede to Congress a district of ten miles square in this State for the seat of the Government of the United States

Be it enacted, by the General Assembly of Maryland, That the representatives of this state in the house of representatives in the congress of the United States, appointed to assemble at New York on the first Wednesday of March next, be and they are hereby authorized and required, on the behalf of this state, to cede to the congress of the United States, any district in this state, not exceeding ten miles square, which the congress may fix upon and accept for the seat of government of the United States. (Md. act, December 23, 1788, ch. 46.)

ACT OF MARYLAND RATIFYING THE CESSION

AN ACT Concerning the Territory of Columbia and the city of Washington

[Passed December 19, 1791]

Whereas the President of the United States, by virtue of several acts of Congress, and acts of the assemblies of Maryland and Virginia, by his proclamation, dated at Georgetown on the thirtieth day of March, seventeen hundred and ninety-one, did declare and make known that the whole of the territory of ten miles square, for the permanent seat of government of the United States, shall be located and included within the four lines following, that is to say: Beginning at Jones Point, being the upper point of Hunting Creek, in Virginia, and at an angle at the outset forty-five degrees west of north, and running a direct line ten miles for the first line; then beginning again at the same Jones Point and running another direct line at a right angle with the first across the Potomac ten miles for the second line; then from the terminations of the said first and second lines running two other direct lines ten miles each, the one across the Eastern Branch and the other Potomac, and meeting each

other in a point, which has since been called the Territory of Columbia; and,

Whereas Notley Young, Daniel Carroll, of Duddington, and many others, proprietors of the greater part of the land hereinafter mentioned to have been laid out in a city, came into an agreement, and have conveyed their lands in trust to Thomas Beall, son of George, and John Mackall Gantt, whereby they have subjected their lands to be laid out as a city, given up part to the United States, and subjected other parts to be sold to raise money as a donation to be employed according to the act of Congress for establishing the temporary and permanent seat of the Government of the United States, under and upon the terms and conditions contained in each of the said deeds; and many of the proprietors of lots in Carrollsburg and Hamburg have also come into an agreement, subjecting their lots to be laid out anew, giving up one-half of the quantity thereof to be sold, and the money thence arising to be applied as a donation as aforesaid, and they to be reinstated in one-half of the quantity of their lots in the new location, or otherwise compensated in land in a different situation within the city, by agreement between the Commissioners and them, and in case of disagreement, that then a just and full compensation shall be made in money; yet some of the proprietors in Carrollsburg and Hamburg, as well as some of the proprietors of other lands, have not, from imbecility and other causes, come into any agreement concerning their lands within the limits hereinafter mentioned, but a very great number of the landholders having agreed on the same terms, the President of the United States directed a city to be laid out comprehending all the lands beginning on the east side of Rock Creek, at a stone standing in the middle of the road leading from Georgetown to Bladensburgh; thence along the middle of the said road to a stone standing on the east side of the Reedy Branch of Goose Creek; thence southeasterly, making an angle of sixty-one degrees and twenty minutes with the meridian, to a stone standing in the road leading from Bladensburgh to the Eastern Branch ferry; then south to a stone eighty poles north of the east and west line already drawn from the mouth of Goose Creek to the Eastern Branch; then east, parallel to the said east and west line, to the Eastern Branch; then with the waters of the Eastern Branch, Potomac River, and Rock Creek to the beginning, which has since been called the City of Washington; and

Whereas it appears to this general assembly highly just and expedient that all the lands within the said city should contribute, in due proportion, in the means which have already greatly enhanced the value of the whole; that an incontrovertible title ought to be made to the purchasers, under public sanction; that allowing foreigners to hold land within the said territory will greatly contribute to the improvement and population thereof; and that many temporary provisions will be necessary till Congress exercise the jurisdiction and government over the said territory; and

Whereas in the cession of this State, heretofore made, of territory for the Government of the United States, the lines of such cession could not be particularly designated; and it being expedient and proper that the same should be recognized in the acts of this State—

2. *Be it enacted by the General Assembly of Maryland,* That all that part of the said territory called Columbia which lies within the limits of this State shall be, and the same is hereby, acknowledged to be forever ceded and relinquished to the Congress and Government of the United States, and full and absolute right and exclusive jurisdiction, as well of soil as of persons residing or to reside thereon, pursuant to the tenor and effect of the eighth section of the first article of the Constitution of Government of the United States: *Provided,* That nothing herein contained shall be so construed to vest in the United States any right of property in the soil as to affect the rights of individuals therein, otherwise than the same shall or may be transferred by such individuals to the United States: *And provided also,* That the jurisdiction of the laws of this State over the persons and property of individuals residing within the limits of the cession aforesaid shall not cease or determine until Congress shall, by law, provide for the government thereof, under their jurisdiction, in manner provided by the article of the Constitution before recited.

3. *And be it enacted,* That all the lands belonging to minors, persons absent out of the State, married women, or persons non compos mentis, or the lands the property of this State, within the limits of Carrollsburg and Hamburg, shall be and are hereby subjected to the terms and conditions hereinbefore recited, as to the lots where the proprietors thereof have agreed concerning the same; and all the other lands, belonging as aforesaid, within the limits of the said city of Washington, shall be, and are hereby, subjected to the same terms and conditions as the said Notley Young, Daniel Carroll, of Duddington, and others, have by their said agreements and deeds, subjected their lands to, and where no conveyances have been made, the legal estate and trust are hereby invested in the said Thomas Beall, son of George, and John Mackall Gantt, in the same manner as if each proprietor had been competent to make, and had made a legal conveyance of his or her land, according to the form of those already mentioned, with proper acknowledgments of the execution thereof, and where necessary, of release of dower, and in every case where the proprietor is an infant, a married woman, insane, absent out of the State, or shall not attend on three months' advertisement of notice in the Maryland Journal and Baltimore Advertiser, the Maryland Herald, and in the Georgetown and Alexandria papers, so that allotment can not take place by agreement, the commissioners, aforesaid, or any two of them, may allot or assign the portion or share of such proprietor as near the old situation as may be, in Carrollsburg and Hamburg, and to the full value of what the party might claim under the terms before recited; and as to the other lands within the said city, the commissioners aforesaid, or any two of them, shall make such allotment and assignment, within the lands belonging to the same person, in alternate lots, determined by lot or ballot, whether the party shall begin with the lowest number: *Provided,* That in the cases of coverture and infancy, if the husband, guardian, or next friend will agree with the commissioners, or any two of them, then an effectual division may be made by consent; and in case of contrary claims, if the claimants will not jointly agree, the commissioners may proceed as if the proprietor was absent; and all persons to whom allotments and assignments of lands shall be made by the commissioners, or any two of them, on consent and agreement, or pursuant to this act without consent, shall hold the same in their former estate and interest, and in lieu of their former quantity, and subject in every respect to all such limitations, conditions, and incumbrances as their former estate and interest, and in lieu of their former quantity, and subject in every respect to all such limitations, conditions, incumbrances as their former estates and interests were subject to, and as if the same had been actually reconveyed pursuant to the said deed in trust.

4. *And be it enacted,* That where the proprietor or proprietors, possessor or possessors, of any lands within the limits of the city of Washington, or within the limits of Carrollsburg or Hamburg, who have not already, or who shall not, within three months of this act, execute deeds in trust to the aforesaid Thomas Beall and John M. Gantt, of all their land within the limits of the said city of Washington, and on the terms and conditions mentioned in the deeds already executed by Notley Young and others, and execute deeds in trust to the said Thomas Beall and John M. Gantt of all their lots in the towns of Carrollsburg and Hamburg on the same terms and conditions contained in the deeds already executed by the greater part of the proprietors of lots in the said towns, the said commissioners, or any two of them, shall and may, at any time or times thereafter, issue a process, directed to the sheriff of Prince Georges County, commanding him, in the name of the State, to summon five good substantial freeholders, who are not of kin to any proprietor or proprietors of the lands aforesaid, and who are not proprietors themselves, to meet on a certain day, and at a certain place within the limits of the said city, to inquire of the value of the estate of such proprietor or proprietors, possessor or possessors, on which day and place the said sheriff shall attend, with the freeholders by him summoned, which freeholders shall take the following oath, or affirmation, on the land to be by them valued, to wit:

"I, A. B., do solemnly swear (or affirm) that I will, to the best of my judgment, value the lands of C. D. now to be valued so as to do equal right and justice to the said C. D. and to the public, taking into consideration all circumstances," and shall then proceed to value the said lands; and such valuation, under their hands and seals and under the hand and seal of the said sheriff, shall be annexed to the said process and returned by the sheriff to the clerk appointed by virtue of this act, who shall make record of the same, and the said lands shall, on the payment of such valuation, be and is hereby vested in the said commissioners in trust, to be disposed of by them or otherwise employed to the use of the said city of Washington; and the sheriff aforesaid and freeholders aforesaid shall be allowed the same fees for their trouble as are allowed to a sheriff and juryman in executing a writ of inquiry; and in all cases where the proprietor or possessor is tenant in right of dower or by the courtesy the freeholders aforesaid shall ascertain the annual value of the lands and the gross value of such estate therein, and upon paying such gross value or securing to the possessor the payment of the annual valuation, at the option of the proprietor or possessor, the commissioners shall be and are hereby vested with the whole estate of such tenant, in manner and for the uses and purposes aforesaid.

5. *And be it enacted,* That all the squares, lots, and parcels of land within the said city which have been or shall be appropriated for the use of the United States, and all the lots and parcels which have been or shall be sold to raise money as a donation as aforesaid shall remain and be to the purchasers, according to the terms and conditions of their respective purchase; and purchases and leases from private persons claiming to be proprietors, and having, or those under whom they claim having, been in the possession of the lands purchased or leased, in their own right, five whole years next before the passing of this act, shall be good and effectual for the estate, and on the terms and conditions of such purchases and leases, respectively, without impeachment, and against any contrary title now existing; but if any person hath made a conveyance, or shall make a conveyance or lease, of any lands within the said city, not having right and title to do so, the person who might be entitled to recover the land under a contrary title now existing may, either by way of ejectment against the tenant or in an action for money had and received for his use against the bargainer or lessor, his heirs, executors, administrators, or devisees, as the case may require, recover all money received by him for the squares, pieces, or parcels appropriated for the use of the United States, as well as for lots or parcels sold and rents received by the person not having title as aforesaid, with interest from the time of receipt; and, on such recovery in ejectment, where the land is in lease, the tenant shall thereafter hold under, and pay the rent reserved to, the person making title to and recovering the land; but the possession bona fide acquired in none of the said cases shall be changed.

6. *And be it enacted,* That any foreigner may, by deed or will hereafter to be made, take and hold lands within that part of the said territory which lies within this State in the same manner as if he were a citizen of this State; and the same lands may be conveyed by him, and transmitted to, and inherited by his heirs or relations, as if he and they were citizens of this State; provided that no foreigner shall, in virtue hereof, be entitled to any further or other privilege of a citizen.

7. *And be it enacted,* That the said commissioners, or any two of them, may appoint a clerk for recording deeds of land within the said territory, who shall provide a proper book for the purpose, and therein record, in a strong, legible hand, all deeds duly acknowledged, of lands in the said territory, delivered to him to be recorded, and in the same book make due entries of all divisions and allotments of lands and lots made by the commissioners in pursuance of this act, and certificates granted by them of sales, and the purchase money having been paid, with a proper alphabet in the same book of the deeds and entries aforesaid; and the same book shall carefully preserve and deliver over to the commissioners aforesaid, or their successors, or such person or persons as Congress shall hereafter appoint, which clerk shall continue such during good behaviour, and shall be removable only on a conviction of misbehaviour in a court of law; but before he acts as such he shall take an oath or affirmation well and truly to execute his office, and he shall be entitled to the same fees as are or may be allowed to the clerks of the county courts for searches, copying, and recording.

8. *And be it enacted,* That acknowledgments of deeds made before a person in the manner and certified as the laws of this State direct or made before, and certified by, either of the commissioners shall be effectual; and that no deed hereafter to be made, of or for lands within that part of the said territory which lies within this State, shall operate as a legal conveyance, nor shall any lease for more than seven years be effectual, unless the deed shall have been acknowledged as aforesaid, and delivered to the said clerk to be recorded within six calendar months from the date thereof.

9. *And be it enacted,* That the commissioners aforesaid, or some two of them, shall direct an entry to be made in the said record book of every allotment and assignment to the respective proprietors in pursuance of this act.

10. And for the encouragement of master builders to undertake the building and finishing houses within the said city by securing to them a just and effectual remedy for their advances and earnings, *Be it enacted,* That for all sums due and owing on written contracts for the building any house in the said city, or the brickwork or carpenters' or joiners' work thereon, the undertaker or workmen employed by the person for whose use the house shall be built shall have a lien on the house and the ground on which the same is erected, as well as for the materials found by him: *Provided,* The said written contract shall have been acknowledged before one of the commissioners, a justice of the peace, or an alderman of the corporation of Georgetown and recorded in the office of the clerk for recording deeds, herein created, within six calendar months from the time of acknowledgment as aforesaid, and if within two years after the last of the work is done he proceeds in equity he shall have as upon a mortgage, or if he proceeds at law within the same time he may have execution against the house and land, in whose hands soever the same may be; but this remedy shall be considered as additional only, nor shall, as to the land, take place of any legal incumbrance made prior to the commencement of such claim.

11. *And be it enacted,* That the treasurer of the western shore be empowered and required to pay the seventy-two thousand dollars agreed to be advanced to the President by resolutions of the last sessions of assembly, in sums as the same may come to his hands on the appointed funds, without waiting for the day appointed for the payment thereof.

12. *And be it enacted,* That the Commissioners aforesaid for the time being, or any two of them, shall from time to time, until Congress shall exercise the jurisdiction and government within the said Territory, have power to license the building of wharves in the waters of the Potomac and the Eastern Branch, adjoining the said city, of the materials, in the manner and of the extent they may judge durable, convenient, and agreeing with the general order; but no license shall be granted to one to build a wharf before the land of another, nor shall any wharf be built in the waters without license as aforesaid; and if any wharf shall be built without such license, or different therefrom, the same is hereby declared a common nuisance. They may also, from time to time, make regulations for the discharge and laying of ballast from ships or vessels lying in the Potomac River above the lower line of the said Territory and Georgetown, and from ships and vessels lying in the Eastern Branch. They may also, from time to time, make regulations for landing and laying materials for building the said city, for disposing and laying earth which may be dug out of the wells, cellars, and foundations and for ascertaining the thickness of the walls of houses, and to enforce the observance of all such regulations by appointing penalties for the breach of any one of them not exceeding ten pounds current money,. which may be recovered in the name of the said Commissioners, by warrant, before a justice of the peace, as in case of small debts, and disposed of as a donation for the purpose of the said act of

Congress. And the said Commissioners, or any two of them, may grant licenses for retailing distilled spirits within the limits of the said city, and suspend or declare the same void. And if any person shall retail or sell any distilled spirits, mixed or unmixed, in less than ten gallons to the same person, or at the same time actually delivered, he or she shall forfeit for every such sale three pounds, to be recovered and applied as aforesaid.

13. *And be it enacted,* That an act of assembly of this State to condemn lands, if necessary, for the public buildings of the United States be, and is hereby, repealed. (Md. act, 1791, ch. 45.)

MARYLAND ACT OF 1792 SUPPLEMENTARY TO ACT OF CESSION

A supplement to the act entitled "An act concerning the Territory of Columbia and the city of Washington"

[Passed December 23, 1792]

Whereas, doubts have arisen upon the act to which this is a supplement, whether it be essential to the validity of deeds and other conveyances of land in that part of the Territory of Columbia which lies within this state, that the same be recorded in the manner prescribed by the laws of this state before the passage of the said act; to remove which doubts—

2. *Be it enacted, by the General Assembly of Maryland,* That all deeds and other conveyances of land lying within the said territory, and recorded agreeably to the directions and provisions of the said act by the clerk appointed in the manner therein provided for the recording of deeds within the said territory, shall be as good, valid, and sufficient, in law, for the purposes of passing the estates therein mentioned, and for all other purposes, as if the same were also recorded in the manner prescribed by the laws of this state, before the passage of the said act for the recording of deeds and other conveyances of land within this state. (Md. act, 1792, ch. 49.)

MARYLAND ACT OF 1793 SUPPLEMENTARY TO ACT OF CESSION

A further supplement to the act concerning the Territory of Columbia and the city of Washington

Be it enacted, by the General Assembly of Maryland, That the certificates granted, or which may be granted, by the said commissioners, or any two of them, to purchasers of lots in the said city, with acknowledgment of the payment of the whole purchase money, and interest, if any shall have arisen thereon, and recorded agreeably to the directions of the act concerning the territory of Columbia and city of Washington, shall be sufficient and effectual to vest the legal estate in the purchasers, their heirs and assigns, according to the import of such certificates, without any deed or formal conveyance.

II. *And be it enacted,* That on sales of lots in the said city by the said commissioners, or any two of them, under terms or conditions of payment being therefor at any day or days after such contract entered into, if any sum of the purchase money or interest shall not be paid for the space of thirty days after the same ought to be paid, the commissioners, or any two of them, may sell the same lots at public vendue, in the city of Washington, at any time after sixty days notice of such sale, in some of the public newspapers of George-town and Baltimore-town, and retain in their hands sufficient of the money produced by such new sale to satisfy all principal and interest due on the first contract, together with the expenses of advertisements and sale, and the original purchaser, or his assigns, shall be entitled to receive from the said commissioners, at their treasury, on demand, the balance of the money which may have been actually received by them, or under their order, on the said second sale; and all lots, so sold, shall be freed and acquitted of all claim, legal and equitable, of the first purchaser, his heirs and assigns.

III. *And be it enacted,* That the commissioners aforesaid, or any two of them, may appoint a certain day for the allotment and assignment of one half of the quantity of each lot of ground in Carrollsburgh and Hamburgh, not before that time divided or assigned, pursuant to the said act concerning the territory of Columbia and the city of Washington, and on notice thereof in the Annapolis, some one of the Baltimore, the Eastern and Georgetown news-papers, for at least three weeks, the same commissioners may proceed to the allotment and assignment of ground within the said city, on the day appointed for that purpose, and therein proceed at convenient times till the whole be finished, as if the proprietors of such lots actually resided out of this state; provided, that if the proprietor of any such lot shall object in person, or by writing delivered to the commissioners, against their so proceeding as to his lot, before they shall have made an assignment of ground for the same, then they shall forbear as to such lot, and may proceed according to the before-mentioned act.

IV. *And be it enacted,* That the said commissioners may make a seal of office of the clerk for recording deeds within the district of Columbia, which shall be kept by him; and that the like fees shall be paid for, and the like credit shall be given to, certificates under seal, as to the like acts under the seal of a county court, and the said clerk shall be entitled to demand and receive his fees when the services enjoined him by this act, and the act to which this is a further supplement, shall be performed. (Md. act, 1793, ch. 58.)

CONGRESSIONAL ACCEPTANCE OF CEDED TERRITORY

AN ACT For establishing the temporary and permanent seat of the Government of the United States

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That a district of territory, not exceeding ten miles square, to be located as hereafter directed on the river Potomac, at some place between the mouths of the Eastern Branch and Connogochegue, be, and the same is hereby accepted for the permanent seat of the government of the United States. *Provided nevertheless,* That the operation of the laws of the state within such district shall not be affected by this acceptance, until the time fixed for the removal of the government thereto, and until Congress shall otherwise by law provide.

SEC. 2. *And be it further enacted,* That the President of the United States be authorized to appoint, and by supplying vacancies happening from refusals to act or other causes, to keep in appointment as long as may be necessary, three commissioners, who, or any two of whom, shall, under the direction of the President, survey, and by proper metes and bounds define and limit a district of territory, under the limitations above mentioned; and the district so defined, limited and located, shall be deemed the district accepted by this act, for the permanent seat of the government of the United States.

SEC. 3. *And be it [further] enacted,* That the said commissioners, or any two of them, shall have power to purchase or accept such quantity of land on the eastern side of the said river, within the said district, as the President shall deem proper for the use of the United States, and according to such plans as the President shall approve, the said commissioners, or any two of them, shall, prior to the first Monday in December, in the year one thousand eight hundred, provide suitable buildings for the accommodation of Congress, and of the President, and for the public offices of the government of the United States.

SEC. 4. *And be it [further] enacted,* That for defraying the expense of such purchases and buildings, the President of the United States be authorized and requested to accept grants of money.

SEC. 5. *And be it [further] enacted,* That prior to the first Monday in December next, all offices attached to the seat of the government of the United States, shall be removed to, and until the said first Monday in December, in the year one thousand eight hundred, shall remain at the city of Philadelphia, in the state of Pennsylvania, at which place the session of Congress next ensuing the present shall be held.

SEC. 6. *And be it [further] enacted,* That on the said first Monday in December, in the year one thousand eight hundred, the seat of the government of the United States shall, by virtue of this act, be transferred to the district and place aforesaid. And all offices attached to the said seat of government, shall accordingly be removed thereto by their respective holders, and shall, after the said day, cease to be exercised elsewhere; and that the necessary expense of such removal shall be defrayed out of the duties on imposts and tonnage, of which a sufficient sum is hereby appropriated.

Approved, July 16, 1790 (1 Stat. 139, ch. 28).

PROCLAMATION BY THE PRESIDENT RESPECTING A SURVEY, AND DEFINING THE LIMITS OF, THE DISTRICT OF COLUMBIA

A proclamation

WHEREAS the General Assembly of the State of Maryland, by an act passed on the twenty-third day of December, in the year one thousand seven hundred and eighty-eight, intituled "An act to cede to Congress a District of ten miles square in this State, for the seat of the government of the United States," did enact, that the Representatives of the said State, in the House of Representatives of the Congress of the United States, appointed to assemble at New York, on the first Wednesday of March then next ensuing, should be and they were thereby authorized and required on the behalf of the said State, to cede to the Congress of the United States, any District in the said State, not exceeding ten miles square, which the Congress might fix upon and accept for the seat of Government of the United States.

And the General Assembly of the Commonwealth of Virginia, by an act passed on the third day of December, one thousand seven hundred and eighty-nine, and intituled "An act for the cession of ten miles square, or any lesser quantity of territory within this State, to the United States in Congress assembled, for the permanent seat of the General Government," did enact that a tract of country not exceeding ten miles square, or any lesser quantity to be located within the limits of the said State, and in any part thereof, as Congress might by law direct, should be and the same was thereby forever ceded and relinquished to the Congress and Government of the United States, in full and absolute right, and exclusive jurisdiction, as well of soil as of persons residing or to reside thereon, pursuant to the tenor and effect of the eighth section of the first article of the Constitution of Government of the United States.

And the Congress of the United States, by their act passed the sixteenth day of July, one thousand seven hundred and ninety, and intituled "An act for establishing the temporary and permanent seat of the Government of the United States," authorized the President of the United States to appoint three commissioners to survey under his direction, and by proper metes and bounds to limit a district of territory, not exceeding ten miles square, on the River Potomac, at some place between the mouths of the Eastern Branch and Connogocheque, which District, so to be located and limited, was accepted by the said act of Congress, as the District for the permanent seat of the Government of the United States.

Now, therefore, in pursuance of the powers to me confided, and after duly examining and weighing the advantages and disadvantages of the several situations within the limits aforesaid, I do hereby declare and make known, that the location of one part of the said District of ten miles square, shall be found by running four lines of experiment in the following manner, that is to say, running from the Court-house of Alexandria in Virginia, due southwest half a mile, and thence a due southeast course, till it shall strike Hunting Creek, to fix the beginning of the said four lines of experiment:

Then beginning the first of the said four lines of experiment at the point on Hunting Creek, where the said southeast course shall have struck the same, and running the said first line due northwest ten miles; thence the second line into Maryland due northeast ten miles; thence the third line due southeast ten miles; and thence the fourth line due southwest ten miles, to the beginning on Hunting Creek.

And the said four lines of experiment being so run, I do hereby declare and make known, that all that part within the said four lines of experiment which shall be within the State of Maryland and above the Eastern Branch, and all that part within the same four lines of experiment which shall be within the Commonwealth of Virginia, and above a line to be run from the point of land forming the Upper Cape of the mouth of the Eastern Branch due southwest, and no more, is now fixed upon, and directed to be surveyed, defined, limited and located for a part of the said District accepted by the said act of Congress for the permanent seat of the Government of the United States; (hereby expressly reserving the direction of the survey and location of the remaining part of the said District, to be made hereafter contiguous to such part or parts of the present location as is or shall be agreeable to law.)

And I do accordingly direct the said commissioners, appointed agreeably to the tenor of the said act, to proceed forthwith to run the said lines of experiment, and the same being run, to survey, and by proper metes and bounds to define and limit the part within the same, which is hereinbefore directed for immediate location and acceptance; and thereof to make due report to me, under their hands and seals.

In testimony whereof, I have caused the seal of the United States to be affixed to these presents, and signed the same with my hand. Done at the [L. S.] city of Philadelphia, the twenty-fourth day of January, in the year of our Lord one thousand seven hundred and ninety-one, and of the independence of the United States the fifteenth.

GEO. WASHINGTON.

By the President:
THOMAS JEFFERSON.

ACTS RELATIVE TO BOUNDARIES OF THE DISTRICT OF COLUMBIA

AN ACT To amend "An act for establishing the temporary and permanent seat of the Government of the United States"

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the act, intitled "An act for establishing the temporary and permanent seat of the government of the United States," as requires that the whole of the district of territory, not exceeding ten miles square, to be located on the river Potomac, for the permanent seat of the government of the United States, shall be located above the mouth of the Eastern Branch, be and is hereby repealed, and that it shall be lawful for the President to make any part of the territory below the said limit, and above the mouth of Hunting Creek, a part of the said district, so as to include a convenient part of the Eastern Branch, and of the lands lying on the lower side thereof, and also the town of Alexandria, and the territory so to be included, shall form a part of the district not exceeding ten miles square, for the permanent seat of the

government of the United States, in like manner and to all intents and purposes, as if the same had been within the purview of the above recited act: *Provided,* That nothing herein contained, shall authorize the erection of the public buildings otherwise than on the Maryland side of the river Potomac, as required by the aforesaid act.

Approved, March 3, 1791 (1 Stat. 214, ch. 17).

PROCLAMATION FIXING BOUNDARIES OF THE DISTRICT OF COLUMBIA

A proclamation by the President of the United States

Whereas, by a proclamation bearing date the twenty-fourth day of January of this present year, and in pursuance of certain acts of the States of Maryland and Virginia, and of the Congress of the United States therein mentioned, certain lines of experiment were directed to be run in the neighborhood of Georgetown, in Maryland, for the purpose of locating a part of the territory, of ten miles square, for the permanent seat of Government of the United States, and a certain part was directed to be located within the said lines of experiment on both sides of the Potomac, and above the limit of the Eastern Branch, prescribed by the said act of Congress;

And Congress, by an amendatory act, passed on the third day of this present month of March, have given further authority to the President of the United States "to make any part of the said territory below the said limit, and above the mouth of Hunting Creek, a part of the said district, so as to include a convenient part of the Eastern Branch and of the lands lying on the lower side thereof, and also the town of Alexandria:

Now, therefore, for the purpose of amending and completing the location of the whole of the said territory, of ten miles square, in conformity with the said amendatory act of Congress, I do hereby declare and make known, that the whole of the said territory shall be located and included within the four lines following; that is to say:

Beginning at Jones's Point, being the upper cape of Hunting Creek, in Virginia, and at an angle in the outset of forty-five degrees west of the north, and running in a direct line ten miles, for the first line; then beginning again at the same Jones's Point and running another direct line, at a right angle with the first, across the Potomac, ten miles, for the second line; thence from the termination of the said first and second lines, running two other direct lines of ten miles each, the one crossing the Eastern Branch aforesaid, and the other the Potomac, and meeting each other in a point.

And I do accordingly direct the commissioners named under the authority of the said first-mentioned act of Congress to proceed forthwith to have the said four lines run, and by proper metes and bounds defined and limited; and thereof to make due report, under their hands and seals; and the territory so to be located, defined, and limited shall be the whole territory accepted by the said act of Congress as the district for the permanent seat of the Government of the United States.

In testimony whereof, I have caused the seal of the United States to be affixed to these presents, and signed the same with my hand. Done at Georgetown aforesaid, the thirtieth day of March, in the year of our Lord seventeen hundred and ninety-one, and of the Independence of the United States the fifteenth.

[SEAL.] GEORGE WASHINGTON.

By the President:

THOMAS JEFFERSON.

ORGANIC ACT OF 1801

AN ACT Concerning the District of Columbia

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the laws of the state of Virginia, as they now exist, shall be and continue in force in that part of the District of Columbia, which was ceded by the said state to the United States, and by them accepted for the permanent seat of government; and that the laws of the state of Maryland, as they now exist, shall be and continue in force in that part of the said district, which was ceded by that state to the United States, and by them accepted as aforesaid.

SEC. 2. *And be it further enacted,* That the said district of Columbia shall be formed into two counties; one county shall contain all that part of said district, which lies on the east side of the river Potomac, together with the islands therein, and shall be called the county of Washington; the other county shall contain all that part of said district, which lies on the west side of said river, and shall be called the county of Alexandria; and the said river in its whole course through said district shall be taken and deemed to all intents and purposes to be within both of said counties.

SEC. 3. *Be it further enacted,* That there shall be a court in said district, which shall be called the circuit court of the district of Columbia; and the said court and the judges thereof shall have all the powers by law vested in the circuit courts and the judges of the circuit courts of the United States. Said court shall consist of one chief judge and two assistant judges resident within said district, to hold their respective offices during good behaviour; any two of whom shall constitute a quorum; and each of the said judges shall, before he enter on his office, take the oath or affirmation provided by law to be taken by the judges of the circuit courts of the United States; and said court shall have power to appoint a clerk of the court in each of said counties, who shall take the oath and give a bond with sureties, in the manner directed for clerks of the district courts in the act to establish the judiciary of the United States.

SEC. 4. *Be it further enacted,* That said court shall, annually, hold four sessions in each of said counties, to commence as follows, to wit: for the county of Washington, at the city of Washington, on the fourth Mondays of March, June, September and December; for the county of Alexandria, at Alexandria, on the second Mondays of January, April, July, and the first Monday of October.

SEC. 5. *Be it further enacted,* That said court shall have cognizance of all crimes and offences committed within said district, and of all cases in law and equity between parties, both or either of which shall be resident or be found within said district, and also of all actions or suits of a civil nature at common law or in equity, in which the United States shall be plaintiffs or complainants; and of all seizures on land or water, and all penalties and forfeitures made, arising or accruing under the laws of the United States.

SEC. 6. *Provided, and be it further enacted,* That all local actions shall be commenced in their proper counties, and that no action or suit shall be brought before said court, by any original process against any person, who shall not be an inhabitant of, or found within said district, at the time of serving the writ.

SEC. 7. *Be it further enacted,* That there shall be a marshal for the said district, who shall have the custody of the gaols of said counties, and be accountable for the safe keeping of all prisoners legally committed therein; and he shall be appointed for the same term, shall take the same oath, give a bond with sureties in the same manner, shall have generally, within said district, the same powers, and perform the same duties, as is by law directed and provided in the case of marshals of the United States.

SEC. 8. *Be it further enacted,* That any final judgment, order or decree in said circuit court, wherein the matter in dispute, exclusive of costs, shall exceed the value of one hundred dollars, may be re-examined and reversed or affirmed in the supreme court of the United States, by writ of error or appeal, which shall be prosecuted in the same manner, under the same regulations, and the same proceedings shall be had therein, as is or shall be provided in the case of writs of error on judgments, or appeals upon

orders or decrees, rendered in the circuit court of the United States.

SEC. 9. *Be it further enacted,* That there shall be appointed an attorney of the United States for said district, who shall take the oath and perform all the duties required of the district attornies of the United States; and the said attorney, marshal and clerks, shall be entitled to receive for their respective services, the same fees, perquisites and emoluments, which are by law allowed respectively to the attorney, marshal and clerk of the United States, for the district of Maryland.

SEC. 10. *Be it further enacted,* That the chief judge, to be appointed by virtue of this act, shall receive an annual salary of two thousand dollars, and the two assistant judges, of sixteen hundred dollars each, to be paid quarterly, at the treasury of the United States.

SEC. 11. *Be it further enacted,* That there shall be appointed in and for each of the said counties, such number of discreet persons to be justices of the peace, as the President of the United States shall from time to time think expedient, to continue in office five years; and such justices, having taken an oath for the faithful and impartial discharge of the duties of the office, shall, in all matters, civil and criminal, and in whatever relates to the conservation of the peace, have all the powers vested in, and shall perform all the duties required of, justices of the peace, as individual magistrates, by the laws herein before continued in force in those parts of said district, for which they shall have been respectively appointed; and they shall have cognizance in personal demands to the value of twenty dollars, exclusive of costs; which sum they shall not exceed, any law to the contrary notwithstanding; and they shall be entitled to receive for their services the fees allowed for like services by the laws herein before adopted and continued, in the eastern part of said district.

SEC. 12. *And be it further enacted,* That there shall be appointed in and for each of the said counties a register of wills, and a judge to be called the judge of the orphans' court, who shall each take an oath for the faithful and impartial discharge of the duties of his office; and shall have all the powers, perform all the duties, and receive the like fees, as are exercised, performed, and received, by the registers of wills and judges of the orphans' court, within the state of Maryland; and appeals from the said courts shall be to the circuit court of said district, who shall therein have all the powers of the chancellor of the said state.

SEC. 13. *And be it further enacted,* That in all cases where judgments or decrees have been obtained, or hereafter shall be obtained, on suits now depending in any of the courts of the commonwealth of Virginia, or of the state of Maryland, where the defendant resides or has property within the district of Columbia, it shall be lawful for the plaintiff in such case upon filing an exemplification of the record and proceedings in such suits, with the clerk of the court of the county where the defendant resides, or his property may be found, to sue out writs of execution thereon, returnable to the said court, which shall be proceeded on, in the same manner as if the judgment or decree had originally been obtained in said court.

SEC. 14. *And be it further enacted,* That all actions, suits, process, pleadings, and other proceedings of what nature or kind soever, depending or existing in the courts of Hustings for the towns of Alexandria and Georgetown, shall be, and hereby are continued over to the circuit courts to be holden by virtue of this act, within the district of Columbia, in manner following; that is to say: all such as shall then be depending and undetermined, before the court of Hustings for the town of Alexandria, to the next circuit court hereby directed to be holden in the town of Alexandria; and all such as shall then be depending and undetermined, before the court of Hustings for Georgetown, to the next circuit court hereby directed to be holden in the city of Washington: *Provided nevertheless,* that where the personal demand in such cases, exclusive of costs, does not exceed the value of twenty dollars, the justices of the peace within their respective counties, shall have cognizance thereof.

SEC. 15. *And be it further enacted,* That all writs and processes whatsoever, which shall hereafter issue from the courts hereby established within the district, shall be tested in the name of the chief judge of the district of Columbia.

SEC. 16. *And be it further enacted,* That nothing in this act contained shall in any wise alter, impeach or impair the rights, granted by or derived from the acts of incorporation of Alexandria and Georgetown, or of any other body corporate or politic, within the said district, except so far as relates to the judicial powers of the corporations of Georgetown and Alexandria.

Approved, February 27, 1801 (2 Stat. 103, ch. 15).

ACT OF 1802 INCORPORATING THE CITY OF WASHINGTON

AN ACT To incorporate the inhabitants of the city of Washington, in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the inhabitants of the city of Washington be constituted a body politic and corporate, by the name of a mayor and council of the city of Washington, and by their corporate name, may sue and be sued, implead and be impleaded, grant, receive, and do all other acts as natural persons, and may purchase and hold real, personal and mixed property, or dispose of the same for the benefit of the said city; and may have and use a city seal, which may be broken or altered at pleasure; the city of Washington shall be divided into three divisions or wards, as now divided by the levy court for the county, for the purpose of assessment; but the number may be increased hereafter, as in the wisdom of the city council shall seem most conducive to the general interest and convenience.

SEC. 2. *And be it further enacted,* That the council of the city of Washington shall consist of twelve members, residents of the city, and upwards of twenty-five years of age, to be divided into two chambers, the first chamber to consist of seven members, and the second chamber of five members; the second chamber to be chosen from the whole number of councillors elected, by their joint ballot. The city council to be elected annually, by ballot, in a general ticket, by the free white male inhabitants of full age, who have resided twelve months in the city, and paid taxes therein the year preceding the election's being held: the justices of the county of Washington, resident in the city, or any three of them, to preside as judges of election, with such associates as the council may, from time to time, appoint.

SEC. 3. *And be it further enacted,* That the first election of members for the city council shall be held on the first Monday in June next, and in every year afterwards, at such place in each ward as the judges of the election may prescribe.

SEC. 4. *And be it further enacted,* That the polls shall be kept open from eight o'clock in the morning till seven o'clock in the evening, and no longer, for the reception of ballots. On the closing of the poll, the judges shall close and seal their ballot-boxes, and meet on the day following in the presence of the marshal of the district, on the first election, and the council afterwards, when the seals shall be broken, and the votes counted: within three days after such election, they shall give notice to the persons having the greatest number of legal votes, that they are duly elected, and shall make their return to the mayor of the city .

SEC. 5. *And be it further enacted,* That the mayor of the city shall be appointed, annually, by the President of the United States. He must be a citizen of the United States, and a resident of the city, prior to his appointment.

SEC. 6. *And be it further enacted,* That the city council shall hold their sessions in the city hall, or, until such building is erected, in such place as the mayor may provide for that purpose, on the second Monday in June, in every year; but the mayor may convene them oftener, if the public good require their deliberations. Three fourths of the members of each council may be a quorum to do business, but a smaller number may adjourn from day to day: they may compel the attendance of absent members.

in such manner, and under such penalties, as they may, by ordinance, provide: they shall appoint their respective presidents, who shall preside during their sessions, and shall vote on all questions where there is an equal division; they shall settle their rules of proceedings, appoint their own officers, regulate their respective fees, and remove them at pleasure: they shall judge of the elections, returns and qualifications of their own members, and may, with the concurrence of three fourths of the whole, expel any member for disorderly behaviour, or mal-conduct in office, but not a second time for the same offence: they shall keep a journal of their proceedings, and enter the yeas and nays on any question, resolve or ordinance, at the request of any member, and their deliberations shall be public. The mayor shall appoint to all offices under the corporation. All ordinances or acts passed by the city council shall be sent to the mayor, for his approbation, and when approved by him, shall then be obligatory as such. But if the said mayor shall not approve of such ordinance or act, he shall return the same within five days, with his reasons in writing therefor; and if three fourths of both branches of the city council, on reconsideration thereof, approve of the same, it shall be in force in like manner as if he had approved it, unless the city council, by their adjournment, prevent its return.

SEC. 7. *And be it further enacted,* That the corporation aforesaid shall have full power and authority to pass all by-laws and ordinances; to prevent and remove nuisances; to prevent the introduction of contagious diseases within the city; to establish night watches or patrols, and erect lamps; to regulate the stationing, anchorage, and mooring of vessels; to provide for licensing and regulating auctions, retailers of liquors, hackney carriages, wagons, carts and drays, and pawnbrokers within the city; to restrain or prohibit gambling, and to provide for licensing, regulating or restraining theatrical or other public amusements within the city; to regulate and establish markets; to erect and repair bridges; to keep in repair all necessary streets, avenues, drains and sewers, and to pass regulations necessary for the preservation of the same, agreeably to the plan of the said city; to provide for the safe keeping of the standard of weights and measures fixed by Congress, and for the regulation of all weights and measures used in the city; to provide for the licensing and regulating the sweeping of chimneys and fixing the rates thereof; to establish and regulate fire wards and fire companies; to regulate and establish the size of bricks that are to be made and used in the city; to sink wells, and erect and repair pumps in the streets; to impose and appropriate fines, penalties and forfeitures for breach of their ordinances; to lay and collect taxes; to enact by-laws for the prevention and extinguishment of fire; and to pass all ordinances necessary to give effect and operation to all the powers vested in the corporation of the city of Washington: *Provided,* that the by-laws or ordinance of the said corporation, shall be, in no wise, obligatory upon the persons of non-residents of the said city, unless in cases of intentional violation of by-laws or ordinances previously promulgated. All the fines, penalties and forfeitures, imposed by the corporation of the city of Washington, if not exceeding twenty dollars, shall be recovered before a single magistrate, as small debts are, by law, recoverable; and if such fines, penalties and forfeitures exceed the sum of twenty dollars, the same shall be recovered by action of debt in the district court of Columbia, for the county of Washington, in the name of the corporation, and for the use of the city of Washington.

SEC. 8. *And be it further enacted,* That the person or persons appointed to collect any tax imposed in virtue of the powers granted by this act, shall have authority to collect the same by distress and sale of the goods and chattels of the person chargeable therewith; no sale shall be made unless ten days previous notice thereof be given; no law shall be passed by the city council subjecting vacant or unimproved city lots, or parts of lots, to be sold for taxes.

SEC. 9. *And be it further enacted,* That the city council shall provide for the support of the poor, infirm and diseased of the city.

SEC. 10. *Provided always, and be it further enacted,* That no tax shall be imposed by the city council on real property in the said city, at any higher rate than three quarters of one per centum on the assessment valuation of such property.

SEC. 11. *And be it further enacted,* That this act shall be in force for two years, from the passing thereof, and from thence to the end of the next session of Congress thereafter, and no longer.

APPROVED, May 3, 1802 (2 Stat. 195, ch. 53).

ACT OF 1812 AMENDING THE CHARTER OF WASHINGTON

AN ACT Further to amend the charter of the city of Washington

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the first Monday of June next, the corporation of the city of Washington shall be composed of a mayor, a board of aldermen and a board of common council, to be elected by ballot, as herein after directed. The board of aldermen shall consist of eight members, to be elected for two years, two to be residents of and chosen from each ward by the qualified voters resident therein; and the board of common council shall consist of twelve members, to be elected for one year, three to be residents of and chosen from each ward in manner aforesaid: and each board shall meet at the council chamber on the second Monday in June next (for the despatch of business) at ten o'clock in the morning, and on the same day and at the same hour annually thereafter. A majority of each board shall be necessary to form a quorum to do business, but a less number may adjourn from day to day. The board of aldermen, immediately after they shall have assembled in consequence of the first election shall divide themselves by lot into two classes; the seats of the first class shall be vacated at the expiration of one year, and the seats of the second class shall be vacated at the expiration of two years, so that one half may be chosen every year. Each board shall appoint its own president from among its own members, who shall preside during the sessions of the board, and shall have a casting vote on all questions where there is an equal division: *Provided,* such equality shall not have been occasioned by his previous vote.

SEC. 2. *And be it further enacted,* That no person shall be eligible to a seat in the board of aldermen or board of common council, unless he shall be more than twenty-five years of age, a free white male citizen of the United States and shall have been a resident of the city of Washington one whole year next preceding the day of election, and shall, at the time of his election, be a resident of the ward for which he shall be elected, and possessed of a freehold estate in the said city of Washington, and shall have been assessed two months preceding the day of election. And every free white male citizen of lawful age, who shall have resided in the city of Washington for the space of one year next preceding the day of election, and shall be a resident of the ward in which he shall offer to vote, and who shall have been assessed on the books of the corporation not less than two months prior to the day of election, shall be qualified to vote for members to serve in the said board of aldermen and board of common council, and no other person whatever shall exercise the right of suffrage at such election.

SEC. 3. *And be it further enacted,* That the present mayor of the city of Washington shall be, and continue such until the second Monday in June next, on which day, and on the second Monday in June annually thereafter, the mayor of the said city shall be elected by ballot of the board of aldermen and board of common council in joint meeting, and a majority of the votes of all the members of both boards shall be necessary to a choice; and if there should be an equality of votes between two persons, after the third ballot, the two boards shall determine the choice by lot. He shall, before he enters upon the duties of his office, take an oath or affirmation, in the presence of both boards, "lawfully to

execute the duties of his office to the best of his skill and judgment, without favour or partiality." He shall, ex-officio, have and exercise all the powers, authority and jurisdiction of a justice of the peace for the county of Washington, within the said county. He shall nominate, and, with the consent of a majority of the members of the board of aldermen, appoint to all offices under the corporation, (except the commissioners of election,) and any such officer shall be removed from office on the concurrent remonstrance of a majority of the two boards. He shall see that the laws of the corporation be duly executed, and shall report the negligence or misconduct of any officer to the two boards. He shall appoint proper persons to fill up all vacancies during the recess of the board of aldermen, to hold such appointment until the end of the then ensuing session. He shall have power to convene the two boards, when in his opinion the good of the community may require it; and he shall lay before them from time to time, in writing, such alterations in the laws of the corporation, as he shall deem necessary or proper, and shall receive for his services annually, a just and reasonable compensation, to be allowed and fixed by the two boards, which shall neither be increased nor diminished during the period for which he shall have been elected. Any person shall be eligible to the office of mayor, who is a free white male citizen of the United States, who shall have attained to the age of thirty years, and who shall be the bona fide owner of a freehold estate in the said city, and shall have been resident in the said city two years immediately preceding his election: and no other person shall be eligible to the said office. In case of the refusal of any person to accept the office of mayor upon his election thereto, or of his death, resignation, inability or removal from the city, the said two boards shall elect another in his place to serve the remainder of the year.

SEC. 4. *And be it further enacted,* That the first election for members of the board of aldermen and board of common council, shall be held on the first Monday in June next, and on the first Monday in June annually thereafter: the first election to be held by three commissioners, to be appointed in each ward by the mayor of the city, and at such place in each ward as he may direct; and all subsequent elections shall be held by a like number of commissioners, to be appointed in each ward by the two boards in joint meeting, which several appointments, except the first, shall be at least ten days previous to the day of each election. And it shall be the duty of the mayor, for the first election, and of the commissioners for all subsequent elections, to give at least five days' previous public notice of the place in each ward where such elections are to be held. The said commissioners shall, before they receive any ballot, severally take the following oath or affirmation, to be administered by the mayor of the city or any justice of the peace for the county of Washington: "I, A. B., do solemnly swear, or affirm (as the case may be), that I will truly and faithfully receive and return the votes of such persons as are by law entitled to vote for members of the board of aldermen and board of common council in ward, No. according to the best of my judgment and understanding; and that I will not, knowingly, receive or return the vote of any person who is not legally entitled to the same, so help me God." The polls shall be opened at ten o'clock in the morning, and be closed at seven o'clock in the evening of the same day. Immediately on closing the polls, the commissioners of each ward, or a majority of them, shall count the ballots and make out under their hands and seals a correct return of the two persons for the first election, and of the one person for all subsequent elections, having the greatest number of legal votes, together with the number of votes given to each, as members of the board of aldermen; and of the three persons having the greatest number of legal votes, together with the number of votes given to each, as members of the board of common council; and the two persons at the first election and the one person at all subsequent elections, having the greatest number of legal votes for the board of aldermen; and the three persons having the greatest number of legal votes for the board of common council, shall be duly elected; and in all cases of an equality of votes the commissioners shall decide by lot. The said returns shall be delivered to the mayor of the city on the succeeding day, who shall cause the same to be published in some newspaper printed in the city of Washington. A duplicate return, together with a list of the persons who voted at such election, shall also be made by the said commissioners to the register of the city, on the day succeeding the election, who shall preserve and record the same; and shall within two days thereafter notify the several persons so returned, of their election. And each board shall judge the legality of the elections, returns and qualifications of its own members; and shall supply vacancies in its own body, by causing elections to be made to fill the same in the ward and for the board in which such vacancies shall happen, giving at least five days' notice previous thereto; and each board shall have full power to pass all rules necessary and requisite to enable itself to come to a just decision in cases of a contested election of its members; and the several members of each board shall, before entering upon the duties of their office, take the following oath or affirmation: "I do swear, (or solemnly, sincerely and truly affirm and declare, as the case may be) that I will faithfully execute the office of to the best of my knowledge and ability," which oath or affirmation shall be administered by the mayor or some justice of the peace for the county of Washington.

SEC. 5. *And be it further enacted,* That in addition to the powers heretofore granted to the corporation of the city of Washington, by an act, entituled "An act to incorporate the inhabitants of the city of Washington, in the District of Columbia," and an act, entituled "An act supplementary to an act, entituled An act to incorporate the inhabitants of the city of Washington, in the District of Columbia," the said corporation shall have power to lay taxes on particular wards, parts or sections of the city, for their particular local improvements; that after providing for all objects of a general nature, the taxes raised on the assessable property in each ward shall be expended therein, and in no other, in regulating, filling up and repairing of streets and avenues, building of bridges, sinking of wells, erecting pumps and keeping them in repair; in conveying water in pipes, and in the preservation of springs; in erecting and repairing wharves; in providing fire engines and other apparatus for the extinction of fires; and for other local improvements and purposes, in such manner as the said board of aldermen and board of common council shall provide; but the sums raised for the support of the poor, aged and infirm, shall be a charge on each ward in proportion to its population or taxation, as the two boards shall decide. That whenever the proprietors of two thirds of the inhabited houses, fronting on both sides of a street or part of a street, shall, by petition to the two branches, express their desire of improving the same by laying the curbstone of the foot pavement, and paving the gutters or carriage-way thereof, or otherwise improving said street agreeably to its graduation, the said corporation shall have power to cause to be done at any expense not exceeding two dollars and fifty cents per front foot, of the lots fronting on each improved street or part of a street, and charge the same to the owners of the lots fronting on said street or part of a street in due proportion; and also on a like petition, to provide for erecting lamps for lighting any street or part of a street, and to defray the expense thereof, by a tax on the proprietors or inhabitants of such houses, in proportion to their rental or valuation, as the two boards shall decide.

SEC. 6. *And be it further enacted,* That the said corporation shall have full power and authority to erect and establish hospitals or pest houses, workhouses, houses of correction, penitentiary and other public buildings, for the use of the city, and to lay and collect taxes for defraying the expenses thereof; to regulate party and other fences, and to determine by whom the same shall be made and kept in repair; to lay open streets, avenues, lanes and alleys, and to regulate or prohibit all enclosures thereof; and to occupy and improve for public purposes, by and with the consent of the President of the United States, any part of the public and open spaces or squares in said city not interfering with any private rights; to regulate the measurement of, and weight by which all articles brought into the city for sale shall be disposed of; to provide for the appointment of appraisers and measurers of builder's work and materials, and also of wood, coals,

grain and lumber; to restrain and prohibit the nightly and other disorderly meetings of slaves, free negroes and mulattoes, and to punish such slaves by whipping, not exceeding forty stripes, or by imprisonment, not exceeding six calendar months, for any one offence; and to punish such free negroes and mulattoes for such offences, by fixed penalties, not exceeding twenty dollars for any one offence; and in case of the inability of any such free negro or mulatto to pay and satisfy any such penalty and cost thereon, to cause such free negro or mulatto to be confined to labour for such reasonable time, not exceeding six calendar months for any one offence, as may be deemed equivalent to such penalty and costs; to cause all vagrants, idle or disorderly persons, all persons of evil life or ill fame, and all such as have no visible means of support, or are likely to become chargeable to the city as paupers, or are found begging or drunk in or about the streets, or loitering in or about tippling houses, or who can show no reasonable cause of business or employment in the city; and all suspicious persons; and all who have no fixed place of residence, or cannot give a good account of themselves; all evesdroppers and night walkers; all who are guilty of open profanity or grossly indecent language or behaviour publicly in the streets; all public prostitutes and such as lead a notoriously lewd or lascivious course of life; and all such as keep public gaming tables or gaming houses, to give security for their good behaviour for a reasonable time, and to indemnify the city against any charge for their support; and in case of their refusal or inability to give such security, to cause them to be confined to labour for a limited time, not exceeding one year at a time, unless such security should be sooner given; but if they shall afterwards be found again offending, such security may be again required, and for want thereof, the like proceedings may be again had, from time to time, as often as may be necessary; to prescribe the terms and conditions upon which free negroes, mulattoes and others, who can show no visible means of support, may reside in the city; to cause the avenues, streets, lanes and alleys to be kept clean, and to appoint officers for that purpose; to authorize the drawing of lotteries for effecting any important improvement in the city, which the ordinary funds or revenue thereof will not accomplish: (*a*) *Provided,* that the amount to be raised in each year, shall not exceed the sum of ten thousand dollars: *And provided also,* that the object for which the money is intended to be raised, shall be first submitted to the President of the United States, and shall be approved of by him; to take care of, preserve and regulate the several burying grounds within the city; to provide for registering of births, deaths and marriages; to cause abstracts or minutes of all transfers of real property, both freehold and leasehold, to be lodged in the registry of the city at stated periods; to authorize night watches and patrols, and the taking up, and confining by them in the night time of all suspected persons; to punish by law; corporeally, any servant or slave guilty of a breach of any of their by-laws or ordinances, unless the owner or holder of such servant or slave, shall pay the fine annexed to the offence; and to pass all laws which shall be deemed necessary and proper for carrying into execution the foregoing powers, and all other powers vested in the corporation or any of its officers, either by this act or any former act.

SEC. 7. *And be it further enacted,* That the marshal of the district of Columbia shall receive and safely keep within the jail for Washington county, at the expense of the city, all persons committed thereto under the sixth section of this act, until other arrangements be made by the corporation, for the confinement of offenders within the provisions of the said section. And in all cases where suit shall be brought before a justice of the peace, for the recovery of any fine or penalty arising or incurred for a breach of any by-law or ordinance of the corporation, upon a return of nulla bona to any fieri facias issued against the property of the defendant or defendants, it shall be the duty of the clerk of the circuit court for the county of Washington, when required, to issue a writ of capias ad satisfaciendum against every such defendant, returnable to the next circuit court for the county of Washington, thereafter, and which shall be proceeded on as in other writs of the like kind.

SEC. 8. *And be it further enacted,* That unimproved lots in the city of Washington, on which two years' taxes remain due and unpaid, or so much thereof as may be necessary to pay such taxes, may be sold at public sale for such taxes due thereon: *Provided,* that public notice be given of the time and place of sale, by advertising in some newspaper printed in the city of Washington, at least six months, where the property belongs to persons residing out of the United States; three months, where the property belongs to persons residing in the United States, but without the limits of the district of Columbia; and six weeks, where the property belongs to persons residing within the district of Columbia or city of Washington; in which notice shall be stated, the number of the lot or lots, the number of the square or squares, the name of the person or persons to whom the same may have been assessed; and also the amount of taxes due thereon: *And provided also,* that the purchaser shall not be obliged to pay at the time of such sale, more than the taxes due, and the expenses of sale; and that if within two years from the day of such sale the proprietor or proprietors of such lot or lots, or his or their heirs, representatives or agents, shall repay to such purchaser the monies paid for the taxes and expenses as aforesaid, together with ten per centum per annum as interest thereon, or make a tender of the same, he shall be reinstated in his original right and title; but if no such payment or tender be made within two years next after the said sale, then the purchaser shall pay the balance of the purchase money of such lot or lots, into the city treasury, where it shall remain subject to the order of the original proprietor or proprietors, his or their heirs or legal representatives; and the purchaser shall receive a title in fee simple to the said lot or lots, under the hand of the mayor and seal of the corporation, which shall be deemed good and valid in law and equity.

SEC. 9. *And be it further enacted,* That the said corporation shall in future be named and styled "The Mayor, Aldermen and Common Council of the City of Washington;" and that if there shall have been a non-election or informality in the election of a city council on the first Monday in June last, it shall not be taken, construed or adjudged, in any manner, to have operated as a dissolution of the said corporation, or to affect any of its rights, privileges or laws, passed previous to the second Monday in June last, but the same are hereby declared to exist in full force.

SEC. 10. *And be it further enacted,* That the corporation shall, from time to time, cause the several wards of the city to be so located as to give, as nearly as may be, an equal number of voters to each ward: and it shall be the duty of the register of the city, or such officer as the corporation may hereafter appoint, to furnish the commissioners of election, for each ward, on the first Monday in June annually, previous to the opening of the polls, a list of the persons having a right to vote, agreeably to the provisions of the second section of this act.

SEC. 11. *And be it further enacted,* That so much of any former act, as shall be repugnant to the provisions of this act, be, and the same is hereby repealed.

Approved, May 4, 1812 (2 Stat. 721, Ch. 75).

ACT OF 1812 RELATIVE TO LEVY COURT FOR COUNTY OF WASHINGTON

AN ACT Conferring certain powers on the levy court for the county of Washington, in the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the board of commissioners or levy court for the county of Washington, in the district of Columbia, be, and hereby are empowered to erect and maintain a penitentiary, to be erected in such place as the mayor, aldermen and common council of the city of Washington shall designate.

SEC. 2. *And be it further enacted,* That the board of commissioners or levy court for the said county be vested with full power to lay out, straighten and repair public

roads within the said county, except within the corporate limits of the city of Washington and Georgetown, under the conditions herein after prescribed.

SEC. 3. *And be it further enacted,* That the said board or levy court be empowered to lay out and mark roads through any such part of the said county: *Provided,* they shall not exceed one hundred feet in width, and shall not pass through any building, garden or yard, without the consent of the owner; and a reasonable compensation, if required by the owner, shall be made for the land thus marked and laid out, which shall be fixed in the following manner: On laying out and marking any road, six weeks' notice thereof shall be given in some public print, published in the county. In case any owner of land, through which the said road passes, shall require compensation therefor, he shall within two weeks thereafter apply to the levy court, who may agree with him for the purchase thereof; and in case of disagreement, or in case the owner shall be a feme covert, under age, or non compos, or out of the county, on application to any justice of the county, to be made within two weeks after expiration of the aforesaid two weeks, the said justice shall issue his warrant, under his hand, to the marshal of the district of Columbia, commissioning him to summon twelve freeholders, inhabitants of the county, not related to the said owner, nor in any manner interested, to meet on the land to be valued at a day to be expressed in the warrant, of which ten days' notice shall be given by the marshal to the levy court, and to the owner of the said land, or left at his, or her place of abode, or given to his or her guardian, if an infant, or if out of the county, by publishing notice thereof, for six weeks in some public print of the county; and the marshal, on receiving the said warrant, shall summon the said jury, and when met, shall administer an oath or affirmation to every juryman, who shall swear or affirm, as the case may be, that he will justly, faithfully, and impartially, value the land, and all damages the owner thereto will sustain by the road passing through the same, having regard to all circumstances of convenience, benefit or disadvantage according to the best of his skill and judgment; and the inquisition thereupon taken shall be signed by the marshal and seven or more of the said jury, and shall be conclusive; and the same shall be returned to the clerk of the county, to be by him recorded at the expense of the levy court; and the valuation expressed in such inquisition shall be paid by the said levy court to the owner of the land, or his legal representative, before the levy court proceed to open the said road: in case no such application shall be made within the aforesaid periods, the land thus appropriated shall be adjudged to be conclusively condemned, and no compensation be hereafter required therefor.

SEC. 4. *And be it further enacted,* That the board of commissioners or levy court, as soon as they shall have laid out, marked and opened a road, and complied with the foregoing provisions shall return the courses, bounds and plat thereof to the clerk of the county, to be by him recorded at the expense of the said court; and the said road, so laid out and returned, as aforesaid, shall be thereafter taken, held and adjudged, a public road and common highway.

SEC. 5. *And be it further enacted,* That in all cases, where stone, gravel or other material, shall be necessary for making or repairing a road, the levy court may agree with the owner for the purchase thereof, or with the owner of the land on which the same may be, for the purchase of the said land; and in case of disagreement, or in case the owner should be a feme covert, under age, or non compos, or out of the county, on application to a justice of the county, may proceed, in all respects, in the same manner for condemning the said materials for the use of said road, as in like cases where lands are directed to be taken and condemned as aforesaid, for making the said road: and the said parties respectively, shall have the same benefit and advantage of the said proceedings as they have under, and in virtue of the said provision for condemning land herein before mentioned.

SEC. 6. *And be it further enacted,* That if a road shall be carried through any fields of ground in actual cultivation, such fields shall not be laid open, or used as a public road, until after the usual time of taking off crops then growing thereon.

SEC. 7. *And be it further enacted,* That if any person shall alter or change, or in any manner obstruct or encroach on a public road, or cut, destroy, deface or remove any mile stones set up on said road, or put or place any rubbish, dirt, logs, or make any pit or hole therein, such person may be indicted in the circuit court for the district of Columbia, and being convicted thereof shall be fined or imprisoned in the discretion of the court, according to the nature of the offence.

SEC. 8. *And be it further enacted,* That the board of commissioners or levy court may, for the aforesaid and all other general county purposes, annually lay a tax on all the real and personal property in the said county, except within the limits of the city of Washington, any existing law to the contrary notwithstanding, not exceeding twenty-five cents in the hundred dollars value of said property, for the collection, safe keeping and disbursement of which they are hereby empowered to appoint the necessary officers, and to use all the means now in force and necessary for the assessment and collection of taxes in the said county, and to insure a due and regular accountability for the same, and all existing laws, so far as they vest in the said levy court a power to lay taxes, shall be, and the same are hereby repealed.

SEC. 9. *And be it further enacted,* That the board of commissioners or levy court shall be, and hereby are released from any obligation to provide for the support of the poor of any other part of the county of Washington, other than that part without the limits of the city of Washington, to provide for whom they are hereby authorized to lay and collect a special tax, to be imposed on said part of the county.

SEC. 10. *And be it further enacted,* That the board of commissioners or levy court of the county of Washington shall be hereafter composed of seven members, to be designated immediately after the passing of this act, by the President of the United States, from among the existing magistrates of the county, and annually afterwards on the first Monday in May, that is to say, there shall be two members designated from among the magistrates residing in that part of the county lying eastward of Rock creek, and without the limits of the city of Washington; two from among the magistrates residing in that part of the county lying westward of Rock creek, and without the limits of Georgetown; and three from among the magistrates residing within the limits of Georgetown. A majority of the members so designated shall constitute a quorum to do business.

SEC. 11. *And be it further enacted,* That the general county expenses and charges, other than for the expenses of roads and bridges out of the limits of Washington and Georgetown, respectively, shall be borne and defrayed by the said city of Washington, and the other parts of the county equally, that is to say; one moiety of said expenses and charges shall be borne by the city, and paid over to whomsoever the board of commissioners or levy court may appoint as treasurer of the court; and the other moiety, by the other parts of the county: which said general expenses shall be ascertained annually by the said board of commissioners or levy court and the corporation of the said city. And in case of any difference of opinion as to what are or may be properly called general expenses, and applicable to the whole county, agreeably to the provisions of this and other acts relating to the subject, it shall be the duty of the circuit court for the said county, upon joint application, or upon the application of either party, and due notice to the other party; to inquire, determine and settle in a summary way the matter in difference.

SEC. 12. *And be it further enacted,* That the two bridges over Rock creek, immediately between the city of Washington and Georgetown, shall be kept in repair and rebuilt, in like manner as at present, at the joint expense and cost of the said city and Georgetown; and the sums required for such repairs or rebuildings shall from time to time be ascertained by the said board of commissioners or levy court for the county, and the amount required from each corporation shall be paid over, after sixty days' notice, to the treasurer of the county.

SEC. 13. *And be it further enacted,* That it shall and may be lawful at any time hereafter for the corporation

of the city of Washington, and the corporation of Georgetown, jointly or separately, and at their joint or separate expense, as the case may be, to erect a permanent bridge across Rock creek, and between the two places, at such sites as the corporation first choosing to build shall determine and fix upon; and if it should be necessary to obtain private property on which to fix either or both the abutments of the said permanent bridge or bridges, or for other purposes connected with the work, the said corporation so choosing to build shall have power to agree with the owner or owners for the purchase of such property; and in case of disagreement, or in case the owner shall be a feme covert, under age or non compos, or out of the county, the mayor of the said corporation shall thereupon summon a jury to be composed of twelve freeholders, inhabitants of the said county, not related to the said owner, nor in any manner interested, who shall meet on the ground to be valued, at a day to be expressed by the mayor in the said summons, of which ten days' notice shall be given by the mayor to the owner or owners of the said ground, or left at his, her or their place of abode, or given to his, her or their guardian, if an infant, or if out of the county, by publishing notice thereof for six weeks in some newspaper printed in the county, and when the jury shall have met pursuant to the aforesaid summons, each juryman shall swear or affirm, that he will justly, faithfully and impartially value all the ground held as private property and intended and required to be used or occupied by reason of the contemplated erection of the permanent bridge, and the amount of damages the proprietor or proprietors of said ground will sustain (taking into view at the same time the benefits which the said proprietor or proprietors will derive from the erection of the said bridge) according to the best of his skill and judgment. And the inquisition and valuation thereupon taken, shall be signed by the mayor and seven or more of the said jury, and shall be binding and conclusive upon all parties concerned; and the same shall be transmitted to the clerk of the county, to be by him recorded: and the valuation expressed in the aforesaid inquisition shall be paid or tendered to the owner or owners of the ground so condemned, or his or their legal representatives, by the corporation intending to build such bridge, within thirty days after such valuation shall have been made, and before any work is commenced on the grounds so valued.

Approved, July 1, 1812 (2 Stat. 771, ch. 117).

ACT OF 1820 REORGANIZING THE GOVERNMENT OF THE CITY OF WASHINGTON

AN ACT To incorporate the inhabitants of the city of Washington, and to repeal all acts heretofore passed for that purpose

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the act, entitled "An act to incorporate the inhabitants of the city of Washington, in the District of Columbia," and the act supplementary to the same, passed on the twenty-fourth of February, in the year one thousand eight hundred and four, and the act, entitled "An act further to amend the charter of the city of Washington," and all other acts, or parts of acts, inconsistent with the provisions of this act, be, and the same are hereby, repealed: *Provided, however,* That the mayor, the members of the board of aldermen, and the members of the board of common council, of the corporation of the said city, shall and may remain and continue as such, for and during the terms for which they have been respectively appointed, subject to the terms and conditions in such cases legally made and provided; and all acts or things done, or which may be done, by them in pursuance of the provisions, or by virtue of the authority, of the said acts, or either of them, and not inconsistent with the provisions of this act, shall be valid, and of as full force and effect as if the said acts had not been repealed.

SEC. 2. *And be it further enacted,* That the inhabitants of the city of Washington shall continue to be a body politic and corporate, by the name of the "Mayor, board of aldermen, and board of common council, of the city of Washington," to be elected by ballot, as hereinafter directed, and, by their corporate name, may sue and be sued, implead and be impleaded, grant, receive, and do all other acts, as natural persons; and may purchase and hold real, personal, and mixed, property, or dispose of the same, for the benefit of the city; and may have and use a city seal, and break and alter the same at pleasure.

SEC. 3. *And be it further enacted,* That the mayor of the said city shall be elected on the first Monday in June next, and on the same day in every second year thereafter, at the same time and place, in the same manner, and by the persons qualified to vote for members of the board of aldermen and the board of common council. That the commissioners hereinafter mentioned shall make out duplicate certificates of the result of the election of mayor; and shall return one to the board of aldermen and the other to the board of common council, on the Monday next ensuing the election; and the person having the greatest number of votes shall be the mayor: but in case two or more persons, highest in vote, shall have an equal number of votes, then it shall be lawful for the board of aldermen and the board of common council to proceed forthwith, by ballot, in joint meeting, to determine the choice between such persons. The mayor shall, on the Monday next ensuing his election, before he enters on the duties of his office, in the presence of the boards of aldermen and common council, in joint meeting, take an oath, to be administered by a justice of the peace, "lawfully to execute the duties of his office, to the best of his skill and judgment, without favour or partiality." He shall, ex officio, have and exercise all the powers, authority, and jurisdiction, of a justice of the peace for the county of Washington, within the said county. He shall nominate, and with the consent of the board of aldermen, appoint to all offices under the corporation, (except commissioners of election,) and may remove any such officer from office at his will and pleasure. He shall appoint persons to fill up all vacancies which may occur during the recess of the board of aldermen, to hold such appointments until the end of the then ensuing session. He may convene the two boards when, in his opinion, the public good may require it; and he shall lay before them, from time to time, in writing, such alterations in the laws of the corporation as he may deem necessary and proper; and he shall receive, for his services, annually a just and reasonable compensation, to be allowed and fixed by the two boards, which shall neither be increased nor diminished during his continuance in office. Any person shall be eligible to the office of mayor who is a free white male citizen of the United States, who shall have attained to the age of thirty years, who shall have resided in the said city for two years immediately preceding his election, and who shall be the bona fide owner of a freehold estate in the said city; and no other person shall be eligible to the said office. In case of the refusal of any person to accept the office of mayor, upon his election thereto, or of his death, resignation, inability, or removal from the city, the said boards shall assemble and elect another in his place, to serve for the remainder of the term, or during such inability.

SEC. 4. *And be it further enacted,* That the board of aldermen shall consist of two members to be residents in, and chosen from, each ward, by the qualified voters therein, and to be elected for two years, from the Monday next ensuing their election: and the board of common council shall consist of three members, to be residents in, and chosen from, each ward, by the qualified voters therein, and to be elected for one year, from the Monday next ensuing their election; and each board shall meet at the council chamber, on the second Monday in June next, for the despatch of business, at ten o'clock in the morning, and at the same hour on the second Monday in June, in every year thereafter; and at such other times as the two boards may, by law, direct. A majority of each board shall be necessary to form a quorum to do business, but a less number may adjourn from day to day; they may compel the attendance of absent members, in such manner, and under such penalties, and allow such compensation for the attendance of the members, as they may, by

law, provide; each board shall appoint its own President, who shall preside during its sessions, and who shall be entitled to vote on all questions; they shall settle their rules of proceedings, appoint their own officers, regulate their respective compensations, and remove them at pleasure; and may, with the concurrence of three-fourths of the whole, expel any member for disorderly behaviour or malconduct in office, but not a second time for the same offence; each board shall keep a journal of its proceedings, and the yeas and nays shall be entered thereon, at the request of any member; and their deliberations shall be public. All ordinances or acts, passed by the two boards, shall be sent to the mayor for his approbation, and, when approved by him, shall be obligatory as such. But, if the mayor shall not approve of any ordinance or act, so sent to him, he shall return the same, within five days, with his reasons in writing therefor; and if two thirds of both boards, on reconsideration thereof, agree to pass the same, it shall be in force, in like manner as if he had approved it; but, if the two boards shall, by their adjournment, prevent its return, the same shall not be obligatory.

SEC. 5. *And be it further enacted,* That no person shall be eligible to a seat in the board of aldermen, or board of common council, unless he shall be more than twenty-five years of age, a free white male citizen of the United States, and shall have been a resident of the city of Washington for one year next preceding the day of election, and shall, at the time of his election, be a resident of the ward for which he shall be elected, and be then the bona fide owner of a freehold estate in the said city, and shall have been assessed on the books of the corporation, for the year ending on the thirty-first day of December next preceding the day of election. And every free white male citizen of the United States, of lawful age, who shall have resided in the city of Washington for one year next preceding the day of election, and shall be a resident of the ward in which he shall offer to vote, and who shall have been assessed on the books of the corporation, for the year ending on the thirty-first day of December next preceding the day of election, and who shall have paid all taxes legally assessed and due on personal property, when legally required to pay the same, and no other person shall be entitled to vote at any election for members of the two boards. And it shall be the duty of the register of the city, or such officer as the corporation may hereafter direct, to furnish the commissioners of election in each ward, previous to opening the polls at every election, a list of the persons having a right to vote, agreeably to the provisions of this section.

SEC. 6. *And be it further enacted,* That an election for members of the board of aldermen and board of common council shall be held on the first Monday of June next, and on the first Monday in June annually thereafter; and all elections shall be held by three commissioners to be appointed in each ward by the two boards in joint meeting, which appointment shall be at least ten days previous to the day of each election. And it shall be the duty of the commissioners so appointed, to give at least five days' previous notice of the place in each ward where such elections are to be held. The said commissioners shall, before they receive any ballot, severally take an oath or affirmation, to be administered by some justice of the peace for the county of Washington, "truly and faithfully to receive and return the votes of such persons as are by law entitled to vote for members of the board of aldermen and board of common council, in their respective wards, according to the best of their judgment and understanding; and not knowingly to receive or return the vote of any person who is not legally entitled to the same." The polls shall be opened at ten o'clock in the morning, and be closed at seven o'clock in the evening of the same day. Immediately on closing the polls, the said commissioners for each ward, or a majority of them, shall count the ballots, and make out, under their hands and seals, a correct return of the persons having the greatest number of legal votes for members of the board of aldermen and for members of the board of common council, respectively, together with the number of votes given to each person voted for; and the persons having the greatest number of votes for the two boards, respectively, shall be duly elected; and, in all cases of an equality of votes, the commissioners shall decide the choice by lot. The said returns shall be delivered to the mayor, on the day succeeding the election, who shall cause the result of the election to be published in some newspaper printed in the city of Washington; a duplicate return shall, together with a list of the persons who voted at such election, also to be made, on the day succeeding the election, to the register of the city, who shall preserve and record the same; and shall, within two days thereafter, notify the several persons, so returned, of their election. And each board shall judge of the legality of the elections, returns, and qualifications of its own members, and shall supply vacancies in its own body, by causing elections to be held to fill the same, and appoint commissioners to hold the same, and such commissioners shall give at least five days' public notice of the time and place of holding such elections; each of the members of either board, shall, before entering on the duties of his office, take an oath or affirmation, "faithfully to execute the duties of his office, to the best of his knowledge and ability;" which oath or affirmation shall be administered by the mayor or some justice of the peace for the county of Washington.

SEC. 7. *And be it further enacted,* That the corporation aforesaid shall have full power and authority to lay and collect taxes upon the real and personal property within the said city; provided that no tax shall be laid upon real property, at a higher rate than three quarters of one per centum on the assessment valuation thereof, except for the special purposes hereinafter provided; and that no tax shall be laid upon the wearing apparel, or necessary tools and implements used in carrying on the trade or occupation, of any person; nor shall the same be subject to distress and sale for any tax; and, after providing for all objects of a general nature, the taxes raised on the assessable property in each ward shall be expended therein, and in no other; to establish a board of health, with competent authority to enforce its regulations, and to establish such other regulations as may be necessary to prevent the introduction of contagious diseases, and for the preservation of the health of the city; to prevent and remove nuisances; to establish night watches or patrols, and erect lamps in the streets; to preserve the navigation of the Potomac and Anacostia rivers adjoining the city; to erect, repair, and regulate, public wharves, and to deepen creeks, docks, and basins; to regulate the manner of erecting, and the rates of wharfage, at private wharves; to regulate the stationing, anchorage, and mooring of vessels; to provide for licensing, taxing, and regulation, auctions, retailers, ordinaries, and taverns, hackney carriages, wagons, carts, and drays, pawn-brokers, venders of lottery tickets, money-changers, and hawkers and pedlars; to provide for licensing, taxing, regulating, or restraining, theatrical or public shows and amusements; to restrain or prohibit tippling houses, lotteries, and all kinds of gaming; to regulate and establish markets; to erect and repair bridges; to open and keep in repair streets, avenues, lanes, alleys, drains, and sewers, agreeably to the plan of the city, to supply the city with water; to provide for the safe-keeping of the standard weights and measures as fixed by Congress, and for the regulation of all weights and measures used in the city; to regulate the sweeping of chimneys, and fix the rates or fees therefor; to provide for the prevention and extinguishment of fires; to regulate the size of bricks to be made or used; and to provide for the inspection of lumber and other building materials to be sold in the city; to regulate, with the approbation of the President of the United States, the manner of erecting, and the materials to be used in the erection, of houses; to regulate the inspection of tobacco, flour, butter, and lard, in casks or boxes, and salted provisions; to regulate the gauging of casks and liquors; the storage of gunpowder, and all naval and military stores, not the property of the United States; and the weight and quality of bread; to impose and appropriate fines, penalties, and forfeitures, for the breach of their laws or ordinances; and to provide for the appointment of inspectors, constables, and such other officers, as may be necessary to execute the laws of the corporation.

SEC. 8. *And be it further enacted,* That the said corporation shall have full power and authority to lay taxes on particular wards, parts, or sections, of the city, for their particular local improvements; and, upon application of

the owners of more than one half of the property upon any portion of a street, to cause the curb-stones to be set, and the footways to be paved, on such portion of a street, and to lay a tax on such property, to the amount of the expense thereof: *Provided,* That such tax shall not exceed three dollars per front foot; and, upon a like application to cause the carriage-way of any portion of a street to be paved, or lamps to be erected therein, and light the same, and lay a tax, not exceeding the whole expense thereof, in due proportion, on the lots fronting on such portion of a street; and, also, to impose an addition or interest on the amounts of any such taxes, not exceeding ten per centum per annum, when the same shall not have been paid within thirty days after the same shall become due. The said corporation shall also have power and authority to provide for the establishment and superintendence of public schools, and to endow the same; to establish and erect hospitals or pest-houses, watch and workhouses, houses of correction, penitentiary, and other public buildings, and to lay and collect taxes for the expenses thereof; to regulate party or other walls and fences, and to determine by whom the same shall be kept in repair; to cause new alleys to be opened through the squares, and to extend those already laid out, upon the application of the owners of more than one half the property in such squares: *Provided,* That the damages which may accrue thereby, to any individual or individuals, shall be first ascertained by a jury, to be summoned and impannelled by the marshal of the District of Columbia, (and it is hereby made his duty to summon and impannel the same, in all such cases, upon application to him in writing by the mayor of the city,) and such damages to be paid by the corporation; the amount thereof, and the expenses accruing, shall be levied, in due proportion, upon the individuals whose property on such squares shall be benefited thereby, and collected as other taxes are; to occupy and improve, for public purposes, by and with the consent of the President of the United States, any part of the public and open spaces and squares in said city, not interfering with any private rights; to regulate the admeasurement and weight by which all articles brought into the city for sale shall be disposed of; to provide for the appointment of appraisers and measurers of builders' work and materials, and also of wood, coal, grain, and lumber; to restrain and prohibit the nightly and other disorderly meetings of slaves, free negroes, and mulattoes, and to punish such slaves by whipping, not exceeding forty stripes, or by imprisonment, not exceeding six months, for any one offense; and to punish such free negroes and mulattoes, by penalties, not exceeding twenty dollars for any one offense; and in case of the inability of any such free negro or mulatto to pay any such penalty and cost thereon, to cause him or her to be confined to labour for any time not exceeding six calendar months; to cause all vagrants, idle or disorderly persons, all persons of evil life or ill-fame, and all such as have no visible means of support, or are likely to become chargeable to the corporations as paupers, or are found begging or drunk in or about the streets, or loitering in or about tippling houses, or who can show no reasonable cause of business or employment in the city, and all suspicious persons who have no fixed place of residence, or who cannot give a good account of themselves; all evesdroppers and nightwalkers; all who shall be guilty of open profanity, or grossly indecent language or behaviour publicly in the streets; all public prostitutes, and such as lead a notoriously lewd or lascivious course of life, and all such as keep public gaming tables, or gaming houses, to give security for their good behaviour for a reasonable time, and to indemnify the city against any charge for their support; and, in case of their refusal or inability to give such security, to cause them to be confined to labour until such security shall be given, not exceeding, however, one year at a time; but if they shall be found again offending, the like proceedings may be again had, and from time to time, as often as may be necessary to enforce the departure of such vagrants and paupers as may come into the city to reside, unless they shall give ample security that they will not become chargeable on the corporation for their support; to provide for the binding out as apprentices of poor orphan children, and the children of drunkards, vagrants, and paupers; to prescribe the terms and conditions upon which free negroes and mulattoes may reside in the city; to authorize, with the approbation of the President of the United States, the drawing of lotteries for the erection of bridges and effecting any important improvements in the city, which the ordinary revenue thereof will not accomplish, for the term of ten years: *Provided,* that the amount so authorized to be raised in each year shall not exceed the sum of ten thousand dollars, clear of expenses; to take care of and regulate burial grounds; to provide for the registering of births, deaths, and marriages; to punish corporeally any coloured servant or slave for a breach of any of their laws or ordinances, unless the owner or holder of such servant or slave shall pay the fine in such cases provided; and to pass all laws which shall be deemed necessary and proper for carrying into execution the powers vested by this act in the said corporation or its officers.

SEC. 9. *And be it further enacted,* That the marshal of the District of Columbia shall receive and safely keep within the jail for the county of Washington, at the expense of the said corporation, all persons committed thereto under or by authority of the provisions of this act. And in all cases where suit shall be brought before a justice of the peace, for the recovery of any fine or penalty arising or incurred for a breach of any law or ordinance of the corporation, execution shall and may be issued, as in all other cases of small debts.

SEC. 10. *And be it further enacted,* That real property, whether improved or unimproved, in the city of Washington, on which two or more years' taxes shall have remained due and unpaid, or on which any special tax, imposed by virtue of authority of the provisions of this act, shall have remained unpaid for two or more years after the same shall have become due, or so much thereof, not less than a lot, (when the property upon which the tax has accrued is not less than that quantity,) as may be necessary to pay any such taxes, with all legal costs and charges arising thereon, may be sold at public sale to satisfy the corporation therefor: *Provided,* That public notice be given of the time and place of sale, by advertising once a week in some newspaper printed in the city of Washington, for at least six months, where the property is assessed to persons residing out of the United States; for three months, where the property is assessed to persons residing in the United States, but without the District of Columbia; and for six weeks, where the property is assessed to persons residing within the District of Columbia; in which advertisement shall be stated the number of the lot or lots, (if the square has been divided into lots,) the number of the square or squares, or other sufficient or definite description of the property selected for sale, the name of the person or persons to whom the same may have been assessed, for the respective years' taxes due thereon, as also the name of the person to whom the same is assessed, and the aggregate amount of taxes due. The purchaser or purchasers of any such property shall pay, at the time of such sale, the amount of the taxes due on the property so purchased by him, her, or them, respectively, with the amount of the expenses of sale; and he, she, or they, shall pay the residue of the purchase money within ten days after the expiration of two years from the day of sale, to the collector of taxes, or other officer of the corporation authorized to receive the same; and the amount of such residue shall be placed in the city treasury, where it shall remain, subject to the order of the original proprietor or proprietors, his, her, or their, legal representatives; and the purchaser or purchasers shall receive a title in fee simple, in and to the lot or lots so sold and purchased, under the hand of the mayor and seal of the corporation, which shall be deemed good and valid in law and equity: *Provided nevertheless,* That if, within two years from the day of any such sale, or before such purchaser or purchasers shall have paid the residue of the purchase money as aforesaid, the proprietor or proprietors of any property which shall have been sold as aforesaid, his, her, or their heirs, agents, or legal representatives, shall repay to such purchaser or purchasers the moneys paid for the taxes, and expenses as aforesaid, together with ten per centum per annum, as interest thereon, or make a tender thereof, or shall deposit the same in the hands of the mayor of the city, or other officer of the corporation appointed to receive the same, for the use of such purchaser or purchasers,

and subject to his, her, or their, heirs, or legal representatives' order, of which such purchaser, his heirs or legal representatives, shall be immediately informed, by notice in some newspaper printed in the city of Washington, or otherwise; he, she, or they, shall be reinstated in his, her, or their, original right and title, as if no such sale had been made. And if any such purchaser shall fail to pay the residue of the purchase money as aforesaid, within the time required by this section, for any property so purchased by him, he shall pay ten per centum per annum, as interest thereon, and in addition to such residue, to be computed from the expiration of the two years as aforesaid, until the actual payment of such residue, and the receiving of a conveyance from the corporation; and the said interest shall alike be subject to the order of the original proprietor or proprietors, as the residue of the purchase money as aforesaid: *Provided, also,* That no sale shall be made, in pursuance of this section, of any improved property whereon there is personal property of sufficient value to pay the said taxes: and that minors, mortgagees, or others having equitable interest in real property, which property shall be sold for taxes as aforesaid, shall be allowed one year after such minors' coming to, or being of full age, or after such mortgagees, and others having equitable interests, obtaining possession of, or a decree for the sale of, such property, to redeem the property so sold from the purchaser or purchasers, his, her, or their, assigns, on paying the amount of purchase money so paid therefor, with ten per cent. interest thereon as aforesaid, and all the taxes that have been paid thereon by the purchaser, or his assigns, between the day of sale and the period of such redemption, with ten per cent. interest on the amount of such taxes, and also the full value of the improvements which may have been made or erected on such property, by the purchaser or his assigns, while the same was in his or their possession. *And provided, moreover,* That where the estate of the tenant in default, as for years, or for life or lives, shall be sufficient to defray the taxes chargeable thereupon, such estate only shall be liable to be sold under the provisions of this act.

SEC. 11. *And be it further enacted,* That it shall be lawful for the collector or other officer (duly authorized) to postpone, after such advertisement, the sale of any property advertised according to the provisions of the foregoing section, to any future day, for the want of bidders, he giving public notice of such postponement, and the sale made at such postponed time shall be equally valid as if made on the day stated in the advertisement.

SEC. 12. *And be it further enacted,* That the person or persons appointed to collect any tax imposed by virtue of the powers granted by this act, shall have authority to collect the same by distress and sale of the goods and chattels of the person chargeable therewith; but no such sale shall be made unless ten days' previous notice thereof be given in some newspaper printed in the city of Washington. And the provisions of the acts of Assembly of Maryland, now in force within the county of Washington, relating to the right of replevying personal property taken in execution for public taxes, shall apply to all cases of personal property taken by distress to satisfy taxes imposed by virtue of this act.

SEC. 13. *And be it further enacted,* That the levy court of the county of Washington, in the District of Columbia, shall not possess the power of assessing any tax on property in the city of Washington; nor shall the corporation of the said city be obliged to contribute, in any manner, towards the expenses or expenditures of said court, except for the one-half part of the expenses incurred on account of the orphans' court, the office of coroner, the jail of said county, and the opening and repairing of roads in the county of Washington, east of Rock creek, leading directly to the city of Washington, but the said corporation shall have the sole control and management of the bridge across or over Rock creek, at the termination of K street north; and shall be chargeable with the expense of keeping the same in repair, and rebuilding it when necessary.

SEC. 14. *And be it further enacted,* That the clerk of the circuit court, and the register of wills for the county of Washington, respectively, shall furnish the register of the city, or other officer of the corporation, appointed to receive the same, on or about the first Monday in January and July, in every year, correct lists of the transfers of real property in the city, during the next preceding half year, so far as can be ascertained by the records in their respective offices, and the said corporation shall make to the said clerk and register of wills such compensation therefor as shall be agreed on between the respective parties, not exceeding six cents for each transfer on such lists.

SEC. 15. *And be it further enacted,* That the commissioner of the public buildings, or other person appointed to superintend the United States' disbursements in the city of Washington, shall reimburse to the said corporation a just proportion of any expense which may hereafter be incurred, in laying open, paving, or otherwise improving any of the streets or avenues in front of, or adjoining to, or which may pass through or between any of the public squares or reservations, which proportion shall be determined by a comparison of the length of the front, or fronts, of the said squares or reservations of the United States, on any such street or avenue, with the whole extent of the two sides thereof; and he shall cause the curb stones to be set, and foot ways to be paved, on the side or sides of any such street or avenue, whenever the said corporation shall, by law, direct such improvements to be made by the proprietors of the lots on the opposite side of any such street or avenue, or adjacent to any such square or reservation; and he shall cause the footways to be paved, and the curb stones to be set, in front of any lot or lots belonging to the United States, when the like improvements shall be ordered by the corporation in front of the lots adjoining, or squares adjacent thereto; and he shall defray the expenses directed by this section, out of any moneys arising from the sale of lots in the city of Washington, belonging to the United States, and from no other fund.

SEC. 16. *And be it further enacted,* That the present boards of aldermen and common council shall, before the last Monday in May next, divide the said city into as many wards as in their opinion shall be most conducive to the interests of the city; and the boards of aldermen and common council, may, from time to time, as the interests of the city shall require, alter the number and boundaries of the said wards: *Provided,* That the said wards shall, at all times, be so laid off, altered, and bounded, that each ward shall comprise, as near as may be, an equal number of the inhabitants of the said city: *And provided, however,* That if such division shall not be made prior to the said last Monday in May, then the said city shall be divided into six wards, in manner following, to wit: All that part of said city to the westward of Sixteenth street west, shall constitute the first: that part to the eastward of Sixteenth street west, and to the westward of Tenth street west, shall constitute the second; that part to the eastward of Tenth street west, to the westward of First street west, and to the northward of E street south, shall constitute the third; that part to the eastward of First street west, to the westward of Eighth street east, and to the northward of E street south, shall constitute the fourth; that part to the eastward of Tenth street west, to the westward of Fourth street east, and to the southward of E street south, shall constitute the fifth; and the residue of the city shall constitute the sixth ward. The expenses which may be incurred in improving and repairing the streets which form the boundaries of the several wards, shall be defrayed out of the taxes raised in the wards which adjoin the same, respectively, in equal proportions; and the present boards of aldermen and common council shall, before the first Monday in June next, apportion, by law, such portions of the debt of the city, as have been heretofore chargeable to the existing wards, amongst the wards established by this section, upon just and equitable principles. And the board of aldermen shall, so soon as the same shall have been organized, on the second Monday in June next, divide the members into two classes, in manner following, to wit: Those members who are now in office, and, by virtue of their election in June last, shall be entitled to take their seats in the new board, as members from the wards in which they shall, respectively, reside, shall be placed in the first class; and those members who shall be elected from the same wards in June next, shall be placed in the second class; and the other members shall be placed in their respective classes by lot; and the seats

of the first class shall be vacated at the end of the first year, and the seats of the second class shall be vacated at the end of the second year; so that one member shall be elected in each ward every year thereafter. And the members of the board of aldermen shall be hereafter, ex officio, justices of the peace of the county of Washington, unless holding commissions in the army or navy of the United States.

SEC. 17. *And be it further enacted,* That this act shall continue in force for and during the term of twenty years, and until Congress shall, by law, determine otherwise.

Approved, May 15, 1820 (3 Stat. 583, ch. 104).

ACT OF 1848 REORGANIZING THE GOVERNMENT OF THE CITY OF WASHINGTON

AN ACT To continue, alter and amend the charter of the city of Washington

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act of May fifteenth, eighteen hundred and twenty, entitled "An Act to incorporate the inhabitants of the city of Washington, and to repeal all acts heretofore passed for that purpose," and the act of May twenty-sixth, eighteen hundred and twenty-four, entitled "An Act supplementary to 'An Act to incorporate the inhabitants of the city of Washington,' passed the fifteenth of May, one thousand eight hundred and twenty, and for other purposes," and the act or acts supplemental or additional to said acts which were in force on the fourteenth day of May, eighteen hundred and forty, or which may, at the passing of this act, be in force, be and the same are hereby continued in force for the term of twenty years from the date hereof, or until Congress shall by law determine otherwise, with the alterations, additions, explanations, and amendments following, that is to say:

SEC. 2. *And be it further enacted,* That the said corporation shall have full power and authority to lay and collect a tax of not exceeding three fourths of one per centum per annum upon the assessed value of all stocks which may be owned and possessed by any person whatever in any banking, insurance, or other incorporated or unincorporated company in the city of Washington; and to compel all such banking, insurance, or other incorporated or unincorporated company to furnish, when so required to do, within ten days thereafter, a full and complete list of the names of the stockholders in such company, and the amount of stock owned by each, under a penalty not exceeding fifty dollars for each and every week such company shall neglect or refuse or fail to furnish the same. And in default of payment of the tax due on said stock by the banking, insurance or other company, or by the holder or holders of the stock, the said corporation shall have full power and authority to sell the said stock, or so many shares thereof as shall be sufficient to pay the taxes due thereon, and costs of collection, as provided in the case of personal property. The said corporation shall also have power to lay and collect a tax not exceeding three fourths of one per centum per annum on the assessed value of all bonds and mortgages, of stocks of all kinds, and all public and private securities, and on every description of property within the said city, or which may be owned or held by the inhabitants thereof, except the wearing apparel and necessary tools and implements used in carrying on the trade or occupation of any person; and to compel persons to furnish, when required by the assessors, a full and correct list of all property by law taxable, held by them, and to punish with suitable fines and penalties persons refusing or omitting to furnish such lists. The said corporation shall have power to lay and collect a school-tax upon every free white male citizen of the age of twenty-one years and upwards, of one dollar per annum; to provide for licensing, taxing and regulating livery stables, and wholesale and retail dealers, in a ratio according to the annual average amount of the capital invested in the business of such wholesale and retail dealers; to license, tax and regulate agencies of all kinds of insurance companies; to tax private bankers, brokers and money lenders, not exceeding three fourths of one per centum per annum on the assessed amount of capital employed in the business of said private bankers, brokers and money lenders; to make all necessary regulations respecting hackney carriages and the rates of fare of the same, and the rates of hauling by cartmen, wagoners, carmen, and draymen, and the rates of commission of auctioneers; to regulate and graduate the licenses of nonresident merchants and traders, and the taxes on the same; to regulate and establish fish wharves and docks; to restrain and prohibit gaming-houses, and bawdy-houses; to punish those who may sell intoxicating liquors without having obtained license therefor, by fines not less than five dollars; and in default of the payment thereof, by imprisonment and labor in the workhouse for a term not exceeding ninety days; to provide for the punishing by fines and penalties, and by confinement to labor in the workhouse, any person and all persons who shall molest or disturb any church or other place of worship while the congregation are engaged in any religious exercises or proceedings; to provide for the weighing of all kinds of live stock brought into the city; to cause to be pulled down unsafe, dilapidated, or dangerous buildings; to take up and relay foot pavements and paved carriage-ways, and to keep them in repair, and to lay and collect taxes for paying the expenses thereof, on the property fronting on such foot-ways and carriage-ways; to lay and collect taxes for the support of public schools; to cause new alleys to be opened into the squares, and to open, change, or close those already laid out, upon the application of the owners of more than one half of the property in such squares, subject to the second proviso of the eighth section of the act of May the fifteenth, eighteen hundred and twenty, incorporating the inhabitants of the city of Washington. And the said corporation shall have full power and authority to make all necessary laws for the protection of public and private property, the preservation of order, the safety of persons, and the observance of decency in the streets, avenues, alleys, public spaces, and other places in the said city, and for the punishment of all persons violating the same, as well as for the punishment of persons guilty of public profanity and prostitution.

SEC. 3. *And be it further enacted,* That at the first general election held after the passage of this act, a Board of Assessors, to consist of one member from each ward, shall be elected by the qualified voters therein, to serve for two years; and the returns of election for assessors shall be made in the same manner and form as the returns of the election for members of the Board of Aldermen and Board of Common Council; and the person having the greatest number of legal votes in each ward for assessor, shall be duly elected assessor; but in case two or more persons, highest in vote, shall have an equal number of votes, the commissioners of election for the ward in which such equality shall exist, shall decide the choice by lot. No person who is not eligible to a seat in the Board of Aldermen or Board of Common Council, shall be eligible to election as assessor. And on the first Monday of May next succeeding the first election of assessors under this act, the said board, or a majority of the members thereof, shall meet in the City Hall, and in the presence of the mayor and register, shall draw by lot the names of three members thereof, if the number of wards be seven, or if the number of wards exceed seven, the names of one half, as near as may be, of the members of said board; and the members whose names shall be thus drawn, shall thereupon cease to be members of said board; and at the next general election a member shall be elected to serve for two years in each of the wards in which the members so drawn shall have been elected; and at every regular annual election thereafter in such wards as the time of the assessors is about to expire, an assessor shall be elected to serve for two years. No person holding any other office under the corporation, shall be elected to or hold the office of assessor. In the event of the death, resignation, inability, or refusal to serve of any person elected an assessor, the vacancy shall be filled immediately by the Board of Aldermen and Board of Common Council, in joint meeting, in which manner all vacancies in the board of assessors shall

be filled: *Provided,* That until the assessors authorized to be elected by this act, shall have been duly elected and qualified to enter upon their duties, full power and authority are hereby given to the said corporation to provide for the temporary appointment of assessors to perform the duties required of the assessors to be elected under this act. The board of assessors shall assess and value, and make return of all and every species of property by law taxable, at such times, and under such regulations, as the said corporation shall prescribe, and shall make return of all persons subject to a school-tax, in the said city, under such regulations as the said corporation shall prescribe; and if the said assessors, or either of them, shall refuse or wilfully neglect to assess and value, and make return of all and every species of property by law taxable, which may be known to them, or either of them, or come to their knowledge, or shall refuse or wilfully neglect to make return of any person subject to a school-tax, they, or the one so offending, shall be subject to a fine not exceeding one hundred dollars for each offence, at the discretion of the Circuit Court of the District of Columbia for the county of Washington, and shall thereafter be incapable of holding any office under the corporation; and the Board of Aldermen and Board of Common Council may, by joint resolution, remove any assessor from office for any misconduct in office.

SEC. 4. *And be it further enacted,* That the register, collector, and surveyor of the said city shall severally be elected on the first Monday in June next, and on the same day in every second year thereafter, at the same time and place, in the same manner, and by the persons qualified to vote for mayor and members of the Board of Aldermen and Board of Common Council: *Provided,* That if the said first Monday in June next shall be the regular day for the election of mayor of the said city, then the next election thereafter, of register, collector, and surveyor, shall take place on the same day in the following year, and then on the same day in every second year thereafter, as above provided; and the commissioners of election shall make out duplicate certificates of the result of the election for register, collector, and surveyor, and shall return one to the Board of Aldermen, and the other to the Board of Common Council on the Monday next ensuing the day of election; and the persons having the greatest number of votes for those offices respectively, shall be register, collector, or surveyor, as the case may be; but in case two or more persons highest in vote shall have an equal number of votes for either of said offices, then it shall be lawful for the Board of Aldermen and Board of Common Council to proceed forthwith by ballot, in joint meeting, to determine the choice between such persons; and the said register, collector and surveyor shall respectively hold their offices until their respective successors are duly elected and qualified, unless sooner removed from office; and full power and authority are hereby granted to the Corporation of Washington to pass all such laws as may be necessary to define and regulate the respective duties, powers, and authority of the said register, collector, and surveyor; and also to prescribe the amount of bond and security to be given to the said corporation by each before entering upon the duties of their respective offices, and generally to pass all such laws as may be necessary to insure an efficient and faithful discharge of the duties of their respective offices, by the said register, collector, and surveyor; and in case the said officers, or either of them, shall fail or refuse to comply with any law, resolution, or order of the said corporation, or shall fail or refuse to obey any order of the mayor of the said city, or shall fail to discharge the duties of their respective offices with fidelity and a strict regard to the interests of the said corporation, or shall prove unable or incompetent, from any cause whatever, to discharge such duties, or shall be guilty of any malversation in office, or shall be convicted of any high crime or misdemeanor, it shall be lawful for the majority of the Board of Aldermen and Board of Common Council, by joint resolution, to remove such officer, and to order an election to fill the vacancy; and in case of the refusal or failure of any person elected to either of said offices to accept of the same, or to give such bond and security as may be required by said corporation within twenty days after his election, or in case of the death, resignation, or removal from the said city of any person elected to or holding either of said offices, it shall be lawful for the Board of Aldermen and Board of Common Council to declare said office vacant, and to order an election to fill the vacancy. And in all cases where it shall become necessary to hold an election to fill a vacancy in either of said offices, the same regulations shall be observed as to the appointment of commissioners to hold said elections, and as to holding the elections and the returns of the same, as are observed at the regular elections: *Provided,* That authority is hereby given to the mayor of the said city to appoint temporarily, under such regulations as the said corporation may prescribe, some discreet person to discharge the duties of such vacant office until an election can be had and a successor duly elected and qualified to enter upon his duties.

SEC. 5. *And be it further enacted,* That every free white male citizen of the United States, who shall have attained the age of twenty-one years, and shall have resided in the city of Washington one year immediately preceding the day of election, and shall be a resident of the ward in which he shall offer to vote, and shall have been returned on the books of the corporation during the year ending the thirty-first of December next preceding the day of election as subject to a school-tax for that year, (except persons *non compos mentis,* vagrants, paupers, or persons who shall have been convicted of any infamous crime,) and who shall have paid the school-taxes, and all taxes on personal property due from him, shall be entitled to vote for mayor, members of the Board of Aldermen and Board of Common Council, and assessors, and for every officer authorized to be elected at any election under this act, or the act or acts to which this is amendatory or supplementary: *Provided,* That if, during the year ending on the thirty-first day of December next preceding the day of the first election after the passage of this act, no persons shall have been returned on the books of the said corporation as subject to a school-tax, then all persons who shall have been returned on the books of the said corporation as subject to a school-tax before the day of the said first election, and who shall in all other respects be qualified under this act to vote, and who shall have paid the said school-tax and all taxes due on personal property, shall be entitled to vote at the said first election after the passage of this act. And if any person shall buy or sell a vote, or shall vote more than once at any corporation election, held in pursuance of law, or shall give or receive any consideration therefor in money, goods, or any other thing of value, or shall promise any valuable consideration, or vote in consideration of such promise, he shall be disqualified forever thereafter from voting and holding any office under said corporation; and on complaint thereof to the attorney of the United States for the District of Columbia, it shall be the duty of said attorney to proceed against such offender or offenders by indictment and trial, as in other criminal cases; and if found guilty, it shall be the duty of the court to sentence him to pay a fine of not less than ten dollars, and to imprisonment not more than two months nor less than ten days.

SEC. 6. *And be it further enacted,* That in case of the refusal of any person to accept the office of mayor upon his election thereto, or of his death, resignation, inability, or removal from the city, the Board of Aldermen and Board of Common Council shall assemble in joint meeting and elect another in his place to serve for the remainder of the term or during such disability; but in case of temporary absence from the city, or sickness, the mayor may, in writing, depute the president of the Board of Aldermen to act as mayor during such temporary absence or sickness.

SEC. 7. *And be it further enacted,* That so much of the tenth section of the act incorporating the inhabitants of the city of Washington, approved May fifteenth, eighteen hundred and twenty, as is in the following words, viz.: "That real property, whether improved or unimproved, in the city of Washington, on which two or more years' taxes shall have remained due and unpaid, or on which any special tax, imposed by virtue of authority of the provisions of this act, shall have remained unpaid for two or more years after the same shall have become due, or so much thereof, not less than a lot, (when the property on which the tax has accrued is not less than that quantity,) as may be necessary to pay any such taxes,

with all legal costs and charges arising thereon, may be sold at public sale to satisfy the corporation therefor," be and the same is hereby amended, so as to read as follows, viz.: "That real property, whether improved or unimproved, in the city of Washington, on which one or more years' taxes shall have become due and remain unpaid, or on which any special tax imposed by virtue of authority of the provisions of this act, shall have become due and remain unpaid, or so much thereof, not less than a lot, (when the property on which the tax has accrued is not less than that quantity,) as may be necessary to pay any such taxes, with all interests, costs, and charges arising thereon, may be sold at public sale to satisfy the corporation therefor." And so much of the third proviso of the tenth section of the said act incorporating the inhabitants of the city of Washington, approved May the fifteenth, eighteen hundred and twenty, as is in the following words, viz.: "That no sale shall be made, in pursuance of this section, of any improved property whereon there is personal property of sufficient value to pay the said taxes," be and the same is hereby repealed. And the authority given to the collector in the eleventh section of said act to postpone the sale of any property to a future day "for want of bidders," shall be so construed as to authorize the postponement for any other reasonable cause, if, in the opinion of the mayor, the collector, or other officer duly authorized, there shall be other reasonable cause for such postponement; but public notice shall in all cases be given of such postponement, and the sales made at such postponed time shall be equally valid as if made the day first designated for such sale; and no sale of any real property for taxes hereafter made shall be impaired or made void by reason of any error of the mayor, or other officer of the corporation, in making a calculation of computation of the amount of taxes due, the expenses attendant on the advertisement and sale, or of the purchase money and the interest thereon, notwithstanding the sum erroneously calculated or computed may have been paid by the purchaser, his heirs or assigns; but all such sales, and the deeds which may be granted on the certificates then issued, shall be valid and binding as if no such error had been made; and it shall be lawful for the heirs or assigns of any purchaser or purchasers of property sold for taxes in the said city, to receive, do, or perform any thing which by the said act of the fifteenth of May, eighteen hundred and twenty, incorporating the inhabitants of the city of Washington, or by any act or acts supplementary to or in execution of the same, it may be lawful for such purchaser or purchasers to receive, do, or perform.

SEC. 8. *And be it further enacted,* That the said corporation shall have power to cause to be made out plats of all the squares in the city of Washington, on which shall be shown the lines of all the subdivisions of said squares as the same shall actually exist at the date of the completion of the plat of each square, and to prescribe and regulate the manner in which description shall be made of all real estate sold or transferred in the said city: *Provided,* That the said plats shall be made out and drawn upon a uniform scale of not less than one inch to fifty feet; and that the method of description of real estate sold or transferred within the corporate limits which shall be prescribed by the said corporation shall be such that the plats shall at all times show the lines of property as actually existing in the squares; and the office of the surveyor of the city of Washington shall be the legal office of record of the plats of all property in the city of Washington.

SEC. 9. *And be it further enacted,* That the school-tax which may be levied and collected in pursuance of the powers in this act given, shall constitute a fund, or be added to any other fund now or hereafter to be constituted by any act of the corporation, for the establishment and support of common schools, and for no other purpose, under such regulations as may from time to time be established and provided by the corporation.

SEC. 10. *And be it further enacted,* That the corporation shall not have power to increase the present funded debt of the said corporation, either by borrowing money or otherwise, unless it shall be agreed to do so by two thirds of the legal voters in the said city at an annual election; and the said corporation shall annually apply a sum not less than ten thousand dollars of its revenues to the redemption of the present debt of the corporation.

SEC. 11. *And be it further enacted,* That all taxes, except taxes on real property, imposed by virtue of the powers granted by this act, or the acts to which this is amendatory or supplementary, in default of payment thereof within the time limited by act of the incorporation for payment, may be collected by distress and sale of the goods, and chattels, and personal effects of the person or persons chargeable therewith, under such regulations and limitations as the corporation may prescribe; but no such sale shall be made unless ten days' previous notice thereof be given in some newspaper printed and published in the city of Washington.

SEC. 12. *And be it further enacted,* That the commissioner of public buildings, or other officer having charge and authority over the lands and property of the United States lying within the city of Washington, shall from time to time cause to be opened and improved such avenues and streets, or parts or portions thereof, as the President of the United States, upon application of the corporation of the said city, shall deem necessary for the public convenience, and direct to be done; and he shall defray the expenses thereof out of any money arising, or which shall have arisen, from the sale of lots in the city of Washington, belonging, or which may have belonged, to the United States, and from no other fund. And it shall be the duty of the said commissioner, or other United States officer, as aforesaid, upon the application of the mayor, to repair and keep in repair the pavements, water-gutters, water-ways, and flag footways which have been made or shall be made opposite or along the public squares, reservations, or other property belonging to the United States; as also, on like application, to repair and keep in repair such streets and avenues, or parts thereof, as may have been, or shall hereafter be, opened and improved by the United States; the expense of all such repairs to be paid out of the fund before mentioned.

SEC. 13. *And be it further enacted,* That the commissioner of public buildings be, and he is hereby, required to perform the duties required of the city commissioner by the fourteenth section of the act of the twenty-sixth of May, eighteen hundred and twenty-four, supplementary to the act of the fifteenth of May, eighteen hundred and twenty, incorporating the inhabitants of the city of Washington. And it shall be the duty of the commissioner of public buildings, within ninety days after the sale of any lots or squares belonging to the United States in the city of Washington, to report the fact to the corporation of Washington, giving the date of sale, the number of the lot and square, the name of the purchaser or purchasers, and the said lots or squares shall be liable to taxation by the said corporation from the date of such sale. And no open space, public reservation, or other public ground in the said city, shall be occupied by any private person, or for any private purposes whatever.

SEC. 14. *And be it further enacted,* That the justices of the peace, whether they be members of the Board of Aldermen or Board of Common Council or not, who may be selected from time to time by the said corporation, to enforce the police regulations and penal laws of the said city, as also to issue warrants and to hear and determine cases within the jurisdiction of justices of the peace, in which the mayor, Board of Aldermen and Board of Common Council of the said city shall be plaintiffs, shall have power to issue all such warrants, and all other warrants or processes deemed necessary and proper in cases of violations of the police regulations and penal laws of the corporation, and to hear and determine all such cases, and under the orders of the corporation to issue execution or other final process thereon; and the said justices shall also have power to compel the attendance of witnesses by attachment, and to punish them by fine not exceeding ten dollars, or by imprisonment not exceeding ten days, for refusing obedience to a summons.

SEC. 15. *And be it further enacted,* That hereafter the justices of the peace for the county of Washington, in the District of Columbia, shall be appointed for three years; and upon indictment and conviction of any justice of the peace, before any court of competent jurisdiction, of incompetency, habitual drunkenness, corruption in of-

fice, or of any other wilful misconduct in the discharge of his duties as justice of the peace, his commission shall be void, and he shall cease to exercise the office and powers of justice of the peace; and for all criminal process or business issued or tried by or before any justice of the peace in the city and county of Washington, in the District of Columbia, the said justice and the constable who shall execute the process shall respectively be entitled to charge and receive the same fees as are authorized to be charged and received in the case of process issued and served by them respectively in cases of small debts; and the said costs shall be certified by the said justices to the District attorney, for his revision and approval, and when approved shall be paid by the marshal of the District of Columbia.

SEC. 16. *And be it further enacted,* That, in addition to the seven members now authorized to be appointed to the Levy Court of the county of Washington, from and after May, eighteen hundred and forty-eight, the President of the United States is hereby authorized and required annually to appoint four additional members from the city of Washington; and the said court shall thereafter consist of eleven members.

SEC. 17. *And be it further enacted,* That the corporation of the said city of Washington shall have full power and authority to pass all laws which may be needful and necessary to carry into full and complete effect the powers granted to the said corporation, or to any of its officers or servants, by this act, or by the act or acts to which this act is amendatory or supplementary. And all acts or parts of acts in conflict with the provisions of this act, be, and the same are hereby, repealed.

Approved, May 17, 1848 (9 Stat. 223, ch. 42).

ACT OF RETROCESSION OF COUNTY OF ALEXANDRIA

AN ACT To retrocede the county of Alexandria, in the District of Columbia, to the State of Virginia

Whereas no more territory ought to be held under the exclusive legislation given to Congress over the District which is the seat of the General Government than may be necessary and proper for the purposes of such a seat; and whereas experience hath shown that the portion of the District of Columbia ceded to the United States by the State of Virginia has not been, nor is ever likely to be, necessary for that purpose; and whereas the State of Virginia, by an act passed on the third day of February, eighteen hundred and forty-six, entitled "An act accepting by the State of Virginia the county of Alexandria, in the District of Columbia, when the same shall be receded by the Congress of the United States," has signified her willingness to take back the said territory ceded as aforesaid: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That with the assent of the people of the county and town of Alexandria, to be ascertained as hereinafter prescribed, all of that portion of the District of Columbia, ceded to the United States by the State of Virginia, and all the rights and jurisdiction therewith ceded over the same, be, and the same are hereby, ceded and forever relinquished to the State of Virginia, in full and absolute right and jurisdiction, as well of soil as of persons residing or to reside thereon.

SEC. 2. *And be it further enacted,* That nothing herein contained shall be construed to vest in the State of Virginia any right of property in the custom-house and post-office of the United States within the town of Alexandria, or in the soil of the territory hereby re-ceded, so as to affect the rights of individuals or corporations therein, otherwise than as the same shall or may be transferred by such individuals or corporations to the State of Virginia.

SEC. 3. *And be it further enacted,* That the jurisdiction and laws now existing in the said territory, ceded to the United States by the State of Virginia, as aforesaid, over the persons and property of individuals therein residing, shall not cease or determine until the State of Virginia shall hereafter provide, by law, for the extension of her jurisdiction and judicial system over the said territory hereby re-ceded.

SEC. 4. *And be it further enacted,* That this act shall not be in force until after the assent of the people of the county and town of Alexandria shall be given to it, in the mode hereinafter provided. Immediately after the close of the present session of Congress, the President of the United States shall appoint five commissioners, (any three of whom may act,) citizens of the said town or county of Alexandria, and freeholders within the same, who shall be sworn, before some justice of the peace in and for the said town or county, to discharge the duties hereby imposed upon them faithfully, impartially, and to the best of their ability. These commissioners, or any of them, shall proceed, within ten days after they are notified of their appointment, to fix upon the time, place, and manner, of taking the vote within the town or county of Alexandria, and shall give notice of the same by advertisement in the newspapers of the said town. And on the day and at the place so appointed, every free white male citizen of the United States, who shall have resided in said county of Alexandria for six months preceding the time when he offers his vote, insane persons and paupers excepted, shall vote *viva voce* upon the question of accepting or rejecting the provisions of this act. The said commissioners shall preside when this vote is taken, and decide all questions arising in relation to the right of voting under this act. Within three days after this vote is taken as aforesaid, the said commissioners shall make out three statements of the result of this poll, upon oath, and under their seals. Of these, one shall be transmitted to the President of the United States, one to the governor of the Commonwealth of Virginia, and one shall be deposited in the clerk's office of the county court of Alexandria. If a majority of the votes so given shall be cast against accepting the provisions of this act, then it shall be void and of no effect; but if a majority of the said votes should be in favor of accepting the provisions of this act, then this act shall be in full force, and it shall be the duty of the President of the United States to inform the governor of Virginia that this act is in full force and effect, and to make proclamation of the fact.

SEC. 5. *And be it further enacted,* That, in such case, the right of property in the half square in Alexandria on which stands the courthouse, bounded by Columbus, Queen, and Princess streets, and the half square on which stands the jail, bounded by Princess, St. Asaph, and Pitt streets, shall be conveyed to the governor of Virginia, and his successors, for the use of the county and corporation of Alexandria forever; and the Solicitor of the Treasury of the United States is hereby authorized and required, in the name and on the behalf of the United States, to make all the proper and necessary conveyances for that purpose.

SEC. 6. *And be it further enacted,* That Congress will in no event assume and pay the debt, or any part thereof, now due by the corporation of the city of Alexandria. (July 9, 1846, 9 Stat. 35, ch. 35.)

VIRGINIA ACT ACCEPTING RETROCESSION

AN ACT Accepting by the State of Virginia the county of Alexandria, in the District of Columbia, when the same shall be re-ceded by the Congress of the United States

[Passed February 3, 1846]

Whereas the general assembly of this commonwealth, on the third day of December, in the year seventeen hundred and eighty-nine, passed an act, entitled "an act for the cession of ten miles square, or any lesser quantity of territory within this state, to the United States, in congress assembled, for the permanent seat of the general government;" and by the said act it was enacted, that "a tract of country not exceeding ten miles square, or any lesser quantity, to be located within the limits of this state, and in any part thereof as congress may by

law direct, shall be and the same is hereby forever ceded and relinquished to the congress and government of the United States, in full and absolute right, and exclusive jurisdiction as well of soil as of persons residing or to reside thereon, pursuant to the tenor and effect of the eighth section of the first article of the constitution of the government of the United States." And whereas the congress of the United States did, under the provisions of the said act, locate that portion of the territory of Virginia now known as the county of Alexandria in the District of Columbia, lying south and west of the river Potomac, and bounded by said river and the lines which separate the District of Columbia from Virginia: And whereas the congress of the United States, on the twenty-seventh day of February, in the year eighteen hundred and one, passed an act, entitled "an act concerning the District of Columbia," by the provisions of which act the exclusive jurisdiction of the United States was extended over the territory so located as aforesaid, which territory has since formed a part of the District of Columbia: And whereas a petition has been presented to the general assembly by the citizens residing in said county of Alexandria, representing that they now have pending before the congress of the United States an application for the re-cession of the said county of Alexandria to the commonwealth of Virginia, and praying the consent of the general assembly to such re-cession, and for the passage of a law to give effect thereto, if the same should be granted by congress; and as the prayer of the said petition is deemed reasonable,

1. *Be it therefore enacted by the general assembly,* That so soon as the congress of the United States shall by law re-cede to the commonwealth of Virginia the said county of Alexandria, and relinquish their exclusive jurisdiction, as well of territory as of persons residing or to reside thereon, the same shall be re-annexed to the said commonwealth, and constitute a portion thereof, subject to such reservation and provisions respecting the public property of the United States, as congress may enact in their act of re-cession.

2. *Be it further enacted,* That the general assembly hereby assents that the jurisdiction and laws of the United States, as well as the rights and privileges of the citizens of said county, and bodies politic and corporate thereof, shall continue in force and be exercised in like manner, and to the same extent, as they now exist, until the general assembly of Virginia shall by law provide for the government of said county under the constitution and laws of this commonwealth.

3. This act shall be in force from the passing thereof. (Virginia act, February 3, 1846, ch. 64.)

PROCLAMATION RELATIVE TO RETROCESSION

A proclamation by the President of the United States of America declaring Alexandria County to be retroceded to Virginia

Whereas, by the act of Congress, approved July 9, 1846, entitled "An Act to retrocede the County of Alexandria, in the District of Columbia, to the State of Virginia," it is enacted, That, with the assent of the people of the county and town of Alexandria, to be ascertained in the manner therein prescribed, all that portion of the District of Columbia ceded to the United States by the State of Virginia, and all the rights and jurisdiction therewith ceded over the same, shall be ceded and forever relinquished to the State of Virginia, in full and absolute right and jurisdiction, as well of soil as of persons residing or to reside thereon: And whereas, it is further provided, that the said act "shall not be in force until after the assent of the people of the county and town of Alexandria shall be given to it, in the mode therein provided;" and if a majority of the votes should be in favor of accepting the provisions of the said act, it shall be the duty of the President to make proclamation of the fact:

And whereas, on the 17th day of August, 1846, after the close of the late session of the Congress of the United States, I duly appointed five citizens of the county or town of Alexandria, being freeholders within the same, as commissioners, who, being duly sworn to perform the duties imposed on them, as prescribed in the said act, did proceed, within ten days after they were notified, to fix upon the first and second days of September, 1846, as the time, the court-house of the county of Alexandria, as the place, and *viva voce* as the manner of voting; and gave due notice of the same; and at the time, and at the place, in conformity with the said notice, the said commissioners presiding, and deciding all questions arising in relation to the right of voting under the said act, the votes of the citizens qualified to vote were taken *viva voce,* and recorded in poll-books, duly kept, and on the third day or [of] September instant, after the said polls were closed, the said commissioners did make out, and on the next day did transmit to me, a statement of the polls so held, upon oath, and under their seals; and of the votes so cast and polled, there were, in favor of accepting the provisions of the said act, seven hundred and sixty-three votes, and against accepting the same, two hundred and twenty-two—showing a majority of five hundred and forty-one votes for the acceptance of the same:

Now, therefore, be it known, that I, James K. Polk, President of the United States of America, in fulfilment of the duty imposed upon me by the said act of Congress, do hereby make proclamation of the "result" of said "poll," as above stated, and do call upon all and singular the persons whom it doth or may concern, to take notice, that the act aforesaid, "is in full force and effect."

In witness whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the City of Washington, this seventh day of September, in the year of our Lord one thousand eight hundred and forty-six, and of the Independence of the United States, the seventy-first.

JAMES K. POLK.

By the President.

N. P. TRIST,
Acting Secretary of State.

ACT OF 1862 RELATIVE TO HIGHWAYS IN THE COUNTY OF WASHINGTON

AN ACT Relating to highways in the county of Washington and District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, from and after the passage of this act, it shall be lawful for the levy court of Washington county, in the District of Columbia, to alter, repair, widen, and regulate the public roads and highways in said county, and to lay out additional roads as hereinafter specified.

SEC. 2. *And be it further enacted,* That all roads within said county of Washington which have been used by the public for a period of twenty-five years or more as a highway, and have been recognized by the said levy court as public county roads, and for the repairs of which the said levy court has appropriated and expended money, are declared public highways, whether the same have been recorded or not; and any person who shall obstruct the free use of said highways, or any one of them, without authority from said levy court, shall be subject to a fine for each and every offence of not less than one hundred or more than two hundred and fifty dollars, to be imprisoned till the said fine and the costs of suit and collection of the same are paid; said fines to be collected in the name of the United States, for the use of the levy court.

SEC. 3. *And be it further enacted,* That within one year from the passage of this act the levy court shall cause the surveyor of the said county of Washington to survey and plat all such roads as are named in the last preceding section, and have the same recorded among the records

of said county now used for recording surveys and plats of other public county roads; and, in making said survey, the county surveyor shall follow, as nearly as possible, the lines and boundaries heretofore used and known as a highway, and he shall cause the lines and boundaries of the same to be permanently marked and fixed by the erection of stones or posts at the different angles thereof.

SEC. 4. *And be it further enacted,* That all such roads as are named in the second section of this act as have been obstructed by any person or persons in any manner within the last six years shall be re-opened by the levy court, if, in the judgment of said court, the public convenience requires it; and the expenses thereby incurred shall be paid by the person or persons who shall have obstructed the same, which expenses shall be collected as fines are required to be collected under the second section of this act.

SEC. 5. *And be it further enacted,* That hereafter, in laying out new roads in said county of Washington, the levy court shall cause such roads to be of a width of not less than fifty nor more than one hundred feet, and it may also cause the width of any of the existing roads in said county to be increased to not more than one hundred feet, and change the location of any of them, as the said levy court may deem best for the public interest; and, for the purpose of opening or widening such roads, the said levy court is hereby empowered to cause to be condemned any land or lands necessary for the same, as other lands are now condemned by law.

SEC. 6. *And be it further enacted,* That in any case where materials shall be necessary for making or repairing a public road, if the levy court cannot agree with the owner as to their purchase, the said court may proceed in the same manner for condemning said materials as in cases of condemnation of land for the purposes of a public road.

SEC. 7. *And be it further enacted,* That no field or garden or yard, in actual cultivation, shall be laid open or used as a public highway until after the usual time of taking off the crops growing thereon.

SEC. 8. *And be it further enacted,* That the requirement in the existing laws, that members of the levy court shall be appointed from amongst the justices of the peace in the county of Washington, is hereby repealed.

Approved, May 3, 1862 (12 Stat. 383, ch. 63).

ACT OF 1863 DEFINING POWERS OF LEVY COURT

AN ACT To define the powers and duties of the levy court of the county of Washington, District of Columbia, in regard to roads, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the levy court of the county of Washington, District of Columbia, shall hereafter consist of nine members, to be appointed by the President of the United States, by and with the advice and consent of the Senate, who shall hold their offices for the term of three years. But of the members to be first appointed one third shall be appointed and hold their offices for one year, or until the thirty-first day of December, eighteen hundred and sixty-three; one third for two years, or until the thirty-first of December, eighteen hundred and sixty-four; and one third for three years, or until the thirty-first of December, eighteen hundred and sixty-five. The terms of members shall commence on the first day of January, and end on the thirty-first day of December; and it shall be the duty of the President to nominate members, to fill the places of those whose term is about to expire, as early as the fifteenth day of December; and he may renominate any out-going member, should he think proper to do so. Of the nine members of the court, five shall be residents of the county, three of the city of Washington, and one of the city of Georgetown. In case of vacancies happening, the President shall fill them as other vacancies are filled; and the term of the person appointed to fill any vacancy shall expire when the term of him in whose place he is appointed would have expired.

SEC. 2. *And be it further enacted,* That every person appointed as a member of the levy court shall, before he enters on his duties, take an oath faithfully to discharge the duties of the office, and also to support the Constitution of the United States; and he shall also take the oath of allegiance prescribed by the act of July second, eighteen hundred and sixty-two. The members of said court shall hereafter be entitled to receive four dollars a day, each, for every day they shall attend a sitting of the court, and not absent themselves without permission of the court, and four dollars for every day they shall serve on a committee, to be paid by the county treasurer upon the certificate of the president of said court.

SEC. 3. *And be it further enacted,* That the said court shall have the care and charge of, and the exclusive jurisdiction over, all the roads and bridges in said county, except such roads and bridges as belong to and are under the care of the United States. And the said court shall have power, and it shall be their duty—

First. To lay out, alter, repair, discontinue, and regulate any of the public roads and highways within said county, and at any time hereafter to inquire and to decide whether any road in said county held by any incorporated company, has been, and is at the time of such inquiry, kept in the condition required by the charter thereof, and if not, to take legal proceedings to acquire possession of the same as other county roads.

Second. To levy and collect taxes for that purpose upon and from the inhabitants of said county, of the age of twenty-one years and over; those having no property to assess to be assessed to labor.

Third. To appoint, annually, and take bond and security from, a clerk and treasurer, and also to appoint a collector of taxes, who shall have power to collect all the taxes (not to be paid in labor) levied by said court, and to proceed to collect the same, in such manner and within such periods of time as the said levy court may direct.

Fourth. To appoint, annually, a general superintendent of roads and such number of supervisors of roads as they may deem expedient; to remove them, as well as the clerk and treasurer and tax collector, whenever, in their judgment, there is sufficient cause, or the public interests will be subserved thereby.

Fifth. To cause bridges to be erected whenever necessary or convenient, and to keep all bridges in good repair.

Sixth. To fix, from time to time, the pay of the clerk, treasurer, tax collector, superintendent, and supervisors of roads, and the rates per day or hour, to be paid for labor to be performed by men or teams when employed upon roads or bridges.

Seventh. To levy a tax upon all lands and other assessable property lying in said county, at a rate not exceeding one dollar in the hundred dollars of their valuation, and also a tax of not exceeding one dollar each on dogs.

Eighth. To require reports or the rendition of accounts from the collector of taxes, the treasurer of the county, and from supervisors of roads, whenever they shall deem it expedient or proper. Also, reports from supervisors as to the condition of the roads and bridges in their respective districts, and estimates of the probable amount that will be required to put and keep the same in good repair for the ensuing year.

Ninth. To pass ordinances imposing fines for trespassing upon or obstructing or injuring any road or trees therein, or bridge, in said county, and to empower and require the tax collector to collect the same in the same manner as other fines are now collected, and to exercise a general police power over all roads and bridges in said county.

Tenth. To lay out private roads.

Eleventh. To provide for the maintenance and support of the poor; to erect a "poor-house" for that purpose, if deemed by said court necessary and proper; and, in addition to the tax otherwise herein authorized, to levy and collect a tax on real and personal property in said county to pay for the same. The powers herein given are to apply only to that portion of the county not included within the corporate bounds of Washington and Georgetown.

SEC. 4. *And be it further enacted,* That the said court may authorize any portion, not exceeding three fourths of the taxes levied for road and bridge purposes, to be

paid in labor, of men, horses, mules, oxen, the use of ploughs, cars, and wagons, at rates per day or hour, for each to be fixed by said court. But in case any one assessed shall have no visible property, and shall prefer it, he may pay the whole of his tax in labor. All labor upon roads and bridges shall be performed at such times and places as the superintendent of roads shall direct, and under his supervision, or that of the supervisor of the road, or such other person as may be appointed to superintend the work. And it shall be the duty of the superintendent to notify all persons liable to pay road tax, or to labor on roads, of the time and place, when and where they must appear and perform such labor, at least one week before the day they are required to appear. And he may notify such as have teams of horses, mules, or oxen, or may have a cart or wagon, to come or send an able-bodied hand with such team, cart or wagon, to be used in repairing or making roads or bridges; such notice to be given personally or in writing left at the residence of the individual notified. If the person so notified shall fail to appear at the time and place, or send an able-bodied substitute, or shall not conform to the directions of the person having charge of the work, or shall not labor diligently, in the latter case he shall be dismissed, and in either case he shall pay the whole amount of his road tax in cash, with an addition of twenty per centum thereon. For the convenience of the tax collector and the superintendent of roads, it shall be the duty of all tax-payers who desire to work out that portion of their road tax which is herein provided they may work out, as early as the first Monday of April of each year, to give notice to the supervisor of their district of such desire, and such supervisor shall notify the tax collector. But in case any one shall fail to perform the labor required of him, the tax collector shall, upon being notified thereof, collect the said tax in cash, with the twenty per centum added.

SEC. 5. *And be it further enacted,* That it shall be the duty of the superintendent and supervisors of roads to have at least three fourths of the work to be done on them during the year performed as early as the middle of July; and in making and repairing the roads they shall be raised full twelve inches higher in the middle than at the sides, and shall be gradually rounded off to the gutters, which shall be made capacious enough to carry off all the falling water.

SEC. 6. *And be it further enacted,* That no bill for labor performed upon any road or bridge shall be allowed or paid to any supervisor by the levy court which is not accompanied by a certificate of the superintendent of roads that he has personally examined the road or bridge so made or repaired, and that the work has been well done and according to law, and that the charges are reasonable and just: *Provided, however,* That one or more members of the court, to be appointed for that purpose, may, after personal examination, make such certificate.

SEC. 7. *And be it further enacted,* That on extraordinary occasions, when any public road or bridge shall be destroyed, or so injured as to require immediate repair, it shall be the duty of the superintendent as well as the supervisor of the road to cause the necessary repairs to be forthwith made; and if there are no funds in hand with which to hire laborers and teams, or if laborers and teams cannot be otherwise procured, the said supervisor shall immediately summon a sufficient number of men living nearest the place to appear and labor on said road or bridge until it shall be repaired; and he may also require any person owning a team and living within a reasonable distance to appear with said team and cart or wagon and plough. And if any one thus called upon, having received two days' notice, shall neglect or refuse to appear and labor, or send an ablebodied substitute, or shall refuse his team, cart, wagon, or plough, he shall forfeit and pay to the levy court a sum not less than three dollars, nor more than ten, to be recovered before any justice of the peace in said county, with costs. For labor, the use of teams, and other necessary implements, performed and furnished on such occasions, a just and fair compensation shall be paid, to be fixed by the said court.

SEC. 8. *And be it further enacted,* That whenever the levy court shall deem it conducive to the public interests to open a new road, or change the course of an old one, they shall direct the route of such road to be surveyed by the county surveyor, and a plat or map of the same to be prepared. They shall then cause notice to be given, by advertisement, twice a week for three weeks, of the proposed opening of the new road, or of the alteration of an existing one, calling upon all persons who may have any objections thereto to present them to the court at its next regular meeting. If any objections are made, the court shall then and there hear them. If the route only is objected to, and another or others suggested as more advantageous, the court may adopt it, or appoint five discreet, disinterested men, of whom the county surveyor shall be one, to examine all the proposed routes, and report such an one as they shall deem most feasible and advantageous to the county, and such report shall be made to the court at its next session. If no objection to the opening or altering a road by the owners of the land through which it must pass after such notice [is made], it shall be taken for granted that no damages are or will be claimed, and the road may be recorded and opened, and shall then be a public road or highway; but if any owner or owners of the land shall object and claim damages, and the court cannot agree with such owner or owners upon the amount, then the court shall direct the marshal of the District to summon a jury of seven judicious, disinterested men, not related to any party interested, to be and appear on the premises on a day specified to assess the damages, if any, which each owner of land through which the road is to pass may sustain by reason thereof. And the marshal shall summon such jury, and administer an oath or affirmation to them that they will, without favor or partiality to any one, to the best of their judgment, decide what damage, if any, each owner may sustain by reason of running the road through his premises; but in doing this they shall take into consideration the benefit it may be to him or her by enhancing the value of his or her land, or otherwise, and give their verdict accordingly. It shall be the duty of the marshal, upon receiving the order from the court, to give the owner or owners aforesaid not less than ten days' notice of the time and place of the meeting of the jury to assess their damages. In cases where notice cannot be served on the owner or owners, the same proceedings shall be had as is provided in this section in the case of minors. The jury, having been upon the premises and assessed the damages, shall make out a written verdict, to be signed by them, or a majority of them, and attested by the marshal, which the marshal shall transmit to the court at its next session and which shall be recorded. If the court or any owner or owners of the land aforesaid are dissatisfied with the verdict thus rendered, and no arrangement being made between the court and the said owner or owners, the court shall order the marshal to summon a second jury of twelve judicious, disinterested men, not related to any one interested, to meet and view the premises, giving the parties interested at least ten days' notice of the time and place of meeting. And the marshal and jury shall proceed as before directed in regard to the first jury. And the verdict, signed by each of the jurors, or a majority of them, shall be returned to the court at its next session, and recorded as final and conclusive, and the road shall then be declared a public road, and the court shall order it to be opened as such. And the same mode of proceeding shall be observed in cases where application shall be made to the court by the residents of the county to lay out a new, or alter any existing road. In all cases where the land through which it is proposed to run a road shall belong to a minor or minors, it shall be presumed that objection is made, and the damages assessed accordingly. In all cases where it becomes necessary to summon a second jury to assess damages, if the amount assessed by the second jury shall not be greater than the amount assessed by the first, the costs of the second jury shall be paid by the party or parties objecting to the first verdict; but if greater, they shall be paid by the county. All expenses up to the second jury shall be paid by the county.

MARSHAL'S FEES

For summoning each juror the marshal shall be entitled to fifty cents.

For travel, per mile, going and coming to the premises to be examined, twelve and a half cents.

For each day's attendance, two dollars and fifty cents.

JUROR'S FEES

For each day's attendance, two dollars.

SEC. 9. *And be it further enacted,* That in any case where materials of any kind shall be deemed necessary for making or repairing a public road, if the levy court cannot agree with the owner as to their purchase, the said court may proceed in the same manner for condemning said materials as in cases of condemnation of land for the purposes of a public road, as is provided for in the next preceding section of this act.

SEC. 10. *And be it further enacted,* That said levy court shall have full power to make sanitary rules and regulations in said county, to abate nuisances, and to pass such ordinances as it may deem necessary for their condemnation and removal, and for the punishment of persons creating them or suffering them to exist on their premises; which punishment shall not exceed a fine of twenty dollars, for the use of the county, or imprisonment in the county jail thirty days for each offence. Said levy court shall also have power to pass such ordinances as it may deem necessary to effectually prevent Sabbath-breaking in said county by hunting, gaming, fishing, or otherwise, on Sunday; to prohibit the killing of such game as said court may think proper during certain periods; to regulate fishing in the waters of said county, and to provide for sufficient penalties for the violation thereof. And it shall be the duty of the metropolitan police of the District of Columbia to enforce any and all of the ordinances of the said levy court in the same manner as they are now required to enforce the ordinances of the cities of Washington and Georgetown; the funds required for that purpose to be paid by said levy court from the county treasury. And from and after the passage of this act the duties of county constable shall be confined exclusively to the service of civil process and the collection of strictly private debts within the said District of Columbia. And each of the county constables holding office at the time of the passage of this act, and each of said constables hereafter appointed, shall, before performing any duties required to be performed in his said office, take the oath of allegiance required by the act of July second, eighteen hundred and sixty-two, in addition to any oath of office required of him at the time, and shall moreover enter into a bond to the United States in the sum of five thousand dollars, with security to be approved by the clerk of the circuit court, conditioned for the faithful performance of the duties of his office, and for the punctual payment of all moneys coming into his hands to the persons entitled to receive the same, and shall renew the said bond on the thirty-first day of June in every alternate year of his continuance in office.

SEC. 11. *And be it further enacted,* That the act entitled "An act to authorize the levy court to issue tavern and other licenses in the District of Columbia," approved June twelfth, eighteen hundred and sixty, be so extended as to authorize the levy court to grant licenses to wholesale and retail dealers in goods, wares, or merchandise in the county of Washington outside the limits of the cities of Washington and Georgetown, under such restrictions and penalties as the said levy court may deem expedient

SEC. 12. *And be it further enacted,* That fines, under any of the ordinances of the levy court, may be recovered in the name, and for the use, of said levy court, before any magistrate of said county of Washington, and the person or persons against whom a fine may be imposed shall pay the same at the time it is so imposed with costs, or give security for the payment of such fine and costs, as required by the sixth section of an act entitled "An act to amend 'An act to create a metropolitan police district of the District of Columbia, and to establish a police therefor,'" approved August six, eighteen hundred and sixty-one, or shall stand committed till the whole is paid.

SEC. 13. *And be it further enacted,* That all laws inconsistent with this act are hereby repealed.

Approved March 3, 1863 (12 Stat. 799, ch. 106).

REGULATION OF ELECTIVE FRANCHISE

AN ACT To regulate the elective franchise in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, from and after the passage of this act each and every male person, excepting paupers and persons under guardianship, of the age of twenty-one years and upwards, who has not been convicted of any infamous crime or offence, and excepting persons who may have voluntarily given aid and comfort to the rebels in the late rebellion, and who shall have been born or naturalized in the United States, and who shall have resided in the said District for the period of one year, and three months in the ward or election precinct in which he shall offer to vote, next preceding any election therein, shall be entitled to the elective franchise, and shall be deemed an elector and entitled to vote at any election in said District, without any distinction on account of color or race.

SEC. 2. *And be it further enacted,* That any person whose duty it shall be to receive votes at any election within the District of Columbia, who shall wilfully refuse to receive, or who shall wilfully reject, the vote of any person entitled to such right under this act, shall be liable to an action of tort by the person injured, and shall be liable, on indictment and conviction, if such act was done knowingly, to a fine not exceeding five thousand dollars, or to imprisonment for a term not exceeding one year in the jail of said District, or to both.

SEC. 3. *And be it further enacted,* That if any person or persons shall wilfully interrupt or disturb any such elector in the exercise of such franchise, he or they shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not to exceed one thousand dollars, or be imprisoned in the jail in said District for a period not to exceed thirty days, or both, at the discretion of the court.

SEC. 4. *And be it further enacted,* That it shall be the duty of the several courts having criminal jurisdiction in said District to give this act in special charge to the grand jury at the commencement of each term of the court next preceding the holding of any general or city election in said District.

SEC. 5. *And be it further enacted,* That the mayors and aldermen of the cities of Washington and Georgetown, respectively, on or before the first day of March, in each year, shall prepare a list of the persons they judge to be qualified to vote in the several wards of said cities in any election; and said mayors and aldermen shall be in open session to receive evidence of the qualification of persons claiming the right to vote in any election therein, and for correcting said list, on two days in each year, not exceeding five days prior to the annual election for the choice of city officers, giving previous notice of the time and place of each session in some newspaper printed in said District.

SEC. 6. *And be it further enacted,* That on or before the first day of March the mayors and aldermen of said cities shall post up a list of voters thus prepared in one or more public places in said cities, respectively, at least ten days prior to said annual election.

SEC. 7. *And be it further enacted,* That the officers presiding at any election, shall keep and use the check-list herein required at the polls during the election of all officers, and no vote shall be received unless delivered by the voter in person, and not until the presiding officer has had opportunity to be satisfied of his identity, and shall find his name on the list, and mark it, and ascertain that his vote is single.

SEC. 8. *And be it further enacted,* That it is hereby declared unlawful for any person, directly or indirectly, to promise, offer, or give, or procure or cause to be promised, offered, or given, any money, goods, right in action, bribe, present, or reward, or any promise, understanding, obligation, or security for the payment or delivery of any money, goods, right in action, bribe, present, or reward, or any other valuable thing whatever, to any person with intent

to influence his vote to be given at any election hereafter to be held within the District of Columbia; and every person so offending shall, on conviction thereof, be fined in any sum not exceeding two thousand dollars, or imprisoned not exceeding two years, or both, at the discretion of the court.

SEC. 9. *And be it further enacted,* That any person who shall accept, directly or indirectly, any money, goods, right in action, bribe, present, or reward, or any promise, understanding, obligation, or security for the payment or delivery of any money, goods, right in action, bribe, present, or reward, or any other valuable thing whatever, to influence his vote at any election hereafter to be held in the District of Columbia, shall, on conviction, be imprisoned not less than one year and be forever disfranchised.

SEC. 10. *And be it further enacted,* That all acts and parts of acts inconsistent with this act be, and the same are hereby repealed.

SCHUYLER COLFAX,
Speaker of the House of Representatives.
LA FAYETTE S. FOSTER,
President of the Senate, pro tempore.

IN SENATE OF THE UNITED STATES,
January 7, 1867.

The President of the United States having returned to the Senate, in which it originated, the bill entitled "An act to regulate the elective franchise in the District of Columbia," with his objections thereto, the Senate proceeded in pursuance of the Constitution to reconsider the same, and

Resolved, That the said bill do pass, two thirds of the Senate agreeing to pass the same.

Attest:

J. W. FORNEY,
Secretary of the Senate.

IN THE HOUSE OF REPRESENTATIVES,
OF THE UNITED STATES,
January 8, 1867.

The House of Representatives having proceeded, in pursuance of the Constitution to reconsider the bill entitled "An Act to regulate the elective franchise in the District of Columbia," returned to the Senate by the President of the United States, with his objections, and sent by the Senate to the House of Representatives, with the message of the President returning the bill:

Resolved, That the bill do pass, two thirds of the House of Representatives agreeing to pass the same.

Attest:

EDWD. MCPHERSON, *Clerk.*

(January 8, 1867, 14 Stat. 375, ch. 6.)

AMENDMENT OF REGULATION OF ELECTIVE FRANCHISE

A RESOLUTION Relative to the payment of expenses incurred by the judges of election for the cities of Washington and Georgetown, District of Columbia

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the corporations of the cities of Washington and Georgetown, District of Columbia, be, and the same are hereby, required to pay, or cause to be paid, all necessary expenses, including printing, clerk hire, room rent, stationery, and a per diem compensation to each of the judges of election in the respective cities, appointed under the act of Congress entitled "An act to punish illegal voting in the District of Columbia, and for other purposes," approved February fifth, eighteen hundred and sixty-seven, of five dollars per day for every day they shall be actually employed in the discharge of their duties, and the certificate of the judges of election of either city, or a majority thereof, of the correctness of any account arising out of the action of said judges, shall be deemed sufficient to constitute the same a legal debt against the city to which the judges so certifying shall belong. And it shall be lawful for any of the said judges of election to administer oaths in all cases relating to the duties assigned them by law, and any person wilfully making a false statement under oath, before any of said judges, shall be deemed guilty of perjury, and on conviction thereof shall be subject to imprisonment for the term of not less than one nor more than five years.

SEC. 2. *And be it further resolved,* That the judges of the supreme court of the District of Columbia shall appoint three commissioners of election in each voting precinct in said cities of Washington and Georgetown, who shall hold their offices for two years and until their successors are appointed and qualified, whose duty it shall be to take charge of the ballot-boxes at the polls at each election, to receive and deposit in said boxes the ballots of legalized voters in their respective precincts, to count the votes after the polls are closed, and declare the result, and make returns thereof as now provided by law. And the said commissioners of election shall receive the votes of all persons whose names are on the list of voters in said precinct, prepared by the judges of election aforesaid, and none others; they shall have power to administer oaths, and to examine persons offering to vote, and other witnesses as to the identity of voters, and shall receive from their respective cities the same compensation for their services as is now paid to the commissioners of election in said cities; and any person swearing falsely relative to the same shall be deemed guilty of perjury, and shall, on conviction thereof, be subject to imprisonment for the term of not less than one nor more than five years. All acts and parts of acts inconsistent herewith are hereby repealed.

Approved, March 29, 1867 (15 Stat. 27, Resolution No. 26).

ACT OF 1871 CREATING LEGISLATIVE ASSEMBLY

AN ACT To provide a government for the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that part of the territory of the United States included within the limits of the District of Columbia be, and the same is hereby, created into a government by the name of the District of Columbia, by which name it is hereby constituted a body corporate for municipal purposes, and may contract and be contracted with, sue and be sued, plead and be impleaded, have a seal, and exercise all other powers of a municipal corporation not inconsistent with the Constitution and laws of the United States and the provisions of this act.

SEC. 2. *And be it further enacted,* That the executive power and authority in and over said District of Columbia shall be vested in a governor, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall hold his office for four years, and until his successor shall be appointed and qualified. The governor shall be a citizen of and shall have resided within said District twelve months before his appointment, and have the qualifications of an elector. He may grant pardons and respites for offenses against the laws of said District enacted by the legislative assembly thereof; he shall commission all officers who shall be elected or appointed to office under the laws of the said District enacted as aforesaid, and shall take care that the laws be faithfully executed.

SEC. 3. *And be it further enacted,* That every bill which shall have passed the council and house of delegates shall, before it becomes a law, be presented to the governor of the District of Columbia; if he approve, he shall sign it, but if not, he shall return it, with his objections, to the house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two thirds

of all the members appointed or elected to the house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of all the members appointed or elected to that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the legislative assembly by their adjournment prevent its return, in which case it shall not be a law.

SEC. 4. *And be it further enacted,* That there shall be appointed by the President, by and with the advice and consent of the Senate, a secretary of said District, who shall reside therein and possess the qualification of an elector, and shall hold his office for four years, and until his successor shall be appointed and qualified; he shall record and preserve all laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and journals of the legislative assembly within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence semiannually, on the first days of January and July in each year, to the President of the United States, and four copies of the laws to the President of the Senate and to the Speaker of the House of Representatives, for the use of Congress; and in case of the death, removal, resignation, disability, or absence, of the governor from the District, the secretary shall be, and he is hereby, authorized and required to execute and perform all the powers and duties of the governor during such vacancy, disability, or absence, or until another governor shall be duly appointed and qualified to fill such vacancy. And in case the offices of governor and secretary shall both become vacant, the powers, duties, and emoluments of the office of governor shall devolve upon the presiding officer of the council, and in case that office shall also be vacant, upon the presiding officer of the house of delegates, until the office shall be filled by a new appointment.

SEC. 5. *And be it further enacted,* That legislative power and authority in said District shall be vested in a legislative assembly as hereinafter provided. The assembly shall consist of a council and house of delegates. The council shall consist of eleven members, of whom two shall be residents of the city of Georgetown, and two residents of the county outside of the cities of Washington and Georgetown, who shall be appointed by the President, by and with the advice and consent of the Senate, who shall have the qualification of voters as hereinafter prescribed, five of whom shall be first appointed for the term of one year, and six for the period of two years, provided that all subsequent appointments shall be for the term of two years. The house of delegates shall consist of twenty-two members, possessing the same qualifications as prescribed for the members of the council, whose term of service shall continue one year. An apportionment shall be made, as nearly equal as practicable into eleven districts for the appointment of the council, and into twenty-two districts for the election of delegates, giving to each section of the District representation in the ratio of its population as nearly as may be. And the members of the council and of the house of delegates shall reside in and be inhabitants of the districts from which they are appointed or elected, respectively. For the purposes of the first election to be held under this act, the governor and judges of the supreme court of the District of Columbia shall designate the districts for members of the house of delegates, appoint a board of registration and persons to superintend the election and the returns thereof, prescribe the time, places, and manner of conducting such election, and make all needful rules and regulations for carrying into effect the provisions of the act not otherwise herein provided for: *Provided,* That the first election shall be held within sixty days from the passage of this act. In the first and all subsequent elections the persons having the highest number of legal votes for the house of delegates, respectively, shall be declared by the governor duly elected members of said house. In case two or more persons voted for shall have an equal number of votes for the same office, or if a vacancy shall occur in the house of delegates, the governor shall order a new election. And the persons thus appointed and elected to the legislative assembly shall meet at such time and at such place within the District as the governor shall appoint; but thereafter the time, place, and manner of holding and conducting all elections by the people, and the formation of the districts for members of the council and house of delegates, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the legislative assembly: *Provided,* That no session in any one year shall exceed the term of sixty days, except the first session, which may continue one hundred days.

SEC. 6. *And be it further enacted,* That the legislative assembly shall have power to divide that portion of the District not included in the corporate limits of Washington or Georgetown into townships, not exceeding three, and create township officers, and prescribe the duties thereof; but all township officers shall be elected by the people of the townships respectively.

SEC. 7. *And be it further enacted,* That all male citizens of the United States, above the age of twenty-one years, who shall have been actual residents of said District for three months prior to the passage of this act, except such are non compos mentis and persons convicted of infamous crimes, shall be entitled to vote at said election, in the election district or precinct in which he shall then reside, and shall have so resided for thirty days immediately preceding said election, and shall be eligible to any office within the said District, and for all subsequent election twelve months' prior residence shall be required to constitute a voter; but the legislative assembly shall have no right to abridge or limit the right of suffrage.

SEC. 8. *And be it further enacted,* That no person who has been or hereafter shall be convicted of bribery, perjury, or other infamous crime, nor any person who has been or may be a collector or holder of public moneys who shall not have accounted for and paid over, upon final judgment duly recovered according to law, all such moneys due from him, shall be eligible to the legislative assembly or to any office of profit or trust in said District.

SEC. 9. *And be it further enacted,* That members of the legislative assembly, before they enter upon their official duties, shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and will faithfully discharge the duties of the office upon which I am about to enter; and that I have not knowingly or intentionally paid or contributed anything, or made any promise in the nature of a bribe, to directly or indirectly influence any vote at the election at which I was chosen to fill the said office, and have not accepted, nor will I accept, or receive, directly or indirectly, any money or other valuable thing for any vote or influence that I may give or withhold on any bill, resolution, or appropriation, or for any other official act." Any member who shall refuse to take the oath herein prescribed shall forfeit his office, and every person who shall be convicted of having sworn falsely to or of violating his said oath shall forfeit his office and be disqualified thereafter from holding any office of profit or trust in said District, and shall be deemed guilty of perjury, and upon conviction shall be punished accordingly.

SEC. 10. *And be it further enacted,* That a majority of the legislative assembly appointed or elected to each house shall constitute a quorum. The house of delegates shall be the judge of the election returns and qualifications of its members. Each house shall determine the rules of its proceedings, and shall choose its own officers. The governor shall call the council to order at the opening of each new assembly; and the secretary of the District shall call the house of delegates to order at the opening of each new legislative assembly, and shall preside over it until a temporary presiding officer shall have been chosen and shall have taken his seat. No member shall be expelled by either house except by a vote of two thirds of all the members appointed or elected to that house. Each house may punish by imprisonment any person not a member who shall be guilty of disre-

spect to the house by disorderly or contemptuous behavior in its presence; but no such imprisonment shall extend beyond twenty-four hours at one time. Neither house shall, without the consent of the other, adjourn for more than two days, or to any other place than that in which such house shall be sitting. At the request of any member the yeas and nays shall be taken upon any question and entered upon the journal.

SEC. 11. *And be it further enacted,* That bills may originate in either house, but may be altered, amended, or rejected by the other; and on the final passage of all bills the vote shall be by yeas and nays upon each bill separately, and shall be entered upon the journal, and no bill shall become a law without the concurrence of a majority of the members elected to each house.

SEC. 12. *And be it further enacted,* That every bill shall be read at large on three different days in each house. No act shall embrace more than one subject, and that shall be expressed in its title; but if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed in the title; and no act of the legislative assembly shall take effect until thirty days after its passage, unless, in case of emergency, (which emergency shall be expressed in the preamble or body of the act,) the legislative assembly shall by a vote of two thirds of all the members appointed or elected to each house otherwise direct.

SEC. 13. *And be it further enacted,* That no money shall be drawn from the treasury of the District, except in pursuance of an appropriation made by law, and no bill making appropriations for the pay or salaries of the officers of the District government shall contain any provisions on any other subject.

SEC. 14. *And be it further enacted,* That each legislative assembly shall provide for all the appropriations necessary for the ordinary and contingent expenses of the government of the District until the expiration of the first fiscal quarter after the adjournment of the next regular session, the aggregate amount of which shall not be increased without a vote of two thirds of the members elected or appointed to each house as herein provided, nor exceed the amount of revenue authorized by law to be raised in such time, and all appropriations, general or special, requiring money to be paid out of the District treasury, from funds belonging to the District, shall end with such fiscal quarter; and no debt, by which the aggregate debt of the District shall exceed five per cent. of the assessed property of the District, shall be contracted, unless the law authorizing the same shall at a general election have been submitted to the people and have received a majority of the votes cast for members of the legislative assembly at such election. The legislative assembly shall provide for the publication of said law in at least two newspapers in the District for three months, at least, before the vote of the people shall be taken on the same, and provision shall be made in the act for the payment of the interest annually, as it shall accrue, by a tax levied for the purpose, or from other sources of revenue, which law providing for the payment of such interest by such tax shall be irrepealable until such debt be paid: *Provided,* That the law levying the tax shall be submitted to the people with the law authorizing the debt to be contracted.

SEC. 15. *And be it further enacted,* That the legislative assembly shall never grant or authorize extra compensation, fee, or allowance to any public officer, agent, servant, or contractor, after service has been rendered or a contract made, nor authorize the payment of any claim, or part thereof, hereafter created against the District under any contract or agreement made, without express authority of law; and all such unauthorized agreements or contracts shall be null and void.

SEC. 16. *And be it further enacted,* That the District shall never pay, assume, or become responsible for the debts or liabilities of, or in any manner give, loan, or extend its credit to or in aid of any public or other corporation, association, or individual.

SEC. 17. *And be it further enacted,* That the legislative assembly shall not pass special laws in any of the following cases, that is to say: For granting divorces; regulating the practice in courts of justice; regulating the jurisdiction or duties of justices of the peace, police magistrates, or constables; providing for changes of venue in civil or criminal cases, or swearing and impaneling jurors; remitting fines, penalties, or forfeitures; the sale or mortgage of real estate belonging to minors or others under disability; changing the law of descent; increasing or decreasing the fees of public officers during the term for which said officers are elected or appointed; granting to any corporation, association, or individual, any special or exclusive privilege, immunity, or franchise whatsoever. The legislative assembly shall have no power to release or extinguish, in whole or in part, the indebtedness, liability, or obligation of any corporation or individual to the District or to any municipal corporation therein, nor shall the legislative assembly have power to establish any bank of circulation, nor to authorize any company or individual to issue notes for circulation as money or currency.

SEC. 18. *And be it further enacted,* That the legislative power of the District shall extend to all rightful subjects of legislation within said District, consistent with the Constitution of the United States and the provisions of this act, subject, nevertheless, to all the restrictions and limitations imposed upon States by the tenth section of the first article of the Constitution of the United States; but all acts of the legislative assembly shall at all times be subject to repeal or modification by the Congress of the United States, and nothing herein shall be construed to deprive Congress of the power of legislation over said District in as ample manner as if this law had not been enacted.

SEC. 19. *And be it further enacted,* That no member of the legislative assembly shall hold or be appointed to any office, which shall have been created or the salary or emoluments of which shall have been increased while he was a member, during the term for which he was appointed or elected, and for one year after the expiration of such term; and no person holding any office of trust or profit under the government of the United States shall be a member of the legislative assembly.

SEC. 20. *And be it further enacted,* That the said legislative assembly shall not have power to pass any ex post facto law, nor law impairing the obligation of contracts, nor to tax the property of the United States, nor to tax the lands or other property of non-residents higher than the lands or other property of residents; nor shall lands or other property in said district be liable to a higher tax, in any one year, for all general objects, territorial and municipal, than two dollars on every hundred dollars of the cash value thereof; but special taxes may be levied in particular sections, wards, or districts for their particular local improvements; nor shall said territorial government have power to borrow money or issue stock or bonds for any object whatever, unless specially authorized by an act of the legislative assembly, passed by a vote of two thirds of the entire number of the members of each branch thereof, but said debt in no case to exceed five per centum of the assessed value of the property of said District, unless authorized by a vote of the people, as *hereinafter* [hereinbefore] provided.

SEC. 21. *And be it further enacted,* That the property of that portion of the District not included in the corporations of Washington or Georgetown shall not be taxed for the purposes either of improving the streets, alleys, public squares, or other public property of the said cities, or either of them, nor for any other expenditure of a local nature, for the exclusive benefit of said cities, or either of them, nor for the payment of any debt heretofore contracted, or that may hereafter be contracted by either of said cities while remaining under a municipal government not coextensive with the District.

SEC. 22. *And be it further enacted,* That the property within the corporate limits of Georgetown shall not be taxed for the payment of any debt heretofore or hereafter to be contracted by the corporation of Washington, nor shall the property within the corporate limits of Washington be taxed for the payment of any debt heretofore or hereafter to be contracted by the corporation of Georgetown; and so long as said cities shall remain under distinct municipal governments, the property within the corporate limits of either of said cities shall not be taxed for the local benefit of the other; nor shall said cities, or

either of them, be taxed for the exclusive benefit of the county outside of the limits thereof: *Provided,* That the legislative assembly may make appropriations for the repair of roads, or for the construction or repair of bridges outside the limits of said cities.

SEC. 23. *And be it further enacted,* That it shall be the duty of said legislative assembly to maintain a system of free schools for the education of the youth of said District, and all moneys raised by general taxation or arising from donations by Congress, or from other sources, except by request or devise, for school purposes, shall be appropriated for the equal benefit of all the youths of said District between certain ages, to be defined by law.

SEC. 24. *And be it further enacted,* That the said legislative assembly shall have power to provide for the appointment of as many justices of the peace and notaries public for said District as may be deemed necessary, to define their jurisdiction and prescribe their duties; but justices of the peace shall not have jurisdiction of any controversy in which the title of land may be in dispute, or in which the debt or sum claimed shall exceed one hundred dollars: *Provided, however,* That all justices of the peace and notaries public now in commission shall continue in office till their present commissions expire, unless sooner removed pursuant to existing laws.

SEC. 25. *And be it further enacted,* That the judicial courts of said District shall remain as now organized until abolished or changed by act of Congress; but such legislative assembly shall have power to pass laws modifying the practice thereof, and conferring such additional jurisdiction as may be necessary to the due execution and enforcement of the laws of said District.

SEC. 26. *And be it further enacted,* That there shall be appointed by the President of the United States, by and with the advice and consent of the Senate, a board of health for said District, to consist of five persons, whose duty it shall be to declare what shall be deemed nuisances injurious to health, and to provide for the removal thereof; to make and enforce regulations to prevent domestic animals from running at large in the cities of Washington and Georgetown; to prevent the sale of unwholesome food in said cities; and to perform such other duties as shall be imposed upon said board by the legislative assembly.

SEC. 27. *And be it further enacted,* That the offices and duties of register of wills, recorder of deeds, United States attorney, and United States marshal for said District shall remain as under existing laws till modified by act of Congress; but said legislative assembly shall have power to impose such additional duties upon said officers, respectively, as may be necessary to the due enforcement of the laws of said District.

SEC. 28. *And be it further enacted,* That the said legislative assembly shall have power to create by general law, modify, repeal, or amend, within said District, corporations aggregate for religious, charitable, educational, industrial, or commercial purposes, and to define their powers and liabilities: *Provided,* That the powers of corporations so created shall be limited to the District of Columbia.

SEC. 29. *And be it further enacted,* That the legislative assembly shall define by law who shall be entitled to relief as paupers in said District, and shall provide by law for the support and maintenance of such paupers, and for that purpose shall raise the money necessary by taxation.

SEC. 30. *And be it further enacted,* That the legislative assembly shall have power to provide by law for the election or appointment of such ministerial officers as may be deemed necessary to carry into effect the laws of said District to prescribe their duties, their terms of office, and the rate and manner of their compensation.

SEC. 31. *And be it further enacted,* That the governor, secretary, and other officers to be appointed pursuant to this act, shall, before they act as such, respectively, take and subscribe an oath or affirmation before a judge of the supreme court of the District of Columbia, or some justice of the peace in the limits of said District, duly authorized to administer oaths or affirmations by the laws now in force therein, or before the Chief Justice or some associate justice of the Supreme Court of the United States, to support the Constitution of the United States, and faithfully to discharge the duties of their respective offices; which said oaths, when so taken, shall be certified by the person before whom the same shall have been taken; and such certificates shall be received and recorded by the said secretary among the executive proceedings; and all civil officers in said District, before they act as such, shall take and subscribe a like oath or affirmation before the said governor or secretary, or some judge or justice of the peace of the District, who may be duly commissioned and qualified, or before the Chief Justice of the Supreme Court of the United States, which said oath or affirmation shall be certified and transmitted by the person administering the same to the secretary, to be by him recorded as aforesaid; and afterward the like oath or affirmation shall be taken and subscribed, certified and recorded in such manner and form as may be prescribed by law.

SEC. 32. *And be it further enacted,* That the governor, shall receive an annual salary of three thousand dollars; and the secretary shall receive an annual salary of two thousand dollars, and that the said salaries shall be paid quarter-yearly, from the dates of the respective appointments, at the treasury of the United States; but no payment shall be made until said officers shall have entered upon the duties of their respective appointments. The members of the legislative assembly shall be entitled to receive four dollars each per day during their actual attendance at the session thereof, and an additional allowance of four dollars per day shall be paid to the presiding officer of each house for each day he shall so preside. And a chief clerk, one assistant clerk, one engrossing and one enrolling clerk, and a sergeant-at-arms may be chosen for each house; and the chief clerk shall receive four dollars per day, and the said other officers three dollars per day, during the session of the legislative assembly: *Provided,* That there shall be but one session of the legislative assembly annually, unless, on an extraordinary occasion, the governor shall think proper to call the legislative assembly together. And the governor and secretary of the District shall, in the disbursement of all moneys appropriated by Congress and intrusted to them, be governed solely by the instructions of the Secretary of the Treasury of the United States, and shall semiannually account to the said Secretary for the manner in which the aforesaid moneys shall have been expended; and no expenditure shall be made by the said legislative assembly of funds appropriated by Congress, for objects not especially authorized by acts of Congress making the appropriations, nor beyond the sums thus appropriated for such objects.

SEC. 33. *And be it further enacted,* That the legislative assembly of the District of Columbia shall hold its first session at such time and place in said District as the governor thereof shall appoint and direct.

SEC. 34. *And be it further enacted,* That a delegate to the House of Representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States and of the District of Columbia, and shall have the qualifications of a voter, may be elected by the voters qualified to elect members of the legislative assembly who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several Territories of the United States to the House of Representatives, and shall also be a member of the committee for the District of Columbia; but the delegate first elected shall hold his seat only during the term of the Congress to which he shall be elected. The first election shall be held at the time and places and be conducted in such manner as the elections for members of the House of Representatives are conducted; and at all subsequent elections the time and places and the manner of holding the elections shall be prescribed by law. The person having the greatest number of legal votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given accordingly; and the Constitution and all the laws of the United States, which are not locally inapplicable, shall have the same force and effect within the said District of Columbia as elsewhere within the United States.

SEC. 35. *And be it further enacted,* That all officers to be appointed by the President of the United States, by and with the advice and consent of the Senate, for the District of Columbia, who, by virtue of the provisions of any law now existing, or which may be enacted by Congress, are required to give security for moneys that may be intrusted

to them for disbursement, shall give such security at such time and in such manner as the Secretary of the Treasury may prescribe.

SEC. 36. *And be it further enacted,* That there shall be a valuation taken in the District of Columbia of all real estate belonging to the United States in said District, except the public buildings, and the grounds which have been dedicated to the public use as parks and squares, at least once in five years, and return thereof shall be made by the governor to the President of the Senate and Speaker of the House of Representatives on the first day of the session of Congress held after such valuation shall be taken, and the aggregate of the valuation of private property in said District, whenever made by the authority of the legislative assembly, shall be reported to Congress by the governor: *Provided,* That all valuations of property belonging to the United States shall be made by such persons as the Secretary of the Interior shall appoint, and under such regulations as he shall prescribe.

SEC. 37. *And be it further enacted,* That there shall be in the District of Columbia a board of public works, to consist of the governor, who shall be president of said board; four persons, to be appointed by the President of the United States, by and with the advice and consent of the Senate, one of whom shall be a civil engineer, and the others citizens and residents of the District, having the qualifications of an elector therein; one of said board shall be a citizen and resident of Georgetown, and one of said board shall be a citizen and resident of the county outside of the cities of Washington and Georgetown. They shall hold office for the term of four years, unless sooner removed by the President of the United States. The board of public works shall have entire control of and make all regulations which they shall deem necessary for keeping in repair the streets, avenues, alleys, and sewers of the city, and all other works which may be intrusted to their charge by the legislative assembly or Congress. They shall disburse upon their warrant all moneys appropriated by the United States, or the District of Columbia, or collected from property-holders, in pursuance of law, for the improvement of streets, avenues, alleys, and sewers, and roads and bridges, and shall assess in such manner as shall be prescribed by law, upon the property adjoining and to be specially benefited by the improvements authorized by law and made by them, a reasonable proportion of the cost of the improvement, not exceeding one third of such cost, which sum shall be collected as all other taxes are collected. They shall make all necessary regulations respecting the construction of private buildings in the District of Columbia, subject to the supervision of the legislative assembly. All contracts made by the said board of public works shall be in writing, and shall be signed by the parties making the same, and a copy thereof shall be filed in the office of the secretary of the District; and said board of public works shall have no power to make contracts to bind said District to the payment of any sums of money except in pursuance of appropriations made by law, and not until such appropriations shall have been made. All contracts made by said board in which any member of said board shall be personally interested shall be void, and no payment shall be made thereon by said District or any officers thereof. On or before the first Monday in November of each year, they shall submit to each branch of the legislative assembly a report of their transactions during the preceding year, and also furnish duplicates of the same to the governor, to be by him laid before the President of the United States for transmission to the two houses of Congress; and shall be paid the sum of two thousand five hundred dollars each annually.

SEC. 38. *And be it further enacted,* That the officers herein provided for, who shall be appointed by the President, by and with the advice and consent of the Senate, shall be paid by the United States by appropriations to be made by law as hereinbefore provided; and all other officers of said District provided for by this act shall be paid by the District: *Provided,* That no salary shall be paid to the governor as a member of the board of public works in addition to his salary as governor, nor shall any officer of the army appointed upon the board of public works receive any increase of pay for such service.

SEC. 39. *And be it further enacted,* That if, at any election hereafter held in the District of Columbia, any person shall knowingly personate and vote, or attempt to vote, in the name of any other person, whether living, dead, or fictitious, or vote more than once at the same election for any candidate for the same office, or vote at a place where he may not be entitled to vote, or vote without having a lawful right to vote, or do any unlawful act to secure a right or opportunity to vote for himself or any other person, or by force, threats, menace or intimidation, bribery, reward, or offer, or promise thereof, or otherwise unlawfully prevent any qualified voter of the District of Columbia from freely exercising the right of suffrage, or by any such means induce any voter to refuse to exercise such right, or compel or induce, by any such means or otherwise, any officer of any election in said District to receive a vote from a person not legally qualified or entitled to vote; or interfere in any manner with any officer of said elections in the discharge of his duties; or by any unlawful means induce any officer of an election, or officer whose duty it is to ascertain, announce, or declare the result of any such election, or give or make any certificate, document, or evidence in relation thereto, to violate or refuse to comply with his duty, or any law regulating the same; or knowingly and wilfully receive the vote of any person not entitled to vote, or refuse to receive the vote of any person entitled to vote; or aid, counsel, procure, or advise any such voter, person, or officer to do any act hereby made a crime, or to omit to do any duty the omission of which is hereby made a crime, or attempt to do so, every such person shall be deemed guilty of a crime, and shall for such crime be liable to prosecution in any court of the United States of competent jurisdiction, and on conviction thereof shall be punished by a fine not exceeding five hundred dollars, or by imprisonment for a term not exceeding three years, or both, in the discretion of the court, and shall pay the costs of prosecution.

SEC. 40. *And be it further enacted,* That the charters of the cities of Washington and Georgetown shall be repealed on and after the first day of June, A. D. eighteen hundred and seventy-one, and all offices of said corporations abolished at that date; the levy court of the District of Columbia and all offices connected therewith shall be abolished on and after said first day of June, A. D. eighteen hundred and seventy-one; but all laws and ordinances of said cities, respectively, and of said levy court, not inconsistent with this act, shall remain in full force until modified or repealed by Congress or the legislative assembly of said District; that portion of said District included within the present limits of the city of Washington shall continue to be known as the city of Washington; and that portion of said District included within the limits of the city of Georgetown shall continue to be known as the city of Georgetown; and the legislative assembly shall have power to levy a special tax upon property, except the property of the government of the United States, within the city of Washington for the payment of the debts of said city; and upon property, except the property of the government of the United States, within the limits of the city of Georgetown for the payment of the debts of said city; and upon property, except the property of the government of the United States, within said District not included within the limits of either of said cities to pay any debts owing by that portion of said District: *Provided,* That the charters of said cities severally, and the powers of said levy court, shall be continued for the following purposes, to wit: For the collection of all sums of money due to said cities, respectively, or to said levy court; for the enforcement of all contracts made by said cities, respectively, or by said levy court, and all taxes, heretofore assessed, remaining unpaid; for the collection of all just claims against said cities, respectively, or against said levy court; for the enforcement of all legal contracts against said cities, respectively, or against said levy court, until the affairs of said cities, respectively, and of said levy court, shall have been fully closed; and no suit in favor of or against said corporations, or either of them, shall abate by reason of the passage of this act, but the same shall be prosecuted to final judgment as if this act had not been passed.

SEC. 41. *And be it further enacted,* That there shall be no election holden for mayor or members of the common council of the city of Georgetown prior to the first day of June, eighteen hundred and seventy-one, but the present mayor and common council of said city shall hold their offices until said first day of June next. No taxes for general purposes shall hereafter be assessed by the municipal authorities of the cities of Washington or Georgetown, or by said levy court. And upon the repeal of the charters of the cities of Washington and Georgetown, the District of Columbia be, and is hereby, declared to be the successor of said corporations, and all the property of said corporations, and of the county of Washington, shall become vested in the said District of Columbia, and all fines, penalties, costs, and forfeitures, which are now by law made payable to said cities, respectively, or said levy court, shall be paid to said District of Columbia, and the salaries of the judge and clerk of the police court, the compensation of the deputy clerk and bailiffs of said police court, and of the marshal of the District of Columbia shall be paid by said District: *Provided,* That the moneys collected upon the judgments of said police court, or so much thereof as may be necessary, shall be applied to the payment of the salaries of the judge and other officers of said court, and to the payment of the necessary expenses thereof, and any surplus remaining after paying the salaries, compensation, and expenses aforesaid, shall be paid into the treasury of the District at the end of every quarter.

Approved, February 21, 1871 (16 Stat. 419, ch. 62).

TEMPORARY ORGANIC ACT OF 1874

AN ACT For the government of the District of Columbia, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all provisions of law providing for an executive, for a secretary for the District, for a legislative assembly, for a board of public works, and for a Delegate in Congress in the District of Columbia are hereby repealed: *Provided,* That this repeal shall not affect the term of office of the present Delegate in Congress.

SEC. 2. That the President of the United States, by and with the advice and consent of the Senate, is hereby authorized to appoint a commission, consisting of three persons, who shall, until otherwise provided by law, exercise all the power and authority now lawfully vested in the governor or board of public works of said District, except as hereinafter limited; and shall be subject to all the restrictions and limitations now imposed by law on said governor or board; and shall have power to apply the taxes or other revenues of said District to the payment of the current expenses thereof, to the support of the public schools, the fire department, and the police, and to the payment of the debts of said District secured by a pledge of the securities of said District or board of public works as collateral, and also to the payment of debts due to laborers and employees of the District and board of public works; and for that purpose shall take possession and supervision of all the offices, books, papers, records, moneys, credits, securities, assets, and accounts belonging or appertaining to the business or interests of the government of the District of Columbia and the board of public works, and exercise the power and authority aforesaid; but said commission, in the exercise of such power or authority, shall make no contract, nor incur any obligation other than such contracts and obligations as may be necessary to the faithful administration of the valid laws enacted for the government of said District, to the execution of existing legal obligations and contracts, and to the protection or preservation of improvements existing, or commenced and not completed, at the time of the passage of this act. All taxes heretofore lawfully assessed and due or to become due shall be collected pursuant to law, except as herein otherwise provided; but said commissioners shall have no power to anticipate taxes by a sale or hypothecation of any such taxes, or evidence thereof: *Provided,* That nothing in this clause contained shall affect any provisions of law authorizing or requiring a deposit of certificates of assessment with the sinking-fund commissioners of said District; and said commissioners are hereby authorized to abolish any office, to consolidate two or more offices, reduce the number of employees, remove from office, and make appointments to any office authorized by law; and the compensation of all officers and employees, except teachers in the public schools, and officers and employees in the fire department, shall be reduced twenty per centum per annum. Said commissioners shall each, before entering upon the discharge of his duties, take an oath to support the Constitution of the United States and to faithfully discharge the duties imposed upon him by law; and shall each give bond in the penal sum of fifty thousand dollars, to be approved by the Secretary of the Treasury, for the faithful discharge of the duties of his office; and shall each receive for his services a compensation at the rate of five thousand dollars per annum: *Provided,* That nothing in this act shall be construed to abate or in any wise interfere with any suit pending in favor of or against the District of Columbia: *And provided further,* That in suits hereafter commenced against the District of Columbia, process may be served on any one of said commissioners, until otherwise provided by law.

SEC 3. That the President of the United States shall detail an officer of the Engineer Corps of the Army of the United States, who shall, subject to the general supervision and direction of the said board of commissioners, have the control and charge of the work of repair and improvement of all streets, avenues, alleys, sewers, roads, and bridges of the District of Columbia; and he is hereby vested with all the power and authority of, and shall perform the duties heretofore devolved upon, the chief engineer of the board of public works. He shall take possession of, and preserve and keep, all the instruments pertaining to said office, and all the maps, charts, surveys, books, records, and papers relating to said District, or to any of the avenues, streets, alleys, public spaces, squares, lots and buildings thereon, sewers, or any of them, as are now in or belonging to the office of said engineer of the board of public works, and shall, in books provided for that purpose, keep and preserve the records now required to be kept, and such as may be required by regulations of said board. He may, with the advice and consent of said board of commissioners, appoint not more than two assistant engineers from civil life, who shall each receive a salary of one thousand eight hundred dollars per annum, and shall be subject to his direction and control. He shall receive no additional compensation for such services. And he shall not be deemed by reason of anything in this act contained to hold a civil office under the laws of the United States. And no salary or compensation shall be paid to the surveyor of the District, or any of his subordinates, except such fees for special services as are allowed by law. And the offices of assistant surveyor and additional assistant surveyor of the District of Columbia are hereby abolished.

SEC. 4. That for the support of the government of the District of Columbia, and maintaining the credit thereof, for the fiscal year ending June thirtieth, eighteen hundred and seventy-five, there shall be levied upon all real estate in said District, except that belonging to the United States and to the District of Columbia, and that used for educational and charitable purposes, the following taxes, namely: Upon all such real estate in the city of Washington, three dollars on each one hundred dollars of the present assessed value thereof; upon all such real estate in the city of Georgetown, two dollars and fifty cents on each one hundred dollars of the present assessed value thereof; and upon all such real estate in the District of Columbia outside of the cities of Washington and Georgetown, two dollars on each one hundred dollars of the present assessed value thereof: which said taxes shall become due and payable on the first day of November, eighteen hundred and seventy-four, and, if not paid, shall be in arrears and delinquent from that date; and shall, except as herein modified, be assessed and collected

as now provided by law for the assessment and collection of general taxes for the District of Columbia; and of the sums so collected, one fourth thereof shall be applied, first, to re-imburse the United States for its advances on account of interest, which shall have been paid by the United States on the funded debt of the District of Columbia and Washington and Georgetown, due and payable July first, eighteen hundred and seventy-four; and the remainder shall be used to pay deficiencies in the various funds for the fiscal year ending June thirtieth, eighteen hundred and seventy-four. And all the remainder of said taxes not required for the aforesaid purposes shall be distributed for the purposes and in the proportions provided by the act of the legislative assembly of the District of Columbia, approved June twenty-sixth, eighteen hundred and seventy-three, entitled "An act imposing taxes for the fiscal year ending June thirtieth, eighteen hundred and seventy-four," so far as said apportionment is not inconsistent with this act: *Provided,* That no evidence of debt issued by the District of Columbia, or any branch thereof, or by the board of public works, shall in any manner be received in payment for said taxes: *And provided further,* That no payment shall be made on account of the militia of said District, or for the purpose of erecting a District jail. Upon all payments of said taxes hereby imposed which shall be made in advance of the said first day of November, eighteen hundred and seventy-four, there shall be an abatement allowed of one per centum per month for each and every month so paid in advance; and that upon all said taxes which shall be delinquent and unpaid on said first day of November, there shall be added a penalty of one per centum to the amount thereof, to be collected with such taxes; and a like penalty of one per centum upon the amount thereof shall be added on the first day of each succeeding month to all of said taxes as are then delinquent and unpaid, to be collected as aforesaid. It shall be the duty of the collector of taxes to prepare a complete list of all taxes and property upon which the same are assessed in arrears on the first day of March next, and shall, within ten days thereafter, publish the same, with the notice of sale, in a newspaper published in said District, to be designated by said board of commissioners, for the time and in the manner required by the provisions of the act of the legislative assembly entitled "An act prescribing the duties of certain officers for the District of Columbia, and fixing their compensation," approved August twenty-third, eighteen hundred and seventy-one. And all the provisions of said act as to the sale of property and the collection of taxes in arrears are hereby made applicable to the taxes hereby imposed and in arrears as aforesaid, except that the deed conveying the property so sold shall be executed by the said board of commissioners instead of the governor and the secretary

SEC. 5. That a joint select committee shall be appointed, consisting of two Senators, to be appointed by the presiding officer of the Senate, and two members of the House, to be appointed by the Speaker of the House of Representatives, whose duty it shall be to prepare a suitable frame of government for the District of Columbia and appropriate draughts of statutes to be enacted by Congress for carrying the same into effect, and report the same to the two Houses, respectively, on the first day of the next session thereof; and they shall also prepare and submit to Congress a statement of the proper proportion of the expenses of said government, or any branch thereof, including interest on the funded debt, which should be borne by said District and the United States, respectively, together with the reasons upon which their conclusions may be based; and in the discharge of the duty hereby imposed, said committee is authorized to employ such assistance as it may deem advisable, at an expense not to exceed the sum of five thousand dollars; and said sum, or so much thereof as may be necessary, be, and the same is hereby, appropriated for that purpose.

SEC. 6. That it shall be the duty of the First Comptroller of the Treasury and the Second Comptroller of the Treasury of the United States, who are hereby constituted a board of audit, to examine and audit for settlement all the unfunded or floating debt of the District of Columbia and of the board of public works, hereinafter specified, namely: first, the debt evidenced by sewer certificates; secondly, the debt purporting to be evidenced and ascertained by certificates of the auditor of the board of public works; thirdly, the debt evidenced by the certificates of the auditor and the comptroller of the District of Columbia; fourthly, claims existing or hereafter created for which no evidence of indebtedness has been issued, arising out of contracts, written or oral, made by the board of public works; fifthly, claims, for which no evidence of indebtedness has been issued, arising out of contracts, written or oral, made by or on behalf of the District of Columbia; sixthly, all claims for private property taken by the board of public works from the avenues, streets, and alleys of the cities of Washington and Georgetown; and, seventhly, all unadjusted claims for damages that may have been presented to the board of public works, pursuant to an act of the legislative assembly of the District of Columbia, entitled "An act providing for the payment of damages sustained by reason of public improvements or repairs," approved June twentieth, eighteen hundred and seventy-two, which last-named claims shall severally be examined and audited without regard to any examination heretofore made; and shall make a detailed and tabular statement of all claims presented, the persons or corporations owning the same, and the amount found to be due on account of each; together with a tabular statement of the funded debt of the District of Columbia and of the cities of Washington and Georgetown of every kind and character whatsoever, giving the date of issue, time of maturity, and the rate of interest. And it shall further be the duty of said board to ascertain the amount of sewer-tax or assessment paid by any person, persons, or corporation, under the act of the legislative assembly of said District, entitled "An act creating drainage and sewerage sections in the cities of Washington and Georgetown, in the District of Columbia, and providing for the payment of the construction of sewers and drains therein by assessments, and issuing certificates therefor," approved the twenty-sixth day of June, eighteen hundred and seventy-three, and to prepare a tabulated statement thereof. Said board of audit shall also issue to each claimant a certificate, signed by each of said board and countersigned by the comptroller of said District, stating the amount found to be due to each and on what account; and a register thereof shall be kept by said board, to be transmitted to Congress, and also by the comptroller of said District; and said board of audit shall also ascertain and report to Congress, at the next session thereof, the amount equitably chargeable to the street-railroad companies on account of paving along and within the tracks of said companies, pursuant to the charters of said companies or the acts of Congress relating thereto, together with their reasons therefor. It shall further be the duty of said board of audit to examine into and audit all of the accounts of the auditor and of the treasurer of the board of public works, and of the auditor, the treasurer, the collector, and the comptroller of the District of Columbia, from the date of the organization of said board and of the present government of said District; and for the purposes hereinbefore specified shall have the power to subpœna witnesses, administer oaths, and examine witnesses under oath, and shall have full access to all of the records, books, papers, and vouchers of every kind whatsoever of the board of public works and of the District of Columbia; and to the end that said books and accounts may be thoroughly examined, and the indebtedness of said District, and of the board of public works, and the state of the books and accounts of each of the officers aforesaid, may be accurately ascertained, shall employ one or more skillful and impartial accountants non-resident of the District of Columbia, and such other assistants as they may deem necessary, to make examination of said books, vouchers, and papers, and discharge their other duties under this act, and shall procure inspection of such bank books and papers as may be necessary; and they are hereby authorized to allow for the services of such accountant or accountants and assistants such sums as they may deem proper which shall be paid by the Board of Commissioners out of the revenues of said District. And said accountant or accountants shall take an oath to faithfully discharge the duties imposed by this act. Said board of audit shall

give notice for the presentation of the claims hereinbefore specified in such manner as may be deemed necessary; and no claim shall be audited or allowed unless presented within ninety days after the first publication of such notice, and said board shall make full report of all their acts and proceedings to the President, to be by him transmitted to Congress on the first day of the next session thereof. Each of the said officers constituting said board shall be paid the sum of two thousand dollars for his services under this act, out of the funds of said District, in addition to his present compensation.

SEC. 7. That the sinking-fund commissioners of said District are hereby continued; and it shall be the duty of said sinking fund commissioners to cause bonds of the District of Columbia to be prepared, in sums of fifty and five hundred dollars, bearing date August first, eighteen hundred and seventy-four, payable fifty years after date, bearing interest at the rate of three and sixty-five hundredths per centum per annum, payable semiannually, to be signed by the secretary and the treasurer of said sinking-fund commissioners and countersigned by the comptroller of said District, and sealed as the board may direct; which bonds shall be exempt from taxation by Federal, State, or municipal authority, engraved and printed at the expense of the District of Columbia, and in form not inconsistent herewith. And the faith of the United States is hereby pledged that the United States will, by proper proportional appropriations as contemplated in this act, and by causing to be levied upon the property within said District such taxes as will provide the revenues necessary to pay the interest on said bonds as the same may become due and payable, and create a sinking-fund for the payment of the principal thereof at maturity. Said bonds shall be numbered consecutively, and registered in the office of the comptroller of said District, and shall also be registered in the office of the Register of the Treasury of the United States, for which last named registration the Secretary of the Treasury shall make such provision as may be necessary. And said commissioners shall use all necessary means for the prevention of any unauthorized or fraudulent issue of any such bonds. And the said sinking-fund commissioners are hereby authorized to exchange said bonds at par for like sums of any class of indebtedness in the preceding section of this act named, including sewer taxes or assessments paid, evidenced by certificates of the auditing board provided for in this act.

SEC. 8. That the authority conferred on the board of public works to issue additional certificates of indebtedness by section four of the act of the legislative assembly approved on the twenty-ninth day of May, eighteen hundred and seventy-three, is hereby annulled. No property shall be advertised for sale or sold for the collection of any assessment authorized by the legislative assembly by the act entitled "An act creating drainage and sewerage sections in the cities of Washington and Georgetown, in the District of Columbia, and providing for the payment of the construction of sewers and drains therein by assessments and issuing certificates therefor" approved on the twenty-sixth day of June, eighteen hundred and seventy-three, until otherwise ordered by Congress; and it shall be unlawful to issue any further certificates of indebtedness authorized by said act.

SEC. 9. That no board or commission of which the governor is ex officio a member (the board of public works excepted) shall be abolished by this act, but the members of the same, other than the governor, shall constitute such board or commission.

SEC. 10. That the act of the legislative assembly of the District of Columbia entitled "An act to fund unsettled liabilities of the city of Washington, and providing for the issuing of the bonds, and levying and collecting taxes to pay the same" approved June twentieth, eighteen hundred and seventy-two, is hereby ratified and approved; but none of the bonds authorized by said act remaining unsold shall be negotiated or sold at less than par.

Approved, June 20, 1874 (18 Stat. 116, ch. 337).

PRESENT ORGANIC ACT OF THE DISTRICT OF COLUMBIA

AN ACT Providing a permanent form of government for the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the territory which was ceded by the State of Maryland to the Congress of the United States for the permanent seat of the government of the United States shall continue to be designated as the District of Columbia. Said District and the property and persons that may be therein shall be subject to the following provisions for the government of the same, and also to any existing laws applicable thereto not hereby repealed or inconsistent with the provisions of this act. The District of Columbia shall remain and continue a municipal corporation, as provided in section two of the Revised Statutes relating to said District, and the Commissioners herein provided for shall be deemed and taken as officers of such corporation; and all laws now in force relating to the District of Columbia not inconsistent with the provisions of this act shall remain in full force and effect.

SEC. 2. That within twenty days after the approval of this act the President of the United States, by and with the advice and consent of the Senate, is hereby authorized to appoint two persons, who, with an officer of the Corps of Engineers of the United States Army, whose lineal rank shall be above that of captain, shall be Commissioners of the District of Columbia, and who, from and after July first, eighteen hundred and seventy-eight, shall exercise all the powers and authority now vested in the Commissioners of said District, except as are hereinafter limited or provided, and shall be subject to all restrictions and limitations and duties which are now imposed upon said Commissioners. The Commissioner who shall be an officer detailed, from time to time, from the Corps of Engineers, by the President, for this duty, shall not be required to perform any other, nor shall he receive any other compensation than his regular pay and allowances as an officer of the Army. The two persons appointed from civil life shall, at the time of their appointment, be citizens of the United States, and shall have been actual residents of the District of Columbia for three years next before their appointment, and have, during that period, claimed residence nowhere else, and one of said three Commissioners shall be chosen president of the Board of Commissioners at their first meeting, and annually and whenever a vacancy shall occur, thereafter; and said Commissioners shall each of them, before entering upon the discharge of his duties, take an oath or affirmation to support the Constitution of the United States, and to faithfully discharge the duties imposed upon him by law; and said Commissioners appointed from civil life, shall each receive for his services a compensation at the rate of five thousand dollars per annum. The official term of said Commissioners appointed from civil life shall be three years, and until their successors are appointed and qualified; but the first appointment shall be one Commissioner for one year and one for two years, and at the expiration of their respective terms their successors shall be appointed for three years. Neither of said Commissioners, nor any officer whatsoever of the District of Columbia, shall be accepted as surety upon any bond required to be given to the District of Columbia; nor shall any contractor be accepted as surety for any officer or other contractor in said District.

The said Commissioners are hereby authorized and empowered to determine which officers and employees of the District of Columbia, or which positions occupied or to be occupied by such officers and employees, shall hereafter be bonded for the faithful discharge of the duties of such officers and employees or of such positions, and to fix the penalty or penalties of any such bond: *Provided,* That this power of the Commissioners shall not apply to officers and employees who receive, disburse, account for, or otherwise are responsible for the handling of money, and whose bonds are now fixed by law. The provisions of the act of Congress entitled "An Act making appropriations to

supply urgent deficiencies in appropriations for the fiscal year nineteen hundred and nine, and for other purposes," approved August 5, 1909 (36 Stat. 118, 125 [U.S.C., title 6, § 14]), relating to rates of premiums for bonds for officers and employees of the United States shall be, and are hereby, made applicable to the rates of premiums for bonds of officers and employees of the government of the District of Columbia. (Amended June 28, 1935, 49 Stat. 430, ch. 332, § 1; July 7, 1955, 69 Stat. 281, ch. 280, § 1.)

SEC. 3. That as soon as the Commissioners appointed and detailed as aforesaid shall have taken and subscribed the oath or affirmation hereinbefore required, all the powers, rights, duties, and privileges lawfully exercised by, and all property, estate, and effects now vested by law in the Commissioners appointed under the provisions of the act of Congress approved June twentieth, eighteen hundred and seventy-four, shall be transferred to and vested in and imposed upon said Commissioners; and the functions of the Commissioners so appointed under the act of June twentieth, eighteen hundred and seventy-four, shall cease and determine. And the Commissioners of the District of Columbia shall have power, subject to the limitations and provisions herein contained, to apply the taxes or other revenues of said District to the payment of the current expenses thereof, to the support of the public schools, the fire department, and the police, and for that purpose shall take possession and supervision of all the offices, books, papers, records, moneys, credits, securities, assets, and accounts belonging or appertaining to the business or interests of the government of the District of Columbia, and exercise the duties, powers, and authority aforesaid; but said Commissioners, in the exercise of such duties, powers, and authority, shall make no contract, nor incur any obligation other than such contracts and obligations as are hereinafter provided for and shall be approved by Congress. The Commissioners shall have power to locate the places where hacks shall stand and change them as often as the public interests require. Any person violating any orders lawfully made in pursuance of this power shall be subject to a fine of not less than ten nor more than one hundred dollars, to be recovered before any justice of the peace in an action in the name of the Commissioners. All taxes heretofore lawfully assessed and due, or to become due, shall be collected pursuant to law, except as herein otherwise provided; but said Commissioners shall have no power to anticipate taxes by a sale or hypothecation of any such taxes or evidences thereof, but they may borrow, for the first fiscal year after this act takes effect, in anticipation of collection of revenues, not to exceed two hundred thousand dollars, at a rate of interest not exceeding five per centum per annum, which shall be repaid out of the revenues of that year. And said Commissioners are hereby authorized to abolish any office, to consolidate two or more offices, reduce the number of employees, remove from office, and make appointments to any office under them authorized by law; said Commissioners shall have power to erect light, and maintain lamp-posts, with lamps, outside of the city limits, when, in their judgment, it shall be deemed proper or necessary: *Provided,* That nothing in this act contained shall be construed to abate in any wise or interfere with any suit pending in favor of or against the District of Columbia or the Commissioners thereof, or affect any right, penalty, forfeiture, or cause of action existing in favor of said District or Commissioners, or any citizen of the District of Columbia, or any other person, but the same may be commenced, proceeded for, or prosecuted to final judgment, and the corporation shall be bound thereby as if the suit had been originally commenced for or against said corporation. The said Commissioners shall submit to the Secretary of the Treasury for the fiscal year ending June thirtieth, eighteen hundred and seventy-nine, and annually thereafter, for his examination and approval, a statement showing in detail the work proposed to be undertaken by them during the fiscal year next ensuing, and the estimated cost thereof; also the cost of constructing, repairing, and maintaining all bridges authorized by law across the Potomac River within the District of Columbia, and also all other streams in said District; the cost of maintaining all public institutions of charity, reformatories, and prisons belonging to or controlled wholly or in part by the District of Columbia, and which are now by law supported wholly or in part by the United States or District of Columbia; and also the expenses of the Washington Aqueduct and its appurtenances; and also an itemized statement and estimate of the amount necessary to defray the expenses of the government of the District of Columbia for the next fiscal year: *Provided,* That nothing herein contained shall be construed as transferring from the United States authorities any of the public works within the District of Columbia now in the control or supervision of said authorities. The Secretary of the Treasury shall carefully consider all estimates submitted to him as above provided, and shall approve, disapprove, or suggest such changes in the same, or any item thereof, as he may think the public interest demands; and after he shall have considered and passed upon such estimates submitted to him, he shall cause to be made a statement of the amount approved by him and the fund or purpose to which each item belongs, which statement shall be certified by him, and delivered, together with the estimates as originally submitted, to the Commissioners of the District of Columbia, who shall transmit the same to Congress. To the extent to which Congress shall approve of said estimates, Congress shall appropriate the amount of fifty per centum thereof; and the remaining fifty per centum of such approved estimates shall be levied and assessed upon the taxable property and privileges in said District other than the property of the United States and of the District of Columbia; and all proceedings in the assessing, equalizing, and levying of said taxes, the collection thereof, the listing return and penalty for taxes in arrears, the advertising for sale and the sale of property for delinquent taxes, the redemption thereof, the proceedings to enforce the lien upon unredeemed property, and every other act and thing now required to be done in the premises, shall be done and performed at the times and in the manner now provided by law, except in so far as is otherwise provided by this act: *Provided,* That the rate of taxation in any one year shall not exceed one dollar and fifty cents on every one hundred dollars of real estate not exempted by law; and on personal property not taxable elsewhere, one dollar and fifty cents on every one hundred dollars, according to the cash valuation thereof: *And provided further,* Upon real property held and used exclusively for agricultural purposes, without the limits of the cities of Washington and Georgetown, and to be so designated by the assessors in their annual returns, the rate for any one year shall not exceed one dollar on every one hundred dollars. The collector of taxes, upon the receipt of the duplicate of assessment, shall give notice for one week, in one newspaper published in the city of Washington, that he is ready to receive taxes; and any person who shall, within thirty days after such notice given, pay the taxes assessed against him, shall be allowed by the collector a deduction of five per centum on the amount of his tax; all penalties imposed by the act approved March third, eighteen hundred and seventy-seven, chapter one hundred and seventeen, upon delinquents for default in the payment of taxes levied under said act, at the times specified therein, shall, upon payment of the said taxes assessed against such delinquents within three months from the passage of this act, with interest at the rate of six per centum thereon, be remitted.

SEC. 4. That the said Commissioners may, by general regulations consistent with the act of Congress of March third, eighteen hundred and seventy-seven, entitled "An act for the support of the government of the District of Columbia for the fiscal year ending June thirtieth, eighteen hundred and seventy-eight, and for other purposes," or with other existing laws, prescribe the time or times for the payment of all taxes and the duties of assessors and collectors in relation thereto. All taxes collected shall be paid into the Treasury of the United States, and the same, as well as the appropriations to be made by Congress as aforesaid shall be disbursed for the expenses of said District, on itemized vouchers, which shall have been audited and approved by the auditor of the District of Columbia, certified by said Commissioners, or a majority of them; and the accounts of said Commissioners, and the tax-collectors, and all other officers re-

quired to account, shall be settled and adjusted by the accounting officers of the Treasury Department of the United States. Hereafter the Secretary of the Treasury shall pay the interest on the three-sixty-five bonds of the District of Columbia issued in pursuance of the act of Congress approved June twentieth, eighteen hundred and seventy-four, when the same shall become due and payable; and all amounts so paid shall be credited as a part of the appropriation for the year by the United States toward the expenses of the District of Columbia, as hereinbefore provided.

SEC. 5. That hereafter when any repairs of streets, avenues, alleys, or sewers within the District of Columbia are to be made, or when new pavements are to be substituted in place of those worn out, new ones laid, or new streets opened, sewers built, or any works the total cost of which shall exceed the sum of one thousand dollars, notice shall be given in one newspaper in Washington and if the total cost shall exceed five thousand dollars, then in one newspaper in each of the cities of New York, Philadelphia, and Baltimore also for one week, for proposals, with full specifications as to materials for the whole or any portion of the works proposed to be done; and the lowest responsible proposal for the kind and character of pavement or other work which the Commissioners shall determine upon shall in all cases be accepted: *Provided, however,* That the Commissioners shall have the right, in their discretion, to reject all of such proposals: *Provided,* That work capable of being executed under a single contract shall not be subdivided so as to reduce the sum of money to be paid therefor to less than one thousand dollars. All contracts for the construction, improvement, alteration, or repairs of the streets, avenues, highways, alleys, gutters, sewers, and all work of like nature shall be made and entered into only by and with the official unanimous consent of the Commissioners of the District, and all contracts shall be copied in a book kept for that purpose and be signed by the said Commissioners, and no contract involving an expenditure of more than one hundred dollars shall be valid until recorded and signed as aforesaid. No pavement shall be accepted nor any pavement laid except that of the best material of its kind known for that purpose, laid in the most substantial manner; and good and sufficient bonds to the United States, in a penal sum not less than the amount of the contract, with sureties to be approved by the Commissioners of the District of Columbia, shall be required from all contractors, guaranteeing that the terms of their contracts shall be strictly and faithfully performed to the satisfaction of and acceptance by said Commissioners; and that the contractors shall keep new pavements or other new works in repair for a term of five years from the date of the completion of their contracts; and ten per centum of the cost of all new works shall be retained as an additional security and a guarantee fund to keep the same in repair for said term, which said per centum shall be invested in registered bonds of the United States or of the District of Columbia and the interest thereon paid to said contractors. The cost of laying down said pavement, sewers, and other works, or of repairing the same, shall be paid for in the following proportions and manner, to wit: When any street or avenue through which a street-railway runs shall be paved, such railway company shall bear all of the expense for that portion of the work lying between the exterior rails of the tracks of such roads, and for a distance of two feet from and exterior to such track or tracks on each side thereof, and of keeping the same in repair; but the said railway companies, having conformed to the grades established by the Commissioners, may use such cobblestone or Belgian blocks for paving their tracks, or the space between their tracks, as the Commissioners may direct; the United States shall pay one half of the cost of all work done under the provisions of this section, except that done by the railway companies, which payment shall be credited as part of the fifty per centum which the United States contributes toward the expenses of the District of Columbia for that year; and all payments shall be made by the Secretary of the Treasury on the warrant or order of the Commissioners of the District of Columbia or a majority thereof, in such amounts and at such times as they may deem safe and proper in view of the progress of the work: That if any street railway company shall neglect or refuse to perform the work required by this act, said pavement shall be laid between the tracks and exterior thereto of such railway by the District of Columbia; and if such company shall fail or refuse to pay the sum due from them in respect of the work done by or under the orders of the proper officials of said District in such case of the neglect or refusal of such railway company to perform the work required as aforesaid, the Commissioners of the District of Columbia shall issue certificates of indebtedness against the property, real or personal, of such railway company, which certificates shall bear interest at the rate of ten per centum per annum until paid, and which, until they are paid, shall remain and be a lien upon the property on or against which they are issued together with the franchise of said company; and if the said certificates are not paid within one year, the said Commissioners of the District of Columbia may proceed to sell the property against which they are issued, or so much thereof as may be necessary to pay the amount due, such sale to be first duly advertised daily for one week in some newspaper published in the city of Washington, and to be at public auction to the highest bidder. When street railways cross any street or avenue, the pavement between the tracks of such railway shall conform to the pavement used upon such street or avenue, and the companies owning these intersecting railroads shall pay for such pavements in the same manner and proportion as required of other railway companies under the provisions of this section. It shall be the duty of the Commissioners of the District of Columbia to see that all water and gas mains, service pipes, and sewer connections are laid upon any street or avenue proposed to be paved or otherwise improved before any such pavement or other permanent works are put down; and the Washington Gas Light Company, under the direction of said Commissioners, shall at its own expense take up, lay, and replace all gas mains on any street or avenue to be paved, at such time and place as said Commissioners shall direct. The President of the United States may detail from the Engineer Corps of the Army not more than two officers, of rank subordinate to that of the engineer officer belonging to the Board of Commissioners of said District to act as assistants to said Engineer Commissioner, in the discharge of the special duties imposed upon him by the provisions of this act.

SEC. 6. That from and after the first day of July, eighteen hundred and seventy-eight, the board of metropolitan police and the board of school trustees shall be abolished; and all the powers and duties now exercised by them shall be transferred to the said Commissioners of the District of Columbia, who shall have authority to employ such officers and agents and to adopt such provisions as may be necessary to carry into execution the powers and duties devolved upon them by this act. And the Commissioners of the District of Columbia shall from time to time appoint nineteen persons, actual residents of said District of Columbia, to constitute the trustees of public schools of said District, who shall serve without compensation and for such terms as said Commissioners shall fix. Said trustees shall have the powers and perform the duties in relation to the care and management of the public schools which are now authorized by law.

SEC. 7. That the offices of sinking-fund commissioners are hereby abolished; and all duties and powers possessed by said commissioners are transferred to, and shall be exercised by, the Treasurer of the United States, who shall perform the same in accordance with the provisions of existing laws.

SEC. 8. That in lieu of the board of health now authorized by law, the Commissioners of the District of Columbia shall appoint a physician as health-officer, whose duty it shall be, under the direction of the said Commissioners, to execute and enforce all laws and regulations relating to the public health and vital statistics, and to perform all such duties as may be assigned to him by said Commissioners; and the board of health now existing shall, from the date of the appointment of said health officer, be abolished.

SEC. 9. That there may be appointed by the Commissioners of the District of Columbia, on the recommendation

of the health-officer, a reasonable number of sanitary inspectors for said District, not exceeding six, to hold such appointment at any one time, of whom two may be physicians, and one shall be a person skilled in the matters of drainage and ventilation; and said Commissioners may remove any of the subordinates, and from time to time may prescribe the duties of each; and said inspectors shall be respectively required to make, at least once in two weeks, a report to said health-officer, in writing, of their inspections, which shall be preserved on file; and said health-officer shall report in writing annually to said Commissioners of the District of Columbia, and so much oftener as they shall require.

SEC. 10. That the Commissioners may appoint, on the like recommendation of the health-officer, a reasonable number of clerks, but no greater number shall be appointed, and no more persons shall be employed under said health-officer, than the public interests demand and the appropriation shall justify.

SEC. 11. That the salary of the health-officer shall be three thousand dollars per annum; and the salary of the sanitary inspectors shall not exceed the sum of one thousand two hundred dollars per annum each; and the salary of the clerks and other assistants of the health-officer shall not exceed in the aggregate the amount of seven thousand dollars, to be apportioned as the Commissioners of the District of Columbia may deem best.

SEC. 12. That it shall be the duty of the said Commissioners to report to Congress at the next session succeeding their appointment a draft of such additional laws or amendments to existing laws as in their opinion are necessary for the harmonious working of the system hereby adopted, and for the effectual and proper government of the District of Columbia; and said Commissioners shall annually report their official doings in detail to Congress on or before the first Monday of December.

SEC. 13. That there shall be no increase of the present amount of the total indebtedness of the District of Columbia; and any officer or person who shall knowingly increase, or aid or abet in increasing, such total indebtedness, except to the amount of the two hundred thousand dollars, as authorized by this act, shall be deemed guilty of a high misdemeanor, and, on conviction thereof, shall be punished by imprisonment not exceeding ten years, and by fine not exceeding ten thousand dollars.

SEC. 14. [Repealed. Dec. 24, 1942, 56 Stat. 1091, ch. 826, § 7 (d).]

SEC. 15. That all laws inconsistent with the provisions of this act be, and the same are hereby, repealed.

Approved, June 11, 1878 (20 Stat. 102, ch. 180).

RETROCESSION OF BATTERY COVE

AN ACT Providing for the cession to the State of Virginia of sovereignty over a tract of land located at Battery Cove, near Alexandria, Virginia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that part of the territory of the District of Columbia situated on the Virginia side of the Potomac River at Alexandria, Virginia, lying and being between a line drawn from Jones Point, at low-water mark, to Point Lumley, now Pioneer Mills, at low-water mark, and high-water mark on the Virginia shore of the Potomac River at Alexandria, containing an area of forty-six and fifty-seven one-hundredths acres of made land, more or less, be, and the same is hereby, ceded to and declared to be within the territorial boundaries, jurisdiction, and sovereignty of the state of Virginia. *Provided, however,* That this Act shall not be construed to waive or relinquish the title of the United States to the fee of the forty-six and fifty-seven one-hundredths acres of made land in Battery Cove nor as relinquishing or in any manner affecting the power of Congress to exercise exclusive legislation over the said area so long as the same remains in the ownership and possession of the United States: *And provided further,* That this Act shall not be construed to affect, impair, surrender, waive, or defeat any claim, right, or remedy, either at law or in equity, of the United States against the Virginia Shipbuilding Corporation for or on account of any debt or obligation of said company to the United States or that hereafter may be ascertained to be due by said company to the United States, by any court of competent jurisdiction of the parties and of the subject matter in any suit now pending or that may hereafter be instituted by the United States against the Virginia Shipbuilding Corporation.

Approved, February 23, 1927 (44 Stat. 1176, ch. 171).

ACTS RELATING TO THE CORPORATION OF GEORGETOWN

63-440 O—67—vol. 1——5

ORIGINAL MARYLAND ACT AUTHORIZING ERECTION OF GEORGETOWN

AN ACT For laying out and erecting a town on Potomac River, above the mouth of Rock Creek, in Frederick County

[Passed June 8, 1751]

Whereas several inhabitants of Frederick County, by their humble petition to this General Assembly, have set forth, that there is a convenient place for a town on Potomac River, above the mouth of Rock Creek, adjacent to the inspection-house in the County aforesaid, and prayed, that sixty acres of land may be there laid out and erected into a town:

2. *Be it therefore enacted, by the right honorable the lord proprietary, by and with the advice and consent of his lordship's governor, and the Upper and Lower Houses of Assembly, and the authority of the same,* That Captain Henry Wright Crabb, Master John Needham, Master John Clagett, Master James Perrie, Master Samuel Magruder the Third, Master Josias Bealle, and Master David Lynn, shall be, and are hereby, appointed commissioners for Frederick County aforesaid, and are hereby authorized and empowered, as well to buy and purchase sixty acres, part of the tracts of land belonging to Messrs. George Gordon and George Bell, at the place aforesaid, where it shall appear to them, or the major part of them, to be most convenient as to survey and lay out, or cause the same to be surveyed and laid out, in the best and most convenient manner, into eighty lots, to be erected into a town.

3. *And be it further enacted, by the authority, advice, and consent aforesaid,* That the commissioners aforesaid before nominated and appointed, or the major part of them, are hereby empowered and required, at some time by them, or the major part of them, to be appointed, before the first day of October next, to meet together on the land aforesaid, or at some other place near and convenient thereto, and then and there treat and agree (if the same can be done on reasonable terms,) with the owner or owners, and person or persons interested in the same sixty acres of land, for the purchase thereof; and if it shall happen that the said owner or owners, person or persons, will not agree with the said commissioners for such rate or price as they the said commissioners, or the major part of them, shall think reasonable, or shall refuse to make sale of the same, or that through non-age, coverture, or any other disability or impediment, shall be disabled to make such sale, that then and in any such case the commissioners aforesaid, or the major part of them, shall and are hereby empowered and required, to issue a warrant, under their hands and seals, directed to the sheriff or coroner of Frederick County aforesaid for the time being, commanding him to summon and impanel a jury of seventeen good and lawful men, freeholders of his bailiwick, to be and appear at the day and place in such warrant to be mentioned, which sheriff is hereby required and obliged to execute the same; and that jury, being by the said commissioners charged and sworn, shall, upon their oath, inquire, assess, and return, what damages or recompence they shall think fit to be paid and given to such owner or owners, person or persons, for the sixty acres of land aforesaid, and that whatever sum or sums of money such jury shall so assess and award, shall and is hereby declared to be the value and price to be paid to such owner or owners, person or persons, interested in the sixty acres of land aforesaid; but if the said jury shall assess and value the said land at a less price than fifty shillings current money for each acre, then in such case the purchaser or purchasers of such land shall pay such further sum, over and above what shall be the valuation of the said jury, as shall make up the full sum of fifty shillings like money as aforesaid for every acre, to be paid to such proprietor or proprietors as aforesaid.

4. *And be it further enacted, by the authority, advice, and consent aforesaid,* That after the agreement and purchase of the commissioners aforesaid, or after the assessment and return of the jury aforesaid, as the case shall happen, the aforesaid commissioners, or the major part of them, shall and are hereby required to cause the same sixty acres of land to be carefully surveyed, divided and laid out, by the surveyor of the county aforesaid, or such other person as they, or the major part of them, shall make choice of and appoint for that purpose, as near as conveniently may be, into eighty equal lots, allowing such sufficient space or quantity thereof for streets, lanes, and alleys, as to them seem meet, and the same lots, so laid out, shall number with numbers, one, two, and three, and so to eighty, for distinguishing each lot from the other; and shall cause the streets, lanes, and alleys, to be named and distinguished by certain names, and by good sufficient cedar or locust posts, to be set up as a boundary to each of them.

5. *And be it further enacted, by the authority, advice, and consent aforesaid,* That the commissioners, or the major part of them, shall and are hereby required to assess, set, and ascertain the price to be paid for each of the lots aforesaid, according to the value, conveniency, and situation thereof, so always that the prices of all the said lots, added together, may amount to the sum by them agreed for, or awarded by the jury, for the aforesaid sixty acres of land, and no more; and the aforesaid sixty acres of land being so surveyed, laid out and divided, shall be and is hereby, erected into a town and shall be called by the name of Georgetown.

6. *And be it further enacted,* That the owner or owners of the aforesaid land shall and may have his, her, or their choice of any of the two lots aforesaid, to be by him, her, or them, retained for his, her, or their proper use, provided such choice shall be made and declared to the commissioners aforesaid, or the major part of them, within ten days after the survey aforesaid shall be made and completed, and not otherwise; and that after such choice is made, or in case no such choice shall be made within the ten days aforesaid, then after the expiration of the same ten days, all persons whatsoever shall be at liberty to take up and purchase the same lots, paying the owner or owners aforesaid, or others therein interested, the price or value thereof, so as aforesaid set and assessed by the commissioners aforesaid; and that every person who shall pay as aforesaid the price of the lot by him or her so taken up or chosen, or shall prove to the satisfaction of the said commissioners, or the major part of them, that he or she had tendered or offered to pay the said price to the owner or owners aforesaid, and that such owner had refused to accept or receive the same, and an entry of such payment or tender and refusal being made according to the directions hereafter mentioned, such person shall and is hereby declared to be, by virtue of such payment or tender and refusal, and entry thereof made as aforesaid, and this act, fully and absolutely invested and seized of and in an estate of inheritance in fee simple of and in such lot, to him or her, and his and her heirs and assigns forever, without any deed, conveyance, or other transfer, from such owner or owners for the same, any statute, law, usage, or custom, to the contrary notwithstanding.

7. *Provided always,* That it shall not be lawful for any person to take up, enjoy, have, or possess, more than one of the same lots, within twelve months after the same are divided and laid out as aforesaid; *provided, also,* that all and every person and persons aforesaid so taking up the lots aforesaid, or any of them, shall and are hereby obliged and required, within two years after they shall take up their respective lots as aforesaid and entry thereof made as aforesaid, to erect, build, and finish thereon, one good and substantial house that shall cover four hundred

square feet of ground at the least, and that it be made in every respect tenantable, with one good brick or stone chimney thereto; and that all and every of such taker or takers up, who shall neglect to build as aforesaid on their respective lots aforesaid, within the time herein for that purpose limited and appointed, shall lose such, and the estate of such taker up so neglecting as aforesaid, shall from henceforth cease and determine, and such lot or lots so neglected to be built upon shall be subject to be again taken up by any other person whatsoever, which second taker up, paying to the commissioners aforesaid the price thereof so as aforesaid assessed, and entry thereof made as aforesaid, and building thereon as before directed within the time before limited after such second taking up, shall have the like estate in such lot or lots as the first takers up who shall comply with the requisites before mentioned are herein before declared to have, and so, TOTIES QUOTIES, until the same lots shall be built on and improved as aforesaid.

8. *And be it further enacted,* That the money aforesaid directed to be paid to the commissioners aforesaid, for the lots not built on and improved by the first takers up within the time herein limited, shall and is hereby directed to be applied to such purposes, for the use and benefit of the said town, as to the said commissioners, or the major part of them, shall seem meet.

9. *And be it further enacted, by the authority aforesaid,* That the surveyor of the county aforesaid, or any other person whom the commissioners aforesaid, or the major part of them, shall appoint to survey and lay out the lands aforesaid, as before herein directed, shall make out a fair and exact plot of the town aforesaid, and survey thereof, whereby each lot, street, lane, and alley, may appear to be well distinguished by their respective numbers and names, and the same plot, with a full and plain certificate thereof, shall deliver to the commissioners as aforesaid, or the major part of them, to be entered and reposited as hereafter directed; and that the said surveyor, or other person appointed as aforesaid, shall have and receive for surveying and laying out the town aforesaid, and making the plot aforesaid, the sum of one thousand pounds of tobacco, to be paid and allowed in the county levy, and no more.

10. *And be it further enacted, by the authority aforesaid,* That the commissioners aforesaid, or the major part of them, shall and are hereby required to employ some sufficient person for their clerk, and shall administer an oath to such clerk for the due performance of his office, which clerk shall and is hereby obliged to find and provide a good well bound book, for registering and entering the proceeds of the said commissioners in the premises, and shall duly and faithfully register and enter in such book the certificate of the survey aforesaid, the prices of each respective lot, the name of the owner, and the time of its being taken up and paid for, or of the tender or refusal as aforesaid, and all other the transactions and proceedings of the aforesaid commissioners whatsoever, in and about the town aforesaid; which said register, together with the plot or survey of the same town, shall be carefully examined and inspected by the aforesaid commissioners, or the major part of them, and after the same is completed, shall be lodged with, and delivered to, the clerk of the same county, to be by him kept amongst the records of the same county.

11. *And be it further enacted,* That the said commissioners, or the major part of them, shall limit and ascertain what fees their clerk aforesaid shall have and receive for the several services by him to be done by virtue of this act, to be paid by the several persons taking up the lots aforesaid.

12. And whereas it may be advantageous to the said town to have fairs kept therein, and may prove an encouragement to the back inhabitants, and others, to bring commodities there to sell and vend, *Be it enacted,* That it shall and may be lawful for the commissioners of the said town to appoint two fairs to be held therein annually, the one fair to begin on the second Thursday in April, and the other on the first Thursday in October, annually; which said fairs shall be held each for the space of three days, and that during the continuance of such fair or fairs, all persons within the bounds of the said town shall be privileged and free from arrests, except for felony or breach of the peace, and all persons coming to such fair or fairs, or returning therefrom, shall have the like privilege of one day before the fair, and one day on their return therefrom; and the commissioners for the said town are hereby empowered to make such rules and orders for the holding the said fairs, as may tend to prevent all disorders and inconveniences that may happen in the said town, and such as may tend to the improvement and regulating of the said town in general, so as such rules, except in fair-time, affect none but livers in the said town, or such person or persons as shall have a lot or free-hold therein, any law, statute, usage, or custom, to the contrary notwithstanding; provided, always, that such rules and orders be not inconsistent with the laws of this province, nor the statutes or customs of Great Britain

13. *And be it further enacted,* That the commissioners for the said town, or the major part of them, from time to time, and at all times, shall have power to remove all nuisances that they shall find in any of the streets or alleys of said town; provided nevertheless, that this act nor any thing herein contained, shall extend, or be construed to extend, to enable or capacitate the said commissioners or inhabitants of the said town to elect or choose delegates or burgesses to sit in the general assembly of this province as representatives of the said town; *But it is hereby enacted,* That the commissioners or the inhabitants of the said town shall not elect or choose any delegate or delegates, burgess or burgesses, to represent the said town in any general assembly of this province.

14. *And be it further enacted,* That when and as often as any of the commissioners aforesaid shall die, or remove from the county aforesaid, or refuse or neglect to join in the execution of this act, then, and in any such case, the major part of the other commissioners aforesaid shall choose others in the place of such who shall die, refuse, remove, or neglect as aforesaid, and such person or persons so chosen, shall have equal power to act as the other commissioners herein mentioned.

15. *And be it further enacted, by the authority aforesaid,* That all and every person and persons taking up and possessing the lots aforesaid, or any of them, shall be, and are hereby, obliged to pay unto the right honorable the lord proprietary, his heirs or successors, the yearly rent of one penny sterling money for each respective lot by them so taken up and possessed, to be paid in the same manner as his land rents in this province now are, or hereafter shall be paid.

16. Saving unto his most sacred majesty, his heirs and successors, the right honorable the lord proprietary, his heirs and successors, and to all bodies politic and corporate, and all persons not mentioned in this act, their several and respective rights, any thing in this act to the contrary notwithstanding. (Md. act, 1751, ch. 25.)

ACT OF 1783 AUTHORIZING ADDITION TO GEORGETOWN

AN ACT For an addition to Georgetown, in Montgomery County

[Passed December 26, 1783]

Whereas Thomas Beall, son of George, of Montgomery county, by his humble petition to this general assembly hath set forth, that he is seized and possessed of part of a tract of land, called and known by the name of the Rock of Dumbarton, adjoining Georgetown, containing sixty-one acres, which he is desirous of annexing to said town, and therefore prayed that a law might pass for that purpose; and it appearing to this general assembly, that to extend and enlarge the limits of said town will greatly contribute to promote the trade and commerce thereof:

2. *Be it enacted by the General Assembly of Maryland,* That Messieurs John Murdock, Richard Thompson, William Deakins, Thomas Richardson, and Charles Beatty, the commissioners of Georgetown, or the major part of them, be authorized and required, at any time before the first day

of August next, to cause the aforesaid parcel of land, or such part thereof as they may think necessary, to be surveyed and laid out into lots, streets, lanes, and alleys, at the proper cost and expense of the said Thomas Beall, in such manner as to the said commissioners, or a major part of them, shall appear convenient.

3. *And be it enacted,* That the commissioners aforesaid, or a major part of them, shall, on or before the said first day of August next, cause a correct and accurate survey and plot to be made of the said land, and of all the lots, streets, lanes and alleys, which shall be laid out in virtue of this act; and the said plot shall be recorded amongst the records of the said county, as soon as conveniently may be thereafter, there to remain as evidence of the boundaries, situation, and location of the said lots, and of the streets, lanes, and alleys; which said streets, lanes, and alleys, hereafter to be laid out in pursuance of this act, shall be highways, and be so deemed and taken to all intents and purposes whatsoever; and when the same shall be done, the said land, so surveyed and laid out, shall be, and is hereby declared to be, part of Georgetown, as fully and amply, as if originally included therein, and shall have the same immunities and privileges as the rest of the said town hath, or by former laws ought to have; saving to the state of Maryland, and all bodies politic and corporate, and all persons not mentioned in this act, their several and respective rights. (Md. act, 1783, ch. 27.)

(NOTE.—Montgomery County was created by resolution of the Maryland convention on September 6, 1776.)

ACT OF 1785 AUTHORIZING ADDITION TO GEORGETOWN

AN ACT For an addition to Georgetown, in Montgomery County

[Passed January 22, 1785]

Whereas Robert Peters, William Deakins, junior, Charles Beatty, and John Threlkeld, of Georgetown, by their humble petition to this general assembly have set forth, that they have agreed to lay out, as an addition to Georgetown, twenty acres and eighteen thirty seconds of an acre of ground, being part of the following tracts of land, to wit: one acre and twenty-six thirty seconds of an acre, part of a tract of land called Frogland, the property of the aforesaid Charles Beatty, two acres and one thirty second of an acre, part of a tract of land called Discovery, the property of the aforesaid Robert Peters, thirteen acres and twenty-nine thirty seconds of an acre, part of a tract of land called Conjurors' Disappointment, the property of the aforesaid William Deakins, junior, and three acres twenty-six thirty seconds of an acre, part of a tract of lands called the Resurvey on Salop, the property of the aforesaid John Threlkeld, into sixty-five lots, and a sufficient number of streets, as appears by the plot of the actual survey thereof, made by the said Francis Deakins on the first day of September, in the year of our Lord one thousand seven hundred and eighty-four; and the said Robert Peters, John Threlkeld, William Deakins, jr. and Charles Beatty, have prayed that an act may pass confirming the same as an addition to Georgetown, and establishing the boundaries thereof as now laid down by the survey and plot aforesaid, and granting to those who shall be proprietors of the lots fronting on the north side of Water-street, the exclusive right to the ground and water on the south side thereof, for the sole purpose of making wharves, without being allowed to erect any buildings thereon, and vesting a power in the commissioners of Georgetown to improve, by wharves for public good, the land and water fronting Frederick, Fayette, and Gay streets; and it appearing to this general assembly, that extending the limits of the said town will greatly contribute to the promotion of the trade and commerce thereof, and be of general utility; therefore,

2. *Be it enacted by the General Assembly of Maryland,* That the said parts of tracts of land herein before mentioned and described, and laid out into sixty-five lots and a sufficient number of streets, as delineated on the plot of the survey thereof, made by Francis Deakins on the first day of September, in the year of our Lord one thousand seven hundred and eighty-four, be, and they are hereby declared to be, part of Georgetown aforesaid, and shall have, possess, be entitled to, and enjoy, to all and every intent and purpose, all the immunities, privileges, and advantages, which do or shall appertain to the said town, as fully and amply, in every respect, as if the same had been originally part thereof and included therein; and the said lots and streets, surveyed and laid out in manner herein before set forth, shall be, and they are hereby, established and confined, according to the delineation and description of the same on the plot of the survey thereof by Francis Deakins, herein before referred to, and in all disputes and controversies which may or shall hereafter happen or arise respecting the location of the said lots and streets, the said plot, the bounds and lines therein referred to being proved, shall be conclusive evidence between the parties at whose instance this act is passed, and all claiming under them.

3. *And be it further enacted,* That the proprietors of the lots fronting on the north side of Water-street, shall have and enjoy the exclusive right to the ground and water on the south side of their respective lots, for the sole purpose of making wharves, but they shall not be allowed to erect any buildings on the wharves so to be made by them.

4. *And be it further enacted,* That it shall and may be lawful for the commissioners of Georgetown, or the major part of them, and they are hereby empowered, to make and erect wharves on the ground and water fronting on Frederick, Fayette, and Gay-streets. for the public good, which said wharves shall be for the use and convenience of all vessels trading to the said town, without paying wharfage or any duty or imposition whatever, for using the same.

5. *And be it further enacted,* That for the safe keeping and preservation of the said plot of the said addition to Georgetown, the same shall be deposited with the commissioners of the said town, who are hereby directed to receive the said plot, and take care thereof. (Md. act, 1784, ch. 45.)

ACT INCORPORATING GEORGETOWN

AN ACT To incorporate George-town, in Montgomery County

Be it enacted, by the General Assembly of Maryland, That George-town, in Montgomery county, shall be and hereby is erected, constituted and made, an incorporate town, consisting of a mayor, recorder, six aldermen, and ten other persons to be common council-men, of the said town, which said mayor, recorder, aldermen and common council-men, shall be a body incorporate and one community for ever, in right and by the name of The Mayor, Recorder, Aldermen and Common Council, of the said town, and shall be able and capable to sue and be sued at law, and to act and execute, do and perform, as a body incorporate, which shall have succession for ever, and to that end to have a common seal, and the same to change and alter at their pleasure; and Robert Peter, Esquire, one of the inhabitants of the said town, shall for the present be and hereby is appointed mayor of the said town for the next year, to commence on the fifth day of January next; and John Mackall Gantt, Esquire, shall be and hereby is appointed recorder of the said town; and Brooke Beall, Bernard Oneale, Thomas Beall, of George, James Maccubbin Lingan, John Threlkeld and John Peter, Esquires, inhabitants of the said town, shall be and hereby are appointed aldermen of the said town so long as they shall well behave themselves therein.

II. *And be it enacted,* That all free men above twenty-one years of age, and having visible property within the state above the value of thirty pounds current money, and having resided in the said town one whole year next before the first day of January next, shall have a right to assemble at such place in the said town as the said mayor, recorder and aldermen, or any three or more of them, shall appoint, and when assembled they shall proceed to elect, *viva voce,* ten persons, residents of the said town one whole year next before the said first day of

January next, above twenty-one years of age, and having visible property within the state above the value of one hundred pounds current money, to be common council of the said town for so long time as they shall well behave themselves, and the said mayor, recorder and aldermen, or any three or more of them, shall be judges of the said election, and the ten persons who shall have the greatest number of legal votes upon the final casting up of the polls, shall be declared duly elected.

III. And, to perpetuate the succession of the said mayor, recorder, aldermen and common council, in all time to come, *Be it enacted,* That the said mayor, recorder, aldermen and common council, shall assemble at some convenient place in the said town upon the first Monday of January, seventeen hundred and ninety-one, and on the same day for ever thereafter, and shall elect, by the majority of votes of such of them as shall be then present, one other of the aldermen of the said town for the time being, to be mayor of the said town for the ensuing year; and upon the death or removal of the said mayor, or of the recorder or any alderman, of the said town, and within one year after any such event, such of the said persons as shall be alive, or the major part of them, shall assemble at some convenient place in the said town, and elect, by a majority of votes, some other person or persons to be mayor, recorder, alderman or aldermen, of the said town, in the place of such person or persons so deceased or removed respectively, as the case shall require, so as the said mayor, so to be elected, be at the time of such election actually one of the aldermen of the said town, and so as the said recorder, so to be elected, be a person learned in the law, and so as the said alderman and aldermen, so to be elected, be actually, at the time of such election, of the common council of the said town; and in case of the election of any of the common council to be an alderman, the vacancy shall be filled up by an election, at such time, (not less than five days thereafter,) as the said mayor, recorder and aldermen, or any three or more of them, shall appoint, by the residents of the said town qualified as herein before directed and required in the first election of the common council then for the said town.

IV. *And be it enacted,* That the mayor, recorder and aldermen, hereby appointed, or hereafter to be elected, shall be justices of the peace within the said town and the precincts thereof, having first taken the oath appointed by law to be taken by justices of the peace.

V. *And be it enacted,* That the said mayor, recorder and aldermen, hereby appointed, or hereafter to be elected, or any three or more of them, shall have within the said town or the precincts thereof, full power to elect a sheriff, and to appoint constables and other necessary officers, for the said town.

VI. *And be it enacted,* That the said mayor, recorder, aldermen and common council, of the said town, for the time being, shall have full power and authority to make such by-laws for the regulation and good government of the said town and precincts, and the inhabitants thereof, and to restrain all disorders and disturbances, and to prevent all nuisances, inconveniences and annoyances, within the said town and its precincts, and other matters, exigencies and things, within the said town and precincts, as to them, or a major part of them, shall seem meet and consonant to reason, and not contrary to the constitution and laws of this state; and the said by-laws shall be observed, kept and performed, by all the inhabitants of the said town and its precincts, and all persons trading therein, under such reasonable penalties, fines and forfeitures, as shall be imposed by the said by-laws, not exceeding seven pounds ten shillings current money, or twenty dollars; the said penalties, fines or forfeitures, to be levied by distress and sale of the goods, or execution of the person so offending, and applied to the use of the said town.

VII. And, to defray the expences of the said corporation, *Be it enacted,* That it shall be lawful for the said mayor, recorder, aldermen and common council, of the said town, by by-laws made for the purpose, to impose any sum, not exceeding two shillings and six-pence current money in any one year, on every hundred pound of property within the said town.

VIII. *And be it enacted,* That the mayor, recorder and aldermen, of the said town, or any five or more of them, be authorised from time to time, as often as they think it necessary, to cause a correct survey of the said town, and the additions thereto, to be made, and to establish and fix permanent boundaries and stones at such places as they think necessary, with proper marks and devices thereon, to ascertain and perpetuate the true lines of the said town and the additions thereto; and the said mayor, recorder and aldermen, or any five or more of them, be authorized from time to time to survey and ascertain the streets, lanes and alleys, of the said town and the additions thereto, and to declare the same, and to adjudge as nuisances any encroachment thereon; and the said mayor, recorder and aldermen, or any five or more of them, are also authorised and required, on the application and at the expence of the proprietors, or the guardians of infant proprietors, of any lot in the said town or the additions thereto, to survey, alter, amend or lay out anew, any of the streets, lanes and alleys, running through the ground of such proprietors, so as to make the streets, lanes and alleys, throughout every part of the said town and the additions thereto, to correspond and communicate with each other as near as may be; provided that any street, lane or alley, when altered, amended or made anew, shall not run through the ground of any person without his consent.

IX. *And be it enacted,* That the mayor, recorder and aldermen, or any three or more of them, shall hold a court in the said town, to be called The Mayor's Court, and in court they may make proper officers, and settle reasonable fees, not exceeding what are or shall be allowed by law in the county courts of this state.

X. *And be it enacted,* That the mayor, recorder, or any aldermen of the said town, shall have the same jurisdiction as to debts as any justice of the peace of any county of this state now hath, or shall hereafter have by law, and an appeal shall lie in the same manner from their judgment to the mayor's court, as from the decision of any county justice to the county court, and such appeal shall be regulated, prosecuted and determined, by the said mayor's court, in the same mode as is or shall be directed by law in the case of an appeal from the determination of a single justice to the county court.

XI. *And be it enacted,* That the said mayor's court shall have concurrent jurisdiction with the county court of Montgomery county in all criminal cases, except such as affect life or member, if such crimes or offences be committed within the said town, or the precincts thereof, by any inhabitant thereof, or by any person not a citizen of this state; and any fine, penalty or forfeiture, recovered in the said mayor's court, shall be paid and applied in the same manner as if recovered in the county court of the said county, and the mayor, recorder, and any alderman, shall have jurisdiction touching and concerning any such crime, to arrest and bind over to answer therefor in the said mayor's court.

XII. *And be it enacted,* That the said mayor, recorder, aldermen and common council, or the major part of them, shall have power to appoint an inspector or inspectors of flour for the said town, and to fix his or their allowance; provided that the same shall not exceed three-pence current money per barrel.

XIII. *And be it enacted,* That all that part of Montgomery county lying within one quarter of a mile of the limits of the said town, and the additions thereto, and all that space of water of Patowmack river adjoining the said town on all the shores thereof, and used as the harbour, as far unto the said river as the middle thereof, shall be considered as the precincts of the said town, and within the jurisdiction of the mayor, recorder, aldermen and common council of the said town, and subject to their by-laws and regulations, and within the jurisdiction of the mayor recorder, or any alderman of the said town, as before mentioned and limitted by this act.

XIV. *And be it enacted,* That all property belonging to the commissioners or trustees of George-town shall be and the same is hereby transferred and vested in the mayor, recorder, aldermen, and common council of the said town, and their successors, for ever, for the use and benefit of the said town. (Act of Maryland, December 25, 1789, ch. 23.)

ACT OF 1798 AMENDING CHARTER

A SUPPLEMENT To the act entitled "An act to incorporate Georgetown, in Montgomery County"

[Passed January 20, 1798]

Whereas the citizens of Georgetown have, by their petition to this general assembly, set forth, that they sustain many inconveniences from the want of proper powers in said corporation to pass laws to restrain the mischiefs arising from vagrants, loose and disorderly persons, free negroes, and persons having no visible means of support, and for the want of other powers for the due government of the affairs of the said town; therefore

2. *Be it enacted by the General Assembly of Maryland,* That the mayor, recorder, aldermen, and common council, of Georgetown, be, and they are hereby, authorized and empowered to pass, make, and ordain, all laws necessary to take up, fine, imprison, or punish, any and all vagrants, loose and disorderly persons, and persons having no visible means of support, that may be found within the limits or jurisdiction of said town; provided, that they shall not in any case pass, make, or ordain, any law to fine for any one offence a sum exceeding twenty dollars, or imprisonment not exceeding thirty days.

3. *And be it enacted,* That if any person or persons be committed to jail in virtue of this act, and shall not, at the expiration of the time for which he is committed, pay to the sheriff the amount of his fine and prison fees, or give security for the same, it shall and may be lawful for the sheriff, with the consent of the mayor in writing, to sell such person or persons as a servant for any time not exceeding four months, such time to be expressed in writing by the mayor in giving his consent as aforesaid.

4. *And be it enacted,* That so much of the second section of the act to which this is a supplement, as continues the authorities and powers of the common council during good behaviour, be repealed, and that the said common council shall, forever hereafter, be elected to serve for two years only; and an election for a new common council shall be held, in the manner prescribed by the original act, on the first Monday in February, in the year seventeen hundred and ninety-eight, and on the first Monday of February in every year thereafter.

5. *And be it enacted,* That the recorder, aldermen, and common council, may hereafter elect the mayor of said town from their citizens at large, and shall be under no other restriction, except that they shall be confined to a citizen of Georgetown, and the same person may be re-elected as often as the said aldermen and common council may judge it expedient.

6. *And be it enacted,* That the said mayor, recorder, aldermen, and common council, shall have full power and authority to make such by-laws and ordinances for the graduation and leveling of the streets, lanes, and alleys, within the jurisdiction of the same town, as they may judge necessary for the benefit thereof.

7. *And be it enacted,* That the said mayor, recorder, aldermen, and common council, shall have full power and authority to erect wharves on all streets, lanes, and alleys, in said town, for the use of the said town; provided, however, that no building shall be permitted to be erected on front of the said wharves or any of them.

8. And whereas the said corporation claim a right to certain grounds within the limits of said town, and doubts have arisen with respect to the powers of the said corporation to bring ejectments for the same; therefore, *Be it enacted,* That the said mayor, recorder, aldermen, and common council, in their corporate capacity, shall be, and are hereby, authorized and empowered to bring an ejectment or ejectments for all such real estate as they can make a legal title to, and to recover the same for the use of the said town.

9. *And be it enacted,* That to defray the expenses of said corporation, the said mayor, recorder, aldermen, and common council, shall have full power and authority, by ordinance or by law made for that purpose, to impose any sum of money, not exceeding one dollar in any one year, on every hundred pounds of property within the said town, and out of the revenues arising from such taxation to allow the said mayor such annual salary as shall appear to them just and proper. (Md. act, 1797, ch. 56.)

ACT OF 1800 AMENDING CHARTER

AN ACT To vest certain powers in the corporation of Georgetown, in Montgomery County

[Passed January 3, 1800]

Be it enacted by the General Assembly of Maryland, That the mayor, recorder, aldermen, and common councilmen of the corporation of Georgetown, be, and they are hereby, fully authorized and empowered, by a by-law or by-laws for that purpose ordained, to oblige all persons licensed as ordinary keepers and retailers of spirituous liquors within the jurisdiction of the corporation, to pay, for the use of the corporation, a sum not exceeding five dollars.

2. *And be it enacted,* That the mayor's court of the corporation of Georgetown shall have the sole and exclusive power of granting ordinary and retailers licenses within the jurisdiction of the corporation, and the person or persons obtaining such license shall, at the time of receiving the same, pay to the mayor of the corporation the same sum as is now directed by law to be paid for such license for the use of the state, and such further sum, for the use of the corporation, as the corporation may direct by their by-laws as herein before empowered.

3. *And be it enacted,* That the mayor of the corporation of Georgetown, for the time being, shall enter into bond, with security, to the state of Maryland, conditioned, that he shall well and truly pay over to the treasurer of the western shore all sums of money by him received for the use of the state for ordinary and retailer's licenses, in the same manner, and at the same time, as the clerks of the several county courts are by law directed, which bond shall be lodged with the clerk of the general court of the western shore.

4. *And be it enacted,* That the clerk of Montgomery county court be, and he is hereby directed, to deliver to the order of the mayor of the corporation of Georgetown, the book now deposited in his office containing the plan of Georgetown, and that the same be deposited with the clerk of the mayor's court of the corporation of Georgetown. (Md. act, 1799, ch. 85.)

ACT OF 1805 AMENDING CHARTER

AN ACT To amend the charter of Georgetown

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the second Monday in March current, the corporation of Georgetown, in the district of Columbia, shall be divided into two branches; the first branch to be composed of five members, and a recorder, and to be called "the board of aldermen;" and the second branch to be composed of eleven members, and to be called "the board of common councilmen;" which said two branches shall be elected as hereafter particularly provided.

SEC. 2. *And be it further enacted,* That after the passage of this act, and before the said day above mentioned, the present members of the said corporation shall meet at their usual place of meeting, and then and there choose, by ballot, from their body, five persons to compose the said board of aldermen, which said persons, when chosen as aforesaid, shall compose the said board of aldermen, and be, and continue such, until the fourth Monday in February, one thousand eight hundred and six; and that

the present recorder of the said corporation shall be the president of the said board of aldermen until the time last aforesaid: that the other members of the said corporation, (except the mayor,) shall compose the said second branch, called the board of common councilmen, and be and continue such, until the time aforesaid, and shall choose out of their own body a president, to be and continue such until the time aforesaid; and when thus organized, said corporation shall have, exercise, and possess, all the powers and rights now vested in the said corporation, and to be herein and hereby vested in them.

SEC. 3. *And be it further enacted,* That the present mayor of the corporation of Georgetown, shall be, and continue such, until the first Monday of January next.

SEC. 4. *And be it further enacted,* That on the fourth Monday of February next, the free white male citizens of Georgetown, of full age, and having resided within the town aforesaid, twelve months previously, and having paid tax to the corporation, shall assemble at a place to be appointed, as hereafter directed, and then and there shall proceed to elect, by ballot, five fit and proper persons, citizens of the United States, and residents of the said town, one whole year next before the said day of election, above twenty-one years of age, and having paid a tax to said corporation, to compose the said board of aldermen; and shall also, at the same time, proceed as aforesaid, to elect eleven fit and proper persons, having the qualifications last aforesaid, to compose the said board of common council; the said board of aldermen to continue two years, and the said board of common council to continue one year: and the said mayor, together with such other fit persons as shall be named and appointed by the said corporation, shall be judges of the election, and the five persons voted for as aldermen, who shall have the greatest number of legal votes, on the final casting up of the polls, shall be declared duly elected for the board of aldermen: and the eleven persons voted for as common council, who shall have the greatest number of legal votes upon the final casting up of the polls, shall be declared duly elected for the board of common council; and that the like election for aldermen be held on the fourth Monday in February, every two years thereafter; and for the said common council, on the said fourth Monday in February, annually, for ever thereafter.

SEC. 5. *And be it further enacted,* That on the first Monday of January next, and on the same day, annually, for ever thereafter, the said corporation shall, by a joint ballot of the said two branches present, choose some fit and proper person to be mayor of the said corporation, and some fit and proper person, learned in the law, to be the recorder of the said corporation, to continue in office one year.

SEC. 6. *And be it further enacted,* That the said mayor, before he acts as such, and the said recorder, before he acts as such, shall, respectively, make oath, before some justice of the peace, for the county of Washington aforesaid, in the presence of both branches of the said corporation, that he will well and faithfully discharge the several and respective duties of his office; and that each member of the said two branches shall, before he acts as such, in the presence of the corporation, take an oath to discharge the duties and trust reposed in him, with integrity and fidelity.

SEC. 7. *And be it further enacted,* That four members of the board of aldermen, and seven members of the board of common council, shall form a quorum to do business: the said corporation shall hold two sessions in each year; one to commence on the first Monday in March, and the other on the first Monday in December, with power to adjourn from day to day, to be held at such place as the mayor may designate, not otherwise provided for by ordinance: *Provided always,* that the mayor shall have power, on urgent occasions, to convene said corporation, on application of at least five members, in writing, giving reasonable notice of such intended meeting.

SEC. 8. *And be it further enacted,* That each of the said branches shall judge of the elections, qualifications and returns of its own members, and may compel the attendance of the members of each branch by reasonable penalties: and either branch shall have power to appoint their president, pro tempore, in case of the absence of the one duly chosen, as aforesaid. Any ordinance may originate in either branch, and no ordinance shall be passed, but by a majority of both branches, nor unless it shall pass both branches during the same session, and be approved of by the mayor, who shall sign the same, unless he objects thereto, within forty-eight hours from the time the same is presented to him for signature; if he does so object, he shall immediately return the same to the said corporation, with his objections, in writing, and if on reconsideration, two thirds of each branch of the corporation shall be of opinion that the said law ought to be passed, it shall, notwithstanding the objections of the mayor, become a law; and he shall sign the same; if the said mayor shall not return his objections to the same, to the said corporation, within the time aforesaid, it shall become a law, and shall be signed by him; the clerk of the corporation shall record in a book to be kept by him for that purpose, all the laws and resolutions which shall be passed as aforesaid, and deliver a copy of them to the public printer, to be printed by him for the use of the people.

SEC. 9 *And be it further enacted,* That in case the aldermen composing the first branch shall, at any time, on any question before them, be equally divided, the recorder shall have the casting vote, and determine such question to the same effect as if the same had been determined by a majority of the aldermen present; and similar power is hereby given to the president of the second branch in case of an equal division in that body.

SEC. 10. *And be it further enacted,* That it shall be the duty of the mayor to see that the laws of the corporation be duly executed, and to report the negligence or misconduct of any officer to the said corporation, who on satisfactory proof thereof, may remove from office the said delinquent, or take such other measures thereupon as shall be just and lawful; he shall lay before the said corporation, from time to time, in writing, such alterations in the laws of the said corporation as he shall deem necessary and proper; he shall have and exercise the powers of a justice of the peace in the said town, and shall receive for his services, annually, a just and reasonable compensation, to be allowed and fixed by the said corporation; no person shall be eligible to the said office of mayor unless a citizen of the United States, of the age of thirty years, a resident of the said town for five years then last past, and unless he shall have paid a tax to said corporation.

SEC. 11. *And be it further enacted,* That in case of a vacancy in either branch of the said corporation, by death, removal, or otherwise, of either of the members, a fit person or persons qualified, as aforesaid, shall be elected by the people, in the manner aforesaid, to fill such vacancy immediately thereafter; the mayor giving however at least five days' notice of such election: and in case of the vacancy of the mayor or recorder, the said corporation shall, within five days thereafter, as herein before directed, proceed to the choice of a fit person or persons, qualified, as aforesaid, to fill his or their place.

SEC. 12. *And be it further enacted,* That the said corporation shall have power to impose a tax, not exceeding in any one year, fifty cents in the hundred dollars, on all property within the said town; and the sessions of the said corporation shall be held as heretofore, until the said second Monday in March current; and the said corporation shall have, possess and enjoy, all the rights, immunities, privileges and powers heretofore enjoyed by them; and shall be called by the same name as heretofore, and shall have perpetual succession; and in addition thereto, they shall have power to regulate the inspection of flour and tobacco in said town; to prevent the introduction of contagious diseases within said town and precincts; to establish night watches and patroles, and erect lamps; to regulate the stationing, anchorage and mooring of vessels; to provide for regulating and licensing ordinaries, auctions and retailers of liquors, hackney carriages, wagons, carts and drays within said town and precincts; to restrain or prohibit gambling; to provide for licensing, regulating or restraining theatrical or other public amusements; to regulate and establish markets; to pass all laws for the regulation of weights and measures; to provide for the licensing and regulating the sweeping of chimneys and fixing the rates thereof; to establish and regulate fire wards and fire companies; to regulate and establish the

size of bricks to be made and used within said town; the inspection of salted provisions, and the assize of bread; to sink wells and erect and repair pumps in the streets; to impose and appropriate fines, penalties and forfeitures for breach of their ordinances; to erect workhouses; to open, extend, and regulate streets within the limits of the said town; provided they make to the person or persons who may be injured by such opening, extension or regulation just and adequate compensation, to be ascertained by the verdict of an impartial jury, to be summoned and sworn by a justice of the peace of the county of Washington, and to be formed of twenty-three men, who shall proceed in like manner as has been usual in other cases where private property has been condemned for public use; and they shall have the power of restraining, regulating and directing the manner of building wharves and docks; also to direct the manner in which the improvements thereon to be erected, shall be made, so that they may not become injurious to the health of the town; in addition to the power heretofore granted to the said corporation by the act of Congress, intituled "An act additional to, and amendatory of an act, intituled An act concerning the district of Columbia," of laying a tax of two dollars per foot front for paving the streets, lanes and alleys of the said town; they shall have the power upon petition, in writing, of a majority of the holders of the real property fronting on any street or alley, if, in their judgment it shall be deemed necessary, to lay such further and additional sum on each front foot, on said street, or part of a street, as will be sufficient to pave said street or part of a street, lane or alley, so petitioned for; and the like remedy shall be used for the recovery thereof, as is now used for the recovery of the public county taxes in the said county of Washington; and they shall have power by ordinance to direct or order the paved streets to be cleansed and kept clean, and appoint an officer for that purpose; to make and keep in repair all necessary sewers and drains, and to pass regulations necessary for the preservation of the same.

SEC. 13. *And be it further enacted,* That the duties on all licenses to be granted as aforesaid, shall be to and for the proper use and benefit of the said corporation; and the said corporation shall have power to pass all laws not inconsistent with the laws of the United States, which may be necessary to give effect and operation to all the powers vested in the said corporation; and to appoint constables and collectors of the taxes, and all other officers who may be deemed necessary for the execution of their laws, whose duties and powers shall be prescribed in such manner as the said corporation shall deem fit for the purpose aforesaid.

SEC. 14. *And be it further enacted,* That the jurisdiction of the said corporation shall extend to the limits of the original plan of said town, and to such additions as are recognized by law; and that a survey as soon as conveniently may be after the passage of this law, shall be made, under the direction of the said corporation, ascertaining said limits, and a plat thereof made and returned to said corporation, which, when approved of by them, shall be preserved, and become a record.

Approved, March 3, 1805 (2 Stat. 332, ch. 32).

ACT OF 1809 AMENDING CHARTER

AN ACT Supplementary to the act entituled "An act to amend the charter of Georgetown"

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following shall, and are hereby declared to be the limits of Georgetown, in the district of Columbia, any law or regulation to the contrary notwithstanding, that is to say: beginning in the middle of College street, as laid down and designated in Fenwick's map of the said town, at or near to the bank of the river Potomac; thence by a straight line drawn northernly through the middle of said street to the middle of First street; thence by a line drawn through the middle of First street to a point directly opposite to the termination of the eastern line of the lots now enclosed as the property of the college; thence northernly by the eastern line of said enclosure as far as the same extends; thence in the same northernly direction to the middle of Fourth street; thence eastwardly by a line drawn along the middle of Fourth street to a point at the distance of one hundred and twenty feet westward from the west side of Fayette street; thence northernly by a line drawn parallel to Fayette street at the said distance of one hundred and twenty feet westward from the west side thereof, until it intersects a boundary line of Beatty and Hawkins' addition to Georgetown; thence westwardly by said boundary line as far as it extends; thence by the courses and distances of the several other boundary lines of Beatty and Hawkins' addition aforesaid, that is to say; westwardly, northwardly, eastwardly and southwardly, to a point opposite to the middle of Road street, and opposite or nearly opposite to the middle of Eighth street; thence eastwardly by a line drawn through the middle of Road street, as it now runs, and as far as it extends; thence eastwardly by a line drawn parallel to Back street, and continued in the same direction to the middle of Rock creek; thence by the middle of the same creek and the middle of the Potomac river to a point directly opposite to the middle of College street aforesaid; thence to the place of beginning.

SEC. 2. *And be it further enacted,* That the corporation of Georgetown be, and they are hereby authorized and directed to cause a complete and accurate survey to be made of the said town agreeably to the courses and limits prescribed in the preceding section of this act, and to establish and fix, from time to time, permanent boundaries at such places as they may deem necessary and proper for perpetuating the boundaries of the said town, and after the said survey shall have been so made, and approved by the corporation, the same shall be admitted to record in the clerk's office for the county of Washington in the district of Columbia.

SEC. 3. *And be it further enacted,* That all the rights, powers and privileges heretofore granted to the said corporation by the general assembly of Maryland, and by the act to which this is a supplement, and which are at this time claimed and exercised by them, shall be and remain in full force and effect, and may and shall be exercised and enjoyed by them within the bounds and limits set forth and described in the first section of this act.

SEC. 4. *And be it further enacted,* That the said corporation shall have power to lay out, open, extend and regulate streets, lanes and alleys, within the limits of the town, as before described, under the following regulations, that is to say: the mayor of the town shall summon twelve freeholders, inhabitants of the town, not directly interested in the premises, who, being first sworn to assess and value what damages would be sustained by any person or persons by reason of the opening or extending any street, lane or alley, (taking all benefits and inconveniences into consideration) shall proceed to assess what damages would be sustained by any person or persons whomsoever, by reason of such opening or extension of the street, and shall also declare to what amount in money each individual benefited thereby shall contribute and pay towards compensating the person or persons injured by reason of such opening and extension: and the names of the person or persons so benefited, and the sums which they shall respectively be obliged to pay, shall be returned under their hands and seals to the clerk of the corporation, to be filed and kept in his office; and the person or persons benefited by opening or extending any street, and assessed as aforesaid, shall respectively pay the sums of money so charged and assessed to them, with interest thereon at the rate of six per cent. per annum, from the time limited for the payment thereof until paid; and the sums of money assessed and charged in manner aforesaid to each individual benefited in manner aforesaid, shall be a lien upon and bind all the property so benefited to the full amount thereof: *Provided always,* that no street, lane, or alley, shall be laid out, opened or extended, until the damages assessed to individuals in consequence

thereof shall have been paid, or secured to be paid: *And provided also,* that nothing in this act contained shall be so construed or understood as to authorize the corporation of Georgetown to locate, lay out, or open any street, lane, alley or other way, through any of the squares or lots situated in that part of Thomas Beall's second addition to Georgetown, which lies north of Back street, without the consent and permission of the owner or proprietor of such square or lot, first had and obtained in writing, which consent and permission shall be acknowledged in the presence of, and such acknowledgement certified by the mayor of the town aforesaid, or some justice of the peace for the county of Washington.

SEC. 5. *And be it further enacted,* That the recorder of the corporation shall be, and he is hereby declared to be a member of the board of aldermen, to all intents and purposes whatsoever.

Approved, March 3, 1809, (2 Stat. 537, ch. 30).

ACT OF 1826 EXTENDING THE LIMITS OF GEORGETOWN

AN ACT To extend the limits of Georgetown, in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That, in addition to the limits prescribed by an act supplementary to an act, entitled "An act to amend the charter of Georgetown," approved third of March, eighteen hundred and nine, the said limits between Seventh and Eighth streets shall be further extended, so as to extend westwardly, from Fayette street, three hundred feet.

Approved, March 3, 1826 (4 Stat. 140, ch. 10).

ACT OF 1826 AMENDING CHARTER

AN ACT Further to amend the charter of Georgetown, in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the levy court of Washington county, in the District of Columbia, shall not possess the power of assessing any tax on real or personal property within the limits of the corporation of Georgetown, nor shall the corporation of the said town be obliged to contribute in any manner towards the expenses or expenditures of said court, except for the one fourth part of the expenses incurred on account of the orphans' court, the office of coroner, the jail of said county, and one half of the expenses for the opening and repairing of roads in the county of Washington, west of Rock Creek, and leading to Georgetown: *Provided, always,* That nothing herein contained shall be construed to prevent the said court, or the collector by them appointed, from collecting all taxes which have been levied by the said court on real and personal property within the limits of Georgetown, before the passage of this act, and of appropriating the same according to present existing laws; but that it shall be the duty of the said court, and they are hereby authorized and directed to use all the powers with which they are now invested, for collecting the said tax: *And provided further,* That all laws now in force, which make it the duty of the said court to provide for the support of the poor residing within the limits of Georgetown, be, and the same are hereby, repealed, and that henceforth it shall be the duty of said court to provide for the support of such only of the poor of the county as reside out of the limits of Washington and Georgetown.

SEC. 2. *And be it further enacted,* That the said corporation may, for the general purposes mentioned in the charter of said town, and for the support of the poor annually, lay a tax on all real and personal property within the limits of Georgetown, not exceeding seventy cents in the hundred dollars, any law to the contrary notwithstanding.

SEC. 3. *And be it further enacted,* That this act shall commence and be in force from and after the passage thereof.

Approved, May 20, 1826 (4 Stat. 183, ch. 111).

ACT OF 1830 AMENDING CHARTER

AN ACT To amend the charter of Georgetown

(SECTION 1.) *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That public notice of the time and place of sale of any real property chargeable with taxes in Georgetown, in all cases hereafter, shall be given once in each week, for twelve successive weeks, in some one newspaper in the County of Washington, in which shall be stated the number of the lot or lots, or parts thereof, intended to be sold, and the value of the assessment, and the amount of the taxes due and owing thereon; and that so much of the seventh section of an act of Congress, approved May twenty-sixth, one thousand eight hundred and twenty-four, as requires said notice to be given in the National Intelligencer, and in a newspaper in Alexandria, be, and the same is hereby repealed: *Provided,* That nothing in this act shall change the manner of giving notice of the sales of property owned by the persons not residing in the District of Columbia.

SEC. 2. *And be it further enacted,* That on the fourth Monday of February next, and on the same day biennially thereafter, the citizens of Georgetown, qualified to vote for Members of the two Boards of the Corporation of said Town, shall, by ballot, elect some fit and proper person having the qualifications now required by law to be Mayor of the Corporation of Georgetown, to continue in Office two years, and until a successor is duly elected, and the person having at said election, which shall be conducted by Judges of election appointed by the Corporation, the greatest number of legal votes, shall be declared duly elected; and in the event of an equal number of votes being given to two or more candidates, the two Boards in joint meeting by ballot, shall elect the Mayor from the persons having such equal number of votes.

SEC. 3. *And be it further enacted,* That in the event of the death or resignation of the Mayor, or his inability to discharge the duties of his office, the two Boards of the Corporation, in Joint meeting, by ballot, shall elect some fit person to fill the Office until the next regular election.

SEC. 4. *And be it further enacted,* That the present Mayor of Georgetown shall continue to fill the office of Mayor until the fourth Monday of February next.

SEC. 5. *And be it further enacted,* That, so much of the present Charter of Georgetown, as is inconsistent with the provisions of this act, be, and the same is hereby repealed.

Approved, May 31, 1830 (4 Stat. 426, ch. 229)

ACT OF 1832 EXTENDING THE LIMITS OF GEORGETOWN

AN ACT To extend the limits of Georgetown, in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the limits of Georgetown, in the District of Columbia, be, and they are hereby, extended, so as to include the part of a tract of land called "Pretty Prospect," recently purchased by the corporation of the said town, as

a site for their poor's-house; beginning, for the said piece of ground, at a stone marked number four, extending at the end of four hundred and seventy-six poles on the first line of a tract of land, called the "Rock of Dumbarton;" said stone also standing on the western boundary line of lot numbered two hundred and sixty, of Beatty and Hawkins' addition to said town; and running thence, north, seventy-eight degrees, east thirty-eight poles; south eighty degrees, east three poles; south eighteen poles, south twelve degrees, east nine poles; south eleven degrees, west twelve poles; south seventy-two degrees, west twenty-three poles, to the said first line of the "Rock of Dumbarton", thence, with said line, to the beginning.

SEC. 2. *And be it further enacted,* That all the rights powers, and privileges, heretofore granted by law to the said corporation, and which are at this time claimed and exercised by them, may and shall be exercised and enjoyed by them, within the bounds and limits set forth and described in the first section of this act.

Approved, May 25, 1832 (4 Stat. 517, ch. 105).

ACT OF 1842 EXTENDING THE LIMITS OF GEORGETOWN

AN ACT To extend the jurisdiction of the corporation of Georgetown

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the jurisdiction of the corporation of Georgetown is hereby extended so as to include the bridge lately constructed by the said corporation across the river Potomac, at the Little Falls, and the site of the said bridge and premises appertaining to said site; and that, as often and as long as said bridge shall hereafter, from any cause, be impassable, it shall and may be lawful for the proprietors of land on both sides of the said river, through which the ferry road to connect with the Falls Bridge turnpike must necessarily pass, and they are hereby authorized and empowered to establish and keep a ferry, at any rate of ferriage not exceeding the tolls which the Georgetown Bridge Company were heretofore authorized to charge on their bridge.

SEC. 2. *And be it further enacted,* That said Corporation of Georgetown, in addition to its present chartered powers, shall have full power and authority to provide for licensing, taxing, and regulating, within its corporate limits, all traders, retailers, pawnbrokers, and to tax venders of lottery tickets, money changers, hawkers and pedlers.

Approved, July 27, 1842 (5 Stat. 497, ch. 82).

ACT OF 1855 AMENDING CHARTER

AN ACT Authorizing the corporate authorities of Georgetown to impose additional taxes, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the mayor, recorder, aldermen, and common council, of Georgetown, be, and they are hereby, authorized and empowered to lay and collect a special annual tax of seventy-five cents, or so much thereof as may be necessary, upon every hundred dollars of property by law now taxable within the corporate limits of said town, and all money vested or held in any banking, insurance, brokerage, or exchange company or institution, upon all State or corporation stocks, and money loaned at interest on bond, mortgage, or other evidence of indebtedness, in order to meet the engagements recently assumed by said town in subscribing to the stock of the Metropolitan Railroad Company; and to pledge the same to secure the said engagements, in such a manner that no part of the same shall in any event be applied to any other object; and the like remedy shall be used for the recovery thereof as is now used for the recovery of other public taxes in said town.

SEC. 2. *And be it further enacted,* That the said corporation of Georgetown shall have full power and authority to introduce into said town a supply of water for the use of the inhabitants thereof; and to cause the streets, lanes, and alleys, or any of them, or any portion of any of them, to be lighted by gas or otherwise; and to provide for the expense of any such works or improvements, either by a special tax or out of its corporate funds generally, or both, at its discretion.

Approved, March 2, 1855 (10 Stat. 633, ch. 45).

ACT OF 1856 AMENDING CHARTER

AN ACT To amend the charter of Georgetown, in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Corporation of Georgetown, in the District of Columbia, shall have full power and authority to lay and impose the present year and annually thereafter, a school tax upon every free white male citizen, of the age of twenty-one years and upwards, of one dollar per annum; said tax to be levied and collected under such regulations as the said corporation may prescribe.

SEC. 2. *And be it further enacted,* That from and after the passage of this act, every free white male citizen of the United States, who shall have attained the age of twenty-one years, and shall have resided within the corporate limits of Georgetown, in the District aforesaid, one year immediately preceding the day of election, and shall have been returned on the books of the corporation during the year ending on the thirty-first day of December next preceding the day of election, as subject to a school tax for that year, (except persons *non compos mentis,* vagrants, paupers, and persons who shall have been convicted of any infamous crime,) and who shall have paid the school taxes due from him, shall be entitled to vote for mayor, members of the board of aldermen and board of common council and for every officer authorized to be elected at any election under the acts of said corporation: *Provided,* That if, during the year ending on the thirty-first day of December next preceding the day of the first election after the passage of this act, no person shall have been returned on the books of the said corporation as subject to a school tax, then all persons who shall have been returned on the books of the said corporation as subject to a school tax before the day of the said first election, and who shall in all other respects be qualified under this act to vote, and who shall have paid the said school tax, shall be entitled to vote at the said first election after the passage of this act; and if any person shall buy or sell a vote, or shall vote more than once at any corporation election, held in pursuance of law, or shall give or receive any consideration therefor in money, goods, or any other thing of value, or shall promise any valuable consideration, or vote in consideration of such promise, he shall be disqualified forever thereafter from voting or holding any office under said corporation; and on complaint thereof to the attorney of the United States for the District of Columbia, it shall be the duty of said attorney to proceed against said offender or offenders by indictment and trial, as in other criminal cases; and if found guilty it shall be the duty of the court to sentence him to pay a fine of not less than ten dollars, and to imprisonment not more than two months, nor less than ten days.

SEC. 3. *And be it further enacted,* That it shall be the duty of the clerk of said corporation, on the presentation of the corporation tax collector's receipt showing that the

applicant has paid his school tax for that year, to enter the name of such school tax payer on the books of said corporation, and to furnish the judges of elections to be held under the laws of said corporation at each precinct, before or on the morning of any election, before the hour for opening the polls, with a list of the names of all persons who shall have paid their school taxes for that year.

SEC. 4. *And be it further enacted,* That the school tax which shall be levied and collected under this act shall constitute a fund, or be added to any other fund now or hereafter to be constituted by any act of said corporation for the establishment and support of common schools, and for no other purpose, under such regulations as the corporation may prescribe.

SEC. 5. *And be it further enacted,* That it shall be the duty of said corporation to provide or establish at least two election precincts within the limits of the corporation of Georgetown, and to appoint not less than three judges of election for each precinct, and to adopt such other regulations as may be necessary to give full force and effect to this section.

SEC. 6. *And be it further enacted,* That all acts or parts of acts in conflict with this act be and the same are hereby repealed.

Approved, August 11, 1856 (11 Stat. 32, ch. 84).

ACT OF 1862 AMENDING CHARTER

AN ACT To authorize the corporation of Georgetown, in the District of Columbia, to lay and collect a water tax, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Mayor, Recorder, Aldermen, and Common Council of Georgetown, in the District of Columbia, shall have full power and authority to levy and collect a tax not exceeding sixty cents per front foot on all lots and parts of lots within said corporate limits in front of or parallel to which water mains have been or may hereafter be laid; or, in their discretion, to appropriate from the corporate funds generally so much money as may be necessary to supply the inhabitants of said town with Potomac water from the aqueduct mains or pipes now laid or to be laid in the streets of said town by the United States; and to make all laws and regulations for the proper distribution of the same, subject to the restrictions prescribed by this act, and the act approved March the third, eighteen hundred and fifty-nine, and entitled "An act to provide for the care and preservation of the works constructed by the United States for bringing the Potomac water into the cities of Washington and Georgetown, for the supply of said water for all Government purposes, and for the uses and benefits of the inhabitants of said cities."

SEC. 2. *And be it further enacted,* That said Corporation shall have full power and authority to collect such taxes, when so fixed, in advance or otherwise, through such agents, collectors, or commissioners, as they may designate and appoint; and upon the failure of any owner of said lot or lots, or part thereof, to pay said taxes, to sell the same; or to stop the supply of water to the same, or to distrain and sell the personal effects of such owner, and in the case of any sale the same proceedings shall be observed as are adopted in enforcing the collection of the general tax of said town; and generally to enact such laws as may be necessary to furnish the inhabitants of said town with pure and wholesome water, and to carry into complete effect the powers herein granted: *Provided,* That the taxes levied by virtue of this act shall never be a source of revenue other than as a means of supplying said town with water.

SEC. 3. *And be it further enacted,* That in levying said front foot tax, said Corporation shall, in all cases where a lot or lots, or part thereof, may be situated at the intersection of two streets and fronting on the same, so reduce and graduate the tax thereon as not to exceed in all a tax upon one hundred feet front; and shall, in all cases where said property may have a front on any one or more streets, of more than one hundred feet, so reduce and graduate the tax thereon as not to exceed a tax upon one hundred feet front.

SEC. 4. *And be it further enacted,* That all ordinances and resolutions or parts thereof relating to the distribution of Potomac water through said town, and the collection of a water tax, and the ordinances and resolutions heretofore passed by said Corporation particularly mentioned in this section, be and the same are hereby ratified and confirmed, said ordinances and resolutions being described and identified as follows, to wit: A resolution approved April the twenty-third, eighteen hundred and fifty-nine, entitled "A resolution authorizing the tapping of water mains;" a resolution approved May the seventh, eighteen hundred and fifty-nine, entitled "A resolution authorizing the laying of a water main up High street," an ordinance approved May the ninth, eighteen hundred and fifty-nine, entitled "An ordinance authorizing the distribution of the Potomac water through the city of Georgetown;" a resolution approved May the fourteenth, eighteen hundred and fifty-nine, entitled "A supplement repealing a part of a resolution for laying a water main up High street;" an ordinance approved July the second, eighteen hundred and fifty-nine, entitled "A supplement to an ordinance authorizing the distribution of the Potomac water through the city of Georgetown, approved May the ninth, eighteen hundred and fifty-nine;" a resolution approved July the second, eighteeen hundred and fifty-nine, entitled "A resolution approving of certain contracts for distributing water through the town;" a resolution approved August the twentieth, eighteen hundred and fifty-nine, entitled "A resolution in relation to the water distribution;" a resolution approved September the seventeenth, eighteen hundred and fifty-nine, entitled "A resolution authorizing the water board to purchase water pipes;" a resolution approved September the seventeenth, eighteen hundred and fifty-nine, entitled "A resolution in relation to water distribution;" a resolution approved September the twenty-fourth, eighteen hundred and fifty-nine, entitled "A resolution supplementary to a resolution, entitled 'A resolution in relation to the water distribution, approved August the twentieth, eighteen hundred and fifty-nine;' " a resolution approved September the twenty-fourth, eighteen hundred and fifty-nine, entitled "A resolution in relation to the redemption of water stock;" a resolution approved October twenty-ninth, eighteen hundred and fifty-nine, entitled "A resolution in relation to water mains;" a resolution approved November the fifth, eighteen hundred and fifty-nine, entitled "A resolution approving the contract for patent water-pipes for Road street;" a resolution approved November the nineteenth, eighteen hundred and fifty-nine, entitled "A resolution repealing a portion of the resolution approved April the twenty-third, eighteen hundred and fifty-nine, in relation to tapping water-mains."

SEC. 5. *And be it further enacted,* That in case of a failure to pay any taxes whatever laid by said corporation by virtue of its vested powers, it shall be lawful to sell, in the discretion of the collector or other proper officer, either the real or personal estate, or both, of the delinquent taxpayer; and so much of the eighth section of the act approved May the twenty-sixth eighteen hundred and twenty-four, entitled "An act supplementary to the act 'to incorporate the inhabitants of the city of Washington,' passed the fifteenth of May, one thousand eight hundred and twenty, and for other purposes," as is in the following words, viz: *"Provided,* That no sale of real estate shall be made but where the owner or tenant of the property has not sufficient personal estate out of which to enforce a collection of the debt due," be and the same is hereby repealed.

SEC. 6. *And be it further enacted,* That the person or persons appointed to collect any taxes imposed by said corporation in pursuance of its vested powers shall have authority to collect the same by distress and sale of the goods and chattels of the person chargeable therewith, but no such sale shall be made unless ten days' previous notice thereof be given in some newspaper printed in the District of Columbia, aforesaid; and the provisions of the acts of Maryland now in force within said District re-

lating to the right of replevying personal property taken in execution for public taxes shall apply to all cases of personal property taken by distress to satisfy taxes imposed by virtue of the corporation powers aforesaid.

SEC. 7. *And be it further enacted,* That said corporation shall have power and authority to repair any of the footways of the streets in said town, and to impose and collect such tax or taxes on the lot or lots, or parts thereof, adjoining the same, as may be necessary to pay the expense of such repairs.

SEC. 8. *And be it further enacted,* That so much of the first section of the act approved May thirty-one, eighteen hundred and thirty, entitled "An act to amend the charter of Georgetown," as is in the following words, viz: "*Provided,* That nothing in this act shall change the manner of giving notice of the sales of property owned by persons not residing in the District of Columbia," be and the same is hereby repealed.

Approved, May 21, 1862 (12 Stat. 405, ch. 82).

ACT OF 1895 CHANGING NAME OF GEORGETOWN

AN ACT Changing the name of Georgetown, in the District of Columbia, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act all that part of the District of Columbia embraced within the bounds and now constituting the city of Georgetown, as referred to in said acts of February twenty-first, eighteen hundred and seventy-one and June twentieth, eighteen hundred and seventy-four, shall no longer be known by the name and title in law of the city of Georgetown, but the same shall be known as and shall constitute a part of the city of Washington, the Federal Capital; and all general laws, ordinances, and regulations of the city of Washington be, and the same are hereby, extended and made applicable to that part of the District of Columbia formerly known as the city of Georgetown; and all general laws, regulations, and ordinances of the city of Georgetown be, and the same are hereby, repealed; that the title and existence of said Georgetown as a separate and independent city by law is hereby abolished, and that the Commissioners of the District of Columbia be, and they are hereby, directed to cause the nomenclature of the streets and avenues of Georgetown to conform to those of Washington so far as practicable. And the said Commissioners are also directed to have the squares in Georgetown renumbered, so that no square shall hereafter bear a like number to any square in the city of Washington: *Provided,* That nothing in this Act shall operate to affect or repeal existing law making Georgetown a port of entry, except as to its name.

Approved, February 11, 1895 (28 Stat. 650, ch. 79; see act of February 21, 1871, 16 Stat. 419, ch. 62, ante, p. 469).

CONSTITUTION OF THE UNITED STATES OF AMERICA—1787*

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Article. I.

Section. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section. 2. [1] The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

[2] No person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[3] †[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.]‡ The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

[1] When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

Note.—This text of the Constitution follows the engrossed copy signed by Gen. Washington and the deputies from 12 States. The superior number preceding the paragraphs designates the number of the clause; it was not in the original.

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*In May, 1785, a committee of Congress made a report recommending an alteration in the Articles of Confederation but no action was taken on it, and it was left to the State Legislatures to proceed in the matter. In January, 1786, the Legislature of Virginia passed a resolution providing for the appointment of five commissioners, who, or any three of them, should meet such commissioners as might be appointed in the other States of the Union, at a time and place to be agreed upon, to take into consideration the trade of the United States; to consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony; and to report to the several States such an act, relative to this great object, as, when ratified by them, will enable the United States in Congress effectually to provide for the same. The Virginia commissioners, after some correspondence, fixed the first Monday in September as the time, and the city of Annapolis as the place for the meeting, but only four other States were represented, viz: Delaware, New York, New Jersey, and Pennsylvania; the commissioners appointed by Massachusetts, New Hampshire, North Carolina, and Rhode Island failed to attend. Under the circumstances of so partial a representation, the commissioners present agreed upon a report, (drawn by Mr. Hamilton, of New York,) expressing their unanimous conviction that it might essentially tend to advance the interests of the Union if the States by which they were respectively delegated would concur, and use their endeavors to procure the concurrence of the other States, in the appointment of commissioners to meet at Philadelphia on the Second Monday of May following, to take into consideration the situation of the United States; to devise such further provisions as should appear to them necessary to render the Constitution of the Federal Government adequate to the exigencies of the Union; and to report such an act for that purpose to the United States in Congress assembled as, when agreed to by them and afterwards confirmed by the Legislatures of every State, would effectually provide for the same.

Congress, on the 21st of February, 1787, adopted a resolution in favor of a convention, and the Legislatures of those States which had not already done so (with the exception of Rhode Island) promptly appointed delegates. On the 25th of May, seven States having convened, George Washington, of Virginia, was unanimously elected President, and the consideration of the proposed constitution was commenced. On the 17th of September, 1787, the Constitution as engrossed and agreed upon was signed by all the members present, except Mr. Gerry of Massachusetts, and Messrs. Mason and Randolph, of Virginia. The president of the convention transmitted it to Congress, with a resolution stating how the proposed Federal Government should be put in operation, and an explanatory letter. Congress, on the 28th of September, 1787, directed the Constitution so framed, with the resolutions and letter concerning the same, to "be transmitted to the several Legislatures in order to be submitted to a convention of delegates chosen in each State by the people thereof, in conformity to the resolves of the convention."

On the 4th of March, 1789, the day which had been fixed for commencing the operations of Government under the new Constitution, it had been ratified by the conventions chosen in each State to consider it, as follows: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788; Virginia, June 26, 1788; and New York, July 26, 1788.

The President informed Congress, on the 28th of January, 1790, that North Carolina had ratified the Constitution November 21, 1789; and he informed Congress on the 1st of June, 1790, that Rhode Island had ratified the Constitution May 29, 1790. Vermont, in convention, ratified the Constitution January 10, 1791, and was, by an act of Congress approved February 18, 1791, "received and admitted into this Union as a new and entire member of the United States."

†This clause has been affected by the 14th and 16th amendments.

‡The part included in heavy brackets was changed by section 2 of the fourteenth amendment.

[5] The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

SECTION. 3. [1] The Senate of the United States shall be composed of two Senators from each State, [chosen by the Legislature thereof,]* for Six Years; and each Senator shall have one Vote.

[2] Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; [and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies].**

[3] No Person shall be a Senator who shall not have attained to the Age of thirty Years and been nine Years a Citizen of the United States and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

[4] The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

[5] The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

[6] The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

[7] Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment according to Law.

SECTION. 4. [1] The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

[2] The Congress shall assemble at least once in every Year, and such Meeting shall [be on the first Monday in December,]*** unless they shall by Law appoint a different Day.

SECTION. 5. [1] Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

[2] Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

[3] Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those present, be entered on the Journal.

[4] Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

SECTION. 6. [1] The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

[2] No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

SECTION. 7. [1] All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

[2] Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

[3] Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Ad-

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*The part included in heavy brackets was changed by section 1 of the seventeenth amendment.

**The part included in heavy brackets was changed by clause 2 of the seventeenth amendment.

***The part included in heavy brackets was changed by section 2 of the twentieth amendment.

journment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION. 8. [1] The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

[2] To borrow Money on the credit of the United States;

[3] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

[4] To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

[5] To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

[6] To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

[7] To establish Post Offices and post Roads;

[8] To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

[9] To constitute Tribunals inferior to the supreme Court;

[10] To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

[11] To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

[12] To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

[13] To provide and maintain a Navy;

[14] To make Rules for the Government and Regulation of the land and naval Forces;

[15] To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

[16] To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

[17] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

[18] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

SECTION. 9. [1] The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

[2] The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

[3] No Bill of Attainder or ex post facto Law shall be passed.

*[4] No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

[5] No Tax or Duty shall be laid on Articles exported from any State.

[6] No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

[7] No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

[8] No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

SECTION. 10. [1] No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

[2] No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

[3] No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

ARTICLE. II.

SECTION. 1. [1] The executive Power shall be vested in a President of the United States of America. He

*See also the sixteenth amendment.

shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected as follows

[2] Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

[The Electors shall meet in their respective States, and vote by Ballot for two Persons of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.]*

[3] The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

[4] No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

[5] In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

[6] The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased or diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

[7] Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

SECTION. 2. [1] The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

[2] He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

[3] The President shall have power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

SECTION. 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement, between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

SECTION. 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE. III.

SECTION. 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

*This paragraph has been superseded by the twelfth amendment.

SECTION. 2. [1] The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;*—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

[2] In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

[3] The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION. 3. [1] Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

[2] The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

ARTICLE. IV.

SECTION. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

SECTION. 2. [1] The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

[2] A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

[3] [No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.]**

*This clause has been affected by the eleventh amendment.

**This paragraph has been superseded by the thirteenth amendment.

SECTION. 3. [1] New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

[2] The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

SECTION. 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE. V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided [that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and]*** that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

ARTICLE. VI.

[1] All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

[2] This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

[3] The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE. VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

***Obsolete.

DONE in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth IN WITNESS whereof We have hereunto subscribed our Names,

G° WASHINGTON —*Presidt*
and deputy from Virginia

New Hampshire

JOHN LANGDON NICHOLAS GILMAN

Massachusetts

NATHANIEL GORHAM RUFUS KING

Connecticut

WM. SAML. JOHNSON ROGER SHERMAN

New York

ALEXANDER HAMILTON

New Jersey

WIL: LIVINGSTON WM. PATERSON
DAVID BREARLEY JONA: DAYTON

Pennsylvania

B FRANKLIN THOS. FITZSIMONS
THOMAS MIFFLIN JARED INGERSOLL
ROBT MORRIS JAMES WILSON
GEO. CLYMER GOUV. MORRIS

Delaware

GEO. READ RICHARD BASSETT
GUNNING BEDFORD jun JACO. BROOM
JOHN DICKINSON

Maryland

JAMES MCHENRY DANL CARROLL.
DAN OF ST THOS. JENIFER

Virginia

JOHN BLAIR— JAMES MADISON Jr.

North Carolina

WM. BLOUNT HU WILLIAMSON
RICH'D DOBBS SPAIGHT.

South Carolina

J. RUTLEDGE CHARLES PINCKNEY
CHARLES COTESWORTH PIERCE BUTLER.
PINCKNEY

Georgia

WILLIAM FEW ABR BALDWIN.

Attest: WILLIAM JACKSON, *Secretary.*

RATIFICATION OF THE CONSTITUTION

The Constitution was adopted by a convention of the States on September 17, 1787, and was subsequently ratified by the several States, on the following dates: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788.

Ratification was completed on June 21, 1788.

The Constitution was subsequently ratified by Virginia, June 25, 1788; New York, July 26, 1788; North Carolina, November 21, 1789; Rhode Island, May 29, 1790; and Vermont, January 10, 1791.

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION

ARTICLE [I]*

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

ARTICLE [II]

A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

ARTICLE [III]

No Soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE [IV]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE [V]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE [VI]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the

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*Only the 13th, 14th, 15th, and 16th articles of amendment had numbers assigned to them at the time of ratification.

accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

ARTICLE [VII]

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

ARTICLE [VIII]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE [IX]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE [X]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The first 10 amendments to the Constitution, and 2 others that failed of ratification, were proposed by the Congress on September 25, 1789. They were ratified by the following States, and the notifications of the ratification by the Governors thereof were successively communicated by the President to the Congress: New Jersey, November 20, 1789; Maryland, December 19, 1789; North Carolina, December 22, 1789; South Carolina, January 19, 1790; New Hampshire, January 25, 1790; Delaware, January 28, 1790; New York, February 24, 1790; Pennsylvania, March 10, 1790; Rhode Island, June 7, 1790; Vermont, November 3, 1791; and Virginia, December 15, 1791.

Ratification was completed on December 15, 1791.

The amendments were subsequently ratified by Massachusetts, March 2, 1939; Connecticut, April 19, 1939; and Georgia, March 18, 1939.

ARTICLE [XI]

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

The 11th amendment to the Constitution was proposed by the Congress on March 4, 1794. It was declared, in a message from the President to Congress, dated January 8, 1798 to have been ratified by the legislatures of 12 of the 15 States. The dates of ratification were: New York, March 27, 1794; Rhode Island, March 31, 1794; Connecticut, May 8, 1794; New Hampshire, June 16, 1794; Massachusetts, June 26, 1794; Vermont, between October 9, 1794 and November 9, 1794; Virginia, November 18, 1794; Georgia, November 29, 1794; Kentucky, December 7, 1794; Maryland, December 26, 1794; Delaware, January 23, 1795; North Carolina, February 7, 1795.

Ratification was completed on February 7, 1795.

The amendment was subsequently ratified by South Carolina on December 4, 1797. New Jersey and Pennsylvania did not take action on the amendment.

ARTICLE [XII]

The electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. [And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.]* The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

The 12th amendment to the Constitution was proposed by the Congress on December 9, 1803. It was declared, in a proclamation of the Secretary of State, dated September 25, 1804, to have been ratified by the legislatures of 13 of the 17 States. The dates of ratification were: North Carolina, December 21, 1803; Maryland, December 24, 1803; Kentucky, December 27, 1803; Ohio, December 30, 1803; Pennsylvania, January 5, 1804; Vermont, January 30, 1804; Virginia, February 3, 1804; New York, February 10, 1804; New Jersey, February 22, 1804; Rhode Island, March 12, 1804; South Carolina, May 15, 1804; Georgia, May 19, 1804; New Hampshire, June 15, 1804.

Ratification was completed on June 15, 1804.

The amendment was subsequently ratified by Tennessee, July 27, 1804.

The amendment was rejected by Delaware, January 18, 1804; Massachusetts, February 2 or 3, 1804; Connecticut, at its session begun May 10, 1804.

ARTICLE XIII

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

*The part included in heavy brackets has been superseded by section 3 of the twentieth amendment.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

The 13th amendment to the Constitution was proposed by the Congress on January 31, 1865. It was declared, in a proclamation of the Secretary of State, dated December 18, 1865, to have been ratified by the legislatures of 27 of the 36 States. The dates of ratification were: Illinois, February 1, 1865; Rhode Island, February 2, 1865; Michigan, February 2, 1865; Maryland, February 3, 1865; New York, February 3, 1865; Pennsylvania, February 3, 1865; West Virginia, February 3, 1865; Missouri, February 6, 1865; Maine, February 7, 1865; Kansas, February 7, 1865; Massachusetts, February 7, 1865; Virginia, February 9, 1865; Ohio, February 10, 1865; Indiana, February 13, 1865; Nevada, February 16, 1865; Louisiana, February 17, 1865; Minnesota, February 23, 1865; Wisconsin, February 24, 1865; Vermont, March 9, 1865; Tennessee, April 7, 1865; Arkansas, April 14, 1865; Connecticut, May 4, 1865; New Hampshire, July 1, 1865; South Carolina, November 13, 1865; Alabama, December 2, 1865; North Carolina, December 4, 1865; Georgia, December 6, 1865.

Ratification was completed on December 6, 1865.

The amendment was subsequently ratified by Oregon, December 8, 1865; California, December 19, 1865; Florida, December 28, 1865 (Florida again ratified on June 9, 1868, upon its adoption of a new constitution); Iowa, January 15, 1866; New Jersey, January 23, 1866 (after having rejected the amendment on March 16, 1865); Texas, February 18, 1870; Delaware, February 12, 1901 (after having rejected the amendment on February 8, 1865).

The amendment was rejected by Kentucky, February 24, 1865, and by Mississippi, December 4, 1865.

ARTICLE XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The 14th amendment to the Constitution was proposed by the Congress on June 13, 1866. It was declared, in a certificate by the Secretary of State dated July 28, 1868, to have been ratified by the legislatures of 28 of the 37 States. The dates of ratification were: Connecticut, June 25, 1866; New Hampshire, July 6, 1866; Tennessee, July 19, 1866; New Jersey, September 11, 1866 (subsequently the legislature rescinded its ratification, and on March 5, 1868, readopted its resolution of rescission over the Governor's veto); Oregon, September 19, 1866 (and rescinded its ratification on October 15, 1868); Vermont, October 30, 1866; Ohio, January 4, 1867 (and rescinded its ratification on January 15, 1868); New York, January 10, 1867; Kansas, January 11, 1867; Illinois, January 15, 1867; West Virginia, January 16, 1867; Michigan, January 16, 1867; Minnesota, January 16, 1867; Maine, January 19, 1867; Nevada, January 22, 1867; Indiana, January 23, 1867; Missouri, January 25, 1867; Rhode Island, February 7, 1867; Wisconsin, February 7, 1867; Pennsylvania, February 12, 1867; Massachusetts, March 20, 1867; Nebraska, June 15, 1867; Iowa, March 16, 1868; Arkansas, April 6, 1868; Florida, June 9, 1868; North Carolina, July 4, 1868 (after having rejected it on December 14, 1866); Louisiana, July 9, 1868 (after having rejected it on February 6, 1867); South Carolina, July 9, 1868 (after having rejected it on December 20, 1866).

Ratification was completed on July 9, 1868.[1]

The amendment was subsequently ratified by Alabama, July 13, 1868; Georgia, July 21, 1868 (after having rejected it on November 9, 1866); Virginia, October 8, 1869 (after having rejected it on January 9, 1867); Mississippi, January 17, 1870; Texas, February 18, 1870 (after having rejected it on October 27, 1866); Delaware, February 12, 1901 (after having rejected it on February 8, 1867); Maryland, April 4, 1959 (after having rejected it on March 23, 1867); California, May 6, 1959.

ARTICLE XV

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

The 15th amendment to the Constitution was proposed by the Congress on February 26, 1869. It was declared, in a proclamation of the Secretary of State, dated March 30, 1870, to have been ratified by the legislatures of 29 of the 37 States. The dates of ratification were: Nevada, March 1, 1869; West Virginia, March 3, 1869; Illinois, March 5,

[1] The certificate of the Secretary of State, dated July 20, 1868, was based upon the assumption of invalidity of the rescission of ratification by Ohio and New Jersey. The following day, the Congress adopted a joint resolution declaring the amendment a part of the Constitution. The Secretary of State issued a proclamation of ratification without reservation.

1869; Louisiana, March 5, 1869; North Carolina, March 5, 1869; Michigan, March 8, 1869; Wisconsin, March 9, 1869; Maine, March 11, 1869; Massachusetts, March 12, 1869; Arkansas, March 15, 1869; South Carolina, March 15, 1869; Pennsylvania, March 25, 1869; New York, April 14, 1869 (and the legislature of the same State passed a resolution January 5, 1870, to withdraw its consent to it); Indiana, May 14, 1869; Connecticut, May 19, 1869; Florida, June 14, 1869; New Hampshire, July 1, 1869; Virginia, October 8, 1869; Vermont, October 20, 1869; Missouri, January 7, 1870; Minnesota, January 13, 1870; Mississippi, January 17, 1870; Rhode Island, January 18, 1870; Kansas, January 19, 1870; Ohio, January 27, 1870 (after having rejected it on April 30, 1869); Georgia, February 2, 1870; Iowa, February 3, 1870.

Ratification was completed on February 3, 1870, unless the withdrawal of ratification by New York was effective; in which event ratification was completed on February 17, 1870, when Nebraska ratified.

The amendment was subsequently ratified by Texas, February 18, 1870; New Jersey, February 15, 1871 (after having rejected it on February 7, 1870); Delaware, February 12, 1901 (after having rejected it on March 18, 1869); Oregon, February 24, 1959; California, April 3, 1962 (after having rejected it on January 28, 1870).

ARTICLE XVI

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

The 16th amendment to the Constitution was proposed by the Congress on July 12, 1909. It was declared, in a proclamation of the Secretary of State, dated February 25, 1913, to have been ratified by 36 of the 48 States. The dates of ratification were: Alabama, August 10, 1909; Kentucky, February 8, 1910; South Carolina, February 19, 1910; Illinois, March 1, 1910; Mississippi, March 7, 1910; Oklahoma, March 10, 1910; Maryland, April 8, 1910; Georgia, August 3, 1910; Texas, August 16, 1910; Ohio, January 19, 1911; Idaho, January 20, 1911; Oregon, January 23, 1911; Washington, January 26, 1911; Montana, January 30, 1911; Indiana, January 30, 1911; California, January 31, 1911; Nevada, January 31, 1911; South Dakota, February 3, 1911; Nebraska, February 9, 1911; North Carolina, February 11, 1911; Colorado, February 15, 1911; North Dakota, February 17, 1911; Kansas, February 18, 1911; Michigan, February 23, 1911; Iowa, February 24, 1911; Missouri, March 16, 1911; Maine, March 31, 1911; Tennessee, April 7, 1911; Arkansas, April 22, 1911 (after having rejected it earlier); Wisconsin, May 26, 1911; New York, July 12, 1911; Arizona, April 6, 1912; Louisiana, June 28, 1912; Minnesota, July 11, 1912; West Virginia, January 31, 1913; New Mexico, February 3, 1913.

Ratification was completed on February 3, 1913.

The amendment was subsequently ratified by Massachusetts, March 4, 1913; New Hampshire, March 7, 1913 (after having rejected it on March 2, 1911).

The amendment was rejected by Connecticut, Rhode Island, and Utah.

ARTICLE [XVII]

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided,* That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

The 17th amendment to the Constitution was proposed by the Congress on May 13, 1912. It was declared, in a proclamation by the Secretary of State, dated May 31, 1913, to have been ratified by the legislatures of 36 of the 48 States. The dates of ratification were: Massachusetts, May 22, 1912; Arizona, June 3, 1912; Minnesota, June 10, 1912; New York, January 15, 1913; Kansas, January 17, 1913; Oregon, January 23, 1913; North Carolina, January 25, 1913; California, January 28, 1913; Michigan, January 28, 1913; Iowa, January 30, 1913; Montana, January 30, 1913; Idaho, January 31, 1913; West Virginia, February 4, 1913; Colorado, February 5, 1913; Nevada, February 6, 1913; Texas, February 7, 1913; Washington, February 7, 1913; Wyoming, February 8, 1913; Arkansas, February 11, 1913; Maine, February 11, 1913; Illinois, February 13, 1913; North Dakota, February 14, 1913; Wisconsin, February 18, 1913; Indiana, February 19, 1913; New Hampshire, February 19, 1913; Vermont, February 19, 1913; South Dakota, February 19, 1913; Oklahoma, February 24, 1913; Ohio, February 25, 1913; Missouri, March 7, 1913; New Mexico, March 13, 1913; Nebraska, March 14, 1913; New Jersey, March 17, 1913; Tennessee, April 1, 1913; Pennsylvania, April 2, 1913; Connecticut, April 8, 1913.

Ratification was completed on April 8, 1913.

The amendment was subsequently ratified by Louisiana, June 11, 1914.

The amendment was rejected by Utah on February 26, 1913, and by Delaware on March 18, 1913.

[ARTICLE [XVIII]

[SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

[SECTION 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

[SECTION 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.]*

The 18th amendment to the Constitution was proposed by the Congress on December 18, 1917. It was declared, in a proclamation by the Acting Secretary of State, dated January 29, 1919, to have been ratified by the legislatures of 36 of the 48 States. The dates of ratification were: Mississippi, January 8, 1918; Virginia, January 11, 1918; Kentucky, January 14, 1918; North Dakota, January 25, 1918; South Carolina, January 29, 1918; Maryland, February 13, 1918; Montana, February 19, 1918; Texas, March 4, 1918; Delaware, March 18, 1918; South Dakota, March 20, 1918; Massachusetts, April 2, 1918; Arizona, May 24, 1918; Georgia, June 26, 1918; Louisiana, August 3, 1918; Florida, December 3, 1918; Michigan, January 2, 1919; Ohio, January 7, 1919; Oklahoma, January 7, 1919; Idaho, January 8, 1919; Maine, January 8, 1919; West Virginia, January 9, 1919; California, January 13, 1919; Tennessee, January 13, 1919; Washington, January 13, 1919; Arkansas, January 14, 1919; Kansas, January 14, 1919; Alabama, January 15, 1919; Colorado, January 15, 1919; Iowa, January 15, 1919; New Hampshire, January 15, 1919; Oregon, January 15, 1919; Nebraska, January 16, 1919; North Carolina, January 16, 1919; Utah, January 16, 1919; Missouri, January 16, 1919; Wyoming, January 16, 1919.

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*Repealed by section 1 of the twenty-first amendment.

Ratification was completed on January 16, 1919.

The amendment was subsequently ratified by Minnesota on January 17, 1917; New Mexico, January 20, 1919; Nevada, January 21, 1919; New York, January 29, 1919; Vermont, January 29, 1919; Pennsylvania, February 25, 1919; Connecticut, May 6, 1919; and New Jersey, March 9, 1922.

The amendment was rejected by Rhode Island.

ARTICLE [XIX]

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

The 19th amendment to the Constitution was proposed by the Congress on June 4, 1919. It was declared, in a certificate by the Secretary of State, dated August 26, 1920, to have been ratified by the legislatures of 36 of the 48 States. The dates of ratification were: Illinois, June 10, 1919 (and that State readopted its resolution of ratification June 17, 1919); Michigan, June 10, 1919; Wisconsin, June 10, 1919; Kansas, June 16, 1919; New York, June 16, 1919; Ohio, June 16, 1919; Pennsylvania, June 24, 1919; Massachusetts, June 25, 1919; Texas, June 28, 1919; Iowa, July 2, 1919; Missouri, July 3, 1919; Arkansas, July 28, 1919; Montana, August 2, 1919; Nebraska, August 2, 1919; Minnesota, September 8, 1919; New Hampshire, September 10, 1919; Utah, October 2, 1919; California, November 1, 1919; Maine, November 5, 1919; North Dakota, December 1, 1919; South Dakota, December 4, 1919; Colorado, December 15, 1919; Kentucky, January 6, 1920; Rhode Island, January 6, 1920; Oregon, January 13, 1920; Indiana, January 16, 1920; Wyoming, January 27, 1920; Nevada, February 7, 1920; New Jersey, February 9, 1920; Idaho, February 11, 1920; Arizona, February 12, 1920; New Mexico, February 21, 1920; Oklahoma, February 28, 1920; West Virginia, March 10, 1920; Washington, March 22, 1920; Tennessee, August 28, 1920.

Ratification was completed on August 20, 1920.

The amendment was subsequently ratified by Connecticut on September 14, 1920 (and that State reaffirmed on September 21, 1920); Vermont, February 8, 1921; Maryland, March 29, 1941 (after having rejected it on February 24, 1920; ratification certified on February 25, 1958); Alabama, September 8, 1953 (after that State had rejected it on September 22, 1919).

The amendment was rejected by Georgia on July 25, 1919; South Carolina, January 28, 1920; Virginia, February 12, 1920; Mississippi, March 29, 1920; Delaware, June 2, 1920; Louisiana, July 1, 1920.

ARTICLE [XX]

SECTION 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

SECTION 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

SECTION 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

SECTION 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

SECTION 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

SECTION 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

The 20th amendment to the Constitution was proposed by the Congress on March 2, 1932. It was declared, in a certificate by the Secretary of State, dated February 6, 1933, to have been ratified by the legislatures of 36 of the 48 States. The dates of ratification were: Virginia, March 4, 1932; New York, March 11, 1932; Mississippi, March 16, 1932; Arkansas, March 17, 1932; Kentucky, March 17, 1932; New Jersey, March 21, 1932; South Carolina, March 25, 1932; Michigan, March 31, 1932; Maine, April 1, 1932; Rhode Island, April 14, 1932; Illinois, April 21, 1932; Louisiana, June 22, 1932; West Virginia, July 30, 1932; Pennsylvania, August 11, 1932; Indiana, August 15, 1932; Texas, September 7, 1932; Alabama, September 13, 1932; California, January 4, 1933; North Carolina, January 5, 1933; North Dakota, January 9, 1933; Minnesota, January 12, 1933; Arizona, January 13, 1933; Montana, January 13, 1933; Nebraska, January 13, 1933; Oklahoma, January 13, 1933; Kansas, January 16, 1933; Oregon, January 16, 1933; Delaware, January 19, 1933; Washington, January 19, 1933; Wyoming, January 19, 1933; Iowa, January 20, 1933; South Dakota, January 20, 1933; Tennessee, January 20, 1933; Idaho, January 21, 1933; New Mexico, January 21, 1933; Georgia, January 23, 1933; Missouri, January 23, 1933; Ohio, January 23, 1933; Utah, January 23, 1933.

Ratification was completed on January 23, 1933.

The amendment was subsequently ratified by Massachusetts on January 24, 1933; Wisconsin, January 24, 1933; Colorado, January 24, 1933; Nevada, January 26, 1933; Connecticut, January 27, 1933; New Hampshire, January 31, 1933; Vermont, February 2, 1933; Maryland, March 24, 1933; Florida, April 26, 1933.

ARTICLE [XXI]

SECTION 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

SECTION 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

SECTION 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

The 21st amendment to the Constitution was proposed by the Congress on February 20, 1933. It was declared, in a certificate of the Acting Secretary of State, dated December 5, 1933, to have been ratified by conventions in 36 of the 48 States. The dates of ratification were: Michigan, April 10, 1933; Wisconsin, April 25, 1933; Rhode Island, May 8, 1933; Wyoming, May 25, 1933; New Jersey, June 1, 1933; Delaware, June 24, 1933; Indiana, June 26, 1933; Massachusetts, June 26, 1933; New York, June 27, 1933; Illinois, July 10, 1933; Iowa, July 10, 1933; Connecticut, July 11, 1933; New Hampshire, July 11, 1933; California, July 24, 1933; West Virginia, July 25, 1933; Arkansas, August 1, 1933; Oregon, August 7, 1933; Alabama, August 8, 1933; Tennessee, August 11, 1933; Missouri, August 29, 1933; Arizona, September 5, 1933; Nevada, September 5, 1933; Vermont, September 23, 1933; Colorado, September 26, 1933; Washington, October 3, 1933; Minnesota, October 10, 1933; Idaho, October 17, 1933; Maryland, October 18, 1933; Virginia, October 25, 1933; New Mexico, November 2, 1933; Florida, November 14, 1933; Texas, November 24, 1933; Kentucky, November 27, 1933; Ohio, December 5, 1933; Pennsylvania, December 5, 1933; Utah, December 5, 1933.

Ratification was completed on December 5, 1933.

The amendment was subsequently ratified by Maine, on December 6, 1933, and by Montana, on August 6, 1934.

The amendment was rejected by South Carolina, on December 4, 1933.

ARTICLE [XXII]

SECTION 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President, shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

SECTION 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

The 22d amendment to the Constitution was proposed by the Congress on March 21, 1947. It was declared, in a certificate by the Administrator of General Services, dated March 3, 1951, to have been ratified by the legislatures of 36 of the 48 States. The dates of ratification were: Maine, March 31, 1947; Michigan, March 31, 1947; Iowa, April 1, 1947; Kansas, April 1, 1947; New Hampshire, April 1, 1947; Delaware, April 2, 1947; Illinois, April 3, 1947; Oregon, April 3, 1947; Colorado, April 12, 1947; California, April 15, 1947; New Jersey, April 15, 1947; Vermont, April 15, 1947; Ohio, April 16, 1947; Wisconsin, April 16, 1947; Pennsylvania, April 29, 1947; Connecticut, May 21, 1947; Missouri, May 22, 1947; Nebraska, May 23, 1947; Virginia, January 28, 1948; Mississippi, February 12, 1948; New York, March 9, 1948; South Dakota, January 21, 1949; North Dakota, February 25, 1949; Louisiana, May 17, 1950; Montana, January 25, 1951; Indiana, January 29, 1951; Idaho, January 30, 1951; New Mexico, February 12, 1951; Wyoming, February 12, 1951; Arkansas, February 15, 1951; Georgia, February 17, 1951; Tennessee, February 20, 1951; Texas, February 22, 1951; Nevada, February 26, 1951; Utah, February 26, 1951; Minnesota, February 27, 1951.

Ratification was completed on February 27, 1951.

The amendment was subsequently ratified by North Carolina on February 28, 1951; South Carolina, March 13, 1951; Maryland, March 14, 1951; Florida, April 16, 1951; Alabama, May 4, 1951.

The amendment was rejected by Oklahoma in June 1947, and Massachusetts on June 9, 1949.

ARTICLE [XXIII]

SECTION 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

The 23d amendment to the Constitution was proposed by the Congress on June 17, 1960. It was declared, in a certificate by the Administrator of General Services, to have been ratified by 38 of the 50 States. The dates of ratification were: Hawaii, June 23, 1960 (and that State made a technical correction to its resolution on June 30, 1960); Massachusetts, August 22, 1960; New Jersey, December 19, 1960; New York, January 17, 1961; California, January 19, 1961; Oregon, January 27, 1961; Maryland, January 30, 1961; Idaho, January 31, 1961; Maine, January 31, 1961; Minnesota, January 31, 1961; New Mexico, February 1, 1961; Nevada, February 2, 1961; Montana, February 6, 1961; South Dakota, February 6, 1961; Colorado, February 8, 1961; Washington, February 9, 1961; West Virginia, February 9, 1961; Alaska, February 10, 1961; Wyoming, February 13, 1961; Delaware, February 20, 1961; Utah, February 21, 1961; Wisconsin, February 21, 1961; Pennsylvania, February 28, 1961; Indiana, March 3, 1961; North Dakota, March 3, 1961; Tennessee, March 6, 1961; Michigan, March 8, 1961; Connecticut, March 9, 1961; Arizona, March 10, 1961; Illinois, March 14, 1961; Nebraska, March 15, 1961; Vermont, March 15, 1961; Iowa, March 16, 1961; Missouri, March 20, 1961; Oklahoma, March 21, 1961; Rhode Island, March 22, 1961; Kansas, March 29, 1961; Ohio, March 29, 1961.

Ratification was completed on March 29, 1961.

The amendment was subsequently ratified by New Hampshire on March 30, 1961 (when that State annulled and then repeated its ratification of March 29, 1961).

The amendment was rejected by Arkansas on January 24, 1961.

ARTICLE [XXIV]

SECTION 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

The 24th amendment to the Constitution was proposed by the Congress on August 27, 1962. It was declared in a certificate of the Administrator of General Services, dated February 4, 1964, ratified by the legislatures of 38 of the 50 States. The dates of ratification were: Illinois, November 14, 1962; New Jersey, December 3, 1962; Oregon, January 25, 1963; Montana, January 28, 1963; West Virginia, February 1, 1963; New York, February 4, 1963; Maryland, February 6, 1963; California, February 7, 1963;

Alaska, February 11, 1963; Rhode Island, February 14, 1963; Indiana, February 19, 1963; Utah, February 20, 1963; Michigan, February 20, 1963; Colorado, February 21, 1963; Ohio, February 27, 1963; Minnesota, February 27, 1963; New Mexico, March 5, 1963; Hawaii, March 6, 1963; North Dakota, March 7, 1963; Idaho, March 8, 1963; Washington, March 14, 1963; Vermont, March 15, 1963; Nevada, March 19, 1963; Connecticut, March 20, 1963; Tennessee, March 21, 1963; Pennsylvania, March 25, 1963; Wisconsin, March 26, 1963; Kansas, March 28, 1963; Massachusetts, March 28, 1963; Nebraska, April 4, 1963; Florida, April 18, 1963; Iowa, April 24, 1963; Delaware, May 1, 1963; Missouri, May 13, 1963; New Hampshire, June 12, 1963; Kentucky, June 27, 1963; Maine, January 16, 1964; South Dakota, January 23, 1964.

Ratification was completed on January 23, 1964.

The amendment was rejected by Mississippi on December 20, 1962.

[EDITORIAL NOTE.—There is some conflict as to the exact dates of ratification of the amendments by the several States. In some cases, the resolutions of ratification were signed by the officers of the legislatures on dates subsequent to that on which the second house had acted. In other cases, the Governors of several of the States "approved" the resolutions (on a subsequent date), although action by the Governor is not contemplated by article V, which requires ratification by the legislatures (or conventions) only. In a number of cases, the journals of the State legislatures are not available. The dates set out in this document are based upon the best information available.]

PROPOSED AMENDMENT

[SUCCESSION TO PRESIDENCY AND VICE PRESIDENCY; INABILITY OF PRESIDENT]

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"ARTICLE —

"SECTION 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

"SEC. 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

"SEC. 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

"SEC. 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

"Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling withing forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office."

HISTORICAL NOTE

Proposed by the Eighty-ninth Congress. Passed Senate Feb. 19, 1965. Passed House, amended, Apr. 13, 1965; House agreed to Conference Report June 30, 1965; Senate agreed to Conference Report July 6, 1965; received by the Office of the Federal Register, NARS, General Services Administration, July 7, 1965.

RATIFICATION

As of January 9, 1967, the proposed amendment has been ratified by the following States:

Alaska	Kentucky	New Jersey
Arizona	Louisiana	New York
Arkansas	Maine	Oklahoma
California	Maryland	Pennsylvania
Colorado	Massachusetts	Rhode Island
Delaware	Michigan	Utah
Hawaii	Mississippi	Vermont
Idaho	Missouri	Virginia
Indiana	Nebraska	Wisconsin
Kansas	New Hampshire	West Virginia

DISTRICT OF COLUMBIA CODE

1967 Edition

THE CODE OF THE DISTRICT OF COLUMBIA

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GOVERNMENT OF DISTRICT

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Chapter 1.—CREATION OF DISTRICT—GENERAL PROVISIONS

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§ 1–101. Territorial area of District of Columbia.

The District of Columbia is that portion of the territory of the United States ceded by the state of Maryland for the permanent seat of government of the United States, including the river Potomac in its course through the District, and the islands therein. (R. S., D. C., § 1.)

PRESENT ORGANIC ACT, § 1

"All the territory which was ceded by the State of Maryland to the Congress of the United States for the permanent seat of the government of the United States shall continue to be designated as the District of Columbia. Said District and the property and persons that may be therein shall be subject to the following provisions for the government of the same, and also to any existing laws applicable thereto not hereby repealed or inconsistent with the provisions of this act. The District of Columbia shall remain and continue a municipal corporation, as provided in section two of the Revised Statutes [§ 1–102] relating to said District, and the Commissioners herein provided for shall be deemed and taken as officers of such corporation; and all laws now in force relating to the District of Columbia not inconsistent with the provisions of this act shall remain in full force and effect." (June 11, 1878, 20 Stat. 102, ch. 180, § 1.)

RETROCESSION TO THE STATE OF VIRGINIA OF SOVEREIGNTY OVER A TRACT OF LAND LOCATED AT BATTERY COVE, NEAR ALEXANDRIA, VIRGINIA

All that part of the territory of the District of Columbia situated on the Virginia side of the Potomac River at Alexandria, Virginia, lying and being between a line drawn from Jones Point, at low-water mark, to Point Lumley, now Pioneer Mills, at low-water mark, and high-water mark on the Virginia shore of the Potomac River at Alexandria, containing an area of forty-six and fifty-seven one-hundredths acres of made land, more or less, be, and the same is hereby, ceded to and declared to be within the territorial boundaries, jurisdiction, and sovereignty of the State of Virginia: *Provided, however,* That this Act shall not be construed to waive or relinquish the title of the United States to the fee of the forty-six and fifty-seven one-hundredths acres of made land in Battery Cove nor as relinquishing or in any manner affecting the power of Congress to exercise exclusive legislation over the said area so long as the same remains in the ownership and possession of the United States: *And provided further,* That this Act shall not be construed to affect, impair, surrender, waive, or defeat any claim, right, or remedy, either at law or in equity, of the United States against the Virginia Shipbuilding Corporation for or on account of any debt or obligation of said company to the United States or that hereafter may be ascertained to be due by said company to the United States, by any court of competent jurisdiction of the parties and of the subject matter in any suit now pending or that may hereafter be instituted by the United States against the Virginia Shipbuilding Corporation. (Feb. 23, 1927, 44 Stat. 1176, ch. 171.)

BOUNDARY LINE BETWEEN THE DISTRICT OF COLUMBIA AND THE COMMONWEALTH OF VIRGINIA

Act Oct. 31, 1945, ch. 443, titles I and II, §§ 101–108, 201, 59 Stat. 552, 554, provided:

"SEC. 101. The boundary line between the District of Columbia and the Commonwealth of Virginia is hereby established as follows:

"Said boundary line shall begin at a point where the northwest boundary of the District of Columbia inter-

cepts [1] the high-water mark on the Virginia shore of the Potomac River and following the present mean high-water mark; thence in a southeasterly direction along the Virginia shore of the Potomac River to Little River, along the Virginia shore of Little River to Boundary Channel, along the Virginia side of Boundary Channel to the main body of the Potomac River, along the Virginia side of the Potomac River across the mouths of all tributaries affected by the tides of the river to Second Street, Alexandria, Virginia, from Second Street to the present established pierhead line, and following said pierhead line to its connection with the District of Columbia-Maryland boundary line; that whenever said mean high-water mark on the Virginia shore is altered by artificial fills and excavations made by the United States, or by alluvion or erosion, then the boundary shall follow the new mean high-water mark on the Virginia shore as altered, or whenever the location of the pierhead line along the Alexandria water front is altered, then the boundary shall follow the new location of the pierhead line.

"SEC. 102. All that part of the territory situated on the Virginia side of the Potomac River lying between the boundary line as described in section 101 and the mean high-water mark as it existed January 24, 1791, is hereby ceded to and declared to be henceforth within the territorial boundaries, jurisdiction, and sovereignty of the State of Virginia: *Provided, however,* That concurrent jurisdiction over the said area is hereby reserved to the United States.

"SEC. 103. Nothing in this Act shall be construed as relinquishing any right, title, or interest of the United States to the lands lying between the mean high-water mark as it existed January 24, 1791, and the boundary line as described in section 101; or to limit the right of the United States to establish its title to any of said lands as provided by Act of Congress of April 27, 1912 (37 Stat. 93); or the jurisdiction of the courts of the United States for the District of Columbia to hear and determine suits to establish the title of the United States in all lands in the bed, marshes, and lowlands of the Potomac River, and other lands as described by said Act below the mean high-water mark of January 24, 1791; or to limit the authority to make equitable adjustments of conflicting claims as provided for in the Act approved June 4, 1934 (48 Stat. 836).

"SEC. 104. The 'present' mean high-water mark shall be construed as the mean high-water mark existing on the effective date of this Act.

"SEC. 105. The United States Coast and Geodetic Survey is hereby authorized, empowered, and instructed to survey and properly mark by suitable monuments the said boundary line as described in section 101, and from time to time to monument such sections of said boundary line as may be changed as provided for in section 101; and the necessary appropriations for this work are hereby authorized.

"SEC. 106. The provisions of sections 272 to 289, inclusive, of the Criminal Code (U. S. C., title 18, secs. 451–468) shall be applicable to such portions of the George Washington Memorial Parkway and of the Washington National Airport as are situated within the Commonwealth of Virginia. Any United States commissioner specially designated for that purpose by the District Court of the United States for the Eastern District of Virginia shall have jurisdiction to try and, if found guilty, to sentence persons charged with petty offenses against the laws of the United States committed on the above-described portions of the said parkway or airport. The probation laws shall be applicable to persons so tried. For the purposes of this section, the term 'petty offense' shall be defined as in section 335 of the Criminal Code (U. S. C., title 18, sec. 541). If any person charged with any petty offense as aforesaid shall so elect, however, he shall be tried in the said district court.

"SEC. 107. The State [2] of Virginia hereby consents that exclusive jurisdiction in the Washington National Airport (as described in sec. 1 (b) of the Act of June 29, 1940 (54 Stat. 686)), title to which is now in the United States, shall be in the United States. The conditions upon which this consent is given are the following and none others:

(1) There is hereby reserved in the Commonwealth of Virginia the jurisdiction and power to levy a tax on the sale of oil, gasoline, and all other motor fuels and lubricants sold on the Washington National Airport for use in over-the-road vehicles such as trucks, busses, and automobiles, except sales to the United States: *Provided,* That the Commonwealth of Virginia shall have no jurisdiction or power to levy a tax on the sale or use of oil, gasoline, or other motor fuels and lubricants for other purposes; (2) there is hereby expressly reserved in the Commonwealth of Virginia the jurisdiction and power to serve criminal and civil process on the Washington National Airport; and (3) there is hereby reserved in the Commonwealth of Virginia the jurisdiction and power to regulate the manufacture, sale, and use of alcoholic beverages on the Washington National Airport (as described in sec. 1 (b) of the Act of June 29, 1940 (54 Stat. 686)).

"Subject to the limitation on the consent of the State [2] of Virginia as expressed herein exclusive jurisdiction in the Washington National Airport shall be in the United States and the same is hereby accepted by the United States.

"This Act shall have no retroactive effect except that taxes and contributions in connection with operations, sales and property on and income derived at the Washington National Airport heretofore paid either to the Commonwealth of Virginia or the District of Columbia are hereby declared to have been paid to the proper jurisdictions and the Commonwealth of Virginia and the District of Columbia each hereby waives any claim for any such taxes or contributions heretofore assessed or assessable to the extent of any such payments to either jurisdiction.

"Any provision of law of the United States or the Commonwealth of Virginia which is to any extent in conflict with this Act is to the extent of such conflict hereby expressly repealed.

"SEC. 108. This title shall not become effective unless and until the State [2] of Virginia shall accept the provisions thereof.

"TITLE II—MISCELLANEOUS

"SEC. 201. Nothing in this Act shall be construed (a) to prevent the acceptance by the United States pursuant to the provisions of section 355 of the Revised Statutes, as amended (40 U. S. C., sec. 255), of such jurisdiction as may be granted by the State [2] of Virginia over any lands to which the United States now has, or may hereafter have, title within the boundaries of the State as established by this Act; or (b) to affect any jurisdiction heretofore obtained by the United States from the State [2] of Virginia over lands adjoining or adjacent to those herein ceded; and all jurisdiction whether partial, concurrent, or exclusive, which Virginia has ceded and which the United States has accepted over any part or parts of the ceded total is hereby expressly retained."

Section 202 of said act Oct. 31, 1945, amended section 111 of the Judicial Code [now covered by 28 U. S. C. § 127] which provided for the division of the State [2] of Virginia into two judicial districts to be known as the eastern and western districts of Virginia.

CROSS REFERENCES

District of Columbia constituted a police district, see § 4–101.

Fire department embraces whole District, see § 4–401.

NOTES TO DECISIONS

Boundaries

The boundary between the District and Virginia is, at least, the low-water mark of the Potomac River on the Virginia shore. *Marine R. & Coal Co.* v. *United States* (1921, 42 S. Ct. 32, 257 U.S. 47, 66 L. Ed. 124).

"The entire part of the Potomac River between the District and Virginia shores is a part of the District of Columbia, and as such is subject to all local legislation and police regulations, unless the intent appears to exclude it therefrom." *Jefferson* v. *District of Columbia* (1913, 40 App. D.C. 381). See, also, *District of Columbia* v. *Tyrrell* (1914, 41 App. D.C. 463); *Herald* v. *United States* (1923, 284 F. 927, 52 App. D.C. 147); *Croson* v. *District of Columbia* (1925, 2 F. 2d 924, 55 App. D.C. 122).

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[1] So in original. Probably should read "intersects."

[2] So in original. Probably should read "Commonwealth."

Historical

By the Act of Congress of 1801, assuming the government of the District of Columbia, in virtue of the cession from Maryland and Virginia, the laws of these States, and, of course, the proceedings in their courts as parts of these laws were expressly recognized within such portions of the District, respectively. as originally were within the limits of the ceding States. *United States* v. *Eliason* (1842, 41 U. S. 291, 16 Pet. 291, 10 L. Ed. 968).

The District of Columbia was considered as exercising the same general jurisdiction in both counties of Washington and Alexandria; but the rights of its citizens were not governed by the same laws. *Rhodes* v. *Bell* (1844, 43 U.S. 397, 2 How. 397, 11 L. Ed. 314).

When the Government of the United States took possession of the District in 1800, it was divided by Congress into two counties, that of Alexandria on the west side of the Potomac, and that of Washington on the east side; and the laws of Virginia governed the former and the laws of Maryland the latter. A circuit court was established with general jurisdiction, civil and criminal, to hold sessions alternately in each county; but the corporate rights of Alexandria and Georgetown were expressly left unimpaired, except as related to judicial powers. *Metropolitan R. Co.* v. *District of Columbia* (1889, 10 S. Ct. 19, 132 U.S. 1, 33 L. Ed. 231).

The county of Washington embraced all that portion of the original District of Columbia acquired from the State of Maryland and lying north of the Potomac River, a fact of which a court will take judicial knowledge. *Green* v. *McIntire* (1914, 42 App. D.C. 250).

§ 1–102. District created body corporate for municipal purposes.

The District is created a government by the name of the "District of Columbia," by which name it is constituted a body-corporate for municipal purposes, and may contract and be contracted with, sue and be sued, plead and be impleaded, have a seal, and exercise all other powers of a municipal corporation not inconsistent with the Constitution and laws of the United States and the provisions of this Code. (R.S., D.C., § 2; June 11, 1878, 20 Stat. 102, ch. 180, § 1.)

PRESENT ORGANIC ACT, § 2

"Within twenty days after the approval of this act the President of the United States, by and with the advice and consent of the Senate, is hereby authorized to appoint two persons, who, with an officer of the Corps of Engineers of the United State Army, whose lineal rank shall be above that of captain, shall be Commissioners of the District of Columbia, and who, from and after July first, eighteen hundred and seventy-eight, shall exercise all the powers and authority now vested in the Commissioners of said District, except as are hereinafter limited or provided, and shall be subject to all restrictions and limitations and duties which are now imposed upon said Commissioners. The Commissioner who shall be an officer detailed, from time to time, from the Corps of Engineers, by the President, for this duty, shall not be required to perform any other, nor shall he receive any other compensation than his regular pay and allowances as an officer of the Army. The two persons appointed from civil life shall, at the time of their appointment, be citizens of the United States, and shall have been actual residents of the District of Columbia for three years next before their appointment, and have, during that period, claimed residence nowhere else, and one of said three Commissioners shall be chosen president of the Board of Commissioners at their first meeting, and annually and whenever a vacancy shall occur, thereafter; and said Commissioners shall each of them, before entering upon the discharge of his duties, take an oath or affirmation to support the Constitution of the United States, and to faithfully discharge the duties imposed upon him by law; and said Commissioners appointed from civil life, shall each receive for his services a compensation at the rate of five thousand dollars per annum. The official term of said Commissioners appointed from civil life shall be three years, and until their successors are appointed and qualified; but the first appointment shall be one Commissioner for one year and one for two years, and at the expiration of their respective terms their successors shall be appointed for three years. Neither of said Commissioners, nor any officer whatsoever of the District of Columbia, shall be accepted as surety upon any bond required to be given to the District of Columbia; nor shall any contractor be accepted as surety for any officer or other contractor in said District.

"The said Commissioners are hereby authorized and empowered to determine which officers and employees of the District of Columbia, or which positions occupied or to be occupied by such officers and employees, shall hereafter be bonded for the faithful discharge of the duties of such officers and employees or of such positions, and to fix the penalty or penalties of any such bond: *Provided;* That this power of the Commissioners shall not apply to officers and employees who receive, disburse, account for, or otherwise are responsible for the handling of money, and whose bonds are now fixed by law. The provisions of the act of Congress entitled 'An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year nineteen hundred and nine, and for other purposes,' approved August 5, 1909 (36 Stat. 118, 125 [U.S.C., title 6, § 14]), relating to rates of premiums for bonds for officers and employees of the United States shall be, and are hereby, made applicable to the rates of premiums for bonds of officers and employees of the government of the District of Columbia." (June 11, 1878, ch. 180, § 2, 20 Stat. 102; June 28, 1935, ch. 332, § 1, 49 Stat. 430; July 7, 1955, ch. 280, § 1, 69 Stat. 281.)

NOTES TO DECISIONS

District a municipal corporation

District of Columbia is a municipal corporation. *I. Randolph* v. *District of Columbia* (D.C. Mun. App. 1959, 156 A. 2d 686).

Effect of "commerce clause"

While the case does not hold that the District of Columbia is a "State" within the meaning of the commerce clause, the dissenting opinion is on the ground that commerce between a citizen of Maryland and citizens of the District is not commerce "among the several States," the majority opinion having held the commerce clause applicable. *Stoutenburgh* v. *Hennick* (1889, 9 S. Ct. 256, 129 U.S. 141, 32 L. Ed. 637).

The commerce clause operates as a limitation solely upon the States; it constitutes no bar to the action of Congress in any event so far as the District of Columbia is concerned. *Neild* v. *District of Columbia* (1940, 110 F. 2d 246, 71 App. D.C. 306) stating that "if the dictum to the contrary in *Potomac Electric Power Co.* v. *Hazen* (1937, 67 App. D.C. 161, 90 F. 2d 406, certiorari denied 58 S. Ct 11, 302 U.S. 692, 82 L. Ed. 535), was intended to apply to the District of Columbia, we decline to follow it."

Legislative jurisdiction

The District possesses no sovereign or legislative power. *United States ex rel. Daly* v. *Macfarland* (1907, 28 App. D.C 552). See, also, *Croson* v. *District of Columbia* (1925, 2 F. 2d 924, 55 App. D.C. 122).

Congress possesses full and unlimited jurisdiction to provide for the general welfare of citizens within the District of Columbia by any and every act of legislation which it may deem conducive to that end. *Neild* v. *District of Columbia* (1940, 110 F. 2d 246, 71 App. D. C. 306).

Within the District of Columbia there is no division of legislative powers such as exists between the State and Federal Governments. *Id.*

Congress by keeping in force for 70 years this section creating the District of Columbia as a body corporate for municipal purposes and authorizing it to contract and to be contracted with and to sue and "be sued" and by re-enacting it after District of Columbia courts repeatedly decided that the act does not subject the District of Columbia to garnishment, has in effect ratified the decisions, as against contention that authority to "be sued" as used therein includes garnishment for the collection of a private judgment. *Chewning* v. *District of Columbia,* 1941 (1941, 119 F. 2d 459, 73 App. D.C. 392, certiorari denied 62 S. Ct. 74, 314 U.S. 639, 86 L. Ed. 513, rehearing denied 62 S. Ct. 175, 314 U.S. 710, 86 L. Ed. 566).

Parties

Where one who had been wrongfully compelled to pay water bill of another brought action to recover back the sum paid against commissioners, water registrar and collector of taxes, individually and officially, without naming District of Columbia as a party defendant, no judgment could be entered against the District. *Farrell* v. *Ward* (D. C. Mun. App. 1947, 53 A. 2d 46).

Although there is express authority under this section for suing District of Columbia in its own name, a money judgment against District is not authorized in an action to which it is not a party. *Id.*

Power to sue and be sued

District of Columbia is a municipal corporation, having a right to sue and be sued, and subject to the ordinary rules that govern the law of procedure between private persons. *Metropolitan R. Co.* v. *District of Columbia* (1889, 10 S. Ct. 19, 132 U.S. 1, 33 L. Ed. 231).

Proprietary function

Operation of public market by District of Columbia is a proprietary function and District is liable for injuries to a customer at a public market, under the law relating to its proprietary obligation as the owner and operator of property used for business purposes to one invited there as a customer, and the mere fact that the market is operated pursuant to a specific mandate of Congress does not change that principle. *District of Columbia* v. *Walter C. Green* (1955, 223 F. 2d 312, 96 U.S. App. D.C. 20).

Public works

District of Columbia is a municipal corporation and is responsible for the negligence of its officers having the care of streets, avenues, and sidewalks, as resulted in personal injuries to individuals. *District of Columbia* v. *Woodbury* (1890, 10 S. Ct. 990, 136 U.S. 450, 34 L. Ed. 472).

Under this section, the powers of the Board of Public Works has been vested in the Commissioners of the District of Columbia. *Bauman* v. *Ross* (1897, 17 S. Ct. 966, 167 U.S. 548, 42 L. Ed. 270).

The District of Columbia was not liable for damage to abutting realty resulting from widening and changing the natural grade of a street, in absence of negligence in manner in which such work was done. *Bealle* v. *District of Columbia* (D.C.D.C. 1948, 80 F. Supp. 75).

Qualifications

The civil persons appointed should be citizens of the United States and actual residents of the District of Columbia for 3 years next before their appointment. *Newman* v. *United States ex rel. Frizzell* (1915, 35 S. Ct. 881, 238 U.S. 537, 59 L. Ed. 1446).

Waiver of immunity

District of Columbia did not waive its defense of immunity from suit arising out of collision between private vehicle and Police Department patrol wagon by filing suit against driver of such vehicle. *Edwin M. Adams* v. *District of Columbia* (D. C. Mun. App. 1956, 122 A. 2d 765).

§ 1–103. Commissioners made officers of corporation.

The Commissioners herein provided for shall be deemed and taken as officers of such corporation. (June 11, 1878, 20 Stat. 102, ch. 180, § 1.)

PRESENT ORGANIC ACT, § 3

"As soon as the Commissioners appointed and detailed as aforesaid shall have taken and subscribed the oath or affirmation hereinbefore required, all the powers, rights, duties, and privileges lawfully exercised by, and all property, estate, and effects now vested by law in the Commissioners appointed under the provisions of the act of Congress approved June twentieth, eighteen hundred and seventy-four, shall be transferred to and vested in and imposed upon said Commissioners; and the functions of the Commissioners so appointed under the act of June twentieth, eighteen hundred and seventy-four, shall cease and determine. And the Commissioners of the District of Columbia shall have power, subject to the limitations and provisions herein contained, to apply the taxes or other revenues of said District to the payment of the current expenses thereof, to the support of the public schools, the fire department, and the police, and for that purpose shall take possession and supervision of all the offices, books, papers, records, moneys, credits, securities, assets, and accounts belonging or appertaining to the business or interests of the government of the District of Columbia, and exercise the duties, powers, and authority aforesaid; but said Commissioners, in the exercise of such duties, powers, and authority, shall make no contract, nor incur any obligation other than such contracts and obligations as are hereinafter provided for and shall be approved by Congress. The Commissioners shall have power to locate the places where hacks shall stand and change them as often as the public interests require. Any person violating any orders lawfully made in pursuance of this power shall be subject to a fine of not less than ten nor more than one hundred dollars, to be recovered before any justice of the peace in an action in the name of the Commissioners. All taxes heretofore lawfully assessed and due, or to become due, shall be collected pursuant to law, except as herein otherwise provided; but said Commissioners shall have no power to anticipate taxes by a sale or hypothecation of any such taxes or evidences thereof, but they may borrow, for the first fiscal year after this act takes effect, in anticipation of collection of revenues, not to exceed two hundred thousand dollars, at a rate of interest not exceeding five per centum per annum, which shall be repaid out of the revenues of that year. And said Commissioners are hereby authorized to abolish any office, to consolidate two or more offices, reduce the number of employees, remove from office, and make appointments to any office under them authorized by law; said Commissioners shall have power to erect light, and maintain lamp-posts, with lamps, outside of the city limits, when in their judgment, it shall be deemed proper or necessary: *Provided,* That nothing in this act contained shall be construed to abate in any wise or interfere with any suit pending in favor of or against the District of Columbia or the Commissioners thereof, or affect any right, penalty, forfeiture, or cause of action existing in favor of said District or Commissioners, or any citizen of the District of Columbia, or any other person, but the same may be commenced, proceeded for, or prosecuted to final judgment, and the corporation shall be bound thereby as if the suit had been originally commenced for or against said corporation. The said Commissioners shall submit to the Secretary of the Treasury for the fiscal year ending June thirtieth, eighteen hundred and seventy-nine, and annually thereafter, for his examination and approval, a statement showing in detail the work proposed to be undertaken by them during the fiscal year next ensuing, and the estimated cost thereof; also the cost of constructing, repairing, and maintaining all bridges authorized by law across the Potomac River within the District of Columbia, and also all other streams in said District; the cost of maintaining all public institutions of charity, reformatories, and prisons belonging to or controlled wholly or in part by the District of Columbia, and which are now by law supported wholly or in part by the United States or District of Columbia; and also the expenses of the Washington Aqueduct and its appurtenances; and also an itemized statement and estimate of the amount necessary to defray the expenses of the government of the District of Columbia for the next fiscal year: *Provided,* That nothing herein contained shall be construed as transferring from the United States authorities any of the public works within the District of Columbia now in the control or supervision of said authorities. The Secretary of the Treasury shall carefully consider all estimates submitted to him as above provided, and shall approve, disapprove, or suggest such changes in the same, or any item thereof, as he may think the public interest demands; and after he shall have considered and passed upon such estimates submitted to him, he shall cause to be made a statement of the amount approved by him and the fund or purpose to which each item belongs which statement shall be certified by him, and delivered, together with the estimates as originally submitted, to the Commissioners of the District of Columbia, who shall transmit the same to Congress. To the extent to which Congress shall approve of said estimates, Congress shall appropriate the amount of fifty per centum thereof; and the remaining fifty per centum of such approved estimates shall be levied and assessed upon the taxable prop-

erty and privileges in said District other than the property of the United States and of the District of Columbia; and all proceedings in the assessing, equalizing, and levying of said taxes, the collection thereof, the listing return and penalty for taxes in arrears, the advertising for sale and the sale of property for delinquent taxes, the redemption thereof, the proceedings to enforce the lien upon unredeemed property, and every other act and thing now required to be done in the premises, shall be done and performed at the times and in the manner now provided by law, except in so far as is otherwise provided by this act: *Provided,* That the rate of taxation in any one year shall not exceed one dollar and fifty cents on every one hundred dollars of real estate not exempted by law; and on personal property not taxable elsewhere, one dollar and fifty cents on every one hundred dollars, according to the cash valuation thereof: *And provided further,* Upon real property held and used exclusively for agricultural purposes, without the limits of the cities of Washington and Georgetown, and to be so designated by the assessors in their annual returns, the rate for any one year shall not exceed one dollar on every one hundred dollars. The collector of taxes, upon the receipt of the duplicate of assessment, shall give notice for one week, in one newspaper published in the city of Washington, that he is ready to receive taxes; and any person who shall, within thirty days after such notice given, pay the taxes assessed against him, shall be allowed by the collector a deduction of five per centum on the amount of his tax; all penalties imposed by the act approved March third, eighteen hundred and seventy-seven, chapter one hundred and seventeen, upon delinquents for default in the payment of taxes levied under said act, at the times specified therein, shall, upon payment of the said taxes assessed against such delinquents within three months from the passage of this act, with interest at the rate of six per centum thereon, be remitted." (June 11, 1878, 20 Stat. 103, ch. 180, § 3.)

CROSS REFERENCES

Appointment of Commissioners, see § 1–201 et seq.
General limitation on power of Commissioners, see § 1–801.

NOTES TO DECISIONS

Proprietary function

Operation of public market by District of Columbia is a proprietary function and District is liable for injuries to a customer at a public market, under the law relating to its proprietary obligation as the owner and operator of property used for business purposes to one invited there as a customer, and the mere fact that the market is operated pursuant to a specific mandate of Congress does not change that principle. *District of Columbia* v. *Walter C. Green* (1955, 223 F. 2d 312, 96 U.S. App. D.C. 20).

Right to office

If a private citizen and taxpayer could institute quo warranto proceedings to test the title to the office of civil commissioner of the District, he could, under the same claim of right, institute like proceedings against any of those statutory officers of the United States who, in the District, exercise many important functions which affect persons and things throughout the entire country. *Newman* v. *United States ex rel. Frizzell* (1915, 35 S. Ct. 881, 238 U.S. 537, 59 L. Ed. 1446).

§ 1–104. District of Columbia successor of former corporations.

The District of Columbia is the successor of the corporations of Washington and Georgetown, and all the property of said corporations, and of the county of Washington, is vested in the District of Columbia. (R. S., D. C., § 96.)

§ 1–105. Former corporation continued for certain purposes.

The corporation of the District of Columbia is continued for all the purposes of this section and other acts for the collection of taxes, for suing and being sued, for causes arising prior to June 20th, 1874, and for acquiring and holding real estate for school and municipal purposes. (Mar. 3, 1877, 19 Stat. 402, ch. 117, § 15.)

CODIFICATION

The first part of section 15 of act Mar. 3, 1877, concerning causes of action prior to June 20, 1874, is omitted as obsolete.

§ 1–106. Records of former corporations and of levy court made property of District of Columbia.

All records, books, files, maps plats, surveys, drawings, writings and other papers, of the late corporations of Washington [and] Georgetown, or of the levy court of the District of Columbia, or made by persons in the employment or service of either of them, or of the District of Columbia, in the course of such employment or service, or which shall be so made after Feb. 4, 1878, are, and shall be the property of the District of Columbia. (Feb. 4, 1878, 20 Stat. 23, ch. 12, § 3.)

CODIFICATION

Bracketed word "and" was added by the compilers of the 1929 Code.

§ 1–107. "Limits of city of Washington" defined—Georgetown abolished—General laws of Washington extended to former Georgetown.

That portion of the District included within the limits of the city of Washington, as the same existed on the 21st day of February, 1871, and all that part of the District of Columbia embraced within the bounds and constituting on February 11, 1895 the city of Georgetown (as referred to in the Acts of Congress approved Feb. 21, 1871, 16 Stat. 419, ch. 62, and June 20, 1874, 18 Stat. 116, ch. 337) shall be known as and shall constitute the city of Washington, the federal capital; and all general laws, ordinances, and regulations of the city of Washington are extended and made applicable to that part of the District of Columbia formerly known as the city of Georgetown. The title and existence of said Georgetown as a separate and independent city by law is abolished. Nothing in this section shall operate to affect or repeal existing law making Georgetown a port of entry, except as to its name. (R. S., D. C., § 94; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

NOTES TO DECISIONS

Bowling alley a place of public amusement

A bowling alley was a place of "public amusement" within act of corporation of city of Washington prohibiting persons who have obtained license for purpose of giving a lecture, concert, exhibition, circus performance, theatrical performance, or for conducting place of public amusement of any kind from making any distinction on account of race or color. *Central Amusement Co., Inc.* v. *District of Columbia* (D. C. Mun. App. 1956, 121 A. 2d 865).

Due process

Fact that act adopted by corporation of city of Washington prohibiting persons who have obtained license for conducting place of public amusement of any kind from making any distinction on account of race or color was applicable only to that part of the District of Columbia formerly included in the cities of Washington and Georgetown, did not render act invalid as violation of due process. *Central Amusement Co., Inc.* v. *District of Columbia* (D. C. Mun. App. 1956, 121 A. 2d 865).

"Persons" applies to corporations

The word "persons", as used in act of corporation of city of Washington prohibiting persons who have obtained license for purpose of giving a lecture, concert,

exhibition, circus performance, theatrical performance, or for conducting place of public amusement of any kind, from making any distinction on account of race or color, applies to corporations as well as natural persons. *Central Amusement Co., Inc.* v. *District of Columbia* (D. C. Mun. App. 1956, 121 A. 2d 865).

§ 1–108. Name of "Uniontown" changed to "Anacostia."

That portion of the District of Columbia prior to April 22, 1886 known and designated as Uniontown, [shall] be known and designated as Anacostia. (Apr. 22, 1886, 24 Stat. 14, ch. 58.)

CODIFICATION

The bracketed word "shall" was added by the compilers of the 1929 Code.

Chapter 2.—COMMISSIONERS AND OTHER OFFICERS

Sec.
1–201. Appointment of Commissioners.
1–202. Engineer Commissioner may be designated from rank of captain or above.
1–203. Engineer Commissioner not required to perform any other duty.
1–204. Compensation of Engineer Commissioner.
1–204a. Compensation of President of Board of Commissioners.
1–204b. Compensation of Commissioners.
1–205. Engineer Commissioner not deemed to hold civil office.
1–206. Civilian Commissioners—Qualifications.
1–207. Commissioners to choose president of Board.
1–208. Oath of Commissioners.
1–209. Tenure of office.
1–210. Officers becoming surety for contractors prohibited—Contractors not to be surety on bonds of officers.
1–211. Quorum—Assistants to Engineer Commissioner to act in his absence.
1–212. Assistants to Engineer Commissioner, appointment, duties.
1–213. Bonds of officers and employees.
1–213a. Commissioners authorized to obtain surety bonds.
1–213b. Commissioners bonds in lieu of employee bond.
1–214. Secretary of Board of Commissioners authorized to execute certain documents.
1–215. Volunteer services not to be accepted for government of District of Columbia.
1–216. Offices, abolition or consolidation—Reduction of employees—Appointments to and removal from office.
1–217. Repealed.
1–218. Commissioners—Executive power vested in.
1–219. Taxes not to be anticipated by sale or hypothecation.
1–220. Pardons and respites—Power to grant—Commissioning of officers—Execution of laws.
1–221. Location of hack stands.
1–222. Establishment of hack stands adjoining railroad stations—Rates of charges.
1–223. Rates for public vehicles to be fixed by Commissioners.
1–224. Police regulations authorized in certain cases.
1–224a. Additional penalties for violation of regulations.
1–224b. Regulations for the keeping and running at large of dogs.
1–225. Publication of regulations—Effective date.
1–226. Regulations for protection of life, health, and property.
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1–228. Building regulations.
1–229. Regulations for construction and operation of elevators—Penalty.
1–230. Regulations for control of rabies—Vaccination of of dogs—Penalties.
1–231. Outdoor signs—Commissioners may make regulations.
1–232. License requirements—Outdoor signs—Fee.
1–233. Penalties—Publication of regulations.
1–234. Lights—Maintenance outside city limits.
1–235. Cleaning streets, alleys, and avenues, and repairs of sewers made municipal objects.
1–236. Sale of street sweepings authorized.
1–237. Investigations of municipal matters by Commissioners—Authority to administer oaths.
1–238. Annual report to Congress.
1–239. Illustrations in reports prohibited, unless authorized by Commissioners.
1–240. Originals of discontinued reports of government of District of Columbia to be preserved for public inspection.
1–241. Repealed.
1–242. Appropriations for printing schedules or lists of supplies and materials.
1–243. Rent for quarters.
1–243a. Leases for rentals limited to 5 years.
1–244. Additional powers of Commissioners.
1–245. Appointment of contracting officers—Powers—Approval of contracts over $3,000—Void contracts—Liquidated damage contracts.
1–246. Powers and duties of Director of Inspection—Delegation of authority.
1–247. Repealed.
1–248. Effectuate settlement for real estate acquired by purchase or condemnation.
1–249. Power conferred by sections 1–244 to 1–246 and 1–248 as additional.
1–250. Purchase of vehicles—Trade-in as part payment.
1–251. Authority to grant additional compensation.
1–252. Authority to fix certain licensing and registration fees.
1–253. Same—Increase or decrease of fees.
1–254. Commissioners authority to determine honorariums for members of boards—Deposit of fees in the Treasury—Receipt of honorarium without prejudice to other compensation—Definition—Operation of civil service retirement laws.
1–255. Applicability to various boards, commissions and committees.
1–256. Refund of unearned fees.
1–257. Commissioners authorized to change and fix licensing periods.
1–258. Applicability of sections 1–254 to 1–258 to boards covered by Reorganization Plan No. 5 of 1952.
1–259. Appropriation for administration of laws mentioned in section 1–255.
1–260. Holidays for District employees—Regulations.
1–261. Authority for transporting children of certain employees in District-owned vehicles.
1–262. Reception by Commissioners of eminent persons—Appropriation authorized.
1–263. Advancement of moneys by disbursing officer.
1–264. Imposition of penalties by Commissioners for delivery of bad checks in payment of obligations due District of Columbia—Basis for penalty—Exception—Manner of collection.
1–265. District of Columbia student loan insurance program.

§ 1–201. Appointment of Commissioners.

The President of the United States, by and with the advice and consent of the Senate, is hereby authorized to appoint two persons, who, with an officer of the Corps of Engineers of the United States Army, shall be Commissioners of the District of Columbia. (June 11, 1878, 20 Stat. 103, ch. 180, § 2; Dec. 24, 1890, 26 Stat. 1113, Res. No. 7.)

CODIFICATION

In act June 11, 1878, the words "whose lineal rank shall be above that of captain," followed the words "United States Army." Act Dec. 24, 1890, classified to section 1–202, did not specifically amend the first-mentioned act but provided that the engineer commissioner might be detailed from among captains or higher ranking officers with at least 15 years' service in the Engineer Corps.

CROSS REFERENCES

Detail of officer assigned to Corps of Engineers as Engineer Commissioner of the District of Columbia, see 10 U.S.C. § 3534.

Extension of Hatch Act, forbidding pernicious political activities, to officers and employees of the District of Columbia, see 18 U.S.C. § 595.

Constitutionality

Statutes providing for presidential appointment of three commissioners of District of Columbia are not unconstitutional on ground of taxation without representation, denial of right to vote on account of race or color, or on account of denial of right to vote on account of sex. *J. W. Hobson et al.* v. *W. N. Tobriner et al.* (D.C. D.C., 1966, 255 F. Supp. 295).

Assumption of jurisdiction by federal District Court of suit to consider constitutionality of statutes providing for presidential appointment of three commissioners of District of Columbia would result, in some degree, in substitution of court's judgment for that of Congress and would be a grave transgression of doctrine of separation of powers in view of fact that Constitution expressly provides that Congress is vested with jurisdiction over form of government to be accorded the District of Columbia. *Id.*

§ 1–202. Engineer Commissioner may be designated from rank of captain or above.

Such engineer commissioner may, in the discretion of the President of the United States, be detailed from among the captains or officers of higher grade having served at least fifteen years in the Corps of Engineers of the Army of the United States. (Dec. 24, 1890, 26 Stat. 1113, Res. No. 7.)

CROSS REFERENCE

Detail of officer assigned to Corps of Engineers as Engineer Commissioner of the District of Columbia, see 10 U.S.C. § 3534(a).

§ 1–203. Engineer Commissioner not required to perform any other duty.

The Commissioner who shall be an officer detailed, from time to time, from the Corps of Engineers, by the President, for this duty, shall not be required to perform any other. (June 11, 1878, 20 Stat. 103, ch. 180, § 2.)

CROSS REFERENCES

Member of National Capital Park and Planning Commission, see § 1–1002.

Officer detailed as Engineer Commissioner not required to perform any other duty, see, also, 10 U.S.C. § 3534(a).

Power of Engineer Commissioner over municipal architect, see § 1–306.

§ 1–204. Compensation of Engineer Commissioner.

CODIFICATION

Section, act Mar. 3, 1881, 21 Stat. 460, ch. 134, which provided that the Engineer Commissioner shall be entitled to receive such compensation, in addition to his Army pay, as will make his compensation equal to $5,000 per annum, is superseded by section 3 of act July 25, 1958, 72 Stat. 414, Pub. L. 85–552, set out as section 1–204a.

From the fiscal year ending June 30, 1925, to the fiscal year ending June 30, 1929, the various appropriation acts for the District of Columbia fixed the salary of the Engineer Commissioner at $7,500. See acts June 7, 1924, 43 Stat. 539, ch. 302, § 1, and May 21, 1928, ch. 659, § 1. Later appropriation acts, after making a specific appropriation, added the words: "plus so much as may be necessary to compensate the Engineer Commissioner at such rate in Grade 8 of the professional and scientific service of the Classification Act of 1923 (5 U.S.C. § 673), as amended, as may be determined by the Board of Commissioners." See acts February 25, 1929, 45 Stat. 1262, ch. 314, § 1, and June 12, 1940, 54 Stat. 307, ch. 333, § 1.

§ 1–204a. Compensation of President of Board of Commissioners.

Notwithstanding any other provision of law—

(1) the compensation of the President of the Board of Commissioners of the District of Columbia shall be at the rate of $26,000 per annum; and

(2) if the Commissioner detailed from the Corps of Engineers of the United States Army is chosen President of the Board of Commissioners, he shall receive, as President of the Board, an annual compensation which, when added to any compensation he receives as an officer of the United States Army, will equal the compensation authorized by paragraph (1) of this section.

(July 25, 1958, 72 Stat. 414, Pub. L. 85–552, § 3; Aug. 14, 1964, 78 Stat. 430, Pub. L. 88–426, § 306(i)(1).)

AMENDMENTS

1964—Section 306(i)(1) of act Aug. 14, 1964, amended section by providing compensation for President of Board of Commissioners in par. (1) and by making provision in par. (2) for compensation if the President of the Board should be the Commissioner detailed from the Corps of Engineers.

EFFECTIVE DATE OF 1964 AMENDMENTS

Section 501(a) of the above described act provided as follows: "(a) Except to the extent provided in subsection (b) and (c) of this section, this Act and the increases in compensation made by this Act shall become effective on the first day of the first pay period which begins on or after July 1, 1964." This "Act" referred to in this note, insofar as it related to this D.C. Code, was classified to sections 1–204a, 1–204(b), 4–823, 11–702(d), 11–902(d), 31–1501 and 47–2402.

EFFECTIVE DATE

Section 4(c) of act July 25, 1958, provides:

"Sections 2 and 3, inclusive, of this Act [section 1–204b and this section] shall take effect on the first day of the first month which begins after the date of enactment of this Act [July 25, 1958]."

GROUP INSURANCE PROVISIONS OF ACT AUG. 14, 1964

Section 501(d) of the above described act provides as follows: "(d) For the purpose of determining the amount of insurance for which an individual is eligible under the Federal Employees' Group Life Insurance Act of 1954 [5 U.S.C. §§ 2091—2103], all changes in rates of compensation or salary which result from the enactment of this Act shall be held and considered to be effective as of the date of such enactment."

The Federal Employees' Group Life Insurance Act of 1954 (5 U.S.C. § 2091 et seq.), referred to in the above-quoted provisions, was, for the most part, repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a), and the repealed provisions are now covered by 5 U.S.C. §§ 1308, 8701 et seq. For construction in other laws (such as in the above-quoted provisions) of references to laws replaced by such act Sept. 6, 1966, see last sentence of last paragraph of note below, headed "Retroactive Effect of 1964 Amendment", regarding § 7(b) of the act of Sept. 6, 1966.

RETROACTIVE EFFECT OF 1964 AMENDMENT

Section 502 (a) and (b) of the above described act provides as follows: "(a) Retroactive compensation or salary shall be paid by reason of this Act only in the case of an individual in the service of the United States (including service in the Armed Forces of the United States) or the municipal government of the District of Columbia on the date of enactment of this Act, except that such retroactive compensation or salary shall be paid (1) to an officer or employee who retired during the period beginning on the effective date prescribed by section 501(a) and ending on the date of enactment of this Act for services rendered during such period and (2) in accordance with the provisions of the Act of August 3, 1950 (Public Law 636, Eighty-first Congress), as amended (5 U.S.C. 61f—61k), for services rendered during the period beginning on the effective date prescribed by section 501(a) and ending on

the date of enactment of this Act by an officer or employee who dies during such period. Such retroactive compensation or salary shall not be considered as basic salary for the purpose of the Civil Service Retirement Act in the case of any such retired or deceased officer or employee.

"(b) For the purposes of this section, service in the Armed Forces of the United States, in the case of an individual relieved from training and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the Federal Government or the municipal government of the District of Columbia."

The act of Aug. 3, 1950 (Public Law 636 [ch. 518], Eighty-first Congress), as amended (5 U.S.C. 61f—61k), and the Civil Service Retirement Act [5 U.S.C. § 2251 et seq.], referred to in above-quoted provisions, were repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a). Said act Aug. 3, 1950, is now covered by 5 U.S.C. §§ 5581—5583, and the Civil Service Retirement Act is now covered by 5 U.S.C. §§ 1308, 3323, 8331 et seq. Section 7(b) of such act Sept. 6, 1966, 80 Stat. 631, Pub. L. 89–554, of which § 1 revised and enacted title 5, U.S.C., into law, provides that a reference in any other law to a law replaced by such § 1 is deemed to refer to the corresponding provision enacted by that act.

NOTES TO DECISIONS

Right to three-judge court

Federal District Court would deny application for three-judge court in action to enjoin enforcement of sections of the District of Columbia Code providing for presidential appointment of three commissioners of the District of Columbia, on ground that those sections were unconstitutional, where District Court was of opinion that claims of unconstitutionality were insubstantial. *J. W. Hobson et al.* v. *W. N. Tobriner et al.* (D.C. D.C. 1966, 255 F. Supp. 295).

§ 1–204b. Compensation of Commissioners.

Except as otherwise provided by this section and section 1–204a—

(1) the compensation of the Commissioners of the District of Columbia shall be at the rate of $25,500 each per annum; and

(2) the Commissioner detailed from the Corps of Engineers of the United States Army shall receive an annual compensation which, when added to any compensation he receives as an officer of the United States Army, will equal the compensation authorized by paragraph (1) of this section. (July 25, 1958, 72 Stat. 414, Pub. L. 85–552, § 2; Aug. 14, 1964, 78 Stat. 430, Pub. L. 88–426, § 306(i)(1).)

AMENDMENTS

1964—Section 306(i)(1) of act Aug. 14, 1964, amended section by providing an increase in compensation of the Commissioners in par. (1) and by the addition of par. (2).

EFFECTIVE DATE

1964—See note to section 1–204a.

1958—Section effective on the first day of the first month which begins after July 25, 1958, see section 4(c) of act July 25, 1958, set out as a note under section 1–204a.

GROUP INSURANCE PROVISIONS OF ACT AUG. 14, 1964

See note to section 1–204a.

RETROACTIVE SALARY PROVISIONS OF ACT AUG. 14, 1964

See note to section 1–204a.

§ 1–205. Engineer Commissioner not deemed to hold civil office.

The engineer commissioner shall not be deemed by reason of anything in this act contained to hold a civil office under the laws of the United States. (June 20, 1874, 18 Stat. 117, ch. 337, § 3.)

CODIFICATION

The words "this act" relate to act June 20, 1874, 18 Stat. 117, ch. 337. It is known as the Temporary Organic Act of 1874, and but little of it was retained in the 1929 Code and that in fragmentary form. In the first place, the Organic Act of 1878 may have been intended to supersede entirely the temporary act of 1874, and second, even if this is not true it is not clear that the provision set out in this section should be regarded as applying to the Engineer Commissioner appointed under section 2 of the Organic Act of 1878 (§§ 1–201 to 1–203). If it does apply, it seems that the section should read: "The Engineer Commissioner shall not be deemed to hold a civil office under the laws of the United States."

§ 1–206. Civilian Commissioners—Qualifications.

The two persons appointed from civil life shall, at the time of their appointment, be citizens of the United States, and shall have been actual residents of the District of Columbia for three years next before their appointment, and have, during that period, claimed residence nowhere else. (June 11, 1878, 20 Stat. 103, ch. 180, § 2.)

CROSS REFERENCE

General limitation on power of Commissioners, see § 1–801.

NOTES TO DECISIONS

Army officer

Retired Army officer, having qualifications of citizenship and residence, is eligible for appointment to office of Commissioner of District of Columbia. (36 O. A. G. 388.)

Power of appointment

Congress has, from time to time, restricted the President's selection, in the power of appointments, by the requirement of citizenship. It has limited the power of nomination by providing that the office may be held only by a resident of the United States; of a State; of a particular State; of a particular district; of a particular Territory; of the District of Columbia; and of a particular foreign country. *Myers* v. *United States* (1926, 47 S. Ct. 21, 272 U.S. 52, 71 L. Ed. 160).

§ 1–207. Commissioners to choose president of Board.

One of said three Commissioners shall be chosen president of the Board of Commissioners at their first meeting, and annually and whenever a vacancy shall occur. (June 11, 1878, 20 Stat. 103, ch. 180, § 2.)

CROSS REFERENCE

President ex officio member of Commission on Licensure to Practice Healing Art, see § 2–103.

§ 1–208. Oath of Commissioners.

Said Commissioners shall each of them, before entering upon the discharge of his duties, take an oath or affirmation to support the Constitution of the United States, and to faithfully discharge the duties imposed upon him by law. (June 11, 1878, 20 Stat. 103, ch. 180, § 2.)

CODIFICATION

That part of section 2 of the Organic Act of 1878, which provided that Commissioners appointed from civil life should each give bond in the sum of $50,000, was repealed by act June 28, 1935, 49 Stat. 430, ch. 332, § 1.

CROSS REFERENCE

General limitation on power of Commissioners, see § 1–801.

§ 1–209. Tenure of office.

The official term of said Commissioners appointed from civil life shall be three years, and until their successors are appointed and qualified; and at the expiration of their respective terms their successors shall be appointed for three years. (June 11, 1878, 20 Stat. 103, ch. 180, § 2.)

§ 1–210. Officers becoming surety for contractors prohibited—Contractors not to be surety on bonds of officers.

Neither of said Commissioners, nor any officer whatsoever of the District of Columbia, shall be accepted as surety upon any bond required to be given to the District of Columbia; nor shall any contractor be accepted as surety for any officer or other contractor in said District. (June 11, 1878, 20 Stat. 103, ch. 180, § 2.)

CROSS REFERENCE

General limitation on power of Commissioners, see § 1–801.

§ 1–211. Quorum—Assistants to Engineer Commissioner to act in his absence.

Any two of the Commissioners of the District of Columbia, sitting as a board, shall constitute a quorum for the transaction of business, and the senior officer of the Corps of Engineers of the Army who shall for the time being be detailed to act as assistant (and in case of his absence from the District or disability, the junior officer so detailed) shall, in the event of the absence from the District or disability of the Commissioner who shall for the time being be detailed from the Corps of Engineers, perform all the duties imposed by law upon said commissioner. (Dec. 24, 1890, 26 Stat. 1113, Res. No. 7.)

CODIFICATION

This section is apparently inconsistent with section 1–212, since there is no provision for the appointment of a senior officer of the Corps of Engineers of the Army to act as an assistant to the Board of Commissioners.

§ 1–212. Assistants to Engineer Commissioner, appointment, duties.

The President of the United States may detail from the Engineer Corps of the Army not more than three officers, junior to the engineer officer belonging to the Board of Commissioners of said District, to act as assistants to said engineer commissioner in the discharge of the special duties imposed upon him by the provisions of the Organic Act. (June 11, 1878, 20 Stat. 107, ch. 180, § 5; Aug. 7, 1894, 28 Stat. 246, ch. 232.)

REFERENCES IN TEXT

The Organic Act, referred to in the text, is the present Organic Act, 20 Stat. 102, ch. 180. See notes to § 1–801.

AMENDMENT

1894—Act Aug. 7, 1894, increased from two to three the number of officers the President may detail.

CROSS REFERENCES

Assistant to Engineer Commissioner as member of board for condemnation of insanitary buildings, see Organization Order No. 102, set out as a note under § 5–617.

Detail of officers to assist Engineer Commissioner, see, also, 10 U.S.C. § 3534(b).

§ 1–213. Bonds of officers and employees.

The said Commissioners are hereby authorized and empowered to determine which officers and employees of the District of Columbia, or which positions occupied or to be occupied by such officers and employees, shall hereafter be bonded for the faithful discharge of the duties of such officers and employees or of such positions, and to fix the penalty or penalties of any such bond; *Provided,* That this power of the Commissioners shall not apply to officers and employees who receive, disburse, account for, or otherwise are responsible for the handling of money, and whose bonds are now fixed by law. The provisions of 6 U.S.C. § 14, relating to rates of premiums for bonds for officers and employees of the United States shall be, and are hereby, made applicable to the rates of premiums for bonds of officers and employees of the government of the District of Columbia. (June 28, 1935, 49 Stat. 430, ch. 332, § 1; July 7, 1955, 69 Stat. 280, § 1.)

CODIFICATION

This section was amendatory of section 2 of the Organic Act of 1878.

AMENDMENT

1955—Act July 7, 1955, revised the language preceding the proviso.

§ 1–213a. Commissioners authorized to obtain surety bonds.

The Commissioners of the District of Columbia are authorized to obtain blanket, position schedule, or other type of surety bond covering their civilian officers and employees required by law or administrative ruling to be bonded. Each bond shall be of the most suitable type available for the number and type of personnel required to be bonded, and shall be conditioned upon the faithful performance of the duties of the persons so bonded, and the term "faithful performance of the duties" shall be deemed to include the proper accounting for all moneys or property received by virtue of the bonded persons' positions or employment and all responsibilities and accountabilities imposed by statute or regulation issued pursuant thereto. The bond premium may cover a period not exceeding three years and may be paid in advance from funds available for administrative expenses when the contract is made or continued. If the initial or subsequent premium cost exceeds $500 for any bond procured under authority of this section, advertisement for bids shall be required therefor and procurement shall be made from the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the District of Columbia, price and other factors considered. (July 7, 1955, 69 Stat. 281, ch. 280, § 2.)

§ 1–213b. Commissioners bonds in lieu of employee bond.

Whenever any officer or employee of the District of Columbia, as a prerequisite to entering upon the duties of his office or employment, or as a condition to his holding such office or employment is required by any provision of law or regulation to execute or furnish bond, notwithstanding such provision of law, if any bond obtained by the Commissioners pursuant to the authority contained in this Act covers such officer or employee, or covers the position of such officer or employee, in the amount and for such period as may be prescribed by such provision of law, such bond obtained by the Commissioners shall be in lieu of the bond required to be executed or furnished by such officer or employee. (July 7, 1955, 69 Stat. 281, ch. 280, § 3.)

REFERENCES IN TEXT

This Act, referred to in the text, means act July 7, 1955, 69 Stat. 281, ch. 280, which added this section and section 1–213a and amended sections 1–213, 1–504 and 4–186.

§ 1–214. Secretary of Board of Commissioners authorized to execute certain documents.

It shall be lawful for the secretary of the Board of Commissioners of the District of Columbia, or in his absence or upon his inability to act, such person as said commissioners may designate, when so directed by said commissioners, to execute in the name of the District of Columbia or of said Board, by attaching thereto his signature as such secretary and affixing when requisite the seal of said District, any deed, contract, pleading, lease, release, regulation, notice, or other paper, which prior to February 11, 1932, said Commissioners were required to execute by subscribing thereto their respective signatures: *Provided,* That prior to such signing, and sealing if requisite, said deed, contract, pleading, lease, release, regulation, notice, or other paper shall first have been considered and approved by said Board of Commissioners, or a majority of them, sitting as a board, and evidence of such consideration and approval shall be reduced to writing and recorded in the minutes of said Board of Commissioners, which minutes shall thereafter be signed by the members of said Board of Commissioners or a majority thereof. (Feb. 11, 1932, 47 Stat. 48, ch. 40.)

TRANSFER OF FUNCTIONS

Reorganization Order No. 41 of the Board of Commissioners dated June 23, 1953, established as part of the Executive Office of the Board of Commissioners under the direction and control of the Board, an Office of the Secretary to the Board of Commissioners to perform ministerial duties for the Board. The order described the purpose and functions of the Office of Secretary, and provided that the functions and positions of the previously existing Office of the Secretary to the Board be transferred to the new office; and that the previously existing Office of the Secretary be abolished. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to this title.

CROSS REFERENCES

Deeds for sale of District lands, see § 9–303.

Execution of instruments for transfer of Industrial Home School site, see § 32–503.

§ 1–215. Volunteer services not to be accepted for government of District of Columbia.

After July 7, 1898, the Commissioners of the District of Columbia shall not accept volunteer service for the government of the District of Columbia or employ personal services in excess of that authorized by law except in cases of sudden emergency involving the loss of human life or the destruction of property. (July 7, 1898, 30 Stat. 666, ch. 571.)

MEDICAL SERVICES

Act June 12, 1940, 54 Stat. 307, ch. 333, § 1, making appropriations for the government of the District, provided as follows: "The Commissioners may without creating any obligation for the payment of money on account thereof, accept such volunteer services as they may deem expedient in connection with the establishment and maintenance of the medical services herein provided for" (in the health department).

Act July 15, 1939, 53 Stat. 1021, 1022, ch. 281, § 1, contained specific similar provisions for the maintenance of dispensaries, nursing service, and maternal and child health service.

CROSS REFERENCES

Voluntary aid to board of public welfare in the placement and supervision of children under its care, see § 3–119.

Voluntary medical services for public charitable institutions, see § 32–1006.

Voluntary services in public schools authorized, see § 31–802.

Volunteer aid in conducting play grounds, see § 8–132.

§ 1–216. Offices, abolition or consolidation—Reduction of employees—Appointments to and removal from office.

Said Commissioners are hereby authorized to abolish any office, to consolidate two or more offices, reduce the number of employees, remove from office, and make appointments to any office under them authorized by law. (June 11, 1878, 20 Stat. 104, ch. 180, § 3.)

TRANSFER OF FUNCTIONS

Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952, established in the government of the District of Columbia under the direction and control of the Board of Commissioners, a Department of General Administration headed by a director. The order transferred to the Director of General Administration all of the functions and positions of the District Personnel Board. Reorganization Order No. 21 of the Board dated Nov. 20, 1952, established a Personnel Office in the Department of General Administration and provided that the functions of that office would encompass all the personnel functions previously vested in the Board of Commissioners by law or transferred to the Board by Reorganization Plan No. 5 of 1952. The plan and the orders are set out in the Appendix to this title.

Reorganization Order No. 40 of the Board of Commissioners dated June 23, 1953, established the Executive Office of the Board of Commissioners under the direction and control of the Board of Commissioners to provide special and clerical assistance to the Board. The order transferred to the new board all of the functions and positions of the previously existing Executive Office of the Board of Commissioners which the order abolished. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to this title.

REORGANIZATION OF MUNICIPAL AGENCIES

Act June 20, 1949, 63 Stat. 203, ch. 226, as amended (5 U.S.C. former §§ 133z to 133z–15), provided for the reorganization of Government agencies, including any and all parts of the municipal government of the District of Columbia, by means of "Reorganization Plans" prepared by the President of the United States and transmitted to Congress for its approval. Such act was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a), and is now covered by 5 U.S.C. § 901 et seq.

CROSS REFERENCES

Conviction of certain crimes, failure to account, ineligible to hold public office, see § 1–316.

Exemption from military service, see § 39–102.

Forfeiture of position for violation of Money Lenders Law, see § 26–605.

General limitations on power of Commissioners, see § 1–801 and note.

Jury duty, see § 11–2302. See, also, 5 U.S.C. §§ 5517, 5537, 6322.

Power to grant leave of absences to employees, see §§ 1–313, 1–314.

Reorganization of municipal agencies, see Appendix to this title.

NOTES TO DECISIONS

Lawful removal

Where heavy truck driver in District government was notified of his discharge and the reasons therefor and was allowed to appeal, and a hearing was accorded him at which he was represented by counsel of his own choice, who was permitted to call and examine witnesses under oath and to introduce testimony, and it was clear that only rules and regulations relied upon by employee were never adopted or promulgated, removal was accomplished lawfully and he was not entitled to recover wages for time he was in nonpay status. *C. E. Washington* v. *Government of District of Columbia* (D.C. Mun. App. 1959, 152 A. 2d 191).

§ 1–217. Repealed. Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a).

Section, act May 29, 1930, 46 Stat. 470, ch. 349, § 3(e), made the Civil Service Retirement Act of May 29, 1930, applicable to all regular annual employees of municipal government of District of Columbia, including those employees receiving per diem compensation paid out of general appropriations and including public-school employees, except school officers and teachers. All provisions of the Civil Service Retirement Act of May 29, 1930, as generally amended by act July 31, 1956, 70 Stat. 743, ch. 804, title IV, and later acts, were also repealed by § 8(a) of act Sept. 6, 1966, cited in the catchline to this section, and are now covered by 5 U.S.C. §§ 1308, 3323, 8331 et seq. For provisions relating to applicability of those sections to employees of the municipal government of the District of Columbia, see particularly 5 U.S.C. §§ 8331(1)(G), (7) and 8347(h).

§ 1–218. Commissioners—Executive power vested in.

The executive power is vested in the Commissioners. (R. S., D. C., § 3; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 3.)

CODIFICATION

This section is a composite of the credits cited in the history line.

REORGANIZATION OF MUNICIPAL AGENCIES

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CROSS REFERENCES

Annual report to Congress, see §§ 1–238, 1–239.

Authorization to insure District property, see § 1–816.

Claims against District; service of process on Commissioners; settlement of claims; refunds of taxes or assessments, see §§ 1–901 to 1–905.

Cleaning streets, see §§ 1–224, 1–235, 1–236.

Commissioners have common-law powers of constables, except for the service of civil process or the collection of a private debt, see § 4–136.

Duty to preserve original copies of governmental reports, see § 1–240.

Execution of instruments, see § 1–214.

General limitations on power of Commissioners, see § 1–801.

No power to anticipate tax revenue, see § 1–219.

One Commissioner member of board of trustees of National Training School for Boys, see § 32–803.

Police regulations authorized in certain cases, see § 1–224.

Power of Commissioners concerning contracts, see §§ 1–801 to 1–819.

Power over corporation counsel, written opinions, see §§ 1–301, 1–302.

Power over out-of-door advertising, see §§ 1–231 to 1–233.

Powers over animals running at large, see §§ 1–224, 1–224b, 1–230.

Powers over custodians of District property, see § 1–309.

Power to abolish or consolidate offices and to appoint officers or reduce number of employees, see § 1–216.

Power to grant pardons and respites, issuance of commissions of officers, execution of laws, see § 1–220.

Power to locate hack stands, see §§ 1–221, 1–222.

Power to make and enforce building regulations, see § 1–228 and notes.

Power to make police regulations concerning firearms, projectiles, explosives, or weapons, see § 1–227.

Power to make police regulations to protect life, limb, health, comfort, quiet, and property, see § 1–226 and notes.

Power to regulate construction and repair of elevators, see § 1–229.

Power to regulate conveyance of passengers to and from railroad stations, see § 1–222.

Power to require bond of public officers and employees, see §§ 1–213 to 1–213b.

Reorganization of municipal agencies, see Appendix to this title.

Sale of lands that belong to District, see § 9–301 et seq.

NOTES TO DECISIONS

Nature of powers

Provisions of the statutes are to cause the District Commissioners to be merely administrative officers with ministerial powers only. The sum of the municipal powers of the District is neither vested in nor exercised by the District Commissioners. They are, on the contrary, vested in the Congress of the United States, acting pro hac vice as the legislative body of the District, and the Commissioners of the District discharge the functions of administrative officials. *District of Columbia* v. *Bailey* (1898, 18 S. Ct. 868, 171 U.S. 161, 43 L. Ed. 118).

Proprietary function

Operation of public market by District of Columbia is a proprietary function and District is liable for injuries to a customer at a public market, under the law relating to its proprietary obligation as the owner and operator of property used for business purposes to one invited there as a customer, and the mere fact that the market is operated pursuant to a specific mandate of Congress does not change that principle. *District of Columbia* v. *Walter C. Green* (1955, 223 F. 2d 312, 96 U.S. App. D.C. 20).

§ 1–219. Taxes not to be anticipated by sale or hypothecation.

Said Commissioners shall have no power to anticipate taxes by a sale or hypothecation of any such taxes or evidences thereof. (June 11, 1878, 20 Stat. 104, ch. 180, § 3.)

CROSS REFERENCE

General limitations on power of Commissioners, see § 1–801.

§ 1–220. Pardons and respites—Power to grant—Commissioning of officers—Execution of laws.

The Commissioners of the District of Columbia may grant pardons and respites for offenses against the late corporation of Washington, the ordinances of Georgetown and the levy court, the laws enacted by the legislative assembly, and the police and building regulations of the District. They shall commission all officers appointed under the laws of the District, and shall take care that the laws be faithfully executed. (R. S., D. C., § 6; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 2; Apr. 28, 1892, 27 Stat. 22, ch. 55.)

CODIFICATION

This section is a composite of the credits cited in the history line.

NOTES TO DECISIONS

Nature of power

Necessary operation of the provisions of the statutes is to cause the District Commissioners to be merely administrative officers with ministerial powers only. The sum of the municipal powers of the District is neither vested in nor exercised by the District Commissioners. They are, on the contrary, vested in the Congress of the United States, acting pro hac vice as the legislative body of the District, and the Commissioners of the District discharge the functions of administrative officials. *District of Columbia* v. *Bailey* (1898, 18 S. Ct. 868, 171 U.S. 161, 43 L. Ed. 118).

§ 1–221. Location of hack stands.

The Commissioners shall have power to locate the places where hacks shall stand and change them as often as the public interests require. (June 11, 1878, 20 Stat. 104, ch. 180, § 3.)

CROSS REFERENCES

Other provisions concerning regulation of traffic and parking, see §§ 40–603, 40–604, 40–604a.

Powers of Public Service Commission, see § 43–209.

§ 1–222. Establishment of hack stands adjoining railroad stations—Rates of charges.

The Commissioners of the District of Columbia are authorized to locate on the streets or parts of streets adjoining the stations of any railroad company in the District of Columbia, a stand for cabs, carriages, and other vehicles for the conveyance of passengers to and from the said railroad stations, said service to be established by the said railroad companies. The rates of charges for the service to be rendered by the said railroad companies shall be fixed by the Commissioners of the District of Columbia. (June 7, 1898, 30 Stat. 747, Res. No. 46.)

§ 1–223. Rates for public vehicles to be fixed by Commissioners.

The Commissioners of the District of Columbia are authorized and directed, after due investigation, to prepare and put in immediate operation, subject to change from time to time, a reasonable scale of charges by cabs, taxicabs, and public vehicles, for the transportation of passengers in the District of Columbia, and the tariffs so prepared shall be the maximum charges that may be collected in the District of Columbia. The said Commissioners are hereby empowered to prescribe the penalty or penalties for violation of any charge fixed by them. (Mar. 3, 1909, 35 Stat. 724, ch. 250.)

CROSS REFERENCES

Licensing and regulation of vehicles for hire, see § 47–2331.

Power of Commissioners and Public Service Commission concerning public utilities, see § 43–209.

Regulation of charges made by owners of hacks and hackney carriages, see, also, § 1–224.

NOTES TO DECISIONS

Nature of powers

Under this section, Congress gave every evidence of being familiar with the distinction between the delegation of the power to prohibit or exclude. *Smallwood* v. *District of Columbia* (1927, 17 F. 2d 210, 57 App. D.C. 58).

Commissioners may make, modify, and enforce police regulations. *Thomas* v. *District of Columbia* (1937, 90 F. 2d 424, 67 App. D.C. 179).

Congress delegated to the Commissioners the power to make and enforce regulations of a purely local nature. *La Forest* v. *Board of Commissioners of District of Columbia* (1937, 92 F. 2d 547, 67 App. D.C. 396).

§ 1–224. Police regulations authorized in certain cases.

The Commissioners of the District of Columbia are hereby authorized and empowered to make, modify, and enforce usual and reasonable police regulations in and for said District as follows:

First. For causing full inspection to be made, at any reasonable times, of the places where the business of pawnbroking, junk-dealing, or second-hand clothing business may be carried on.

Second. To regulate the storage of highly inflammable substances in the thickly populated portions of the District.

Third. To locate the places where licensed venders on streets and public places shall stand, and change them as often as the public interests require, and to make all the necessary regulations governing their conduct upon the streets in relation to such business.

Fourth. [Repealed.]

Fifth. To establish and regulate the charges to be made by owners of hacks and hackney carriages of any kind whatsoever.

Sixth. To prohibit conducting droves of animals upon such streets and avenues as they may deem needful to public safety and good order.

Seventh. To regulate the keeping of dogs and fowls.

Eighth. To prohibit the deposit upon the street or sidewalks of fruit, or any part thereof, or other substance or articles that might litter the same, or cause injury to or impede pedestrians.

Ninth. To regulate or prohibit loud noises with horns, gongs, or other instruments, or loud cries, upon the streets or public places, and to prohibit the use of any fireworks or explosives within such portions of the District as they may think necessary to public safety.

Tenth. [Repealed.]

Eleventh. To prescribe reasonable penalties for the violation of any of the regulations in this section mentioned; and said penalties may be enforced in any court of the District of Columbia having jurisdiction of minor offenses, and in the same manner that such minor offenses are now by law prosecuted and punished. (Jan. 26, 1887, 24 Stat. 368, ch. 49, § 1; Mar. 3, 1925, 43 Stat. 1125, ch. 443, § 16; Sept. 13, 1961, 75 Stat. 498, Pub. L. 87–227, § 3.)

AMENDMENTS

1961—Section 3 of act Sept. 13, 1961, amended paragraph "Seventh" of the section by striking out the words "and running at large", so that the paragraph now reads, "To regulate the keeping of dogs and fowls."

1925—Subsections "Fourth" and "Tenth" were repealed by act Mar. 3, 1925.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 4 of act Sept. 13, 1961, makes this Amendment "effective thirty days after the date of its approval," which was September 13, 1961.

CROSS REFERENCES

Additional penalties for violation of regulations, see § 1–224a.

Businesses of storing moving-picture films, gasoline, kerosene, oils, explosives, and pyroxylin are required to obtain licenses, see §§ 47–2313 to 47–2315.

Cleaning streets, see §§ 1–235, 1–236 and notes.

General provisions authorizing Commissioners to license business and to provide for the inspection, supervision, or regulation thereof, see §§ 47–2344, 47–2345.

License required for second-hand dealers, see § 47–2339.

Power of Commissioners over public vehicles, see §§ 1–221 to 1–223 and notes.

Regulation of firearms, projectiles, explosives, or weapons, see § 1–227 and notes.

Regulation regarding dogs, see § 1–224b.

Removal of ice and snow from sidewalks, see §§ 7–802 to 7–806.

Undertakers' licenses, see § 47–2344a.

Supervision and inspection of pawnbrokers, venders, hackmen, and cartmen, dealers in second-hand merchandise, intelligence-officer keepers, auctioneers of watches and jewelry, suspected private banking houses, and other doubtful establishments, see §§ 4–147 to 4–150.

NOTES TO DECISIONS

Grade crossings

Where regulations of Commissioners of District of Columbia, adopted in pursuance of the act of Congress of January 26, 1887, 24 Stat. 368, ch. 49 (this section), and a joint resolution of February 26, 1892, 27 Stat. 394 (section 1–226 of this Code), required that "whenever the grade of

a steam railroad track is approximately even with the adjacent surface" of the street in which it is laid, the road should be securely closed on both sides with a substantial fence, and a railroad track was, at the time and place of an accident, not over two feet two inches higher than the level of the street, and was not fenced, the question whether, within the meaning of the regulations, the grade of the track was "approximately even with the adjacent surface" was properly submitted to jury. *Baltimore & P. R. Co.* v. *Cumberland* (1900, 20 S. Ct. 380, 176 U.S. 232, 44 L. Ed. 447).

Street vendors

This section did not authorize the Commissioners to prohibit vending on the streets or public places, but merely regulated such use. *Crane* v. *District of Columbia* (1923, 289 F. 557, 53 App. D.C. 159).

A police regulation designating stands for street vendors is valid. *Carranzo* v. *District of Columbia* (1926, 10 F. 2d 983, 56 App. D.C. 118).

Traffic regulations

Traffic regulations apply to United States employees driving government automobiles. *Croson* v. *District of Columbia* (1925, 2 F. 2d 924, 55 App. D.C. 122).

"Vehicles" and "movement of vehicles" embrace automobiles. *White* v. *District of Columbia* (1925, 4 F. 2d 163, 55 App. D.C. 197).

Commissioners may make traffic regulations inconsistent with postal regulations. *Id.*

Police regulations are admissible in evidence in trial for murder of policeman while enforcing vehicle regulations. *Holmes* v. *United States* (1926, 11 F. 2d 569, 56 App. D.C. 183).

Director of Traffic was authorized to exclude horse-drawn vehicles from arterial highways or boulevards. *District of Columbia* v. *Wheeler* (1927, 17 F. 2d 953, 57 App. D.C. 106).

Traffic Act delegates to the Commissioners of the District power and authority to make rules and regulations in relation to traffic on the public thoroughfares, and to the Director of Parks authority to make rules and regulations in relation to traffic on the roads in the public parks, and to provide for the prosecution for violations, whether on the public streets or in the parks, by proceedings in the police court at the instance of the corporation counsel and to exclude United States attorney from any part in the commencement of such prosecutions except smoke screen violation. *Persham* v. *United States* (1939, 104 F. 2d 249, 70 App. D.C. 116).

Even at an intersection, a streetcar has preferential, though no exclusive, right of way, and a motorist on or near track must use reasonable care, as streetcar approaches, to get off or keep off the track until it passes. *Capital Transit Co.* v. *Smallwood* (1947, 162 F. 2d 14, 82 U.S. App. D.C. 228).

Even if, as a general proposition, a streetcar's preferential right of way at intersection must yield to right of way conferred by traffic regulation on an automobile which precedes streetcar into intersection, where motorist has precedence under traffic regulations by less than two seconds, motorist is negligent if he proceeds into path of streetcar so close at hand when he is able to stop within 3 or 4 feet and save himself from injury. *Id.*

Traffic regulation requiring a vehicle approaching an intersection to slow down and be kept under such control as to avoid colliding with pedestrians or vehicles is not so unreasonable, indefinite or uncertain as to render it void. *Lohman* v. *District of Columbia* (D. C. Mun. App. 1947, 51 A. 2d 382).

§ 1–224a. Additional penalties for violation of regulations.

The Commissioners of the District of Columbia are hereby authorized to prescribe reasonable penalties of fine not to exceed $300 or imprisonments not to exceed ten days, in lieu of or in addition to any fine, for the violation of any building regulation promulgated under authority of section 1–228, and any regulation promulgated under authority of section 1–224, and any regulation promulgated under authority of section 1–226. (Dec. 17, 1942, 56 Stat. 1056, ch. 762, § 7.)

NOTES TO DECISIONS

Housing regulations

Section of District of Columbia housing regulation providing that no owner, licensee, or tenant shall occupy or permit occupancy of any habitation in violation of regulations, imposes upon landlord a duty of care toward its tenants which can be satisfied either by making necessary repairs or by terminating use of premises as a place of habitation and breach of that duty is at least evidence of negligence, but regulation also creates a duty of care which a tenant owes to himself, and breach of this duty is likewise at least evidence of contributory negligence. *Whetzel* v. *Jess Fisher Management Co.* C.A.D.C. (1960, 282 F. 2d 943).

Under District of Columbia housing regulation providing that no person shall rent or offer for rent any habitation unless habitation and its furnishings are in a clean, safe and sanitary condition, and obligation is placed upon landlord to put premises in a safe condition prior to their rental. *Id.*

Under housing regulation requiring owner or licensee of each residential building to provide and maintain facilities, utilities and services required by regulation providing that each facility or utility shall be properly and safely installed and maintained in a safe and good working condition, a duty is imposed upon landlord alone. *Id.*

§ 1–224b. Regulations for the keeping and running at large of dogs.

The Commissioners of the District of Columbia are hereby authorized and empowered to make, modify, and enforce regulations in and for the District of Columbia to regulate the keeping and leashing of dogs and to regulate or prohibit the running at large of dogs, including penalties for violations of such regulations as provided in section 1–224a. (Sept. 13, 1961, 75 Stat. 498, Pub. L. 87–227, § 1.)

EFFECTIVE DATE

Section 4 of act Sept. 13, 1961, makes this section "effective thirty days after the date of its approval," which was September 13, 1961.

CROSS REFERENCE

For other provisions relating to keeping and handling of dogs, see §§ 1–230, 22–1111, 47–2003, and 47–2004.

§ 1–225. Publication of regulations—Effective date.

The regulations provided for in section 1–224 shall, when adopted, be printed in one or more of the daily newspapers published in the District of Columbia; and no penalty prescribed for the violation of said regulations shall be enforced until thirty days after such publication. (Jan. 26, 1887, 24 Stat. 369, ch. 49, § 2.)

CROSS REFERENCE

Other provisions for publication of rules and regulations, effect, see §§ 4–177, 4–178.

§ 1–226. Regulations for protection of life, health, and property.

The Commissioners of the District of Columbia are hereby authorized and empowered to make and enforce all such reasonable and usual police regulations in addition to those already made under sections 1–224, 1–225, as they may deem necessary for the protection of lives, limbs, health, comfort and quiet of all persons and the protection of all property within the District of Columbia. (Feb. 26, 1892, 27 Stat. 394, Res. No. 4, § 2.)

CROSS REFERENCES

Additional penalties for violation of regulations, see § 1–224a.

Business licenses may not be issued until safety regulations have been complied with, see § 47–2302.

General provision giving Commissioners authority to make rules and regulations for the licensing, inspection, or regulation of any business, see §§ 47–2344, 47–2345.

Rules and regulations, publication, effect, see §§ 1–225, 4–177, 4–178.

Sewer agreement with Maryland and Virginia, see §§ 1–817, 1–817c.

SPECIFIC AUTHORITY FOR RULES AND REGULATIONS BY THE COMMISSIONERS

GENERAL WELFARE

Authorized to fix standards of loads of split wood, see § 10–118.

Establishment of tolerances in weights, measures, and specifications, see §§ 10–117, 10–127.

Regulations for produce and other markets, § 10–130.

Rules and regulations by Commissioners and Public Service Commission governing public utilities, see § 43–209 and notes.

Rules and regulations concerning motor vehicles: Equipment and inspection thereof; registration, titling, ownership, transfer of ownership, and revocation of certificate of title; financial responsibility of owners; movement of traffic, speed, length, weight, height, width, routing, and parking, common carriers jointly with Public Utilities Commission, see § 40–603 and notes.

Rules and regulations concerning municipal fish wharf and market, see § 10–135.

Rules and regulations concerning wharves, see §§ 9–101, 9–102.

Rules and regulations concerning wholesale farmers' produce market, see § 10–137.

Rules and regulations for administration and enforcement of Alcoholic Beverage Control Act, see § 25–106 et seq.

Rules and regulations for administration of Real Estate and Business Brokers License Act, see § 45–1403.

Rules and regulations for public beach and dressing houses, see § 8–168 et seq.

Rules and regulations for public scales and fees of public weigh-masters, see § 10–128.

Rules and regulations for registration of motor vehicles, see § 40–102.

Rules and regulations governing additional compensation to police and firemen for demonstrated efficiency, see §§ 4–129, 4–701, 4–702.

Rules and regulations governing conduct of municipal playgrounds and other parks, see §§ 8–128, 8–129, 8–131 to 8–144.

Rules and regulations governing money lenders, see § 26–611.

Rules and regulations to administer law providing for retirement of public school teachers, see § 31–717.

HEALTH

Regulations concerning plumbing and drainage, see § 1–725.

Regulations for administration of laws governing manufacture, renovation, and sale of mattresses, see §§ 6–603, 6–606.

Rules and regulations by health department, see §§ 6–101, 6–102, 6–112, 6–114, 6–118.

Regulations governing Federal government restaurants, see § 6–1101.

Rules and regulations concerning collection of garbage and other refuse, see §§ 6–501, 6–507.

Rules and regulations for admission of paying patients into Children's Tuberculosis Sanatorium, see § 32–313.

Rules and regulations for admission of paying patients into Gallinger Municipal Hospital, see §§ 32–308, 32–309.

Rules and regulations for admission of paying patients into the Tuberculosis Hospital, see § 32–310.

Rules and regulations concerning Public Assistance, see § 3–201 et seq.

Rules and regulations for disposal of human excreta and waste, see §§ 6–703, 6–704.

Rules and regulations for granting permits to operate medical and dental colleges, see § 31–902.

Rules and regulations for labeling potatoes, see § 22–3409.

Rules and regulations governing private hospitals and asylums, see § 32–304.

Rules and regulations governing smallpox hospitals, see § 32–306.

Rules, regulations, and fees for public convenience stations, see § 8–140.

PROPERTY

Building regulations, see §§ 1–228, 5–413 to 5–428.

Regulations concerns out-of-door advertising signs, see §§ 1–231 to 1–233.

Rules and regulations concerning firemen, see §§ 4–402, 4–406, 4–411.

Rules and regulations concerning taxation, see § 47–2505 and notes.

Rules and regulations for smoke prevention, see § 6–802.

SAFETY

Lighting streets, bridges, and other public places, see §§ 7–501, 7–707.

Regulations concerning construction, operation, and repair of elevators, see §§ 1–229, 5–305.

Regulations concerning firearms, projectiles, explosives, or other weapons, see § 1–227 and notes.

Regulations concerning steam and pressure boilers, see §§ 1–715, 1–718.

Regulations for repairing streets, avenues, alleys, and sewers, see § 7–101.

Rules and regulations concerning animals running at large, see §§ 1–224, 1–224b, 1–230.

Rules and regulations concerning fire escapes and safety provisions for buildings, see § 5–304.

Rules and regulations for production, use, and control of electricity, see § 1–719.

Rules and regulations governing Metropolitan Police, see §§ 4–106, 4–115, 4–117, 4–121, 4–122, 4–124, 4–130, 4–131, 4–142, 4–144.

Rules and regulations governing parkings, see § 5–205.

Rules and regulations governing steam and other operating engineers, see § 2–1502.

Rules, regulations, jurisdiction, control, and duties as to establishing, closing, repairing streets, bridges, sidewalks, and sewers, see §§ 7–101, 7–102 and notes.

Rules and regulations by boards or commissions other than Commissioners of the District:

Harbor regulations, see § 22–1701.

Regulations concerning accountants, see § 2–903.

Regulations concerning practice of healing arts, see § 2–103.

Regulations for licenses to erect boathouses on Potomac River, see § 8–157.

Rules and regulations by the Board of Public Welfare, see § 3–104.

Rules and regulations concerning nursing, see § 2–403.

Rules and regulations concerning optometry, see § 2–505.

Rules and regulations for administration of law to provide allowance for dependent children, see §§ 3–202, 3–303.

Rules and regulations for administration of Uniform Narcotic Drug Act, see § 33–405.

Rules and regulations for cemeteries, see § 27–110.

Rules and regulations for eradication of plant diseases and insects, see §§ 6–904, 6–905.

Rules and regulations for labor of prisoners, see § 24–412.

Rules and regulations for management of District Training School, see § 32–604.

Rules and regulations for parks, playgrounds, and public reservations, see §§ 8–128, 8–129, 8–143, 8–144, 8–148.

Rules and regulations for the administration of the Washington National Airport, see § 7–1302.

Rules and regulations governing National Training School for Boys, see § 32–806.

Rules and regulations governing pharmacist and sale of drugs and medicines, see §§ 2–103, 2–608.

Rules and regulations governing practice of podiatry, see §§ 2–702, 2–719.

Rules and regulations regulating dentists, see §§ 2–302, 2–331.

Rules and regulations to carry out Minimum Wage Law, see § 36–405.

Zoning regulations, see § 5–413 et seq.

Rules and regulations by boards or commissions other than Commissioners of the District, subject, however to the approval of the Commissioners of the District:

Regulations concerning practice of veterinaries, see § 2–802.

Rules and regulations for parole of convicts, see § 24–201.

Rules and regulations governing architects, see §§ 2–1001, 2–1006.

Rules and regulations governing barbers, see §§ 2–1103, 2–1114a.

Rules and regulations governing boxing, see § 2–1202.

Rules and regulations governing insurance and insurance companies, see § 35–102 and notes.

Rules and regulations governing practice of cosmetology, see §§ 2–1303, 2–1321.

Rules and regulations governing production and sale of milk, cream, or ice cream, see § 33–307.

Rules and regulations to prevent adulteration of food and drugs, see § 33–104.

NOTES TO DECISIONS

Constitutionality

This section does not invade the property rights of the plaintiffs, for they do not possess any peculiar right, interest, or franchise in the streets of the District. Their rights are held by license only, and are such as belong to the public in general. They cannot be called franchises or vested property interests. *Cave* v. *Rudolph* (1923, 287 F. 989, 53 App. D.C. 12).

Nature of power

Commissioners were not vested with power to prohibit harmless street sales. *Crane* v. *District of Columbia* (1923, 289 F. 557, 53 App. D.C. 159).

Commissioners cannot prescribe a condition for licensing junk and second-hand dealers which Congress did not see fit to impose *Coombe* v. *United States ex rel. Selis* (1925, 3 F. 2d 714, 55 App. D.C. 190).

Careful operation of mail trucks is required quite as much as other similar vehicles, and it is reasonable to believe that the regulation of all such vehicles was intrusted to the Commissioners for protection of lives, limbs, health, comfort, and quiet of all persons. *White* v. *District of Columbia* (1925, 4 F. 2d 163, 55 App. D.C. 197).

Police power

It is within the police power of municipal corporations to control and regulate the manner of collection and disposition of garbage, refuse and filth, and in so doing they may provide for the inspection of premises as a health measure but must not unduly infringe upon individual rights in absence of immediate danger or nuisance per se. *Little* v. *District of Columbia* (D.C. Mun. App. 1948, 62 A. 2d 874, affirmed 178 F. 2d 13, 85 U.S. App. D.C. 242, affirmed 70 S. Ct. 468, 339 U.S. 1, 94 L. Ed. 424).

Source of authority

Authority of Commissioners of District of Columbia to promulgate building code provisions relating to fire regulations which had to be complied with before new occupancy permits for rooming houses would be issued could not be found in congressional grant of authority to issue either police regulations or building regulations, but was discoverable in grant of authority to promulgate regulations "for protection against fire." *R. L. Jones et al., The Ellen Real Estate Corp. et al.* v. *The District of Columbia* (D.C. D.C. 1963, 212 F. Supp. 438).

Summary action

Unless the condition which is the object of inspection amounts to an immediate danger or a dangerous nuisance per se, municipal authorities would be acting beyond their power in taking any summary action. *Little* v. *District of Columbia* (D.C. Mun. App. 1948, 62 A. 2d 874, affirmed 178 F. 2d 13, 85 U.S. App. D.C. 242, affirmed 70 S. Ct. 468, 339 U.S. 1, 94 L. Ed. 424).

§ 1–227. Regulations relative to firearms, explosives, and weapons.

The Commissioners of the District of Columbia are hereby authorized and empowered to make and enforce all such usual and reasonable police regulations, in addition to those already made under sections 1–224, 1–225 and 1–226 as they may deem necessary for the regulation of firearms, projectiles, explosives, or weapons of any kind in the District of Columbia. (June 30, 1906, 34 Stat. 809, ch. 3932, § 4.)

CROSS REFERENCES

Firearms, fireworks, or loud noises on Capitol grounds forbidden, see § 9–123.

Licensing, regulation, and supervision of dealers in dangerous weapons, see § 47–2340.

Other provisions concerning regulation of firearms and explosives, see §§ 1–224, 22–3201 et seq.

Rules and regulations in general, see § 1–226 and notes.

NOTES TO DECISIONS

Sale of firearms

A police regulation prohibiting the sale of firearms to children may not be construed beyond its plain meaning though other provisions of the regulation may reveal an intent to include in the prohibition weapons not covered by the words used. *Tendler* v. *District of Columbia* (D. C. Mun. App. 1946, 50 A. 2d 263).

An "air pistol" is not a "firearm", or a "missile", or a "projectile", within police regulation prohibiting the sale to children of such devices. *Id.*

§ 1–228. Building regulations.

The Commissioners of the District of Columbia, are authorized and directed to make and enforce such building regulations for the said District as they may deem advisable.

Such rules and regulations made as above provided shall have the same force and effect within the District of Columbia as if enacted by Congress. (June 14, 1878, 20 Stat. 131, ch. 194, § 1 in part, § 2.)

CODIFICATION

As originally enacted, this section contained the words "such rules and regulations relative to the sale of coal in the District of Columbia as shall insure full weight to purchasers of coal"; also immediately preceding the words "such building regulations." The provision concerning coal has been superseded by act March 3, 1921, 41 Stat. 1219, ch. 118, § 11, which is set out as § 10–111.

CROSS REFERENCES

Additional penalties for violation of regulations, see § 1–224a.

Approval of replatting and condemnation of lands under District of Columbia Alley Dwelling Act, see § 5–104.

Commissioners authorized to make municipal regulations not inconsistent with sections 5–413 to 5–428, see § 5–413 and notes.

Duties as to unsafe structures or excavations, see §§ 5–502 to 5–505.

Pardoning violations of building regulations, see § 1–220.

Power of Commissioners to make rules and regulations respecting production, use, and control of electricity; inspection of wiring, machinery, and appliances; inspection fees, see §§ 1–719, 1–723.

Rules and regulations governing plumbing, house drainage, ventilation, preservation, and maintenance of house and public sewers; connections and excavations, see §§ 1–724 to 1–727.

NOTES TO DECISIONS

Approval of commissioners

Where department of building inspection had issued raze permit authorizing demolition of demised buildings and had issued a building permit authorizing erection of

shed on the leveled lot, which was to be used as a parking lot, there was sufficient approval of parking lot project plans by District of Columbia commissioners as to entitle landlord to possession of demised premises under District of Columbia Emergency Rent Act. *Ancher* v. *Lamb* (D. C. Mun. App. 1952, 86 A. 2d 533).

Enforcement

It is a matter of common knowledge that the failure of builders in erecting structures for public use to conform to recognized standards has often resulted in disaster and tragedy, and that to prescribe standards without means for enforcing compliance therewith would be as futile as to prohibit an act without affixing a penalty, and all this Congress is presumed to have contemplated when it passed the act of March 3, 1909 [§ 5–429], supplementing this section. *Simmons* v. *District of Columbia* (1923, 290 F. 347, 53 App. D.C. 372).

Evidence, admissibility

In action for injuries allegedly resulting from projection of hinge of vault covering above level of sidewalk, provision of District of Columbia building code governing paving over vaults was admissible, though it had been adopted after construction of the vault involved and was not retroactive, as relevant in determining the common-law standard of care required. *S. C. Curtis* v. *District of Columbia* (1966, 363 F. 2d 973, 124 U.S. App. D.C. 241).

Force and effect

By this section the Commissioners of the District of Columbia were authorized to make "such building regulations for the said District as they may deem advisable," and provided that these should have the same force within the District as if enacted by Congress. *Smoot* v. *Heyl* (1913, 33 S. Ct. 336, 227 U.S. 518, 57 L. Ed. 621. See, also, *D. J. Dunigan, Inc.*, v. *District of Columbia* (1931, 44 F. 2d 892, 59 App. D.C. 384); *Hill* v. *Raymond* (1936, 81 F. 2d 278, 65 App. D.C. 144).

In order to be valid, building regulations must be reasonable and not arbitrary, and must have a tendency to promote the public health, safety, or general welfare; and although a regulation may be lawful on its face and apparently fair on its terms, yet if it is enforced in such a manner as to work a discrimination against a part of the community for no lawful reason, such exercise of power will be invalidated by the courts. *D. J. Dunigan, Inc.* v. *District of Columbia* (1931, 44 F. 2d 892, 59 App. D.C. 384).

Liability for damages

Mere continued use of a tenant of common stairs and hallways of the tenement premises, when he is aware of the failure of the owner to provide lights, as required by the statute and municipal regulations, does not constitute contributory negligence as a matter of law. *Hill* v. *Raymond* (1936, 81 F. 2d 278, 65 App. D.C. 144).

Party wall

If a lot owner uses the party wall, he waives the right to object that this section deprives him of property without due process of law. *Walker* v. *Gish* (1923, 43 S. Ct. 174, 260 U.S. 477, 67 L. Ed. 344).

Source of authority

Authority of Commissioners of District of Columbia to promulgate building code provisions relating to fire regulations which had to be complied with before new occupancy permits for rooming houses would be issued could not be found in congressional grant of authority to issue either police regulations or building regulations, but was discoverable in grant of authority to promulgate regulations "for protection against fire." *R. L. Jones et al., The Ellen Real Estate Corp. et al.* v. *The District of Columbia* (D.C. D.C. 1963, 212 F. Supp. 438).

Zoning commission

Repealing clause of the Zoning Act of March 1, 1920, was in praesenti and operated immediately to deprive the Commissioners of the District of jurisdiction to enact building regulations in conflict with the jurisdiction conferred upon the Zoning Commission. *Schwartz* v. *Brownlow* (1921, 270 F. 1019, 50 App. D.C. 279).

§ 1–229. Regulations for construction and operation of elevators—Penalty.

The Commissioners of the District of Columbia are hereby authorized and directed to make and publish such orders as may be necessary to regulate the construction, repair, and operation of all elevators within the District of Columbia, and prescribe such means of security as may be found necessary to protect life and limb.

Any person or persons, or corporation, who shall neglect or refuse to comply with the orders made pursuant to this section, shall, upon conviction thereof in the District of Columbia Court of General Sessions, on information filed in the name of the District of Columbia, be fined not less than ten dollars nor more than one hundred dollars for each offense. (Mar. 3, 1887, 24 Stat. 580, ch. 390, §§ 1, 2; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963. 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Municipal Court of the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded Act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

TRANSFER OF FUNCTIONS

Elevator Inspection Section transferred to Department of Licenses and Inspections, see note under section 1–246.

CROSS REFERENCES

Other provisions concerning power of Commissioners over elevators, see § 5–305.

Rules and regulations in general, see § 1–22€ and notes.

§ 1–230. Regulations for control of rabies—Vaccination of dogs—Penalties.

Whenever it shall be made to appear to the Commissioners that any dog or other animal within the District is afflicted with rabies, or is suspected of being rabid, or whenever said Commissioners shall be notified by the director of public health of the District of Columbia that rabies may spread within said District, said Commissioners are empowered to issue proclamations requiring such of the following measures as said Commissioners may deem necessary with respect to any or all dogs or other animals within said District: (1) Muzzling; (2) leashing; (3) confinement or quarantine; (4) vaccination against rabies. Such measure or measures shall be required for such periods or at such times as the Commissioners may designate in any such proclamation. The Commissioners are authorized to prescribe in any such proclamation such regulations as may be necessary to carry out the measure or measures required.

Whenever the Commissioners shall by proclamation require dogs or other animals in the District to be vaccinated against rabies, the owners or keepers of such dogs or other animals may have such vaccination done at their own expense by private veterinarians or at the expense of the District of Columbia by veterinarians designated for that purpose by the Commissioners. For the purposes of this section, the Commissioners are authorized and directed to provide the necessary personnel and facilities, including vaccine tags and vaccine.

Any person violating any provision of any such proclamation shall be punished by a fine of not more than $300 or imprisonment for not more than ninety days. (June 19, 1878, 20 Stat. 174, ch. 323, § 7; June 27, 1879, 21 Stat. 35, ch. 38; July 5, 1945, 59 Stat. 409, ch. 267, § 3; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CODIFICATION

There is nothing amendatory of the original act in act June 27, 1879, 21 Stat. 35, ch. 38. It merely authorizes the Commissioners to extend the area for the impounding of animals in the District of Columbia.

AMENDMENT

1945—Act July 5, 1945, amended section generally to control rabies and provide for the vaccination of dogs.

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under § 6–101.

CROSS REFERENCES

Provisions concerning dog tax, see § 47–2001.
Rules and regulations in general, see § 1–226 and notes.

§ 1–231. Outdoor signs—Commissioners may make regulations.

The Commissioners of the District of Columbia are authorized and empowered after public hearings to make and to enforce such regulations as they may deem advisable to (in so far as necessary to promote the public health, safety, morals, and welfare) control, restrict, and govern the erection, hanging, placing, painting, display, and maintenance of all outdoor signs and other forms of exterior advertising on public ways and public space under their control and on private property within public view within the District of Columbia, and such regulations as may be promulgated hereunder shall have the force and effect of law. (Mar. 3, 1931, 46 Stat. 1486, ch. 399. § 1.)

CROSS REFERENCES

Real estate sale or rent signs, see § 7–1001.
Rules and regulations in general, see § 1–226 and notes.

§ 1–232. License requirements—Outdoor signs—Fee.

No person, persons, firm, or corporation shall engage in the business of erecting, hanging, placing painting displaying, or maintaining any sign for outdoor display within the District of Columbia without first having obtained a license therefor from the superintendent of licenses of the District of Columbia, which license shall bear an identification number: *Provided*, That no license shall issue without the prepayment of $5 to the collector of taxes of the District of Columbia, and an annual fee of $5 thereafter for each succeeding year. For good cause shown the Commissioners of the District of Columbia shall have the power to reject any application for a license hereunder, or, where license has been issued, to revoke it. (Mar. 3, 1931, 46 Stat. 1486 ch. 399, § 2.)

CROSS REFERENCE

General provisions concerning business licenses, see § 47–2301.

§ 1–233. Penalties—Publication of regulations.

Any person, persons, firm, or corporation, whether as principal, agent, or employee, violating sections 1–231 to 1–233 or any of the regulations promulgated pursuant to said sections shall, upon conviction thereof in the District of Columbia Court of General Sessions, be fined not less than $5 nor more than $200 for each and every offense, and a like fine shall be imposed for each and every day thereafter that such violation of law shall continue: *Provided*, That the regulations promulgated hereunder shall be printed in one of the daily newspapers published in the District of Columbia, and no penalty prescribed for the violation of said regulations shall be enforced until thirty days after the publication of such regulations. (Mar. 3, 1931, 46 Stat. 1486, ch. 399, § 4; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded Act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 1–234. Lights—Maintenance outside city limits.

Said Commissioners shall have power to erect light, and maintain lamp-posts, with lamps, outside of the city limits, when, in their judgment, it shall be deemed proper or necessary. (June 11, 1878, 20 Stat. 104, ch. 180, § 3.)

CROSS REFERENCE

Lighting streets, bridges, and other public places, see §§ 7–501, 7–701 to 7–710.

§ 1–235. Cleaning streets, alleys, and avenues, and repairs of sewers made municipal objects.

The sweeping, cleaning, and removing all refuse and filthy accumulations in the streets, alleys, and avenues of the city of Washington, and the repairs and cleaning of the sewers, are necessary municipal objects, which belong to the current expenses of the same, to be paid for in money as other ordinary municipal expenses. (Mar. 1, 1875, 18 Stat. 337, ch. 117; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

CODIFICATION

Act Mar. 1, 1875, 18 Stat. 337, ch. 117, made reference to the cities of Washington and Georgetown. Act Feb. 11, 1895, 28 Stat. 650, ch. 79, made Georgetown a part of the city of Washington. The compilers of the 1929 Code reworded the above section to correspond with the provisions of the last-mentioned act.

CROSS REFERENCES

Other provisions concerning collection and disposal of city refuse, see §§ 6–501 to 6–511.
Removal of ice and snow from sidewalks, see §§ 7–801, 7–802 to 7–806.
Repair of highways and sewers, see § 7–101.

§ 1–236. Sale of street sweepings authorized.

The Commissioners of the District of Columbia are authorized to sell sweepings from the streets, the amounts realized from such sales to be deposited in the treasury, to the credit of the United States and of the District of Columbia in the same proportions as appropriations for such fiscal year are paid from the treasury of the United States and the revenues of the District of Columbia. (Apr. 27, 1904, 33 Stat. 373, ch. 1628; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

CODIFICATION

This section is a composite of credits cited in the history line

CROSS REFERENCE

General limitations on powers of Commissioners, see § 1–801 and note.

§ 1–237. Investigations of municipal matters by Commissioners—Authority to administer oaths.

After July 1, 1902, the several provisions of sections 4–601 to 4–603 shall be applicable to and enforceable in any investigation or examination of any municipal matter by the Commissioners of the District of Columbia, as well as to the proceedings before the trial boards named in said sections; and said Commissioners are, and each of them is hereby, authorized to administer oaths to witnesses summoned in any such investigation or examination aforesaid. (July 1, 1902, 32 Stat. 591, ch. 1352.)

CROSS REFERENCES

Certified public accountants, hearings on questions of revocation, suspension or denial of certificates, etc., considered as investigation of municipal matter within meaning of this section, see § 2–921.

Refusal to give testimony relating to office or employment, forfeiture of office and emoluments, see § 1–319.

NOTES TO DECISIONS

Abuse of authority

Where Board of Commissioners for the District of Columbia issued a directive requiring all police officers to answer lengthy questionnaire of Senate District Crime Investigating Committee, and there was no clear showing of an abuse of lawful authority or wrongful usurpation of power by Board, action would not be enjoined although Board had no authority to issue such a directive under governing statutes. *Barrett* v. *Young et al., as the Board of Commissioners for the District of Columbia* (D.C. D.C. 1955, 134 F. Supp. 106).

Powers of Board

Board of Commissioners for the District of Columbia is a creature of statute and derives its power from expressed statutory authority which is in the nature of a restraining rather than an enabling act. *Barrett* v. *Young et al., as the Board of Commissioners for the District of Columbia* (D.C. D.C. 1955, 134 F. Supp. 106).

§ 1–238. Annual report to Congress.

The Commissioners of the District of Columbia shall annually report their official doings in detail to Congress on or before the first Monday of December. (June 11, 1878, 20 Stat. 108, ch. 180, § 12.)

ORGANIC ACT OF 1878

Act June 11, 1878, 20 Stat. 102, ch 180, § 12, read, in its entirety, as follows: "It shall be the duty of the said Commissioners to report to Congress at the next session succeeding their appointment a draft of such additional laws or amendments to existing laws as in their opinion are necessary for the harmonious working of the system hereby adopted, and for the effectual and proper government of the District of Columbia; and said Commissioners shall annually report their official doings in detail to Congress on or before the first Monday of December."

TRANSFER OF FUNCTIONS

Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952, established in the government of the District of Columbia under the direction and control of the Board of Commissioners, a Department of General Administration headed by a director. The order transferred to the Director of General Administration all of the functions and positions of the Budget Office. Reorganization Order No. 24 established in the Department of General Administration a Budget Office headed by a Budget Officer. The preparation of the annual report referred to in this section was included among the functions assigned to the Budget Office by Reorganization Order No. 24. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to this title.

§ 1–239. Illustrations in reports prohibited, unless authorized by Commissioners.

Hereafter no department, board, office, or agency of the government of the District of Columbia shall include any illustration in any annual report prepared by it unless such illustration be authorized under order or regulation approved by the Commissioners of the District of Columbia. (May 18, 1910, 36 Stat. 381, ch. 248, § 1 in part; July 21, 1959, 73 Stat. 223, Pub. L. 86–101, § 1.)

AMENDMENT

1959—Act July 21, 1959, permitted inclusion of illustrations in annual reports if authorized under order or regulation approved by the Commissioners.

§ 1–240. Originals of discontinued reports of government of District of Columbia to be preserved for public inspection.

In all cases where the printing of annual or special reports of the government of the District of Columbia is discontinued, the original copy thereof shall be kept on file in the offices of the Commissioners of the District of Columbia for public inspection. (May 21, 1928, 45 Stat. 649, ch. 659.)

CODIFICATION

This section is derived from an appropriation act.

§ 1–241. Repealed. Oct. 31, 1951, 65 Stat. 706, ch. 654, § 1 (130).

Section, act June 28, 1944, 58 Stat. 531, ch. 300, § 5, related to purchase of materials, supplies, and equipment by officials of the District of Columbia government. It is now covered by 40 U.S.C. § 481, and act June 30, 1949, 63 Stat. 382, ch. 288, title I, § 109, as amended. The 1949 act, as amended, was formerly classified to 5 U.S.C. § 630g. In the revision of title 5, U.S.C., enacted by act Sept. 6, 1966, 80 Stat. 378, Pub. L. 89–554, it was omitted therefrom and transferred to title 40, U.S.C., § 756.

§ 1–242. Appropriations for printing schedules or lists of supplies and materials.

No part of any appropriation for the District of Columbia, except for public schools, shall be expended for printing or binding a schedule or list of supplies and materials for the furnishing of which contracts have been or may be awarded. (June 28, 1944, 58 Stat. 533, ch. 300, § 13.)

§ 1–243. Rent for quarters.

No part of the funds appropriated for the District of Columbia shall be available for the payment of rental of quarters for any activity at a rate in excess of 90 per centum of the per annum rate paid by the District of Columbia for such quarters on June 30, 1933: *Provided,* That the provisions of this paragraph shall not apply to leases made prior to June 28, 1944, except when renewals thereof are made thereafter: *Provided further,* That the appropriations or portions of appropriations unexpended by reason of the operation of this paragraph shall not be used for any purpose, but shall be impounded and deposited in the Treasury to the credit of the District of Columbia. (June 28, 1944, 58 Stat. 532, ch. 300, § 6.)

SIMILAR PROVISIONS

1944—July 1, 1943, ch. 184, § 6, 57 Stat. 346.
1943—June 25, 1942, ch. 452, § 6, 56 Stat. 460.
1942—July 1, 1941, ch. 271, § 6, 55 Stat. 539.
1941—June 12, 1940, ch. 333, § 6, 54 Stat. 342.

TERM OF LEASES

Section 12 of the District of Columbia Appropriations Act of July 16, 1965, 79 Stat. 242, Pub. L. 89–75 provided that:

"Appropriations in this Act shall be available, when authorized by the Commissioners, for the rental of quarters without reference to section 6 of the District of Columbia Appropriations Act, 1945". Similar provisions were contained in the following prior appropriation acts:

1967—Nov. 2, 1966, 80 Stat. 1173, Pub. L. 89–743, § 11.
1966—July 16, 1965, 79 Stat. 242, Pub. L. 89–75, § 12.
1965—Aug. 22, 1964, 78 Stat. 593, Pub. L. 88–479, § 12.
1964—Dec. 30, 1963, 77 Stat. 839, Pub. L. 88–252, § 12.
1963—Oct. 23, 1962, Pub. L. 87–867, § 12, 75 Stat. 564.
1962—Sept. 21, 1961, Pub. L. 87–265, § 12, 75 Stat. 564.
1961—Apr. 8, 1960, Pub. L. 86–412, § 12, 74 Stat. 30.
1960—July 23, 1959, Pub. L. 86–104, § 12, 73 Stat. 238.
1959—Aug. 6, 1958, Pub. L. 85–594, § 12, 72 Stat. 511.
1958—June 27, 1957, Pub. L. 85–61, § 12, 71 Stat. 206.
1957—June 29, 1956, ch. 479, § 15, 70 Stat. 454.

Section 12 of the District of Columbia Appropriations Act, 1959, act Aug. 6, 1958, included in the above enumeration, also contained a permanent proviso, which is set out herein as § 1–243a.

§ 1–243a. Leases for rentals limited to 5 years.

On and after August 6, 1958, leases for rentals shall not be on terms and periods in excess of five years. (Aug. 6, 1958, 72 Stat. 511, Pub. L. 85–594, § 12.)

§ 1–244. Additional powers of Commissioners.

The Commissioners of the District of Columbia are authorized and empowered within their discretion—

(*a*) *Waiver of business license renewal fees for personnel of armed forces.*—In accordance with such regulations as they may make, to provide for the waiver of payment by any person in the military service of the United States of any annual or other periodic fee required by law to be paid to the District of Columbia or to any District of Columbia board or commission as a condition to retaining or renewing any license or permit to engage in any business or calling or to practice any profession in the District of Columbia.

(*b*) *Bond requirements for certain businesses—Amount—Termination of surety's liability—Notification by surety of payment on bond—Insolvency of surety—Action on bond—Amount of recovery—Certified copy of bond—License examination.*—To make, adopt, and enforce regulations requiring persons, firms, and corporations, other than utility companies, engaged within the District of Columbia in the business of plumbing or gas fitting, or of installing, maintaining, or repairing heating, ventilating, air-conditioning, or mechanical refrigerating apparatus, equipment, appliances, systems, or parts thereof, or of installing, maintaining, or repairing apparatus, equipment, fixtures, appliances, or wiring, using or conducting electric current, to furnish and keep in force a bond running to the District of Columbia with corporate surety authorized by the Secretary of the Treasury to do business pursuant to section 3 of the Act of August 13, 1894 (28 Stat. 279), as amended (6 U.S.C. § 8), and by the Insurance Department of the District of Columbia to do business in the District of Columbia in an amount not exceeding $5,000, conditioned upon the performance in accordance with law and regulations in force in the District of Columbia of all such work undertaken by such person, firm, or corporation, and to keep the District of Columbia harmless from the consequences of any and all acts performed by said person, firm, or corporation in connection with such business during the period covered by the said bond.

The surety on any such bond may terminate its liability under such bond by giving thirty days' written notice thereof, served either personally or by registered mail, to the principal and to the Commissioners; and upon giving such notice the surety shall be discharged from all liability under such bond for any act or omission of the principal occurring after the expiration of thirty days from the date of service of such notice. Unless on or before the expiration of such period the principal shall duly file a new bond in like amount and conditioned as the original in substitution of the bond so terminated, the license of the principal to engage in such business shall likewise terminate upon the expiration of such period. Upon making any payment on account of its bond, the surety shall immediately notify the Commissioners.

In the event the surety becomes insolvent or a bankrupt, or ceases to be authorized by the Secretary of the Treasury to do business pursuant to section 3 of the Act of August 13, 1894 (28 Stat. 279), as amended (6 U.S.C. § 8), or by the Insurance Department of the District of Columbia, to do business in the District of Columbia, the principal shall, within ten days after notice thereof, given by the Commissioners duly file a new bond in like amount and conditioned as the original and if the principal shall fail to do so the license of such principal shall terminate. If a recovery be had on any bond the principal shall restore the bond to its original amount.

Any person aggrieved by the violation of any law or regulation in force in the District of Columbia relating to such business shall have, in addition to his right of action against said person, firm, or corporation, a right to bring suit against the surety on said bond, either alone or jointly with the principal thereon, and to recover in an amount not exceeding the penalty of the bond any damages sustained by reason of any act, transaction, or conduct of the principal which is in violation of law or regulation in force in the District of Columbia relating to such business: *Provided, however,* That nothing in this section shall be construed to impose upon the surety on any such bond a greater liability than the total amount thereof or the amount remaining unextinguished by any prior recovery or recoveries as the case may be.

The Commissioners shall furnish to anyone applying therefor a certified copy of any such bond filed with them upon payment of a fee to be fixed by the Commissioners therefor, and such certified copy shall be prima facie evidence in any court that such bond was duly executed and delivered by the person, firm, or corporation whose name appears therein.

The Commissioners are further authorized to provide, in accordance with such regulations as they may prescribe, for the examination of the qualifications and fitness of all applicants for licenses to engage in any of the businesses herein enumerated by a board, consisting of not less than two persons who have been actively engaged in the District of Columbia for at least five years next preceding their

appointment in the business for which license is sought (one of whom shall have been an owner or manager and one of whom shall have been an employee competent to superintend the performance of work) and not less than one official of the District of Columbia, appointed by the said Commissioners: *Provided,* That nothing herein shall repeal existing law relating to the examination and licensing of master plumbers and gas fitters.

(*c*) *Leasing powers.*—To rent any building or land belonging to the District of Columbia or under the jurisdiction of the Commissioners, or any available space therein, whenever such building or land, or space therein, is not then required for the purpose for which it was acquired, and to rent any used personal property belonging to the District of Columbia which is not then needed for the purpose for which it was acquired: *Provided,* That nothing contained in this paragraph shall have the effect of changing in any manner Public Law Numbered 732, Seventy-fourth Congress, entitled "An Act to authorize the operation of stands in Federal buildings by blind persons, to enlarge the economic opportunities of the blind, and for other purposes", approved June 20, 1936 (20 U.S.C. §§ 107—107f).

(*d*) *Issuance of revocable permits for construction of tunnels, and laying of conduits and pipes.*—To grant revocable permits upon such terms, conditions, bonds, and rentals as the Commissioners may impose for the construction of tunnels, and the laying of conduits and pipes in the alleys, streets, and avenues in the District of Columbia under the jurisdiction of the Commissioners.

(*e*) *Suspension of officers and employees.*—To suspend, with or without pay, any officer or employee appointed by them and, under such rules or regulations as they may prescribe, to delegate this power to any officers or employees of the District of Columbia.

(*f*) *Name and rename highways, buildings, public places and property, etc.*—To name highways and to name and change the name of any circle, bridge, building, or other public place or property in the District of Columbia under the jurisdiction of the Commissioners, and after public hearing to change the name of any highway under the jurisdiction of said Commissioners.

(*g*) *Assess and collect fees for copies and transcripts of regulations, permits, certificates and records—Disposition of moneys.*—To fix, assess, and collect fees for copies of orders, regulations, permits, certificates, and transcripts of records furnished by the District of Columbia, including, but not limited to, transcripts of records of births and deaths. No one transcript shall be made so as to apply to more than one birth or death. No fee shall be charged for certificates, copies or transcripts furnished the various departments of the United States Government for official purposes. Such fees shall not exceed the reasonably estimated cost of providing such copies, certificates, and transcripts, and shall be deposited in the Treasury of the United States to the credit of the District of Columbia.

(*h*) *Penalties for violation of rules and regulations.*—Where not otherwise specifically provided, to prescribe a penalty upon conviction of a violation of any rule or regulation authorized by sections 1–244 to 1–246, 1–248 and 1–249 by a fine of not more than $300 or imprisonment of not more than ninety days.

(*i*) *Purchase and sale of maps and regulations—District of Columbia Publications Fund—Issuance without charge—Delegation of authority—Payment of cost.*—(1) To purchase and sell maps, and regulations and parts of regulations issued by any agency of the government of the District of Columbia and amendments thereof, including binders therefor (hereinafter referred to as "material"), at such prices as the Commissioners or their designated agent may from time to time determine to be necessary to approximate the cost thereof, including the cost of distribution. All receipts from the sale of such material on hand as of the effective date of this amendment, shall be deposited into a fund which is hereby established, to be known as the "District of Columbia Publications Fund", which fund shall be available without fiscal year limitation for all necessary costs connected with the procurement, publication, and distribution of such material, including postage. There is hereby authorized to be appropriated from the revenues of the District of Columbia $50,000 to provide working capital, which sum shall be deposited to the credit of the fund established by this section, and receipts from the sale of such material shall likewise be deposited to the credit of such fund: *Provided,* That as soon as practicable after the close of each fiscal year, after provision has been made for payment of all obligations then incurred, the amount in such fund in excess of $50,000 shall be deposited to general revenues of the District of Columbia.

(2) To issue such material without charge, in the discretion of the Commissioners, to officers and employees of the governments of the United States and the District of Columbia to States, Territories, and possessions of the United States, local governmental units, and foreign governments; to institutions of research and learning; to applicants for, or holders of, particular licenses issued by the District of Columbia; and to any other person when it is determined by said Commissioners or their designated agent or agents that it is in the best interest of the District of Columbia to furnish such material without charge; and to delegate to the heads of departments and agencies of the government of the District of Columbia the authority likewise to make the distribution authorized by this paragraph of such material as may be purchased by the departments and agencies. Material to be distributed under the authority of this paragraph shall be supplied to the District of Columbia department or agency proposing to make such distribution, only upon payment by the department or agency of the cost thereof.

(*j*) *Placement of orders with Federal departments and agencies—Payment of cost—Obligations upon appropriations.*—To place orders, if they determine it to be in the best interest of the District of Columbia, with any Federal department, establishment, bureau, or office for materials, supplies, equipment, work, or services of any kind that such Federal agency may be in a position to supply or be equipped to render, by contract or otherwise, and shall pay promptly by check to such Federal agency, upon its written request, either in advance or upon

furnishing or performance thereof, all or part of the estimated or actual cost thereof as determined by such department, establishment, bureau, or office as may be requisitioned; but proper adjustments on the basis of the actual costs of the materials, supplies or equipment furnished or work or services performed, paid for in advance, shall be made as may be agreed upon by the departments, establishments, bureaus, or offices concerned. Orders placed as provided in this subsection shall be considered as obligations upon appropriations in the same manner as orders or contracts placed with private contractors.

(*k*) *Placement of orders with departments, offices, or agencies of the District—Payment of cost—Obligations upon appropriations.*—To authorize any department, office, or agency of the District of Columbia government, when it is determined to be in the best interest of the District of Columbia so to do, to place orders with any other department, office, or agency of the District for materials, supplies, equipment, work, or services of any kind that such requisitioned department, office, or agency may be in a position to supply or equipped to render. The department, office, or agency placing any such orders shall either advance, subject to proper adjustment on the basis of actual cost, or reimburse, such department, office, or agency the actual cost of materials, supplies, or equipment furnished or work or services performed as determined by such department, office, or agency as may be requisitioned. Orders placed as provided in this subsection shall be considered as obligations upon appropriations in the same manner as orders or contracts placed with private contractors.

The Commissioners are authorized to delegate any of the functions to be performed by them under the authority of subsections (i) to (k) to any officer or employee of the District of Columbia.

(*l*) *Leases or permits for use of public space over or under 9th Street Southwest.*—To enter into leases of, or to grant revocable permits for the use of, the public space over or under 9th Street Southwest in the District of Columbia to an extent not inconsistent with the use of such street by the general public for the purpose of travel, and in connection with any such lease or permit to impose such terms, including but not limited to the deposit of bond or other security, and to provide for the payment of such rents or fees as the Commissioners may, in their discretion, determine to be necessary or desirable, but the Commissioners shall, in connection with entering into a lease for, or granting a permit for, the use of public space over said street in the District of Columbia, provide as a condition of any such lease or permit that such space shall not be used by the lessee or permittee in such manner as to deprive any real property not owned by such lessee or permittee of its easements of light, air, and access. (Dec. 20, 1944, 58 Stat. 819, ch. 611, § 1; July 2, 1958, 72 Stat. 292, Pub. L. 85–491, §§ 1, 2; Aug. 21, 1959, 73 Stat. 414, Pub. L. 86–178, § 2; Sept. 13, 1960, 74 Stat. 881, Pub. L. 86–743, § 1.)

CODIFICATION

Act Aug. 13, 1894, as amended, referred to in subsection (b) has been repealed and reenacted as 6 U.S.C. § 8, by act July 30, 1947, enacting title 6 into positive law.

AMENDMENTS

1960—Act Sept. 13, 1960, added subsec. (*l*).

1959—Act Aug. 21, 1959, amended subsec. (*g*) by striking out provisions which required fees to be paid to the Collector of Taxes, and inserted provisions relating to transcripts of births and deaths, prohibiting the charging of fees for certificates, copies or transcripts furnished to the United States Government, and limiting fees to not more than the reasonably estimated cost of providing such copies, certificates and transcripts.

1958—Act July 2, 1958, added subsecs. (*i*) to (*k*).

EFFECTIVE DATE OF 1959 AMENDMENT

Section 3 of act Aug. 21, 1959, provided that: "This Act [amending this section and repealing section 6–103] shall take effect sixty days after approval [Aug. 21, 1959]."

CROSS REFERENCES

Bonding of collection agencies, see § 47–2345(c).

Home improvement businesses, regulation of, see § 2–2301 et seq.

Honorariums to various board members and commissioners, see §§ 1–254 to 1–259.

Regulation of finance charges in connection with sale of motor vehicles on installment basis, see chapter 9 of title 40.

NOTES TO DECISIONS

Action on bond

Where District of Columbia Commissioners had never exercised their enlarged authority under Additional Powers Act and as a consequence prior code section providing that District of Columbia shall be kept harmless from consequences of any and all acts of said licensee plumber during period covered by plumber's indemnity bond was still in effect, purchasers of property upon which sewer pipe was allegedly negligently installed by plumber could not bring action against plumber's surety on indemnity bond which named only District of Columbia as obligee therein. *Bolten* v. *Clarke and Aetna Casualty & Surety Co.* (D.C. Mun. App. 1956, 125 A. 2d 60).

Practice of engineering

The preparation by duly licensed master electricians of plans, diagrams and computations for proposed installations in which carrying capacity will exceed 200 amperes or electrical potential will exceed 240 volts does not constitute "practice of engineering" as contemplated in the Professional Engineers' Registration Act, and order of Board of Commissioners of District of Columbia providing that plans and specifications for proposed electrical installations in excess of 240 amperes or 240 volts should be prepared by registered professional electrical engineer was not required under the legislation regulating the practice of engineering. *Electrical Contractors Association of the District of Columbia et al.* v. *Robert E. McLaughlin et al.* (D.C. D.C. 1957, 153 F. Supp. 653).

Regulations must be reasonable

Order of District of Columbia Board of Commissioners requiring that application for any proposed electrical installation in which current carrying capacity exceeds 200 amperes or electrical potential exceeds 240 volts shall be accompanied by plans and computations prepared and signed by professional electrical engineer bears no relationship to the factors of public health, safety or general welfare, results in discrimination against the electrical trade or business and inevitably increases cost to the consuming public, for no lawful reason, and such order is illogical, unreasonable, arbitrary and capricious. *Electrical Contractors Association of the District of Columbia et al.* v. *Robert E. McLaughlin et al.* (D.C. D.C. 1957, 153 F. Supp. 653).

Repeal by implication

Where section of Electrical Code providing for plans and specifications to be submitted by licensed electricians as part of permits for proposed electrical installation was in effect at time Congress enacted legislation regulating architects and engineers without repealing the Electrical Code sections, no repeal of Electrical Code section was intended by implication, and District of Columbia Board of Commissioner's orders amending Electrical Code section to provide that plans and specifications for installations in excess of 240 amperes or 240 volts should be

prepared by a registered professional electrical engineer was without basis in law. *Electrical Contractors Association of the District of Columbia et al.* v. *Robert E. McLaughlin et al.* (D.C. D.C. 1957, 153 F. Supp. 653).

§ 1–245. Appointment of contracting officers—Powers—Approval of contracts over $3,000—Void contracts—Liquidated damage contracts.

The Commissioners of the District of Columbia are authorized to appoint such number of employees of the District of Columbia as they shall consider advisable as contracting officers, who, under the direction of the said Commissioners, may exercise any powers with respect to making and entering into contracts on behalf of said District of Columbia and administering said contracts that are now vested by law in the said Commissioners, except as herein otherwise provided; but no contract of $3,000 or more entered into on behalf of said District of Columbia by any contracting officer appointed pursuant to sections 1–244 to 1–246, 1–248 and 1–249 shall be binding upon said District of Columbia, or give rise to any claim or demand against said District of Columbia, until approved by the Commissioners of the District of Columbia, or a majority of them, sitting as a Board.

All contracts entered into by any contracting officer in which such contracting officer or any of the Commissioners shall be personally interested shall be void, and no payment shall be made on any of such contracts by the District of Columbia or by any officer thereof.

With respect to all contracts of the District of Columbia which contain stipulations for liquidated damages for delay the Commissioners of the District of Columbia are authorized and empowered to remit the whole or any part of such damages as in their discretion may be just and equitable. (Dec. 20, 1944, 58 Stat. 821, ch. 611, § 2; Aug. 16, 1949, 63 Stat. 607, ch. 438.)

AMENDMENT

1949—Act Aug. 16, 1949, substituted "$3,000" for "$1,000."

NOTES TO DECISIONS

Authority of contracting officers

Contractors, whose bid for school supplies amounting to $7,530.15 was accepted by contracting officers of the District of Columbia, could not relieve themselves of performance of the bid by refusing to execute contract forms on ground that no binding contract was entered into prior to approval of commissioners, and, on failure to perform, contractor was liable for difference between contract price and cost of the supplies procured elsewhere. *Singleton* v. *District of Columbia* (1952, 198 F. 2d 945, 91 U.S. App. D.C. 91).

Construction

Statute, providing that commissioners of the District of Columbia may appoint contracting officers authorized to enter into contracts for the District, authorizes the contracting officers to enter into contracts and not merely to negotiate them, and provision that contracts over $1,000 shall not bind District until approved by commissioners is for benefit of District and not parties contracting therewith. *Singleton* v. *District of Columbia* (1952, 198 F. 2d 945, 91 U.S. App. D.C. 91).

Enforceability of contract

The statute providing that no contract of $1,000 or more shall be binding upon the District of Columbia until approved by the District commissioners renders unapproved contracts unenforceable against District but binding upon other party, and therefore successful bidder may not refuse to execute contract and thus prevent approval by commissioners and thereby relieve himself of consequences of his default. *District of Columbia* v. *Singleton* (D. C. Mun. App. 1951, 81 A. 2d 335).

§ 1–246. Powers and duties of Director of Inspection—Delegation of authority.

The Commissioners may transfer to, impose upon, and vest in the Director of Inspection of the District of Columbia all or any of the duties imposed upon, and all or any of the powers, rights, and authority vested in, the Inspector of Buildings of the District of Columbia, the Inspector of Plumbing of the District of Columbia, and the Electrical Engineer of the District of Columbia, by any law, and the Commissioners may authorize the said Director of Inspection to delegate any or all of such powers to the Chief Engineer of the Department of Inspection of the District of Columbia and to the Chief of Inspection of the Department of Inspection of the District of Columbia and to their respective deputies when acting for them. (Dec. 20, 1944, 58 Stat. 822, ch. 611, § 3.)

TRANSFER OF FUNCTIONS

Reorganization Order No. 55 of the Board of Commissioners dated June 30, 1953, and amended Aug. 13, 1953, and Dec. 17, 1953, established under the direction and control of a Commissioner, a Department of Licenses and Inspections headed by a Director. The order set out the purpose, organization, and functions of the new department. The order provided that all of the functions and positions of the following named organizations were transferred to the new Department of Licenses and Inspections: The Department of Inspections including the Engineering Section, the Building Inspection Section, the Electrical Section, the Elevator Inspection Section, the Fire Safety Inspection Section, the Plumbing Inspection Section, the Smoke and Boiler Inspection Section, and the Administrative Section; and similarly the Department of Weights, Measures and Markets, the License Bureau, the License Board, the License Committee, the Board of Special Appeals, the Board for the Condemnation of Dangerous and Unsafe Buildings, and the Central Permit Bureau. The order provided that in accordance with the provisions of Reorganization Plan No. 5 of 1952 the named organizations were abolished. The order and plan are set out in the Appendix to this title.

§ 1–247. Repealed. Oct. 31, 1951, 65 Stat. 706, ch. 654, § 1 (131).

Section, Act Dec. 20, 1944, 58 Stat. 822, ch. 611, § 4, related to purchase of materials, supplies, and equipment by officials of the District of Columbia government. It is now covered by 40 U.S.C. § 481, and act June 30, 1949, 63 Stat. 382, ch. 288, title I, § 109, as amended. The 1949 act, as amended, was formerly classified to 5 U.S.C. § 630g. In the revision of title 5, U.S.C., enacted by act Sept. 6, 1966, 80 Stat. 378, Pub. L. 89–554, it was omitted therefrom and transferred to title 40, U.S.C., § 756.

§ 1–248. Effectuate settlement for real estate acquired by purchase or condemnation.

The Commissioners may, in their discretion and when they deem such action to be in the public interest, effect settlement with owners of real estate authorized to be acquired by purchase or condemnation for District of Columbia purposes, through such title company or companies in the District of Columbia as may be designated by the Commissioners, and to pay from appropriations available for the acquisition of such real estate reasonable fees to cover the cost of the services rendered by such title company or companies. (Dec. 20, 1944, 58 Stat. 822, ch. 611, § 6.)

§ 1–249. Power conferred by sections 1–244 to 1–246 and 1–248 as additional.

The power and authorities conferred by sections 1–244 to 1–246 and 1–248 are to be construed as in addition to and not by way of limitation of the powers now vested by law in the Commissioners. (Dec. 20, 1944, 58 Stat. 822, ch. 611, § 6.)

§ 1–250. Purchase of vehicles—Trade-in as part payment.

In purchasing motor-propelled or animal-drawn vehicles or tractors, or road, agricultural, manufacturing, or laboratory equipment, or boats, or parts, accessories, tires, or equipment thereof, the Commissioners or their duly authorized representatives may exchange or sell similar items and apply the exchange allowances or proceeds of sales in such cases in whole or in part payment therefor. (June 30, 1945, 59 Stat. 293, ch. 209, § 7; July 9, 1946, 60 Stat. 523, ch. 544, § 7.)

§ 1–251. Authority to grant additional compensation.

Authority is hereby granted to the Commissioners and to other wage-fixing authorities of the municipal government of the District of Columbia, the Secretary of the Interior and the President of the United States, in their discretion, to grant additional compensation at rates not to exceed those prevailing without regard to the provisions of section 3679 of the Revised Statutes, as amended (31 U.S.C. § 665), additional compensation at rates not to exceed those prevailing in the District of Columbia for similar or comparable employment to each employee in or under the municipal government of the District of Columbia, National Capital Parks and the Executive Mansion Grounds, whose compensation is fixed and adjusted from time to time by a wage board, or whose compensation is fixed without reference to section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509, and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters], or whose compensation is limited or fixed specifically by the provisions of the District of Columbia Appropriation Act, 1952. (Oct. 25, 1951, 65 Stat. 637, ch. 560, § 2.)

CODIFICATION

The reference in this section to "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949, as amended". The latter act (Oct. 28, 1949, 63 Stat. 954, ch. 782) was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a), and is now covered by the provisions of title 5, U.S.C., cited. Section 7(b) of such act Sept. 6, 1966, 80 Stat. 631, Pub. L. 89–554 (of which § 1 revised and enacted title 5, U.S.C., into law), provided: "A reference to a law replaced by §§ 1—6 of this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this Act.".

§ 1–252. Authority to fix certain licensing and registration fees.

The Commissioners of the District of Columbia are authorized and empowered to fix from time to time, in accordance with section 1–253, the fees authorized to be charged by sections 2–104, 2–119, 2–313, 2–314, 2–323, 2–326, 2–327, 2–404, 2–406, 2–408, 2–514, 2–518, 2–604, 2–609, 2–709, 2–710, 2–803, 2–806, 2–908, 2–1023, 2–1111, 2–1216, 2–1218, 2–1319, 2–1405, 2–1504, 2–1813, 45–1407. (June 5, 1953, 67 Stat. 43, ch. 101, § 1.)

§ 1–253. Same—Increase or decrease of fees.

The Commissioners may after public hearing increase or decrease the fees authorized to be charged by each of the sections listed in section 1–252 to such amounts as may, in the judgment of the Commissioners, be reasonably necessary to defray the approximate cost of administering each of said sections. (June 5, 1953, 67 Stat. 43, ch. 101, § 2.)

§ 1–254. Commissioners authority to determine honorariums for members of boards—Deposit of fees in the Treasury—Receipt of honorarium without prejudice to other compensation—Definition—Operation of civil service retirement laws.

(a) Notwithstanding the provisions set forth in the sections mentioned in section 1–255, the Commissioners of the District of Columbia are authorized and empowered to determine from time to time the honorariums to be paid to the members of the boards, commissions, and committees appointed and established by authority of such sections, such authority to include the power to determine the total amount per annum of any such honorarium.

(b) The funds (including bonds or other securities referred to in section 2–1219) derived from fees and charges for examinations, licenses, certificates, registrations, or for any other service rendered by any such board, commission, or committee, remaining after the payment, or provision made for payment of all obligations of the respective boards, commissions, and committees outstanding as of June 30, 1954, shall be deposited in the Treasury to the credit of the District of Columbia and on and after July 14, 1956, all moneys collected for such fees and charges shall be paid into the Treasury to the credit of the District of Columbia.

(c) Notwithstanding the limitation of any other law or regulation to the contrary, any person heretofore or hereafter appointed as a member of any such board, commission or committee may receive his honorarium as well as any retired pay, retirement compensation, or annuity to which such member may be entitled on account of previous service rendered to the United States or District of Columbia Governments.

(d) As used in sections 1–254 to 1–259, "honorarium" means the fee, per diem, compensation, or any amount paid to any member of any such board, commission, or committee for service as such member. The United States Civil Service Commission, upon recommendation of the Commissioners of the District of Columbia, is authorized to exclude from the operation of sections 1308, 3323 and 8331—8338 of title 5, U.S. Code [relating to civil service retirement], as amended, any officer or employee or group of officers or employees within the purview of sections 1–254 to 1–259 whose services are intermittent and tenure of office is of limited duration. (July 14, 1956, 70 Stat. 532, ch. 590, § 1.)

CODIFICATION

In subsec. (d), the reference "sections 1308, 3323, and 8331—8338 of title 5, U.S. Code [relating to civil service

retirement]" was substituted for "Civil Service Retirement Act" on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Civil Service Retirement Act (May 29, 1930, 46 Stat. 468, ch. 349), as generally amended by act July 31, 1956, 70 Stat. 743, ch. 804, Title IV, § 401, and as amended by later acts, was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the sections of title 5, U.S.C., cited.

Prior to above substitution, "Civil Service Retirement Act" had been substituted for "Civil Service Retirement Act of May 29, 1930", to conform with provisions of § 19 of the latter act, as renumbered and amended by such § 401 of act July 31, 1956, 70 Stat. 743 (760), ch. 804, title IV, and as further renumbered by act Oct. 11, 1962, 76 Stat. 869, Pub. L. 87–793, § 1102(b).

§ 1–255. Applicability to various boards, commissions and committees.

Sections 1–254 to 1–259 shall apply to the boards, commissions, and committees and the members thereof, respectively, established pursuant to the following sections: 1–244, 2–101 to 2–140, 2–301 to 2–331, 2–401 to 2–411, 2–501 to 2–522, 2–601 to 2–617, 2–701 to 2–719, 2–801 to 2–812, 2–901 to 2–909, 2–1001 to 2–1031, 2–1101 to 2–1118, 2–1210 to 2–1226, 2–1301 to 2–1328, 2–1401 to 2–1408, 2–1501 to 2–1507, 2–1801 to 2–1818, 45–1401 to 45–1418, and 47–2301 to 47–2350. (July 14, 1956, 70 Stat. 533, ch. 590, § 2.)

§ 1–256. Refund of unearned fees.

Any fee or charge paid for an examination, license, certificate or registration pursuant to any sections mentioned in section 1–255 shall, if not earned, be refunded upon application therefor: *Provided,* That application for refund is made not later than the end of the third fiscal year following the fiscal year in which such fee or charge was made. (July 14, 1956, 70 Stat. 534, ch. 590, § 3.)

§ 1–257. Commissioners authorized to change and fix licensing periods.

The Commissioners are authorized, after a public hearing, to fix and change from time to time the period for which any license, certificate or registration authorized by any section set forth in section 1–255 may be issued. Upon change of a license, certificate or registration period, the fee for any such license, certificate, or registration shall be prorated on the basis of the time covered. (July 14, 1956, 70 Stat. 534, ch. 590, § 4.)

§ 1–258. Applicability of sections 1–254 to 1–258 to boards covered by Reorganization Plan No. 5 of 1952.

Whenever any board, commission, or committee, other than the Commissioners, is mentioned in sections 1–254 to 1–259, such board, commission, or committee shall be deemed to be the board, commission, or committee or other agency succeeding to the functions of the board, commission, or committee, so mentioned, pursuant to Reorganization Plan No. 5 of 1952. (July 14, 1956, 70 Stat. 535, ch. 590, § 5.)

REFERENCES IN TEXT

Reorganization Plan No. 5 of 1952, referred to in the text, is set out in the Appendix to this title.

§ 1–259. Appropriation for administration of laws mentioned in section 1–255.

There is hereby authorized to be appropriated out of the revenues of the District of Columbia such sums as may be necessary to pay the expenses of administering the sections listed in section 1–255, including the expenses of the Department of Occupations and Professions, established pursuant to authority contained in Reorganization Plan No. 5 of 1952. (July 14, 1956, 70 Stat. 535, ch. 590, § 6.)

REFERENCES IN TEXT

Reorganization Plan No. 5 of 1952, referred to in the text, is set out in the Appendix to this title.

§ 1–260. Holidays for District employees—Regulations.

The Board of Commissioners of the District of Columbia, for purposes of the administration of holidays for employees of the municipal government of the District of Columbia, shall have the same authority to prescribe regulations as that possessed by the President for purposes of the administration of holidays for employees of the Federal Government. (July 18, 1958, 72 Stat. 377, Pub. L. 85–533, § 3.)

§ 1–261. Authority for transporting children of certain employees in District-owned vehicles.

The Commissioners of the District of Columbia are authorized to utilize District-owned vehicles for transportation of children of employees of the District of Columbia Government residing at Children's Center between Children's Center and Laurel, Maryland. (Aug. 18, 1958, 72 Stat. 618, Pub. L. 85–670, § 1.)

§ 1–262. Reception by Commissioners of eminent persons—Appropriation authorized.

There is hereby authorized to be appropriated, out of any moneys in the Treasury of the United States to the credit of the District of Columbia not otherwise appropriated, not to exceed $10,000 in any fiscal year for such expenses as the Commissioners of the District of Columbia shall deem to be necessary, including personal services, and without reference to 41 U.S.C. § 5; section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters], or the civil service laws, for the reception and entertainment of officials of foreign, State, local, or Federal governments and other dignitaries and eminent persons visiting in or returning to the District of Columbia; and the certificate of the Commissioners shall be sufficient voucher for the expenditure of appropriations made pursuant to this section. (July 11, 1947, 61 Stat. 314, ch. 231, § 1; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a).)

REFERENCES IN TEXT

The "civil service laws", referred to in this section, are set forth in title 5, U.S.C. See, particularly, Parts II and III of that title.

CODIFICATION

The reference in this section to "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6,

1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

AMENDMENT

1949—Act Oct. 28, 1949, § 1106(a), which was a part of the Classification Act of 1949, and which has since been repealed, substituted "Classification Act of 1949" for "Classification Act of 1923". See codification note above.

§ 1–263. Advancement of moneys by disbursing officer.

The disbursing officials designated by the Commissioners are authorized to advance to such officials as may be approved by the Commissioners such amounts and for such purposes as the Commissioners may determine. (Nov. 2, 1966, 80 Stat. 1173, Pub. L. 89–743, § 7.)

SIMILAR PROVISIONS

Section was enacted as part of the District of Columbia Appropriation Act, 1967, act. Nov. 2, 1966. Similar provisions were contained in the following prior appropriation acts:

1966—July 16, 1965, 79 Stat. 241, Pub. L. 89–75, § 7.
1965—Aug. 22, 1964, 78 Stat. 592, Pub. L. 88–479, § 7.
1964—Dec. 30, 1963, 77 Stat. 839, Pub. L. 88–252, § 7.
1963—Oct. 23, 1962, 76 Stat. 1154, Pub. L. 87–867, § 7.
1962—Sept. 21, 1961, 75 Stat. 564, Pub. L. 87–265, § 7.
1961—Apr. 8, 1960, 74 Stat. 30, Pub. L. 86–412, § 7.
1960—July 23, 1959, 73 Stat. 238, Pub. L. 86–104, § 7.
1959—Aug. 6, 1958, 72 Stat. 511, Pub. L. 85–594, § 7.
1958—June 27, 1957, 71 Stat. 205, Pub. L. 85–61, § 7.
1957—June 29, 1956, 70 Stat. 453, ch. 479, § 9.
1956—July 5, 1955, 69 Stat. 262, ch. 272, § 9.
1955—July 1, 1954, 68 Stat. 394, ch. 449, § 10.
1954—July 31, 1953, 67 Stat. 295, ch. 299, § 11.
1953—July 5, 1952, 66 Stat. 391, ch. 576, § 11.
1952—Aug. 3, 1951, 65 Stat. 172, ch. 292, § 11.
1951—July 18, 1950, 64 Stat. 347, ch. 467, § 1.
1950—June 29, 1949, 63 Stat. 303, ch. 279, § 1.
1949—June 19, 1948, 62 Stat. 539, ch. 555, § 1.
1948—July 25, 1947, 61 Stat. 427, ch. 324, § 1.
1947—July 9, 1946, 60 Stat. 503, ch. 544, § 1.
1946—June 30, 1945, 59 Stat. 274, ch. 209, § 1.
1945—June 28, 1944, 58 Stat. 512, ch. 300, § 1.
1944—July 1, 1943, 57 Stat. 314, ch. 184, § 1.
1943—June 25, 1942, 56 Stat. 425, ch. 452, § 1.

§ 1–264. Imposition of penalties by Commissioners for delivery of bad checks in payment of obligations due District of Columbia—Basis for penalty—Exception—Manner of collection.

The Commissioners of the District of Columbia are authorized and directed to prescribe and impose as a penalty, in addition to any other penalties provided by law, an amount to be paid by any person who gives or causes to be given a check in payment of any tax, assessment, fee, charge, or other obligation due the Government of the District of Columbia, and such check is subsequently dishonored or not duly paid. The amount of the penalty shall be prescribed from time to time by the Commissioners and shall be based on the approximate cost borne by the District of Columbia in handling and collecting such dishonored or unpaid checks. Upon imposition, such penalty shall be collected in the same manner as the original obligation due the District of Columbia and any receipt theretofore given in reliance upon such check shall be null and void and no other receipt shall be given for the payment of the original indebtedness until the penalty has also been paid. This section shall not apply to a check which is not paid because of the death of the drawer thereof. (Sept. 28, 1965, 79 Stat. 844, Pub. L. 89–208, § 1.)

§ 1–265. District of Columbia student loan insurance program.

(a) The Board of Commissioners of the District of Columbia is authorized (1) to establish a student loan insurance program which meets the requirements of subchapter IV of chapter 28 of title 20, U.S. Code, and the National Vocational Student Loan Insurance Act of 1965 for a State loan insurance program in order to enter into agreements with the Commissioner for the purposes of subchapter IV of chapter 28 of title 20, U.S. Code, and such Act, (2) to enter into such agreements with the Commissioner, (3) to use amounts appropriated to such Board for the purposes of this section to establish a fund for such purposes and for expenses in connection therewith, and (4) to accept and use donations for the purposes of this section.

(b) Notwithstanding the provisions of any applicable law, if the borrower, on any loan insured under the program established pursuant to this section, is a minor, any otherwise valid note or other written agreement executed by him for the purposes of such loan shall create a binding obligation.

(c) There are authorized to be appropriated to such Board such amounts as may be necessary for the purposes of this section. (Nov. 8, 1965, Pub. L. 89–329, title IV, § 436, as added Nov. 3, 1966, 80 Stat. 1244, Pub. L. 89–572, § 12.)

REFERENCES IN TEXT

The "National Vocational Student Loan Insurance Act of 1965" and "such act", referred to in subsec. (a), refer to act Oct. 22, 1965, Pub. L. 89–287, which is classified to § 981 et seq. of title 20, U.S.C.

CODIFICATION

Section, enacted by act Nov. 3, 1966 cited to the text, is a part of the Higher Education Act of 1966 (Nov. 8, 1965, Pub. L. 89–329). See 20 U.S.C. § 1001 et seq. and short title note set out under 20 U.S.C. § 1001.

Chapter 3.—OFFICERS AND EMPLOYEES GENERALLY

Sec.
1–301. Corporation counsel—Duties.
1–302. Assistant corporation counsels—Duties.
1–303. Corporation counsel and assistants may administer oaths.
1–304. Purchasing officer—Duties—Bond.
1–305. Deputy purchasing officers.
1–306. Municipal architect—Duties.
1–307. Inspector of asphalts and cements—Services and compensation.
1–308. Oath to be taken by officers.
1–309. Reports by custodians of property.
1–310. Employees—Compensation to be paid from specific appropriations—Unexpended appropriations.
1–310a. Salary increases by reason of reallocation of positions—Limitation.
1–311. Repealed.
1–312. Repealed.
1–313. Per diem employees—Leave of absence.
1–313a. Repealed.
1–314. Holidays—Leave of absence with pay.
1–314a. Repealed.
1–315. Pay rolls—Signature by mark.
1–316. Persons convicted of certain crimes ineligible to hold office.
1–317. Detective agency employees not to be employed.
1–318. Repealed.
1–319. Refusal to give testimony relating to office or employment.

CROSS REFERENCES

Application of Hatch Act, forbidding pernicious political activities, to officers and employees of the District of Columbia, see 18 U.S.C. § 595.

Political activities of government employees, see 5 U.S.C. § 7321 et seq.

§ 1–301. Corporation counsel—Duties.

The corporation counsel shall be under the direction of the Commissioners, and have charge and conduct of all law business of the said District, and all suits instituted by and against the government thereof. He shall furnish opinions in writing to the Commissioners, whenever requested to do so. All requests for opinions shall be transmitted through the Commissioners, and a record thereof kept, with the opinions, in the office of the secretary of the Board of Commissioners. He shall perform such other professional duties as may be required of him by the Commissioners. (Leg. Assem., Aug. 23, 1871, ch. 108, § 18; June 20, 1874, 18 Stat. 116, ch. 337, § 2; Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 932; June 30, 1902, 32 Stat. 537, ch. 1329; Mar. 4, 1923, 42 Stat. 1488, ch. 265.)

CODIFICATION

This section is a composite of credits cited to the text.

TRANSFER OF FUNCTIONS

Reorganization Order No. 50 of the Board of Commissioners dated June 26, 1953, provided that the Office of the Corporation Counsel would be organized as previously constituted. The previously existing Office of the Corporation Counsel was abolished, and all functions and positions including the duties, powers, and authorities of all officers and employees of the former office were transferred to the new office. Authority to settle claims and suits against the District up to and including $250 was delegated to the Corporation Counsel by the order. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to this title.

The functions of the Employees Compensation Subsection, Investigation Section, Office of the Corporation Counsel, were transferred to the Personnel Office, Department of General Administration by Reorganization Order No. 21 of the Board of Commissioners dated Nov. 20, 1952. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and the plan are set out in the Appendix to this title. See the note under section 1–216 concerning the establishment of the Personnel Office.

CROSS REFERENCES

Certified public accountants, prosecution by Corporation Counsel of violations of regulatory laws, see § 2–926.

Charged with duty of prosecuting and enjoining violations of building and zoning regulations, see §§ 5–408, 5–422.

Commission authorized to appoint three additional assistants to enforce Alcoholic Beverage Control Act, see § 25–104.

Condemnation of insanitary buildings, duty to advise court of such condemnation when title thereto is in litigations, see § 5–623.

Condemnation of insanitary buildings, duty to secure appointment of guardian for non compos mentis or infant owners, see § 5–624.

Duty to prosecute violation of law regulating veterinaries, see § 2–812.

Duties in insanity inquest, see § 21–541 et seq.

Duty to conduct criminal prosecution; determination of duty by Court of Appeals, see §§ 23–101, 23–102.

Duty to enforce Healing Arts Practice Act, see § 2–137.

Duty to enforce laws concerning vital statistics, see § 6–304.

Duty to enforce pharmacy laws and regulations, see § 2–617.

Duty to enforce rules and regulations governing steam boilers, see § 1–713.

Duty to institute proceedings to condemn land for minor streets and alleys, see § 7–333.

Enforcement of health laws and regulations, see § 6–118.

Enforcement of laws and regulations for smoke prevention, see § 6–803.

Enforcement of laws concerning manufacture, renovation, and sale of mattresses, see § 6–605.

Enforcement of laws concerning weights, measures, and markets, see § 10–134.

Enforcement of laws governing architects, see § 2–1030.

Enforcement of laws governing practice of podiatry, legal services to board, see § 2–704.

Enforcement of laws governing private hospitals and asylums, see § 32–305.

Enforcement of laws regulating dentists, legal services to Board of Dental Examiners, see § 2–305.

Examination of articles of incorporation of domestic life insurance companies, see §§ 35–503, 35–509.

General counsel for Public Service Commission, prosecutions, see §§ 43–204, 43–907.

Information agent under Uniform Reciprocal Enforcement of Support Act, see § 30–313.

Proceedings under Juvenile Court Act, see §§ 11–1583, 16–2302.

Prosecution for refusal to produce books and papers in connection with personal property taxes, see §§ 47–1401, 47–1405.

Prosecution of insurance companies for operating without a license, see § 47–1803.

Prosecution of violations of act regulating practice of cosmetology, see § 2–1327.

Prosecution of violations of Alcoholic Beverage Control Act, forfeiture for nonpayment of taxes, see §§ 25–124, 25–132.

Prosecution of violations of money lenders law, see § 26–607.

Prosecution of violations of Motor Fuel Tax Law and collection of taxes due thereunder, see § 47–1913.

Prosecution of violations of Motor Vehicles Registration Law, see § 40–104.

Prosecutions of violations of Real Estate and Business Brokers License Act, see § 45–1416.

Prosecutions for failure to file schedules of property for taxation, see § 47–1410.

Prosecutions for failure to remove weeds, see § 6–903.

Prosecutions for holding public auction without a permit, see § 47–2207.

Prosecutions of violations of Motor Vehicle Lien Law, see § 40–714.

Representation of Minimum Wage Board, prosecution of violations of Wage Law, see §§ 36–416, 36–420.

Representation of superintendent of insurance, see §§ 35–413, 35–419, 35–510, 35–515.

Suit to recover funds expended by Commissioners to remove ice and snow, see § 7–806.

NOTES TO DECISIONS

Notice of claim

Where, in action against District of Columbia, for injuries received when plaintiff tripped on manhole alleged to have been defectively maintained by the District of Columbia so that the manhole edge and cover protruded from the ground, inaccuracies were contained in written notice seasonably sent commissioner, and an attempt to cure such inaccuracies was made by seasonable correction conveyed to assistant in office of corporation counsel, to whom commissioners has referred original notice, and to District's inspector of claims, judgment, by which the Municipal Court of Appeals, because of such inaccuracies, reversed judgment rendered for plaintiff in the municipal court, would be reversed. *Stone* v. *District of Columbia* (1956, 237 F. 2d 28, 99 U.S. App. D.C. 32).

§ 1–302. Assistant corporation counsels—Duties.

The assistant corporation counsels shall, under the direction and control of the corporation counsel, perform such duties as may, with the consent of the Commissioners, be assigned to them by the said corporation counsel. (Leg. Assem. Aug. 23, 1871, ch. 108, § 19; June 20, 1874, 18 Stat. 116, ch. 337, § 2;

Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 932; June 30, 1902, 32 Stat. 537, ch. 1329; Mar. 4, 1923, 42 Stat. 1488, ch. 265.)

CODIFICATION

This section is a composite of credits cited to the text.

§ 1–303. Corporation counsel and assistants may administer oaths.

The corporation counsel and assistant corporation counsels are hereby authorized to administer oaths and affirmations in the discharge of their official duties within the District of Columbia. (Leg. Assem. Aug. 19, 1871, ch. 51; Mar. 3, 1901, 31 Stat. 1340, ch. 854. § 932; June 30, 1902, 32 Stat. 537, ch. 1329.)

CODIFICATION

This section is a composite of credits cited to the text.

§ 1–304. Purchasing officer—Duties—Bond.

The purchasing officer shall after June 26, 1912, under the direction of the Commissioners, supervise the purchase and distribution of all supplies, stores, and construction materials for the use of the government of the District of Columbia, and shall give bond in such sum as the Commissioners may determine. (July 1, 1882, 22 Stat. 139, ch. 263, § 1; Apr. 27, 1904, 33 Stat. 363, ch. 1628; Mar. 2, 1911, 36 Stat. 966. ch. 192; June 26, 1912, 37 Stat. 140, ch. 182.)

TRANSFER OF FUNCTIONS

Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952, established under the direction and control of the Board, the Department of General Administration headed by a Director. The order transferred to the Director of General Administration all of the functions and positions of the Purchasing Division. Reorganization Order No. 29 dated Apr. 14, 1953, as amended June 4, 1953, and Sept. 17, 1953, established a Procurement Office headed by a Procurement Officer in the Department of General Administration to perform the purchasing functions of the District. The former Purchasing Division and the office of the head thereof were abolished and the functions of that Division transferred to the Procurement Office. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to this title.

§ 1–305. Deputy purchasing officers.

The deputy purchasing officers shall, during the absence of the purchasing officer from any cause, perform his duties without additional compensation, and shall, during the presence of the purchasing officer, perform such duties as may be assigned to them by the purchasing officer; and the purchasing officer may require the said deputy purchasing officers to give bond for the faithful performance of their duties; but the purchasing officer shall in every respect be responsible to the United States and the District of Columbia as provided by law. (May 26, 1908, 35 Stat. 274, ch 198.)

TRANSFER OF FUNCTIONS

See the note under section 1–304 concerning the Purchasing Division and the officers and employees of the Purchasing Division.

§ 1–306. Municipal architect—Duties.

After June 26, 1912, it shall be the duty of the municipal architect to prepare or supervise the preparation of plans for, and superintend the construction of, all municipal buildings, and the repair and improvement of all buildings belonging to the District of Columbia, and serve under the direction of the engineer commissioner of the District of Columbia. (Mar. 3, 1909, 35 Stat. 692, ch. 250; June 26, 1912, 37 Stat. 144, ch. 182.)

TRANSFER OF FUNCTIONS

Reorganization Order No. 42 of the Board of Commissioners dated June 23, 1953 established under the direction and control of the Engineer Commissioner, a Department of Buildings and Grounds headed by a Director. The purpose of the new Department was to provide for the construction, repair and improvement of the physical plant of the District of Columbia. The order sets out the functions of the new Department and its organization. The order abolished the former Department of Construction, the Office of the Municipal Architect, the Office of the Superintendent of District Buildings, the Division of Repairs and Improvements of the District of Columbia Repair Shop, and the Construction Division, and provided that all of their functions and positions be transferred to the Department of Buildings and Grounds. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to this title.

§ 1–307. Inspector of asphalts and cements—Services and compensation.

The inspector of asphalts and cements shall not receive or accept compensation of any kind from or perform any work or render any services of a character required of him officially by the District of Columbia to any person, firm, corporation, or municipality other than the District of Columbia. (Sept. 1, 1916, 39 Stat. 679, ch. 433.)

§ 1–308. Oath to be taken by officers.

All civil officers in the District shall, before they act as such, respectively take and subscribe an oath or affirmation to support the Constitution of the United States, and faithfully to discharge the duties of their respective offices; and the oath or affirmation provided for by this section shall be taken and subscribed, certified, and recorded, in such manner and form as may be prescribed by law. (R. S., D. C., § 85; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 2.)

CODIFICATION

This section is a composite of credits cited in the history line.

CROSS REFERENCES

Oath of office, and affidavits, see 5 U.S.C. § 3331 et seq.
Renewal of oaths, see 5 U.S.C. § 2905.

§ 1–309. Reports by custodians of property.

All persons in the employment of the government of the District of Columbia having, as a result of such employment, custody of or chargeable with property, other than real estate, belonging to the District of Columbia, shall, at such times and in such form as the commissioners of the District of Columbia shall require, make returns to said commissioners of all such property remaining in their possession, and the condition thereof, and, with reference to all property that may have come into their custody that shall have been consumed in use, a statement showing the quantity thereof and the purpose for which used. (July 21, 1914, 38 Stat. 553, ch. 191, § 7; Mar. 3, 1915, 38 Stat. 925, ch. 80, § 7.)

CODIFICATION

The wording of the two acts cited in the history line is identical.

§ 1–310. Employees—Compensation to be paid from specific appropriations—Unexpended appropriations.

No civil officer, clerk, draftsman, copyist, messenger, assistant messenger, mechanic, watchman, laborer, or other employee shall, after June 30th, 1905, be employed in any office, department, or other branch of the government of the District of Columbia or be paid from any appropriation made for contingent expenses, or for any specific or general purpose, unless such employment is authorized and payment therefor specifically provided in the law granting the appropriation or is authorized as hereinafter provided, and then only for services actually rendered in connection with and for the purposes of the appropriation from which payment is made and at the rate of compensation usual and proper for such services, and on and after July 1, 1905, all moneys accruing from lapsed salaries, or for unused appropriations for salaries, shall be covered into the treasury as are the balances of other unexpended appropriations for the support of the government of the District of Columbia. (Mar. 3, 1905, 33 Stat. 913, ch. 1406, § 2.)

SALARIES FIXED

Salaries of officers and employees of the government of the District of Columbia are fixed by the classification laws set forth in 5 U.S.C. See, particularly, 5 U.S.C. §§ 5101 et seq., 5331 et seq.

ADDITIONAL PAY

Section 5 of act June 30, 1949, 63 Stat. 377, ch. 287, as amended by act Oct. 28, 1949, 63 Stat. 951, ch. 779, provided as follows: "No additional compensation shall be payable by reason of the enactment of this Act for any period to June 30, 1949, in the case of any person who was not an employee in or under the municipal government of the District of Columbia on June 30, 1949, except that (1) such additional compensation shall be paid to a retired employee for services rendered between the first day of the first pay period which began after June 30, 1948, and the date of his retirement, and (2) a retired officer or member of the Metropolitan Police, the United States Park Police, the White House Police, or the Fire Department of the District of Columbia who is entitled to retirement compensation from the policemen and firemen's relief fund shall be entitled, without application therefor, as of July 1, 1948, or the day on which he became entitled to such compensation, whichever is later, to the pension benefit resulting from the increase in pay made by the first section.

"No person whose salary or compensation is increased by this Act shall be entitled to additional compensation for overtime, night, or holiday work, as provided in sections 201, 203, 301, and 302 of the Federal Employees Pay Act of 1945, as amended, or as provided in section 23 of the Act approved March 28, 1934, as amended (sec. 673c [of Title 5], United States Code), based on the additional compensation provided by this Act for any pay period ending prior to the date of enactment of this Act."

The Federal Employees Pay Act of 1945, as amended, and § 23 of the act approved March 28, 1934 (sec. 673c [of title 5], United States Code), referred to in the above-quoted provisions, were repealed by § 8(a) of act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554 (of which § 1 revised and enacted title 5, U.S.C., into law). Sections 201, 203, 301 and 302 of the Federal Employees Pay Act of 1945, as amended, specifically referred to in such provisions, are now covered by 5 U.S.C. §§ 5542, 5544, 5545 and 5546; and § 23 of the act approved March 28, 1934, as amended (5 U.S.C. § 673c), is now partially covered by 5 U.S.C. §§ 5544, 6102. For effect on references, in other laws, to laws replaced by provisions in title 5, U.S.C., see § 7(b) of such act Sept. 6, 1966, Pub. L. 89–554, set out in codification note under § 1–251.

RETROACTIVE PAY

Section 4 of act June 30, 1949, 63 Stat. 376, ch. 287, authorized the Commissioners and other wage-fixing authorities of the municipal government of the District of Columbia, in their discretion, to grant, retroactive to the first day of the first pay period which began after June 30, 1948, additional compensation at rates not to exceed $330 per annum to each employee in or under the municipal government of the District of Columbia whose compensation is fixed and adjusted from time to time by a wage board, or whose compensation is fixed without reference to the Classification Act of 1923, as amended, or whose compensation is limited or fixed specifically by the provisions of the District of Columbia Appropriation Act, 1949. This authority expired Sept. 30, 1949.

The Classification Act of 1923, as amended, referred to above, was superseded and repealed by the Classification Act of 1949 (Oct. 28, 1949, 63 Stat. 954, ch. 782). The Classification Act of 1949, as amended, was repealed by § 8(a) of act Sept. 6, 1966, 60 Stat. 632, Pub. L. 89–554 (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by 5 U.S.C. § 305, chapter 51, subchapter III of chapter 53, and §§ 5341, 5342, 5509, 7154. For effect on references, in other laws, to laws replaced by provisions in revised title 5, U.S.C., see § 7(b) of such act Sept. 6, 1966, Pub. L. 89–554, set out in codification note under § 1–251.

CROSS REFERENCE

Compensation during service on jury, see 5 U.S.C. § 5537.

NOTES TO DECISIONS

Lawful removal

Where heavy truck driver in District government was notified of his discharge and the reasons therefor and was allowed to appeal, and a hearing was accorded him at which he was represented by counsel of his own choice, who was permitted to call and examine witnesses under oath and to introduce testimony, and it was clear that only rules and regulations relied upon by employee were never adopted or promulgated, removal was accomplished lawfully and he was not entitled to recover wages for time he was in nonpay status. *Washington* v. *Government of District of Columbia* (D.C. Mun. App. 1959, 152 A. 2d 191).

§ 1–310a. Salary increases by reason of reallocation of positions—Limitation.

Appropriations for the District of Columbia shall be used to pay increases in the salaries of officers and employees by reason of the reallocation of the position of any officer or employee by the Civil Service Commission, and administrative promotions within the several grades: *Provided*, That such reallocation increases and administrative promotions shall be subject to the approval of the Commissioners of the District of Columbia: *Provided further*, That officers and employees whose positions were reallocated by the Civil Service Commission during the period January 1, 1945, to July 1, 1945, who have not received such reallocation increases shall be entitled to receive them retroactively to the date they would otherwise have been effective except for the provisions of this section, but in no case prior to January 1, 1945. (June 28, 1944, 58 Stat. 532, ch. 300, § 7; June 30, 1945, 59 Stat. 294, ch. 209, § 9.)

AMENDMENT

1945—Act June 30, 1945, omitted proviso which read "That the total reallocation increases under such appropriations shall not exceed $35,000 in any one fiscal year", and added last proviso.

SIMILAR PROVISIONS

1944—July 1, 1943, ch. 184, § 7, 57 Stat. 346.
1943—June 25, 1942, ch. 452, § 7, 56 Stat. 460.
1942—July 1, 1941, ch. 271, § 7, 55 Stat. 539.
1941—June 12, 1940, ch. 333, § 7, 54 Stat. 342.

§ 1–311. Repealed. Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a).

Section, act July 11, 1919, 41 Stat. 104, ch. 7, § 11, which related to compensation of injured employees of the government of the District of Columbia, except to those members of the police and fire departments of the District pensioned or pensionable under §§ 4–521 to 4–535, is now covered by 5 U.S.C. §§ 8101, 8139.

Act June 10, 1921, 42 Stat. 20, ch. 18, § 2, which had also been cited as one of the sources of this former section, although affecting it, was not a specific amendment thereof, and was not repealed by the 1966 act cited above; but it has been eliminated from this former section as having no further application in view of the repeal.

Act Oct. 3, 1961, 75 Stat. 751, Pub. L. 87–339, which inserted in the proviso of § 104 of the former Federal Employees Compensation Act Amendments of 1960 (former act Sept. 13, 1960, 74 Stat. 906, Pub. L. 87–767, § 104), a provision that said § 104, providing for increase of compensation base where injury occurred before Jan. 1, 1958, should apply to employees of the government of the District of Columbia other than members of the police and fire departments pensioned or pensionable under § 4–521 et seq., and which was formerly set out in note under this former section, was also repealed, along with said § 104 of the Federal Employees Compensation Act Amendments of 1960, as executed, by § 8(a) of the act of Sept. 6, 1966, cited in the catchline to this section. For preservation of rights existing at time of such repeal, see other provisions of said § 8 of the act of Sept. 6, 1966, 5 U.S.C. note preceding § 101.

Act July 4, 1966, 80 Stat. 252, Pub. L. 89–488, amended various provisions of the Federal Employees' Compensation Act (5 U.S.C. former § 751 et seq.), to improve benefits thereunder; and § 15 of such act (80 Stat. 256), after specifying certain personnel to which such amendments did not apply, provided by a second sentence thereof, as follows: "However, these amendments shall apply to employees of the government of the District of Columbia other than members of the Police and Fire Departments who are pensioned or pensionable under the provisions of the Policemen's and Firemen's Retirement and Disability Act [§ 4–521 et seq. of this Code].". Said § 15 of the act of July 4, 1966, was not repealed by Act Sept. 6, 1966, cited in the catchline to this section, and for classification thereof in title 5 of the United States Code, see table preceding revised title 5, U.S.C.

§ 1–312. Repealed. Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a).

Section, act Mar. 2, 1911, 36 Stat. 967, ch. 192, related to annual and sick leave for employees of the government of the District of Columbia (except police and fire departments, and public-school officers, teachers, and employees), and is now covered by 5 U.S.C. § 6301 et seq.

§ 1–313. Per diem employees—Leave of absence.

The Commissioners are authorized in their discretion, and under such regulations as they may prescribe, to grant not exceeding fifteen days leave of absence with pay each year to per diem employees of the District of Columbia who have been employed for ten (10) consecutive months or more. (Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 8.)

CROSS REFERENCE

Annual and sick leave, see 5 U.S.C. § 6301 et seq.

§ 1–313a. Repealed. Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a).

Section, acts June 29, 1938, 52 Stat. 1246, ch. 818, § 1; June 11, 1954, 68 Stat. 249, ch. 283, § 1; July 18, 1958, 72 Stat. 377, Pub. L. 85–533, § 2, related to holiday pay of Federal and District of Columbia government employees whose compensation was fixed at a rate per day, hour, or on a piece-work basis, and is now covered by 5 U.S.C. § 6104.

§ 1–314. Holidays—Leave of absence with pay.

After June 5, 1920, all per diem employees and day laborers of the District of Columbia who have been regularly employed for fifteen working days next preceding such days as are legal holidays in the District of Columbia, and whose employment continues through and beyond said legal holidays, shall be granted such leave of absence with pay as is granted the regular annual employees of the District of Columbia for said legal holidays. (June 5, 1920, 41 Stat. 873, ch. 234, § 7.)

CROSS REFERENCE

Annual and sick leave, see 5 U.S.C. § 6301 et seq.

§ 1–314a. Repealed. Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a).

Section, acts June 30, 1945, 59 Stat. 298, ch. 212, Title III, § 302; May 24, 1946, 60 Stat. 218, ch. 270, § 11; Sept. 1, 1954, 68 Stat. 1110, ch. 1208, Title II, § 207; July 18, 1958, 72 Stat. 377, Pub. L. 85–533, § 1, related to compensation of employees for holiday work, etc., and is now covered by 5 U.S.C. § 5546.

§ 1–315. Pay rolls—Signature by mark.

After May 10, 1926, in the payment of compensation of per diem employees of the government of the District of Columbia, a signature by mark duly witnessed by an employee of such District designated for that purpose by the Commissioners shall be deemed a full legal acquittance as to such signature. (May 10, 1926, 44 Stat. 453, ch. 276, § 7.)

§ 1–316. Persons convicted of certain crimes ineligible to hold office.

No person who has been or may be a collector or holder of public moneys, who shall not have accounted for and paid over, upon final judgment, duly recovered according to law, all such moneys due from him, shall be eligible to any office of profit or trust in the District. Except upon the written approval of the Commissioners, or of an official or officials of the District acting pursuant to rules and regulations issued by the Commissioners, no person who has been convicted of a felony in the District of Columbia or of an offense in any other jurisdiction which, if committed in the District, would be a felony, shall be employed in or by the government of the District of Columbia or any agency thereof. (R. S., D. C., § 86; June 20, 1874, 18 Stat. 116, ch. 337, § 1; June 24, 1954, 68 Stat. 272, ch. 358, § 1.)

AMENDMENT

1954—Act June 24, 1954, deleted the words "person convicted of bribery, perjury, or other infamous crime, nor any" from the first sentence, and added the last sentence concerning persons convicted of a felony.

§ 1–317. Detective agency employees not to be employed.

After Mar. 3, 1893, no employee of the Pinkerton Detective Agency, or similar agency, shall be employed in any government service or by any officer of the District of Columbia. (Mar. 3, 1893, 27 Stat. 591, ch. 208, § 1.)

§ 1–318. Repealed. Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a).

Section, act Sept. 7, 1949, 63 Stat. 690, ch. 538, § 1, related to computation of overtime compensation for Federal and District of Columbia government employees, and is now covered by 5 U.S.C. § 5506.

§ 1–319. Refusal to give testimony relating to office or employment.

(a) Any officer or employee of the District who refuses to testify upon matters relating to his office or employment in any proceeding wherein he is a defendant or is called as a witness, upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself, or who refuses so to testify on such ground when called by a grand jury or a congressional committee, shall forfeit his office or employment and any emolument, perquisite, or benefit (by way of pension or otherwise) arising therefrom, and be disqualified from holding any public office or employment under the District.

(b) Any former officer or employee of the District who refuses to testify upon matters relating to his former office or employment in any proceeding wherein he is a defendant or is called as a witness, upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself, or who refuses so to testify on such ground when called by a grand jury or a congressional committee, shall forfeit any emolument, perquisite, or benefit (by way of pension or otherwise) arising from such former office or employment, and be disqualified from holding any public office or employment under the District.

(c) If the retirement pay, pension, or annuity of any officer or employee or former officer or employee of the District is forfeited under this section, there shall be paid to such individual a sum equal to (1) the total amount paid by him as contributions toward such retirement pay, pension, or annuity, plus any accrued interest attributable to such contributions, less (2) the total amount of such retirement pay, pension, or annuity received by him prior to such forfeiture. (June 29, 1953, 67 Stat. 108, ch. 159, title IV, § 409.)

DEFINITIONS

Section 102 of act June 29, 1953, 67 Stat. 91, ch. 159, title I, provided in part that:

"(1) The term 'Commissioners' means the Board of Commissioners of the District of Columbia;

"(2) The term 'district court' means the United States District Court for the District of Columbia;

"(3) The term 'United States attorney' means the United States attorney for the District of Columbia;

"(4) The term 'municipal court' means The Municipal Court for the District of Columbia; and

"(5) The term 'District' means the District of Columbia."

NOTES TO DECISIONS

Prospective effect

This section, which provides that officer or employee of District of Columbia who refuses, on ground of self-incrimination, to testify on certain matters shall forfeit, among other things, pension rights, applies to refusal made subsequent to effective date of section. *Spencer* v. *Bullock* (1954, 216 F. 2d 54, 94 U.S. App. D.C. 388).

Chapter 4.—COMMISSIONERS OF DEEDS

Sec.
1–401. Repealed.
1–402. Omitted.

§ 1–401. Repealed. Sept. 25, 1962, 76 Stat. 594, Pub. L. 87–694, § 1.

Section of act Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 557, related to the appointment of commissioners of deeds, by the President of the United States.

§ 1–402. Omitted.

AMENDMENT

Section 2 of act Sept. 25, 1962, Pub. L. 87–694, 76 Stat. 594, amended act Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 559, which was this section, by striking the words "commissioners of deed and" making the section no longer applicable to commissioners of deeds, and since section 1–401 was repealed by section 1 of the same act, it is omitted. That part of the same section of act Mar. 3, 1901, relating to notaries public is set out as § 1–502.

Chapter 5.—NOTARIES PUBLIC

Sec.
1–501. Appointment—Representation of clients before government departments—Administration of certain acknowledgments—License fee—Rules and Regulations.
1–502. Tenure of office.
1–503. Repealed.
1–504. Oath and bond.
1–505. Seal.
1–506. Signature and impression of seal deposited.
1–507. Exemption.
1–508. Foreign bills of exchange—Protest.
1–509. Inland bills and notes—Protest—Penalty.
1–510. Other acts for use and effect beyond District.
1–511. Empowered to certify certain instruments, to administer oaths and affirmations—Affidavits.
1–512. Record of official acts—Certified copies.
1–513. Copy of record as evidence.
1–514. Fees of notary.
1–515. Penalties for taking higher fees.
1–516. Vacation of office—Custody of records and papers.
1–517. Certificates issued by Commissioners.
1–518. Appropriation—Inclusion of expenses and salaries in Commissioners' annual estimates.

§ 1–501. Appointment—Representation of clients before government departments—Administration of certain acknowledgments—License fee—Rules and regulations.

The Commissioners of the District of Columbia shall have power to appoint such number of notaries public, residents of said District, or whose sole place of business or employment is located within said District, as, in their discretion, the business of the District may require: *Provided,* That the appointment of any person as such notary public, or the acceptance of his commission as such, or the performance of the duties thereunder, shall not disqualify or prevent such person from representing clients before any of the departments of the United States Government in the District of Columbia or elsewhere: *Provided further,* That such person so appointed as a notary public who appears to practice or represent clients before any such department is not otherwise engaged in Government employ, and shall be admitted by the heads of such departments to practice therein in accordance with the rules and regulations prescribed for other persons or attorneys who are admitted to practice therein: *And provided further,* That no notary public shall be authorized to take acknowledgments, administer oaths, certify papers, or perform any official acts in connection with matters in which he is employed as counsel, attorney, or agent, or in which he may be in any way interested before any of the departments aforesaid.

Each notary public before obtaining his commission, and for each renewal thereof, shall pay to the Collector of Taxes of the District of Columbia a license fee of $10: *Provided,* That no license fee shall be collected from any notary public in the service of the United States Government or the District of

Columbia Government whose notarial duties are confined solely to Government official business: *And provided further,* That no notary fee shall be collected at any time by a notary public who is exempted from the payment of the license fee. The Commissioners are hereby authorized to refund, in the manner prescribed by law for the refunding of erroneously paid taxes, the amount of any fee erroneously paid or collected under this section.

The Commissioners are hereby authorized to prescribe such rules and regulations as they may deem necessary to carry out the purposes of this chapter. (Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 558; June 29, 1906, 34 Stat. 622, ch. 3616; Feb. 10, 1925, 43 Stat. 821, ch. 198; Dec. 16, 1944, 58 Stat. 810, ch. 597, § 1.)

AMENDMENTS

1944—Act Dec. 16, 1944, amended section by omitting "The President" and inserting in lieu thereof "The Commissioners of the District of Columbia", by omitting "his" and inserting in lieu thereof "their" preceding "discretion" in the first par., and by adding the last two pars.

1925—Act Feb. 10, 1925, inserted words "or whose sole place of business or employment is located within said district."

1906—Act June 29, 1906, added provisos.

APPLICABILITY TO DEPARTMENT OF THE INTERIOR

Section 3 of act June 3, 1948, 62 Stat. 301, ch. 392, provided as follows:

"That part of section 558 of the Act of March 3, 1901, entitled 'An Act to establish a code of law for the District of Columbia' (31 Stat. 1279), as amended December 15, 1944 (58 Stat. 810, D. C. Code, 1940 edition, Supp. IV, sec. 1–501), which reads as follows: *'And provided further,* That no notary public shall be authorized to take acknowledgments, administer oaths, certify papers, or perform any official acts in connection with matters in which he is employed as counsel, attorney or agent or in which he may be in any way interested before any of the Departments aforesaid' shall not apply to matters before the Department of the Interior."

NOTES TO DECISIONS

Personal interest

No notary, wherever appointed, can take acknowledgments in matters in which he appears as counsel or is in any way interested before any department. *Halls Safe Co* v. *Herring-Hall-Marvin Safe Co.* (1908, 31 App. D. C. 498).

Protest of notes was not invalid because the notary was a stockholder and the president of the bank which held the notes. *Roberts* v. *International Bank* (1928, 25 F. 2d 214, 58 App. D.C. 87).

§ 1–502. Tenure of office.

Said notaries public shall hold their offices for the period of five years, removable at discretion. (Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 559.)

AMENDMENT

1962—Section 2 of act Sept. 25, 1962, Pub. L. 87–694, 76 Stat. 594, amended section by striking the words "commissioners of deeds and". See note to section 1–402. Sections 1–402 and 1–502 were both based on act Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 559.

§ 1–503. Repealed. June 25, 1948, 62 Stat. 992, ch. 646, § 39, effective Sept. 1, 1948.

Section act Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 560, relating to depositions, acknowledgments and affidavits is covered by rule 28 of the Federal Rules of Civil Procedure, 28 U.S.C. App.; 28 U.S.C. § 637, and 5 U.S.C. § 2903.

§ 1–504. Oath and bond.

Each notary public, before entering upon the duties of his office, shall take the oath prescribed for civil officers in the District of Columbia, and shall give bond to the District of Columbia in the sum of $2,000, with security, to be approved by the Commissioner of the District of Columbia or their designated agent, for the faithful discharge of the duties of his office. Where any such notary public is an officer or employee of the Government of the District of Columbia whose notarial duties are confined solely to government official business, any bond covering such officer or employee for the faithful performance of such notarial duties obtained by the Commissioners of the District of Columbia pursuant to the authority conferred on them by law shall be in lieu of the bond required by the first sentence of this section. (Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 561; June 25, 1936, 49 Stat. 1921, ch. 804; Dec. 16, 1944, 58 Stat. 811, ch. 597, § 2; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 7, 1955, 69 Stat. 281, ch. 280, § 5; July 5, 1966, 80 Stat. 263, Pub. L. 89–493, § 1.)

AMENDMENTS

1966—Act July 5, 1966, in first sentence, substituted "Commissioners of the District of Columbia or their designated agent" for "United States District Court for the District of Columbia or a judge thereof".

1955—Act July 7, 1955, added the last sentence.

1944—Act Dec. 16, 1944, amended section by deleting "United States" and inserting in lieu thereof "District of Columbia" following "bond to".

EFFECTIVE DATE OF 1966 AMENDMENTS

Section 21 of act July 5, 1966, 80 Stat. 266, Pub. L. 89–493, provided: "This Act [amending this section and §§ 1–506, 1–515, 1–516, 2–513, 15–101, 15–102, 15–132, 15–310 and 15–311, repealing pars. (11), (12), (13), (14), (16) and (18) of § 15–706(e), adding § 15–717, amending §§ 30–106, 30–108, 30–110, 30–112, repealing § 30–115, amending §§ 38–102, 38–103, 38–105, 38–110, 38–302, 38–305, 45–711, 46–304(e), 47–1406, 48–101, 48–201, 48–302, 48–306 and 48–401, and enacting provisions set out respectively as a note under § 30–114 and the final paragraph of § 45–708, and amending 26 U.S.C. § 6323(a)(3)] shall take effect on the first day of the first month which is at least ninety days after the date of approval of this Act [July 5, 1966]."

The amendments made by such act July 5, 1966, to §§ 15–101, 15–102 and 15–132, cited within the brackets inserted in the above-quoted provisions, were later repealed by act Nov. 2, 1966, Pub. L. 89–745. See notes under those sections.

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia", and "judge" for "justice."

APPROPRIATIONS

Section 20 of act July 5, 1966, 80 Stat. 266, Pub. L. 89–493, provided: "Appropriations to carry out the purposes of this Act [amending, repealing and adding the sections enumerated in note headed 'Effective Date of 1966 Amendments', above] are authorized."

CROSS REFERENCES

Allowances to civilian employees of the District of Columbia for notarial services in connection with official business, see 5 U.S.C. § 5945.

Oath prescribed for civil officers, see § 1–308.

§ 1–505. Seal.

Each notary public shall provide a notarial seal with which he shall authenticate all his official acts. (Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 562.)

§ 1–506. Signature and impression of seal deposited.

Each notary public shall file his signature and deposit an impression of his official seal with the Commissioners of the District of Columbia or their designated agent, and the Commissioners or their designated agent may certify to the authenticity of the signature and official seal of the notary public. (Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 563; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 263, Pub. L. 89–493, § 2.)

AMENDMENT

1966—Act July 5, 1966, substituted "Commissioners of the District of Columbia or their designated agent" for "office of the clerk of the United States District Court for the District of Columbia", and added the provisions relating to certification as to authenticity of signature and seal.

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act July 5, 1966, as effective on first day of first month which is at least ninety days after July 5, 1966, see § 21 of such act, set out in note under § 1–504.

APPROPRIATIONS

Appropriations authorized to carry out purposes of act July 5, 1966, which amended this section, see § 20 of such act, set out in note under § 1–504.

§ 1–507. Exemption.

A notary's official seal and his official documents shall be exempt from execution. (Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 564.)

§ 1–508. Foreign bills of exchange—Protest.

Notaries public shall have authority to demand acceptance and payment of foreign bills of exchange and to protest the same for nonacceptance and nonpayment, and to exercise such other powers and duties as by the law of nations and according to commercial usages notaries public may do. (Mar 3, 1901, 31 Stat. 1279, ch. 854, § 565.)

CROSS REFERENCES

Acknowledgment of deeds and form thereof, see § 45–402.

Criminal penalty for false personation before notary, impersonating notary or for acting after expiration of commission, see §§ 22–1303, 22–1304.

Notaries employed by banks, limitation on powers, see § 26–110.

See notes to § 1–509

§ 1–509. Inland bills and notes—Protest—Penalty.

Notaries public may also demand acceptance of inland bills of exchange and payment thereof, and of promissory notes and checks, and may protest the same for nonacceptance or nonpayment, as the case may require. And on the original protest thereof he shall state the presentment by him of the same for acceptance or payment, as the case may be, and the nonacceptance or nonpayment thereof, and the service of notice thereof on any of the parties to the same, and the mode of giving such notice, and the reputed place of business or residence of the party to whom the same was given; and such protest shall be prima facie evidence of the facts therein stated. And any notary public failing to comply herewith shall pay a fine of ten dollars to the District of Columbia, to be collected in the District of Columbia Court of General Sessions as are other fines and penalties. (Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 567; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

CROSS REFERENCE

Presentment, notice of dishonor and protest, see §§ 28:3–501 to 28:3–511.

NOTES TO DECISIONS

Necessity of protest

Official protest of promissory note is not necessary in District of Columbia to hold endorsers. *Presbrey* v. *Thomas* (1893, 1 App. D. C. 171).

§ 1–510. Other acts for use and effect beyond District.

Notaries public may also perform such other acts, for use and effect beyond the jurisdiction of the District, as according to the law of any state or territory of the United States or any foreign government in amity with the United States may be performed by notaries public. (Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 566.)

§ 1–511. Empowered to certify certain instruments, to administer oaths and affirmations—Affidavits.

Each notary public shall have power to take and to certify the acknowledgment or proof of powers of attorney, mortgages, deeds, and other instruments of writing, the acknowledgment of any conveyance or other instrument of writing executed by any married woman, to take depositions and to administer oaths and affirmations and also to take affidavits to be used before any court, judge, or officer within the District. (Mar. 3, 1901, 31 Stat. 1280, ch. 854, § 568; June 30, 1902, 32 Stat. 533, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, struck out after the word "affirmations" the words "in all matters incident or belonging to the duties of his office," and inserted after the word "and," the word "also."

§ 1–512. Record of official acts—Certified copies.

Each notary public shall keep a fair record of all his official acts, except such as are mentioned in the preceding section, and when required, shall give a certified copy of any record in his office to any person upon payment of the fees therefor. (Mar. 3, 1901, 31 Stat. 1280, ch. 854, § 569.)

§ 1–513. Copy of record as evidence.

The certificate of a notary public, under his hand and seal of office, drawn from his record, stating the protest and the facts therein recorded, shall be evidence of the facts in like manner as the original protest. (Mar. 3, 1901, 31 Stat. 1280, ch. 854, § 570.)

§ 1–514. Fees of notary.

The fees of notaries public shall be—

For each certificate and seal, fifty cents.

Taking depositions or other writings, for each one hundred words, ten cents.

Administering an oath, fifteen cents.

Taking acknowledgment of a deed or power of attorney, with certificate thereof, fifty cents.

Every protest of a bill of exchange or promissory note, and recording the same, one dollar and seventy-five cents.

Each notice of protest, ten cents.

Each demand for acceptance or payment, if accepted or paid, one dollar, to be paid by the party accepting or paying the same.

Each noting of protest, one dollar. (Mar. 3, 1901, 31 Stat. 1280, ch. 854, § 571; June 30, 1902, 32 Stat. 533, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, struck out in the sixth line the word "take" and inserted in lieu thereof the word "taking."

CROSS REFERENCE

Fees under money lenders law, see § 26–605.

§ 1–515. Penalties for taking higher fees.

Any notary public who shall take a higher fee than is prescribed by the preceding section shall pay a fine of one hundred dollars and be removed from office by the District of Columbia Court of General Sessions. (Mar. 3, 1901, 31 Stat. 1280, ch. 854, § 572; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 263, Pub. L. 89–493, § 3.)

AMENDMENT

1966—Act July 5, 1966, substituted "District of Columbia Court of General Sessions" for "United States District Court for the District of Columbia"

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act July 5, 1966, as effective on first day of first month which is at least ninety days after July 5, 1966, see § 21 of such act, set out in note under § 1–504.

APPROPRIATIONS

Appropriations authorized to carry out purposes of act July 5, 1966, which amended this section, see § 20 of such act, set out in note under § 1–504.

§ 1–516. Vacation of office—Custody of records and papers.

Upon the death, resignation, or removal from office of any notary public, his records, together with all his official papers, shall be deposited in the office of the Commissioners of the District of Columbia or their designated agent. (Mar. 3, 1901, 31 Stat. 1280, ch. 854, § 573; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 263, Pub. L. 89–493, § 4.)

AMENDMENT

1966—Act July 5, 1966, substituted "Commissioners of the District of Columbia or their designated agent" for "clerk of the United States District Court for the District of Columbia".

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act July 5, 1966, as effective on first day of first month which is at least ninety days after July 5, 1966, see § 21 of such act, set out in note under § 1–504.

APPROPRIATIONS

Appropriations authorized to carry out purposes of act July 5, 1966, which amended this section, see § 20 of such act, set out in note under § 1–504.

§ 1–517. Certificates issued by Commissioners.

Certificates issued by the Commissioners may be signed by the secretary, Board of Commissioners, District of Columbia. (Dec. 16, 1944, 58 Stat. 811, ch. 597, § 4.)

§ 1–518. Appropriation—Inclusion of expenses and salaries in Commissioners' annual estimates.

Appropriation is hereby authorized to be made to carry out the provisions of this section and sections 1–504, 1–507, and 1–518, and the Commissioners of the District of Columbia are authorized to include in their annual estimates provision for all expenses incident to such purposes, including the purchase of equipment and supplies and the payment of salaries to personnel, subject to the limitations of section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]. (Dec. 16, 1944, 58 Stat. 811, ch. 597, § 5; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a).)

CODIFICATION

The reference in this section to "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

AMENDMENT

1949—Act Oct. 28, 1949, § 1106(a), which was a part of the Classification Act of 1949 and which has since been repealed, substituted "Classification Act of 1949" for "Classification Act of 1923". See codification note above.

Chapter 6.—SURVEYOR

Sec.

1–601. Appointment and term of office—Salary.
1–602. Oath.
1–603. Assistant surveyor and other employees.
1–604. Assistant surveyor's duties.
1–605. Surveyor's office to be legal office of record of plats and subdivisions.
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1–607. Records of divisions.
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1–609. Typewritten records authorized.
1–610. Scale of plats.
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1–624. Deficiency or excess in number of feet—Apportionment.
1–625. Party walls.
1–626. Wall extending over lot line.
1–627. Surveyor to certify and record location of party wall.
1–628. Adjusting lines of buildings—Certificate as evidence.
1–629. Commissioners of the District of Columbia to prescribe fees for surveyor—Schedule of fees to be displayed.

§ 1–601. Appointment and term of office—Salary.

The surveyor of the District of Columbia shall receive a salary in lieu of fees, and shall be appointed by the Commissioners of the District of Columbia for a term of four years, unless sooner removed for cause, and shall be under the direction and control of the said commissioners. (Mar. 3, 1901, 31 Stat. 1424, ch. 854, § 1577.)

CODIFICATION

The law as originally enacted provided for salary of "$3,000 per annum, in lieu of fees."

TRANSFER OF FUNCTIONS

Reorganization Order No. 27 of the Board of Commissioners dated Apr. 3, 1953, abolished the previous existing Office of the Surveyor including the office of the head thereof, and established the Office of the Surveyor headed by a Surveyor, under the direction and control of the Engineer Commissioner. All positions under the previous office of Surveyor were transferred to the new office with certain named exceptions. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to this title.

CROSS REFERENCE

Compensation of government employees, including employees of the government of the District of Columbia, see, particularly, 5 U.S.C., ch. 51, and subch. III of ch. 53.

§ 1–602. Oath.

The surveyor shall take and subscribe an oath or affirmation before the Commissioners that he will faithfully and impartially discharge the duties of his office, which oath shall be deposited with the Commissioners of the District of Columbia. (Mar. 3, 1901, 31 Stat. 1424, ch. 854, § 1578; June 28, 1935, 49 Stat. 431, ch. 332, § 2.)

AMENDMENT

1935—Act June 28, 1935, deleted a provision that "The surveyor shall give bond to the United States in the penalty of $20,000, with security to be approved by the Commissioners, conditioned for the faithful discharge of the duties of his office."

§ 1–603. Assistant surveyor and other employees.

The Commissioners of the District of Columbia, on the recommendation of the surveyor, are hereby authorized to appoint one assistant surveyor, and such employees as may in the judgment of the Commissioners of the District of Columbia be required for the surveyor's office and operation. (Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1579.)

CODIFICATION

The law as originally enacted provided for salary of $1,800, and provided for additional employees "at an aggregate expense of not exceeding $10,000 in any one year."

§ 1–604. Assistant surveyor's duties.

The assistant surveyor shall take the same oath his principal is required to take, and may, during the continuance of his office, discharge and perform any of the official duties of his principal. (Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1592; June 28, 1935, 49 Stat. 431, ch. 332, § 3.)

AMENDMENT

1935—Act June 28, 1935, deleted the provision that default or misfeasance in office of the assistant surveyor should be deemed a breach of the official bond of his principal.

§ 1–605. Surveyor's office to be legal office of record of plats and subdivisions.

The office of the surveyor of the District shall be the legal office of record of the plats and subdivisions of all private property in the District of Columbia and of all property belonging to the District of Columbia. And the copies of all records of the division of squares and lots made between the public and the original proprietors and all plats, papers, books, maps, and records now in the office of the surveyor shall remain therein. (Mar. 3, 1901, 31 Stat. 1424, ch. 854, § 1574; June 30, 1902, 32 Stat. 544, ch. 1329.)

CODIFICATION

Prior to the amendment by act June 30, 1902, section read as follows: "The office of the surveyor of the District shall be the legal office of record of the plats of all private property, in the District of Columbia, and authenticated copies of all records of the division of squares and lots made between the public and the original proprietors or otherwise authorized by law shall be kept in said office."

NOTES TO DECISIONS

No dedication when plat not recorded

Where plat was never recorded in the surveyor's office as provided by statute, there was no dedication to the District of Columbia of the property shown as streets. *Faulks* v. *Schrider* (1938, 99 F. 2d 370, 69 App. D. C. 137).

§ 1–606. Records, papers, and instruments to be kept and preserved by surveyor.

The surveyor shall keep his office in a room designated by the Commissioners for the purpose, and shall not be engaged in the transaction of any business appertaining to any other office or appointment which may be held by him, and shall in his said office preserve and keep all such maps, charts, surveys, books, records, and papers relating to the District of Columbia, or to any of the avenues, streets, alleys, public spaces, squares, lots, and buildings thereon, or any of them, as shall for the purpose of being deposited in his office come into his hands or possession; and shall, in books provided or to be provided for that purpose, keep a true record of every survey, certificate, or account which shall be made, issued,

or prepared by him, and also shall preserve and keep in good order and repair the instruments in his said office belonging to the District. (Mar. 3, 1901, 31 Stat. 1427, ch. 854, § 1599.)

CROSS REFERENCES

Designation of land of District by square and lot number, see §§ 47–401, 47–404, 47–405.

Duty to furnish assessor transcript of conveyances of real estate, see § 47–407.

Highway plans, see §§ 7–108 to 7–131.

Payment of taxes and assessments before recording plat of subdivision, see §§ 47–713 to 47–715.

Plat books of lands outside city of Washington, see § 47–406.

Plats and maps opening, extending, widening, straightening, closing, or abandoning alleys or minor streets, see §§ 7–303 to 7–313.

Plats or maps of streets closed under street readjustment act, see § 7–404.

Recording names of streets, see § 7–107.

Surveying, platting, and recording thereof, for burial ground, see §§ 27–103, 27–115.

§ 1–607. Records of divisions.

All records, or copies thereof, of the divisions of squares and lots heretofore made between the public and the original proprietors, or which are authorized by this chapter, shall be kept in the office of the surveyor of the District of Columbia, and the surveyor shall put up, label, index, and preserve all the maps, charts, plats, plans, and other drawings and papers relating to the District of Columbia or which appertain to his office, and which may come to his office for deposit, record, or otherwise. (Mar. 3, 1901, 31 Stat. 1427, ch. 854, § 1596.)

§ 1–608. Records to be the property of the District of Columbia—Transfer on vacation of office.

All papers, plats, books, maps, and records of his office shall be deemed the property of the District of Columbia, and shall constitute a part of the public records; and in all cases of vacancy in the office, by resignation or otherwise, they shall be transferred to his successor in office. (Mar. 3, 1901, 31 Stat. 1427, ch. 854, § 1600; June 30, 1902, 32 Stat. 545, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, inserted after the word "plats" the words "books, maps."

§ 1–609. Typewritten records authorized.

After May 18, 1910, the recording of all instruments filed for record in the office of the surveyor of the District of Columbia may be done with book typewriters. (May 18, 1910, 36 Stat. 382, ch. 248.)

§ 1–610. Scale of plats.

The plats and squares and subdivisions of the city of Washington shall be drawn upon a uniform scale of not less than one inch to fifty feet, and shall show the lines of all subdivisions of the squares as the same existed at the date of the completion of each square. (Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1580.)

§ 1–611. Transcripts as evidence.

All transcripts from such records certified by the surveyor shall be prima facie evidence thereof. (Mar. 3, 1901, 31 Stat. 1424, ch. 854, § 1575.)

CROSS REFERENCE

Replatting lands acquired under District of Columbia Alley Dwelling Act, see §§ 5–103, 5–104.

§ 1–612. Subdivision of United States squares.

Whenever the President shall deem it necessary to subdivide any square or lot belonging to the United States within the city of Washington, not reserved for public purposes, into convenient building lots or portions for sale and occupancy, and alleys for their accommodation, he may cause a plat to be made by the surveyor in the manner prescribed in this chapter, which plat shall be recorded by the surveyor; and the provisions of this chapter shall extend to the lots, pieces, and parcels of ground contained in such plat as fully as to subdivisions made by individual proprietors. (Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1594.)

§ 1–613. Plats—Regulation—Recording.

The Commissioners are authorized and directed to make and publish such general orders as may be necessary to regulate the platting and subdividing of all lands and grounds in the District of Columbia under their jurisdiction; and no such plat or subdivision made in pursuance of such orders shall be admitted to record in the office of the surveyor of said District without an order to that effect indorsed thereon by the commissioners of said District. (Mar. 3, 1901, 31 Stat. 1427, ch. 854, § 1601.)

CROSS REFERENCES

Highway plans, see §§ 7–108 to 7–131.

Plats or maps opening, extending, widening, straightening, closing, or abandoning alleys and minor streets, see §§ 7–303 to 7–313.

Plats required to comply with highway plans, see § 7–125.

§ 1–614. Streets—Avenues—Alleys.

All spaces on any duly recorded plat of land thereon designated as streets, avenues, or alleys shall thereupon become public ways, provided they are made in conformity with section 1–613. (Mar. 3, 1901, 31 Stat. 1428, ch. 854, § 1602.)

CROSS REFERENCES

Adoption as part of highway plans, see § 7–117.

Highway plans, nature, effect, and requirements, see §§ 7–108 to 7–131.

Major thoroughfare plans to be prepared by National Capital Planning Commission, see § 1–1006.

Opening, extending, widening, straightening, closing, or abandoning alleys or minor streets, see §§ 7–303 to 7–313.

Platted highways outside cities of Washington and Georgetown declared to be public highways, see § 7–104.

Refusal to dedicate streets in conformity with highway plan, power of Commissioners to condemn, see §§ 7–216, 7–217.

§ 1–615. Cemeteries—Right of way through.

If by the extension of any of the present streets or avenues or the opening of any public way it becomes necessary to traverse any grounds now used as a cemetery or place of burial, the commissioners are empowered to secure a right of way through the same by stipulation with the proprietors thereof. (Mar. 3, 1901, 31 Stat. 1428, ch. 854, § 1603.)

CROSS REFERENCE

Jurisdiction, power, and control concerning streets, see § 7–102 and notes.

§ 1–616. Surveys for District—Fees and documents.

It shall be the duty of the surveyor to execute any surveying work for the District of Columbia without

charge, on the order of the commissioners; and all fees for surveys made by the surveyor or the assistant surveyor shall be paid over to the collector of taxes of the District of Columbia under regulations to be prescribed by the commissioners of the District of Columbia, and be covered into the treasury of the United States as other revenues of the District are now; and the field notes of the surveyor and his assistant shall be preserved and shall be a part of the public property of the District of Columbia, and all records, plats, plans, and other papers or documents now existing, or hereafter made or secured by the office of the said surveyor, shall be delivered by each surveyor to his successor in office, and no plat or survey of land shall be recorded in the office of the surveyor of the District of Columbia except it be certified to as correct by the surveyor of said District. (Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1591.)

CROSS REFERENCES

Disposition of fees, see § 47–126.

Highway plans, see §§ 7–108 to 7–131.

Opening, extending, widening, straightening, or closing minor streets or alleys, see §§ 7–303 to 7–313, 7–326.

Plats of certain lands conveyed in establishment of public parks and playgrounds, see § 8–120.

Plats or maps of public highways closed under Street Readjustment Act, see § 7–403.

Schedule of fee prescribed by Commissioners, see § 1–629.

§ 1–617. Order of survey to be speedily executed.

The surveyor shall, as speedily as possible, execute any order of survey made by any court or private individual of any lot or square within the city of Washington, or of any land within the District of Columbia outside of said city, and shall make due return of a true plat and certificate thereof. (Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1590.)

§ 1–618. Subdivisions—Alterations—Changes.

Whenever the proprietor of any tract or parcel of land in the District of Columbia shall desire or deem it necessary to subdivide or alter boundaries, or change the surveys of any such tract or parcel of land, such subdivision, alteration, or change shall be by the surveyor of the District of Columbia, or his assistant, only, and shall be entered in the plat book or books of said surveyor. All such subdivisions, alterations, or changes shall be certified by the surveyor, the party wishing such plat, and two competent witnesses, whose names shall be appended thereto. (Mar. 3, 1901, 31 Stat. 1427, ch. 854, § 1595.)

§ 1–619. Boundaries of lots to be marked.

It shall also be the duty of the surveyor on the request of the proprietor or proprietors of any square, lot, or piece of ground within the District of Columbia to set out and mark the proper lines, and furnish to him, her, or them a certificate describing the dimensions and boundaries of the same, according to the plan. (Mar. 3, 1901, 31 Stat. 1427, ch. 854, § 1598.)

§ 1–620. Subdivisions.

Whenever the proprietor of any square or lot shall deem it necessary to subdivide the same into convenient building lots or portions for sale and occupancy and alleys for their accommodation, he may cause a plat to be made by the surveyor, on which shall be expressed the dimensions and length of all the lines of such portions as are necessary for defining and laying off the same on the ground, and may certify such subdivision under his hand and seal, in the presence of two or more credible witnesses, upon the same plat or on a paper or parchment attached thereto. (Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1581.)

CROSS REFERENCES

Adoption of maps of highway plans, see § 7–110.

Dedication of minor streets and alleys, see §§ 7–303, 7–306, 7–307, 7–310.

Resubdivision to comply with highway plans, see § 7–119.

§ 1–621. Lots and parcels may be resurveyed to determine accuracy—Recording only on order.

At the request of the proprietor the surveyor shall examine whether the lots or parcels into which any square or lot may be subdivided as provided in section 1–620 agree in dimensions with the whole of the square or lot so intended to be subdivided, and whether the dimensions expressed on the plat of subdivision be the true dimensions of the parts so expressed; and whether said lots or parcels conform to the general orders of the Commissioners of the District of Columbia made under existing law or under authority of section 1–613; and if upon such examination he shall find the plat correct he shall certify the same under his hand and seal to the said Commissioners with such remarks as appear to him necessary; but no such plat or subdivision shall be admitted to record in the office of the surveyor without an order to that effect, indorsed thereon by said Commissioners. (Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1582; June 30, 1902, 32 Stat. 544, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, added provisions following the first semicolon.

§ 1–622. Reference to subdivisions.

When a subdivision of any square or lot shall be so certified, examined, and recorded, the purchaser of any part thereof or any person interested therein may refer to the plat and record for description in the same manner as to squares and lots divided between the Commissioners and original proprietors. (Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1583.)

CROSS REFERENCE

Jurisdiction and control of Commissioners over public alleys, streets, and highways, see § 7–102 and notes.

§ 1–623. Alleys—Police regulation.

The ways, alleys, or passages laid out or expressed on any plat of subdivision shall be and remain at all times under the same police regulations as the alleys laid off by the Commissioners on division with the original proprietors. (Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1584; June 30, 1902, 32 Stat. 544, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, deleted words "to the public or subject to the uses declared by the person making such subdivision" which followed the word "remain" in the second line.

§ 1–624. Deficiency or excess in number of feet—Apportionment.

Whenever the surveyor shall lay off any lot, or any parts into which a square or lot may be sub-

divided, as provided in this chapter, he shall measure the whole of that front of the square on which said lot or part lies, and if, on such admeasurement, the whole front of the square exceeds or falls short of the aggregate of the fronts of the lots on that side of the square, as the same are recorded, he shall, except in that portion of the city of Washington included within the limits of what formerly constituted the city of Georgetown, apportion such excess or deficiency among the lots or pieces on that front agreeably to their respective dimensions; and in that portion of the city of Washington included within the limits of what formerly constituted the city of Georgetown he shall allow such excess or charge such deficiency to the highest numbered original lot on that front of the square, or apportion such excess or deficiency among any lots into which such highest numbered original lot may have been subdivided: *Provided*, That wherever in the former city of Georgetown a square or block of land is intersected by the division line between two original additions to said city, the excess or deficiency found between the street lines and said division line shall be applied to the highest numbered original lot on each side of said division line, or apportioned among any lots into which such highest numbered original lot may have been subdivided. (Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1585; June 30, 1902, 32 Stat. 544, ch. 1329.)

CODIFICATION

Prior to the amendment by act June 30, 1902, section read as follows: "Whenever the surveyor shall lay off any lot, or any parts into which a square or lot may be subdivided, as provided in this chapter, he shall measure the whole of that front of the square on which such lot or part lies, and if, on such admeasurement, the whole front of the square exceeds or falls short of the aggregate of the fronts of the lots on that side of the square, as the same are recorded, he shall apportion such excess or deficiency among the lots or pieces on that front agreeably to their respective dimensions."

§ 1–625. Party walls.

Whenever, on such admeasurement, the wall of a house previously erected by any proprietor shall appear to stand on the adjoining lot of any other person in part less than seven inches in width thereon, such wall shall be considered as standing altogether on the land of such proprietor, who shall pay to the owner of the lot on which the wall may stand a reasonable price for the ground so occupied, to be decided by arbitrators or a jury, as the parties interested may agree. (Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1586.)

NOTES TO DECISIONS

In general

There are but two lawful ways in which a party wall can be established, (1) by contract between the owners of the adjoining properties or (2) by force of statute *Fowler* v. *Koehler* (1915, 43 App. D.C. 349, Ann. Cas. 1916E, 1161).

Building regulations

"That the person or persons appointed by the commissioners to superintend the buildings may enter on the land of any person to set out the foundation and regulate the walls to be built between party and party, as to the breadth and thickness thereof: which foundation shall be laid equally upon the lands of the persons between whom such party walls are to be built, and shall be of the breadth and thickness determined by such person proper; and the first builder shall be reimbursed one moiety of the charge of such party wall, or so much thereof as the next builder shall have occasion to make use of, before such next builder shall any ways use or break into the wall. The charge or value thereof, to be set by the person or persons so appointed by the commissioners." Promulgated by President Washington, October 17, 1791.

The regulations governing party walls in force in the original federal city have been made applicable by custom to the territory of the city of Washington outside the original city, except where the property-owner objected at the time to an attempted construction of a party wall and took measures to prevent it. *Walker* v. *Gish* (1923, 43 S. Ct. 174, 260 U. S. 447, 67 L. Ed. 344).

The building regulations of the District of Columbia in respect of party walls are neither statutes nor ordinances; they are mere rules for the enforcement of existing rights, and have no force outside the limits of the city of Washington as they existed at the time the regulations were promulgated. *Fowler* v. *Koehler* (1915, 43 App. D. C. 349, Ann. Cas. 1916E, 1161).

Contribution

One making use of a party wall cannot avoid contributing to the cost thereof on the theory that the regulations governing such walls are so discriminatory as to the second users as to render them unconstitutional. *Walker* v. *Gish* (1923, 43 S. Ct. 174, 260 U. S. 447, 67 L. Ed. 344).

A landowner making use of a party wall erected by the adjoining owner is required to contribute his fair proportion of the cost thereof to the person erecting the wall, or his successor in interest, though the wall was not erected under an agreement to contribute. *Fowler* v. *Koehler* (1915, 43 App. D. C. 349, Ann. Cas. 1916E, 1161).

Where plaintiff built a substantial wall on the dividing line with the knowledge of one of the trustees of the adjoining property and with the consent and approval of the building inspector, and the said trustee made use of the said wall, the wall was a "party wall" and the trustees were bound to pay half of the cost thereof although the other trustee did not have knowledge *Krupsaw* v. *Welch* (D.C. D.C. 1940, 34 F. Supp. 396).

Damages

An adjoining owner is obliged to make good all damages occasioned by his interference with a party wall. *Fowler* v. *Saks* (7 Mackey 570, 7 L. R. A. 649).

Division wall

Where the owner of two pieces of property erected attached buildings on each lot, the supporting wall between the buildings not being exactly on the dividing line between the lots, such wall was not a party wall but a division wall and when thereafter the owner sold the properties to different purchasers after which the buildings were torn down no party wall easement existed. The question of whether the purchasers might have made the division wall a party wall by mutual consent was not decided. *Moore* v. *Shoemaker* (1897, 10 App. D. C. 6).

One cannot compel the removal of a new, appropriate, and more substantial division wall and fence erected by one of the adjacent owners at his own expense, but without the consent of the other owner, when the original wall and fence had been erected by mutual consent and it was impractical to repair the old wall. *Perry* v. *Reeve* (1926, 12 F. 2d 184, 56 App. D. C. 243).

Easement created

The erection of a party wall by one of two adjoining owners does not amount to a taking of property for private use but amounts only to the establishment of a mutual easement or servitude. *Fowler* v. *Koehler* (1915, 43 App. D. C. 349, Ann. Cas. 1916E, 1161.) See, also, *Perry* v. *Reeve* (1926, 12 F. 2d 184, 56 App. D. C. 243).

Encroachment not party wall

Wall of bay window built on party line, the rest of the wall being 3 feet from the line, is merely an encroachment on adjoining property, rather than a wall built on dividing line for mutual advantage. *Smoot* v. *Heyl* (1913, 33 S. Ct. 336, 227 U. S. 518, 57 L. Ed. 621).

Proof of title

Plaintiff must prove his own title in land in order to establish that he was owner of dominant servitude in party wall. *Johnson* v. *Simmons* (1923, 290 F. 331, 53 App. D. C. 356).

Right of subsequent owner

Purchaser of lot with party wall on it, in which adjoining owner has not exercised his right, succeeds to rights of the builder, and is entitled to compensation when such wall is used by adjoining owner. *Walker* v. *Gish* (1921, 273 F. 366, 51 App. D.C. 4).

§ 1–626. Wall extending over lot line.

If the wall of any house already erected cover seven inches or more in width of the adjoining lot, it shall be deemed a party wall, according to the regulations for building in the District, and the ground so occupied more than seven inches in width shall be paid for as provided in section 1–625 (Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1587.)

§ 1–627. Surveyor to certify and record location of party wall.

The surveyor shall ascertain and certify and put on record, at the request and expense of any person interested therein, the fact of the occupation of land by a party wall, as mentioned in section 1–626 (Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1588.)

§ 1–628. Adjusting lines of buildings—Certificate as evidence.

It shall be the duty of the surveyor to attend, and examine the foundation or walls of any house to be erected for the purpose of adjusting the line of the front of such building to the line of the street and correctly placing the party wall on the line of division between that and the adjoining lot; and his certificate of the fact shall be admitted as evidence and binding on the parties interested. (Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1589; June 30, 1902, 32 Stat. 545, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, struck out the words "when requested," following "to attend," and the words "when the same shall be level with the street or surface of the ground," following the word "erected."

§ 1–629. Commissioners of the District of Columbia to prescribe fees for surveyor—Schedule of fees to be displayed.

The Commissioners of the District of Columbia are hereby authorized from time to time to prescribe a schedule of fees to be charged by the surveyor for his services, which schedule shall be printed and conspicuously displayed in the office of the surveyor. (Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1593.)

CROSS REFERENCE

Power of Commissioners to regulate fees of surveyor and the payment thereof into the treasury, see § 1–616.

Chapter 7.—INSPECTION—REGULATORY PROVISIONS

Sec.

1–701 Boiler Inspection Act—Short title
1–702 "Person" defined.
1–703. Boiler inspection service created—Personnel
1–704. Bond—Oath.
1–705. Inspection of designated steam boilers and unfired pressure vessels.
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1–719 Electric wiring—Inspection—Rules and regulations—Fees.
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1–721. Electrical engineer—Appointment—Qualifications—Assistant inspectors.
1–722. Assistant electrical engineer—Duties.
1–723. Connecting current before inspection—Penalty—Authority to remove connection.
1–724. Plumbing—Appointment of inspector—Duties.
1–725. Regulations governing plumbing, house drainage sewers, and for examination and licensing of plumbers and gas-fitters—Noncompliance—Penalty.
1–726 Fees for permits for sewer, gas, and water connections, excavations—Disposition of fees.
1–727 Inspector of plumbing—Inspection of buildings—Enforcement of regulations
1–728. Principal assistant inspector of buildings may discharge duties of inspector.
1–729. Assistant inspector of buildings to inspect elevators and fire escapes.

§ 1–701. Boiler Inspection Act—Short title.

Sections 1–701 to 1–718 may be cited as the "Boiler Inspection Act of the District of Columbia." (June 25, 1936, 49 Stat. 1917, ch. 802, § 1.)

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47–2344, 47–2345.

Criminal penalty for impersonating inspector of a department of the government of the District, see § 22–1305.

General provisions for the licensing, inspection, and supervision of business, see §§ 47–2301 to 47–2350.

Department of Weights, Measures, and Markets, inspection of devices and facilities, see § 10–101 et seq.

Inspection of establishments that employ women, see § 36–306 et seq.

Inspection of insanitary buildings, see § 5–616 et seq.

Inspection of manufacture, renovation, and sale of mattresses, see § 6–607.

Inspection of places and plants in the eradication of plant diseases and insect infections, see §§ 6–904, 6–905.

Inspection of private hospitals and asylums, see § 32–302.

Inspection of unsafe structures, see § 5–501.

Inspector of asphalt and cement, see § 1–307.

Inspector of gas and electric meters, see §§ 43–603, 43–605.

Investigation and inspection of institutions of charity supported by public funds, see §§ 32–1001, 32–1002.

§ 1–702. "Person" defined.

Wherever the word "person" is used in sections 1–701 to 1–718 it shall include individuals, firms, partnerships, associations, and corporations. (June 25, 1936, 49 Stat. 1917, ch. 802, § 2.)

§ 1–703. Boiler inspection service created—Personnel.

There is hereby constituted a boiler inspection service in the Engineer Department of the District of Columbia, to be composed of the following: (a) A boiler inspector who shall be qualified by training and experience in the construction and operation of

steam boilers and unfired pressure vessels, and who, under an official designated by the Commissioners of the District of Columbia, shall have charge of the enforcement of the provisions of sections 1–701 to 1–718 and of the regulations promulgated hereunder; (b) and such other employees as may be necessary for the proper performance of the work. All such officials and employees shall be appointed by the Commissioners of the District of Columbia. (June 25, 1936, 49 Stat. 1917, ch. 802, § 3.)

TRANSFER OF FUNCTIONS

See note under section 1–246 concerning the Department of Licenses and Inspections.

CROSS REFERENCES

Boiler inspector member of board for examination and licensing of steam and other operating engineers, see § 2–1502.

Power of Commissioners to make rules and regulations. publication thereof, see §§ 1–715, 1–718.

§ 1–704. Bond—Oath.

The said inspector shall give bond, with two sufficient securities, to be approved by the Commissioners in the sum of $2,000, and he shall take and subscribe the following oath or affirmation before a notary public or a judge of the District of Columbia Court of General Sessions: "I do solemnly swear that I will diligently, faithfully, and impartially execute the duties of my office without favor." (Leg. Assem., June 25, 1873, ch. 25, § 4; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 1–705. Inspection of designated steam boilers and unfired pressure vessels.

No person shall use or cause to be used any steam boiler operating at a pressure in excess of fifteen pounds per square inch, or operating at a pressure less than fifteen pounds per square inch unless provided with an unassisted gravity return, or any unfired pressure vessel operating at a pressure in excess of sixty pounds per square inch and having a capacity in excess of fifteen gallons, except such vessels as may be exempted by the Commissioners of the District of Columbia, without having first obtained a certificate of inspection from the boiler inspector. (June 25, 1936, 49 Stat. 1917, ch. 802, § 4.)

CROSS REFERENCES

Inspection fees, see §§ 1–710, 1–715, 1–718.
Other exemptions, see § 1–709.
Revocation of certificate, see § 1–708.

§ 1–706. Operating at pressure greater than permitted.

No person shall operate or cause to be operated any boiler or unfired pressure vessel, referred to in section 1–705 at a pressure greater than that permitted by the certificate of inspection, or while feed pumps, gauges, cocks, valves, or automatic safety-control devices are not in proper working condition, or in violation of any of the regulations promulgated hereunder by the Commissioners of the District of Columbia. (June 25, 1936, 49 Stat. 1917, ch. 802, § 5.)

CROSS REFERENCES

Power of commission to make rules and regulations and publication thereof, see §§ 1–715, 1–718.
Pressure vessels inspected and insured by approved insurance companies, exempted, see § 1–707.
Revocation of certificate, see § 1–708.
Vessels exempted, see §§ 1–705, 1–709.

§ 1–707. Annual inspection—Certificate of inspection—Display.

The boiler inspector, or one of his assistants, shall inspect annually all boilers and unfired pressure vessels for which a certificate of inspection is required by section 1–705 and shall determine by actual tests the condition thereof from the standpoint of safety and fitness for operation. If such boiler or vessel be safe and fit for operation, the boiler inspector shall issue the certificate of inspection which shall state, among other things, the pressure per square inch such boiler or vessel may be allowed to carry. This certificate of inspection shall be displayed in a conspicuous place in close proximity to the boiler or vessel covered thereby. In the case of a steam boiler or unfired pressure vessel which is regularly insured and inspected at least once a year by an insurance company duly licensed in the District of Columbia and approved by the Commissioners of the said District as to its inspection service, where a report of such inspection filed within thirty days after such inspection with the boiler inspector shows any such boiler or unfired pressure vessel to be in a safe and insurable condition, such inspection and report shall take the place of the inspection hereinbefore provided and the certificate of inspection may be issued upon such report. Insurance companies shall report to the inspectors the cancelation of insurance of any certificate holder. (June 25, 1936, 49 Stat. 1917, ch. 802, § 6.)

CROSS REFERENCES

Inspection fees, see §§ 1–710, 1–715, 1–718.
Revocation of certificate, see § 1–708.

§ 1–708. Revocation or suspension of certificate.

The boiler inspector may in his discretion revoke or suspend the certificate of inspection provided in section 1–705 if at any time he shall find any boiler or unfired pressure vessel covered by such certificate to be unsafe or unfit for operation. (June 25, 1936, 49 Stat. 1917, ch. 802, § 7.)

§ 1–709. Exemptions.

Steam boilers and unfired pressure vessels located in or upon boats or vessels or other floating equipment, or boats or vessels owned or operated by the United States, or upon locomotives, street cars, busses, or other vehicles, operated under the regulations of any federal agency or the Public Service Commission of the District of Columbia, shall be exempt from the provisions of sections 1–701 to 1–718. (June 25, 1936, 49 Stat. 1917, ch. 802, § 8; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88–503, § 21.)

CHANGE OF NAME

Act Aug. 30, 1964, changed the name of the Public Utilities Commission of the District of Columbia to "Public Service Commission of the District of Columbia". See § 2–2418.

CROSS REFERENCE

Exemption by rule of Commissioners, see § 1–705.

§ 1–710. Fees—Certificate invalidated by cessation of insurance.

There shall be paid to the Collector of Taxes of the District of Columbia by the owner or user, for the issuance of a certificate as required by sections 1–701 to 1–718, fees to be fixed from time to time by the Commissioners of the District of Columbia for the annual inspection of each steam boiler or unfired pressure vessel, commensurate with the cost of inspection, with power to fix higher fees for the issuance of a certificate where the inspection in connection therewith is made on a Sunday or legal holiday. When an inspection report is filed by an insurance company with the said boiler inspector, showing that a boiler or unfired pressure vessel has been inspected and found to be in a safe and insurable condition as provided in section 1–707, the owner or user of such insured and inspected boiler or unfired vessel shall be exempt from the payment of all fees with the exception that there shall be paid to the Collector of Taxes of the District of Columbia a fee of $1 by the owner or user prior to the issuance of a certificate of inspection. No such certificate shall be valid after the boiler or unfired pressure vessel shall cease to be insured by an insurance company authorized as provided in section 1–707. (June 25, 1936, 49 Stat. 1917, ch. 802, § 9.)

§ 1–711. Right of inspectors to enter premises—Unlawful to deny admittance.

The boiler inspector and his assistants shall have the right to enter, in the performance of his or their duties, at all reasonable hours, all premises on which a steam boiler or unfired pressure vessel is being installed, operated, or maintained, and it shall be unlawful for any person to deny admittance to any such inspector or assistant or to interfere with him or them in the performance of his or their duties. (June 25, 1936, 49 Stat. 1917, ch. 802, § 10.)

§ 1–712. Records to be kept.

The boiler inspector shall keep in the office of the boiler inspection service all applications made, and a complete record thereof, as well as of all certificates issued. He shall also keep a complete record of each boiler and unfired pressure vessel inspected, and such other records and data pertaining to the boiler inspection service as may be directed by the Commissioners of the District of Columbia (June 25, 1936 49 Stat. 1917, ch. 802, § 11.)

§ 1–713. Unauthorized use deemed nuisance—Proceedings to abate.

The use of any steam boiler or unfired pressure vessel in violation of any of the prohibitions or requirements of sections 1–701 to 1–718, or of the regulations promulgated under the authority hereof, shall constitute a common nuisance and the Corporation Counsel of the District of Columbia may maintain an action in the United States District Court for the District of Columbia, in the name of the District of Columbia, to abate and perpetually enjoin such nuisance. (June 25, 1936, 49 Stat. 1917, ch. 802, § 12; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

CROSS REFERENCE

Power of Commissioners to make rules and regulations and publication thereof, see §§ 1–715, 1–718.

§ 1–714. Penalties.

If any person shall violate any one or more of the provisions of sections 1–701 to 1–718 or of regulations duly promulgated hereunder, the Corporation Counsel of the District of Columbia, or any of his assistants, shall file an information in the District of Columbia Court of General Sessions in the name of the District of Columbia, and upon conviction such persons shall be subject to a fine not to exceed $100 or to imprisonment for not more than ninety days, or both, for each and every violation thereof, and each violation shall constitute a separate offense. (June 25, 1936, 49 Stat. 1917, ch. 802, § 13; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 1–715. Regulations—Fees.

The Commissioners of the District of Columbia are hereby authorized and empowered to make such regulations as they may deem proper to carry out the provisions of sections 1–701 to 1–718 and to fix the fees herein provided. (June 25, 1936, 49 Stat. 1917, ch. 802, § 14.)

CROSS REFERENCES

Other provisions concerning fees, see §§ 1–710, 1–718.
Rules and regulations in general, see § 1–226 and note.

§ 7–716. Repeal; act concerning steam engineers not affected.

All laws or parts of laws relating to boiler inspection in conflict with the provisions of sections 1–701 to 1–718 are hereby repealed: *Provided,* That no provision of sections 1–701 to 1–718 shall be deemed to amend, alter, or repeal sections 2–1501 to 2–1507. (June 25, 1936, 49 Stat. 1917, ch. 802, § 15.)

§ 1–717. Separability of provisions.

If any provision of sections 1–701 to 1–718 or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of said sections which can be given effect without the invalid provision or application, and to this end the provisions of said sections are declared to be severable. (June 25, 1936, 49 Stat. 1917, ch. 802, § 16.)

§ 1–718. Effective date of sections 1–701 to 1–718—Promulgation of regulations and schedule of fees.

Sections 1–701 to 1–718 shall become effective six months from the date of its approval (June 25, 1936).

The regulations and schedule of fees herein provided for shall be promulgated by the Commissioners of the District of Columbia and printed in one or more of the daily newspapers published in the said District but shall not be enforced until thirty days after such publication or until December 25, 1936. Amendments to the regulations or new or additional schedules of fees, when and as the same may be adopted, shall likewise be printed in one or more of the daily newspapers published in the said District and no penalty for violation thereof or payment of new or additional fees prescribed shall be enforced until thirty days after such publication. (June 25, 1936, 49 Stat. 1917, ch. 802, § 17.)

CROSS REFERENCES

Other provisions concerning fees, see §§ 1–710, 1–715.

Power of Commissioners to make rules and regulations see § 1–715.

§ 1–719. Electric wiring—Inspection—Rules and regulations—Fees.

The Commissioners of the District of Columbia shall have power to make from time to time such rules and regulations respecting the production, use and control of electricity for light, heat, and power purposes in the District of Columbia not inconsistent with existing laws, as in their judgment will afford safety and convenience to the public; and the Commissioners of said District are further authorized and empowered to prescribe such fees for the examination of the electrical wiring, machinery, and appliances in buildings as they may deem proper, to be paid to the Collector of Taxes of the District of Columbia, and any such rules and regulations shall after promulgation have the effect and force of law: *Provided*, That nothing in sections 1–719 to 1–723 contained shall apply to the power plants or buildings of incorporated companies engaged in the production and distribution of electric current for public service or use. (Apr. 26, 1904, 33 Stat. 306, ch. 1602, § 1.)

TRANSFER OF FUNCTIONS

See note under section 1–246 concerning the Department of Licenses and Inspections.

CROSS REFERENCES

Building regulations, see § 5–413 and notes.

Disposition of fees, see § 47–126.

Provisions concerning power of Commissioners over electric wiring in streets and alleys, see § 43–1401 et seq.

Rules and regulations in general, see § 1–226 and notes.

NOTES TO DECISIONS

Judicial notice

Judicial notice would not be taken that incompetent repairman might injure or kill telephone user by connecting television lead-in to high voltage in television set. *R. A. Harris et al.* v. *W. N. Tobriner et al.* (1962, 304 F. 2d 377, 113 U.S. App. D.C. 10).

In view of electrical contractor's denial that incompetent repairman could cause injury by running of television lead-in wires and telephone wires in same conduit such hazard must be established by competent evidence before Board of Appeals and Review. *Id.*

Record on appeal

Review by district court of order of District of Columbia Board of Appeals and Review directing electrical contractor to remove lead-in wires for master television system from conduits already containing telephone wires should have consisted of full hearing upon record of proceedings before Board and summary judgment should not have been granted against contractor. *R. A. Harris et al.* v. *W. N. Tobriner et al.* (1962, 304 F. 2d 377, 113 U.S. App. D.C. 10).

§ 1–720. Inspection—Notice of violations—Penalty.

The electrical engineer who shall be chief inspector of electrical work and his assistants are hereby empowered and required, under the direction of the commissioners, to inspect any building in course of erection and during reasonable hours to enter into and examine any building where electrical current is produced or utilized for lighting, heating, or for power, for the purpose of ascertaining violations of any of the provisions of sections 1–719 to 1–723; and upon finding any devices aforesaid defective or dangerous shall cause to be delivered a written notice of any violation of any provisions of said sections, or of any regulation of said Commissioners duly adopted, to the constructing contractor, owner, or agent of any building directing him or them to remove or amend the same within a period to be fixed in said notice; and in case of neglect or refusal on the part of the party so notified to remove or amend the same within the time and in the manner prescribed by the chief inspector of electrical work, and approved by the Commissioners of the District of Columbia, the party so offending shall pay a fine of not more than $25 for each and every day's failure or neglect to remove or amend the same after being so notified, and in default of payment of such fine such persons shall be confined in the workhouse of the District of Columbia for a period not exceeding one month; and all prosecutions under sections 1–719 to 1–723 shall be in the District of Columbia Court of General Sessions, in the name of the District of Columbia. (Apr. 26, 1904, 33 Stat. 307, ch. 1602, § 2; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court of said district" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

CROSS REFERENCE

Certification that certain businesses have complied with safety regulations before business license be issued, see § 47–2302.

§ 1–721. Electrical engineer—Appointment—Qualifications—Assistant inspectors.

There is hereby established, under the direction of the Commissioners of the District of Columbia, the office of electrical engineer, and the Commissioners of said District are hereby authorized and directed to appoint an electrical engineer, and said electrical engineer shall be an expert electrician, possessing a thorough knowledge of the most modern methods for the production, use, and control of electricity and electrical appliances, construction, wiring, and insulation, as well as such executive ability and adaptability to office work as is requisite for the efficient management of the said office. And the Commissioners are authorized and directed to appoint two electrical inspectors to assist in the work required by the authority of sections 1–719 to 1–723, who shall

perform such clerical duties as may be required by the commissioners. (Apr. 26, 1904, 33 Stat. 307, ch. 1602, § 3.)

§ 1–722. Assistant electrical engineer—Duties.

The assistant electrical engineer shall perform the duties of the electrical engineer in the absence or disability of the latter and shall have the same qualifications as to ability and technical knowledge as is required by law of the head of the department (Mar. 2, 1911, 36 Stat. 981, ch. 192.)

CODIFICATION

The law as originally enacted provided for salary of $2,000

§ 1–723. Connecting current before inspection—Penalty—Authority to remove connection.

It shall be unlawful for any person, company, or corporation generating current for electric light, heat, or power in the District of Columbia to connect its system and furnish current for electrical purposes to any building or premises, the wiring of which shall not have been inspected and approved by the chief inspector of electrical work.

Any person, company, or corporation violating the provisions of this section shall, upon written notice from the chief inspector of electrical work to do so, immediately remove said connection and cut off the current, and shall not again supply said current until authorized by the said inspector. For failure to comply with said notice the offending person, company, or corporation shall be fined not less than $5 nor more than $100 for each and every day's failure or neglect to remove said connection and to cut off the current.

The chief inspector of electrical work is hereby authorized and empowered, with the approval of the commissioners, to cause said connection to be removed and the current cut off upon such failure of the offending person, company, or corporation, and to refuse to permit said connection to be replaced and the current to be used until the wiring shall be put in proper and safe condition. (Apr. 26, 1904, 33 Stat. 307, ch. 1602, § 4.)

§ 1–724. Plumbing—Appointment of inspector—Duties.

There shall be appointed by the Commissioners of the District of Columbia an inspector of plumbing for said District, whose duty it shall be, to inspect all houses in course of erection, and pass upon the plumbing and sewerage of said houses. (Jan. 25, 1881, 21 Stat. 318, ch. 27.)

TRANSFER OF FUNCTIONS

See note under section 1–246 concerning the Department of Licenses and Inspections.

CROSS REFERENCE

Licensing and regulation of plumbers, see § 2–1401 et seq.

§ 1–725. Regulations governing plumbing, house drainage, sewers, and for examination and licensing of plumbers and gas-fitters—Noncompliance—Penalty.

The Commissioners of the District of Columbia and their successors are authorized and empowered to make, modify, and enforce regulations governing plumbing, house drainage, and the ventilation, preservation, and maintenance in good order of house sewers and public sewers in the District of Columbia, and also regulations governing the examination, registration, and licensing of plumbers and the practice of the business of plumbing and gas-fitting in said District; and any person who shall neglect or refuse to comply with the requirements of the provisions of said regulations after ten days' notice of the specific thing required to be done thereunder, within the time limited by the commissioners for doing such work, or as the said time may be extended by said Commissioners, shall upon conviction thereof be punishable by a fine of not more than $200 for each and every such offense, or in default of payment of fine, to imprisonment not to exceed thirty days. (Apr. 23, 1892, 27 Stat. 21, ch. 53, § 1; Mar. 3, 1893, 27 Stat. 543, ch. 199.)

CODIFICATION

The provisions of this section concerning the regulation of examination, registration, and licensing of plumbers are probably superseded by § 2–1401 et seq.

AMENDMENT

1893—Act Mar. 3, 1893, included the practice of the business of gas-fitting.

CROSS REFERENCES

Building regulations, see § 5–413 and notes.

Commissioners' power to revoke or suspend licenses, see § 2–1405.

Duty of Commissioners to require lots to be connected to public drains, see §§ 6–402 to 6–404.

Penalties for violation of Plumbers' Licensing Law, see § 2–1408.

Rules and regulations in general, see § 1–226 and notes.

NOTES TO DECISIONS

Sentence

Though it was not called to the attention of the Municipal Court of Appeals for the District of Columbia on appeal by defendants from conviction for failure to comply with plumbing regulations of the District of Columbia after statutory notice, that sentence of $100 or sixty days imprisonment in default of payment of fine was improper because statute provides for a fine of not more than $200 or, in default of payment of fine, imprisonment not to exceed thirty days, the Municipal Court of Appeals would remand the case with instructions to vacate existing sentence and resentence defendants in accordance with statute. *Iskovitz* v. *District of Columbia* (D. C. Mun. App. 1956, 125 A. 2d 519).

Statutory notice

Where defendants did not call to attention of trial court the fact that information, which charged them with failure to comply with plumbing regulations of the District of Columbia after statutory notice, did not allege that notice required work to be completed within a specified time, and there was no showing of prejudice, and defendants did not contend that notice did not adequately advise them of the time in which the work should be done, defendants could not complain of such omission on appeal. *Iskovitz* v. *District of Columbia* (D. C. Mun. App. 1956, 125 A. 2d 519).

§ 1–726. Fees for permits for sewer, gas, and water connections, excavations—Disposition of fees.

The said Commissioners and their successors, be, and they hereby are, authorized to establish and charge a fee for each permit granted to connect any building, premises, or establishment with any sewer, water, or gas main, or other underground structure located in any public street, avenue, alley, road, highway, or space; and also to establish and charge a fee for each permit granted to make an excavation in any public street, avenue, alley, highway, road, or space for the purpose of repairing, altering, or ex-

tending any house sewer, water main, or gas main, or other underground construction. The fees authorized by this section shall be paid to the Collector of Taxes of the District of Columbia and by him paid for each fiscal year into the treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the treasury of the United States and the revenues of the District of Columbia. (Apr. 23, 1892, 27 Stat. 21, ch. 53, § 3; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

AMENDMENT

1921—Act Feb. 22, 1921, changed the proportions in which fees deposited were to be credited from one-half each to the proportion shown in last sentence.

CROSS REFERENCES

Lump-sum appropriation by Federal Government for the District, see § 47–134.

Making connections, before streets are paved, see § 7–605.

§ 1–727. Inspector of plumbing—Inspection of buildings—Enforcement of regulations.

The inspector of plumbing and his assistants shall be under the direction of said Commissioners, and they are hereby empowered accordingly, to inspect or cause to be inspected, all houses when in course of erection in said district, to see that the plumbing, drainage, and ventilation of sewers, and gas-fittings thereof conform to the regulations hereinbefore provided for; and also at any time, during reasonable hours, under like direction, on the application of the owner, or occupant, or the complaint under oath of any reputable citizen to inspect or cause to be inspected any house in said district, to examine the plumbing, drainage, and ventilation of sewers, and gas-fittings thereof, and generally to see that the regulations hereinbefore provided for are duly observed and enforced. (Apr. 23, 1892, 27 Stat. 21, ch. 53, § 4; Mar. 3, 1893, 27 Stat. 543, ch. 199.)

AMENDMENT

1893—Act Mar. 3, 1893, included the practice of the business of gas-fitting.

TRANSFER OF FUNCTIONS

See note under section 1–246 concerning the Department of Licenses and Inspections.

§ 1–728. Principal assistant inspector of buildings may discharge duties of inspector.

The principal assistant inspector of buildings may perform and discharge any of the duties of the inspector of buildings when so directed by the Commissioners. (Mar. 3, 1899, 30 Stat. 1046, ch. 422.)

CROSS REFERENCES

Certification that certain businesses have complied with safety regulations before business license be issued, see § 47–2302.

Construction and repair of school buildings, see § 31–803.

Issuance of building permits and occupancy permits, see § 5–422.

Powers and duties concerning repair or removal of unsafe structures or excavations, see §§ 5–501 to 5–503.

Service of notice to remove barbed-wire fences, see § 7–1103.

§ 1–729. Assistant inspector of buildings to inspect elevators and fire escapes.

One of the assistant inspectors of buildings shall hereafter also perform the duties of inspector of elevators and fire escapes, without additional compensation. (Aug. 7, 1894, 28 Stat. 244, ch. 232.)

CROSS REFERENCES

Fire escapes and safety provisions for buildings, see §§ 5–301 to 5–317.

Inspection fees, see § 5–316.

Power of Commissioners to regulate operation and repair of elevators, see § 1–229.

Chapter 8.—CONTRACTS

Sec.
1–801. Limitation on right of Commissioners to contract.
1–802. Contracts in which Commissioners personally interested to be void.
1–803. Commissioners' contracts to be in writing and filed.
1–804. Bond of contractors, laborers, materialmen—Right to sue, intervene—Surety—Liability—Limitations—Notice.
1–805. Contractors' bond not required for contracts not exceeding $1,000—Contracts not to be subdivided to reduce amount.
1–806. Formal contract with bond not required in contracts not exceeding $1,000.
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1–813. Building materials may be tested by Bureau of Standards.
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1–815. Wages of laborers and mechanics employed in construction, alteration, and repair of public buildings—Prevailing rate.
1–816. Insurance of District of Columbia property.
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1–817a. Contracts for removal of certain byproducts of the District of Columbia sewage-treatment plant.
1–817c. Sewerage agreement with Virginia authorized.
1–818. Sale of property unfit for service—Proceeds credited to appropriation.
1–819. Exchange of equipment on purchase of new.

§ 1–801. Limitation on right of Commissioners to contract.

The commissioners, in the exercise of their duties, powers, and authority, shall make no contract, nor incur any obligation other than such contracts and obligations as are hereinafter provided for and shall be approved by Congress. (June 11, 1878, 20 Stat. 103, ch. 180, § 3.)

CODIFICATION

This section seems to be a general limitation upon the powers conferred upon the Commissioners by the present Organic Act, 20 Stat. 103, ch. 180, and it appears herein as the following sections: § 1 (§§ 1–102, 1–103); § 2 (§§1–201, 1–203, 1–204, 1–206 to 1–210, 1–220, 1–308, 1–802, 1–803, 7–101, 7–102, 47–120); § 3 (§§ 1–216, 1–218, 1–219, 1–221, 1–234, 43–1503, 43–1506, 43–1521); § 4 (§ 47–309); § 5 (§§ 1–212, 7–601 to 7–605); § 6 (§§ 4–119, 4–123, 4–126, 4–130, 4–133, 4–134, 4–136, 4–137, 4–139, 4–142, 4–144, 4–145, 4–147, 4–148, 4–155, 4–163, 4–169, 4–171, 4–174, 4–177); § 8 (§§ 6–101, 6–102); § 9 (§§ 6–103 to 6–105); § 10 (§ 6–106); § 12 (§ 1–236); § 13 (§ 47–102).

TRANSFER OF FUNCTIONS

See note under section 1–102 concerning contracts.

CROSS REFERENCES

Contracts for collection and disposal of garbage and other refuse, see § 6–502.

Contracts for street and sewer construction or repair, see §§ 7–601 et seq.

Contracts to obtain gas and electricity not required, see § 7–704.

Sale of street sweepings, see § 1–236.

§ 1–802. Contracts in which Commissioners personally interested to be void.

All contracts made by the Commissioners in which any of the Commissioners shall be personally interested shall be void, and no payment shall be made thereon by the District or any officers thereof. (R. S., D. C., § 82; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 2.)

CODIFICATION

Act June 20, 1874, provided that the Commission shall make no contract, nor incur any obligation other than may be necessary for faithful administration of laws.

Act June 11, 1878, specifically sets out only those contracts that may be entered into; others are void.

CROSS REFERENCE

General limitation on power of Commissioners, see § 1–801.

§ 1–803. Commissioners' contracts to be in writing and filed.

All contracts made by the Commissioners shall be in writing, and shall be signed by the parties making the same, and a copy thereof shall be filed in the office of the secretary of the District. (R. S., D. C., § 80; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 2.)

CROSS REFERENCES

General limitation on power of Commissioners, see § 1–801.

Written contract not required where amount is less than $1,000, see § 1–806.

§ 1–804. Bond of contractors, laborers, materialmen—Right to sue, intervene—Surety—Liability—Limitations—Notice.

Any person or persons entering into a formal contract with the District of Columbia for the construction of any public building, or the prosecution and completion of any public work, or for alteration and/or repairs, including painting and decorating, upon any public building or public work, shall be required, before commencing such work, to execute the usual penal bond in an amount not less than the contract price, with good and sufficient sureties, with the additional obligation that such contractor or contractors shall promptly make payments to all persons supplying him or them with labor and materials in the prosecution of the work provided for in such contract; and any person, company, or corporation who has furnished labor or materials used in the construction or repair of any public building or public work, and payment for which has not been made, shall have the right to intervene and be made a party to any action instituted by the District of Columbia on the bond of the contractor, and to have their rights and claims adjudicated in such action and judgment rendered thereon, subject, however, to the priority of the claim and judgment of the District of Columbia.

If the full amount of the liability of the surety on said bond is insufficient to pay the full amount of said claims and demands, then, after paying the full amount due the District of Columbia, the remainder shall be distributed pro rata among said interveners. If no suit should be brought by the District of Columbia within six months from the completion and final settlement of said contract, then the person or persons supplying the contractor with labor and materials shall, upon application therefor, and furnishing affidavit to the District of Columbia that labor or materials for the prosecution of such work has been supplied by him or them, and payment for which has not been made, be furnished with a certified copy of said contract and bond, upon which he or they shall have a right of action, and shall be, and are hereby, authorized to bring suit in the name of the District of Columbia in the United States District Court for the District of Columbia, irrespective of the amount in controversy in such suit, and not elsewhere for his or their use and benefit, against said contractor and his sureties, and to prosecute the same to final judgment and execution: *Provided,* That where suit is instituted by any of such creditors on the bond of the contractor it shall not be commenced until after the complete performance of said contract and final settlement thereof, and shall be commenced within one year after the performance and final settlement of said contract, and not later: *Provided further,* That where a suit is instituted by a creditor or by creditors, only one action shall be brought, and any creditor may file his claim in such action and be made party thereto within one year from the completion of the work under said contract, and not later. If the recovery on the bond should be inadequate to pay the amounts found due to all of said creditors, judgment shall be given to each creditor pro rata of the amount of the recovery. The surety on said bond may pay into the registry of said court, for distribution among said claimants and creditors, the full amount of the sureties' liability, to wit, the penalty named in the bond, less any amount which said surety may have had to pay to the District of Columbia by reason of the execution of said bond, and upon so doing the surety will be relieved from further liability: *And provided further,* That in all suits instituted under the provisions of this section such personal notice of the pendency of such suits, informing them of their right to intervene as the court may order, shall be given to all known creditors, and in addition thereto notice of publication in some newspaper of general circulation, published in the District of Columbia, for at least three successive weeks, the last publication to be at least three months before the time limited therefor. (Feb. 28, 1899, 30 Stat. 906, ch. 218; July 7, 1932, 47 Stat. 608, ch. 441; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CODIFICATION

Act July 7, 1932, did not expressly amend act Feb. 28, 1899, but rather superseded it.

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

NOTES TO DECISIONS

Bond mandatory

It is clearly evident from reading the enacting clause as well as title, that Congress recognized that no legislation was necessary to enable the Commissioners to require the usual penal bond with sufficient sureties. *Equitable Surety Co.* v. *United States ex rel. McMillan* (1914, 34 S. Ct. 803, 234 U.S. 448, 58 L. Ed. 1394).

There are two reasons why the bond cannot be treated as voluntary. One is that the declaration counts specifically upon a statutory bond. The second is that a suit in the name of the United States could not be brought upon a voluntary bond. *United States ex rel. W. A. Pierce Co.* v. *Faircloth* (1920, 265 F. 963, 49 App. D.C. 323).

Changes in contract

In a contractor's bond given under this section for the erection of a public building, changes in the contract, without knowledge of the surety, do not release him from his obligation to pay for supplies, so far as they are supplied in accordance with the original contract. *Equitable Surety Co.* v. *United States ex rel. McMillan* (1914, 34 S. Ct. 803, 234 U. S. 448, 58 L. Ed. 1394).

Construction

This act should receive liberal construction in aid of the object whose accomplishment is so evidently intended. *Equitable Surety Co.* v. *United States ex rel. McMillan* (1914, 34 S. Ct. 803, 234 U. S. 448, 58 L. Ed. 1394).

Decisions of Third Circuit Court of Appeals and Maryland Federal District Court, construing 40 U. S. C. § 270, limiting time for filing of creditor's intervening petition in action on bond of contractor for public work, are persuasive, but are not binding on District of Columbia Federal District Court construing this section. *District of Columbia* v. *American Excavation Co.* (D.C.D.C. 1946, 64 F. Supp. 19, 1946).

Statute regarding furnishing of contractor's payment bond for any public building is to be liberally construed in favor of those who contribute labor or materials for public works. *Humphreys & Harding, Inc. et ano.* v. *District of Columbia etc.* (1961, 293 F. 2d 150, 110 U.S. App. D.C. 311).

Contract relied upon

In action on a contractor's statutory bond, the exclusion of testimony as to the terms of a prior oral agreement was proper, when the witnesses had just made clear to the court that they were relying upon two instruments which together embodied the terms of the verbal agreement. *H. Herfurth, Jr., Inc.* v. *United States* (1936, 85 F. 2d 719, 66 App. D. C. 220).

Final settlement

Congress by merely transferring the function previously performed by the treasury to the General Accounting Office, did not intend to disturb the construction of the statute or to make final determinations in the executive departments any the less final settlements within the meaning of the Heard Act (40 U.S.C. § 270) than they had been before. *Globe Indemnity Co.* v. *United States* (1934, 54 S. Ct. 499, 291 U.S. 476, 78 L. Ed. 924).

Action taken by the assistant administrator in approving the report of the director of construction constituted a determination, made and recorded in accordance with established administrative practice by the department having the contract in charge, that the contract was completed and that the final payment was due. This action of the assistant administrator was a "final settlement" within the meaning of the Heard Act. *H. G. Christman Co.* v. *Michigan Gypsum Co.* (1936, 85 F. 2d 474).

The settlement which is held "final" foi the periods of limitation is a settlement of the entire contract and of all substantial claims arising under it and its performance. *United States Casualty Co.* v. *District of Columbia* (1940, 107 F. 2d 652, 71 App. D.C. 92).

In construing the term "final settlement" in this section, the court considered decisions construing the Heard Act (40 U.S.C. § 270) controlling. *Id.*

Liability under prime contractor's bond

Under Code provisions for prime contractor's bond to assure payments to all persons supplying labor and materials for work under contract, it is not necessary that supplier have any contractual relationship with prime contractor, and it is sufficient to require payment under bond to supplier if labor or material complying with prime contract was furnished by supplier to prime or subcontractor and used by such contractor in prosecution of work; and it is immaterial whether supplier produces or acquires material or labor. *Boka Electrical Construction Co., Inc.* v. *W. M. Chappell, Inc.* (1958, 262 F. 2d 718, 104 U.S. App. D.C. 407).

It is labor and materials sold to contractor and used for job, and not loans, that are covered; and where financial institution or person lends money to contractor or subcontractor to purchase material or hire labor in order to carry out his contract, no valid claim arises in lender's favor under contract bond. *Id.*

Under statute requiring contractor for public building to give a contractor's payment bond to pay all persons supplying labor or materials, contractor, which placed verbal order for pilings with lumber company, which had plaintiff creosote pilings as required by contract, was liable when lumber company failed to pay plaintiff fully for creosote work. *Humphreys & Harding, Inc. et ano.* v. *District of Columbia etc.* (1961, 293 F. 2d 150, 110 U.S. App. D.C. 311).

Under statute regarding the furnishing of a contractor's payment bond for construction of any public building, it is not necessary that a supplier of materials have any contractual relationship with the prime contractor. *Id.*

Limitation on intervention

The limitation of one year in this section for filing of creditor's intervening petition in action on bond of contractor for public work is not jurisdictional, and the District of Columbia Federal District Court has discretion for good cause shown to grant leave to file such petition after the expiration of one year. *District of Columbia* v. *American Excavation Co.* (D.C. D.C. 1946, 64 F. Supp. 19).

In enacting this section prescribing one-year period within which must be filed a creditor's intervening petition in action on bond of contractor for public work, Congress would be assumed to have acted reasonably and not to have intended to place on a creditor desiring to assert his rights the burden of examining in the clerk's office the file of every suit instituted within the preceding year. *Id.*

Where a claimant had not been aware of pendency of another suit on bond of contractor for public work, and became aware of such fact after the expiration of a year, the District of Columbia Federal District Court had authority, in the exercise of sound discretion, to grant claimant leave to intervene nunc pro tunc, notwithstanding this section prescribing one-year period within which claimant's intervening petition must be filed. *Id.*

For purposes of District of Columbia statute providing that suit instituted by creditors on bond of contractor with district must be commenced within one year after performance and "final settlement" of contract, "final settlement" occurred not when Director of Department of Buildings and Grounds of district accepted all work performed under contract but rather subsequently when he approved final voucher for payment owing contractor. *District of Columbia etc.* v. *B. F. Rodney Co. et ano.* (D.C. D.C. 1963, 219 F. Supp. 192).

Parties to action

It is verified from the language of the act that an action on the bond may be brought against the surety alone. Adequate rules of procedure are available to make the contractor a party defendant should he interpose a defense helpful to the bondsman or one of the creditors. *United States ex rel. Goodenow* v. *Aetna Casualty & Surety Co.* (C.C.A. 6, 1925, 5 F. 2d 412).

Right of supplier as joint venturer

Supplier of material and labor would be entitled to recover under prime contractor's construction bond if material or labor had been provided under such an arrangement with subcontractor as to make subcontractor responsible therefor and had been used by subcontractor

on project, but would not be entitled to recover if arrangement between supplier and subcontractor was a joint venture or similar undertaking of such nature that payment to one should equitably be considered as payment to either. *Boka Electrical Construction Co., Inc.* v. *W. M. Chappell Inc.* (1958, 262 F. 2d 718, 104 U.S. App. D.C. 407).

Rights of unpaid materialmen

The object of the legislation was to give laborers and materialmen the right to bring an action on the bond. The nominal obligee is, with respect to these third parties, a mere trustee, and the obligors as well as the surety and principal contractor enter into the obligation in full view of this. *Equitable Surety Co.* v. *United States ex rel. McMillan* (1914, 34 S. Ct. 803, 234 U.S. 448, 58 L. Ed. 1394).

If under state statutes of similar language and purpose recovery would be allowed from the private owner of a building on the theory that plaintiff's material went into its construction, there is even greater reason for liability under a bond to pay all persons supplying materials in the prosecution of the work. *United States ex rel. Turnover* v. *Charles H. Tompkins Co.* (1934, 72 F. 2d 383, 63 App. D.C. 332).

Although unpaid materialmen are not named parties in the reinsurance agreements and hence cannot at common law sue thereon as parties, and when appellants do not sue upon the first reinsurance agreements in the strict common-law sense, they may sue as a third-party beneficiary of the agreements as having rights in equity. *Bruckner-Mitchell* v. *Sun Indemnity Co.* (1936, 82 F. 2d 434, 65 App. D.C. 178).

Materialman has action against surety on contractor's bond for balance of materials furnished although he contracted with dealer through which cement was supplied to the contractor, as the dealer was in financial difficulties and the materials were furnished to the contractor. *Continental Casualty Co.* v. *North American Cement Corp.* (1937, 91 F. 2d 307, 67 App. D.C. 234).

Suit on bond removable

A suit wherein claim is made under a bond furnished pursuant to a law of the United States arises under a law of the United States and is removable. *Rogge* v. *Michael Del Balso, Inc.* (D.C. D.C. 1936, 15 F. Supp. 499).

§ 1–805. Contractors' bond not required for contracts not exceeding $1,000—Contracts not to be subdivided to reduce amount.

In all cases where the Commissioners of the District of Columbia contract for work or material involving a sum not exceeding $1,000, it shall not be necessary for said Commissioners to require a bond with said contract; but no work capable of execution under a single contract, nor any purchase of material where the total expenditure involved is greater than $1,000, shall be subdivided or lessened for the purpose of reducing the sum of money to be paid therefor to less than that amount. (June 28, 1906, 34 Stat. 546, ch. 3575; June 26, 1912, 37 Stat. 168, ch. 182.)

AMENDMENT

1912—Act June 26, 1912, increased the amount from $500 to $1,000.

CROSS REFERENCE

Application of this section to contracts for construction or repair of streets or sewers, see §§ 7–602 to 7–603.

§ 1–806. Formal contract with bond not required in contracts not exceeding $1,000.

Formal written contracts with bond for work or the purchase of supplies and materials for the District of Columbia shall not be required in cases where the cost of such work or supplies or materials does not exceed the sum of $1,000. (June 26, 1912, 37 Stat. 168, ch. 182.)

§ 1–807. Retents.

On all contracts made by the District of Columbia for construction work there shall be withheld, until completion and acceptance of the work, a retent of 10 per centum of the total amount of any payments made thereunder as a guaranty fund that the terms of such contracts shall be strictly and faithfully performed: *Provided, however,* That whenever 50 per centum of the work required under a contract for construction work has been completed and payments therefor have been made the Commissioners of the District of Columbia, in their sole discretion, may authorize subsequent payments to be made to the contractor without withholding from such subsequent payments 10 per centum thereof as required by this section, or the said Commissioners may authorize retention from such subsequent payments of less than 10 per centum thereof; and the said Commissioners, in their sole discretion, may further authorize payment in full, including retained percentages, for each separate building or public work on which the price is stated separately in the contract upon completion and acceptance of such building or work. (Mar. 3, 1887, 24 Stat. 501, ch. 355; Mar. 31, 1906, 34 Stat. 94, ch. 1356, § 1; Aug. 3, 1949, 63 Stat. 493, ch. 386.)

AMENDMENTS

1949—Act Aug. 3, 1949, removed the exception: "(except as provided in section 7–603)," formerly a part of the first sentence appearing after the words "construction work", deleted provisions regarding the duration of retent on contracts for the construction of pavements, bridges, sewers, buildings and other works, and added the proviso giving discretionary powers to the commissioners of the District of Columbia in connection with retents and payments thereof.

NOTES TO DECISIONS

Finality of administrative decisions

Where only questions of law were involved which were (1) whether retained 10% by District of Columbia was limited to insuring only that actual work of street and sewer construction be completed, or whether it also covered restoration of damaged property, and (2) whether interest should be allowed on sum retained in excess of 10% decision of District Contract Appeals Board was not final and binding on the parties on such questions notwithstanding provision of contract that decision of such board should be final in view of statute providing that no government contract should contain a provision making final on question of law decision of any administrative official or board, and hence contractor could maintain action to recover the money withheld. *Kenny Construction Company* v. *District of Columbia et al.* (1959, 262 F. 2d 926, 105 U.S. App. D.C. 8).

Interest on excessively withheld funds

Where District of Columbia Contract Appeals Board ordered the District to pay as of certain date the amount in excess of 10% retained under contract for street and sewer construction, contractor was entitled to interest from such date to date of actual payment even though contract did not authorize payment of interest on withheld payments, since the sum required to be paid back was in excess of the 10% authorized to be retained and should not have been withheld at all. *Kenny Construction Company* v. *District of Columbia et al.* (1959, 262 F. 2d 926, 105 U.S. App. D.C. 8).

Purpose of retent

Under contract for street and sewer construction which authorized District of Columbia to retain 10% until "completion and acceptance of the work", the 10% withheld was to insure not only the completion of the actual work but also the restoration of property damaged by act or omission of contractor, as against contention that

liability insurance and performance bond constituted the expressly designated protection to District under the contract and District could not enlarge such coverage by superimposing upon them, without contractor's consent, the coverage of withheld money, since contract gave District the triple protection of which contractor complained. *Kenny Construction Company* v. *District of Columbia et al.* (1959, 262 F. 2d 926, 105 U.S. App. D.C. 8).

"Work" defined

The word "work" in provision of contract for street and sewer construction authorizing retention of 10% until "completion and acceptance of the work" included all tasks contractually required of the contractor and was not limited to construction of project itself, and hence included contractual requirement of restoration of damaged property. *Kenny Construction Company* v. *District of Columbia et al.* (1959, 262 F. 2d 926, 105 U.S. App. D.C. 8).

§ 1–808. Advertisement for proposals—Limitation on authority to contract for purchase—Exception.

Except as otherwise provided by law all purchases and contracts for supplies or services by the government of the District of Columbia, except for personal services, shall be made by advertising a sufficient time previously for proposals respecting the same, when the public exigencies do not require the immediate delivery of the articles, or performance of the service. When immediate delivery or performance is required by the public exigency, the articles or services required may be procured by open purchase or contract, at the places and in the manner in which such articles are usually bought and sold, or such services engaged, between individuals. No contract for purchase shall hereafter be made unless the same be authorized by law or be made under an appropriation adequate to its fulfilment. If any or all of such proposals shall be rejected, advertisements for proposals shall again be invited and proceeded with in the same manner: *Provided*, That this section shall not be construed to be applied to any purchase or service rendered for the District of Columbia when the aggregate amount involved does not exceed the sum of $100. (Mar. 2, 1861, 12 Stat. 220, ch. 84, § 10; Jan. 27, 1894, 28 Stat. 33, ch. 22; Mar. 2, 1911, 36 Stat. 975, ch. 192; Oct. 10, 1940, 54 Stat. 1109, ch. 851, § 1.)

CODIFICATION

Acts January 27, 1894, March 2, 1911, and Oct. 10, 1940, amended R. S., § 3709, 41 U.S.C. § 5, insofar as that section related to the government of the District of Columbia.

36 Stat. 861, ch. 431, § 23, approved June 25, 1910, and 36 Stat. 531, ch. 297, § 4, approved June 17, 1910 (41 U.S.C. §§ 5, 7), apparently do not apply to the District of Columbia or supersede this section. (See 21 O. A. G. 349; 28 O. A. G. 438. See also 42 Stat. 1244, ch. 72, approved Feb. 13, 1923 (41 U.S.C. § 6); 22 O. A. G. 1.)

CROSS REFERENCE

Street repairs, see § 7–601 et seq.

§ 1–809. Cost of advertising.

After May 30, 1908, there shall not be paid by the government of the District of Columbia, for general advertising authorized and required by law and for tax and school notices and notices of changes in regulations, rates exceeding those charged to individuals or commercial interests for similar advertising in the District of Columbia. (May 30, 1908, 35 Stat. 493, ch. 227.)

§ 1–810. Separate contracts for material and for labor authorized.

After July 5, 1884, in executing public works, the Commissioners are authorized to make separate contracts for materials and for labor. (July 5, 1884, 23 Stat. 125, ch. 227.)

§ 1–811. Operation of District quarry.

The Commissioners of the District of Columbia are hereby authorized to invite bids and to make contracts for operating the District quarry for such periods, not exceeding five years each, as may be determined by them to be most advantageous to the District. (Mar. 3, 1905, 33 Stat. 892, ch. 1406.)

§ 1–812. Use of agents in purchasing sites for schools and public buildings—Commissions—Future enlargement.

After March 2, 1889, the Commissioners in making purchases of sites for schools or other public buildings shall do so without the employment of agents or through other persons not regular dealers in real estate in the District of Columbia, or through such regular dealers who have not had the property for sale continuously from March 2, 1889, and in no case shall commission be paid to more than one person or firm greater than the usual commission.

After June 6, 1900, in the purchase of sites and in preparing plans for new school buildings proper regard shall be had for future enlargement of said buildings. (Mar. 2, 1889, 25 Stat. 802, ch. 370; June 6, 1900, 31 Stat. 568, ch. 789.)

AMENDMENT

1900—Act June 6, 1900, added the last paragraph.

§ 1–813. Building materials may be tested by Bureau of Standards.

Materials for fireproof buildings, other structural materials, and all materials, other than materials for paving and for fuel, purchased for and to be used by the government of the District of Columbia, when necessary in the judgment of the Commissioners to be tested, shall be tested by the Bureau of Standards under the same conditions as similar testing is required to be done for the United States government. (Mar. 4, 1913, 37 Stat. 945, ch. 150.)

§ 1–814. Testing materials in laboratory of highway department.

The Commissioners under such conditions as they may prescribe are further authorized to utilize the existing testing laboratory of the highways department for making tests of all materials for other departments and activities of the District government. (June 29, 1932, 47 Stat. 354, ch. 308.)

§ 1–815. Wages of laborers and mechanics employed in construction, alteration, and repair of public buildings—Prevailing rate.

The advertised specifications for every contract in excess of $2,000, to which the United States or the District of Columbia is a party, for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works of the United States or the District of Columbia within the geographical limits of the States of the Union, the Territory of Alaska, the Territory of Hawaii, or the District of Columbia, and which requires or involves the employment of mechanics and/or laborers shall

contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village, or other civil subdivision of the State, or the Territory of Alaska, or the Territory of Hawaii in which the work is to be performed, or in the District of Columbia if the work is to be performed there; and every contract based upon these specifications shall contain a stipulation that the contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics, and that the scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work; and the further stipulation that there may be withheld from the contractor so much of accrued payments as may be considered necessary by the contracting officer to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by such laborers and mechanics and not refunded to the contractor, subcontractors, or their agents. (Mar. 3, 1931, ch. 411, § 1, 46 Stat. 1494; Aug. 30, 1935, ch. 825, 49 Stat. 1011; June 15, 1940, ch. 373, § 1, 54 Stat. 399.)

CODIFICATION

Section is also classified to 40 U.S.C. § 276a.

AMENDMENTS

1940—Act June 15, 1940, extended the application of this section to the Territories of Alaska and Hawaii.

1935—Act Aug. 30, 1935, made the minimum wage provision applicable to contracts of more than $2,000, and it required that full payment of wages based on the prevailing scale as determined by the Secretary of Labor be made at least once a week on the job.

EFFECTIVE DATE OF 1940 AMENDMENT

Section 2 of act June 15, 1940, provided: "The amendments made by this Act [to this section] shall take effect on the thirtieth day after the date of enactment of this act [June 15, 1940], but shall not affect any contract in existence on such effective date or made thereafter pursuant to invitations for bids outstanding on the date of enactment of this act [June 15, 1940]."

ADMISSION OF ALASKA AND HAWAII TO STATEHOOD

Alaska was admitted into the Union on Jan. 3, 1959, upon the issuance of Proc. No. 3269, Jan. 5, 1959, 24 F.R. 81, 73 Stat. c16, and Hawaii was admitted into the Union on Aug. 21, 1959, upon the issuance of Proc. No. 3309, Aug. 25, 1959, 24 F.R. 6868, 73 Stat. c74. For Alaska Statehood Law, see Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as a note preceding 48 U.S.C. § 21. For Hawaii Statehood Law, see Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 4, set out as a note preceding 48 U.S.C. § 491.

CROSS REFERENCES

Hours of labor limited, see §§ 22–3407 to 22–3408.
Minimum wage law, see § 36–401 et seq.

NOTES TO DECISIONS

Laborers

Executive order requiring employment of persons on relief for all projects would seem to exceed the executive authority given by the act which limits such preference to road-building projects only. It also prohibits discrimination in favor of veterans, and thereby denies the applicability of the Veterans' Preference Act. *Spang* v. *Roper* (D.C. D.C. 1936, 13 F. Supp. 840).

Rate when fixed by Secretary of Labor

Secretary of Labor does not have the power, when he has once found that the rates prevailing at a particular point of time differ from the rates then being paid by the contractor, to postpone or defer the time when his findings shall become effective. *United States ex rel. Wylie* v. *W. S. Barstow & Co.* (1935, 79 F. 2d 496).

Surety cannot reduce the amount of the claims on the ground that the prevailing rate of wages for work of a similar nature in Batavia, N. Y., where the buildings were constructed, was lower than the rate fixed by the Secretary of Labor, as the contract and statute provide the rate of the Secretary of Labor shall be conclusive and acknowledgment of the contractor before laborers went to work of the right of the Government to fix the rate of wage. *United States ex rel. Johnson* v. *Morley Construction Co* (D.C. D.C. 1937, 17 F. Supp. 378).

Release of another contract

This section which forbade any contract that did not protect laborers on public buildings also forbade any release—another contract—which deprived them of the protection so granted. *United States ex rel. Johnson* v. *Morley Construction Co.* (1938, 98 F. 2d 78).

Remedy of Laborers

Congress did not contemplate that laborers and mechanics employed on public buildings may accept compensation at something less than the alleged prevailing wage and thereafter proceed under the Heard Act (40 U.S.C. § 270) upon the contractor's bond in a court of law to recover additional compensation upon theory that they were entitled to a different classification as to character of labor performed and therefore to a higher rate of wages. *United States ex rel. Boucher* v. *Murphy* (D.C. D.C. 1935, 11 F. Supp. 572).

Sufficiency of Indictment

When action is based upon the failure to pay workmen the prevailing wage, the indictment is defective for failure to specify what was the prevailing wage. *United States* v. *Terranova* (D.C. D.C. 1934, 7 F. Supp. 989).

§ 1–816. Insurance of District of Columbia property.

After February 25, 1885, property belonging to the District of Columbia may be insured in advance for periods of five years or less. (Feb. 25, 1885, 23 Stat. 313, ch. 145.)

§ 1–816a. Payment of fire insurance premiums.

No District of Columbia appropriation shall be used for the payment of premiums or other cost of fire insurance. (June 28, 1944, 58 Stat. 533, ch. 300, § 12.)

§ 1–817. Sewerage agreement with Maryland authorized.

For the protection of streams flowing through United States government parks and reservations in the District of Columbia from pollution by sewage discharged therein from sewerage systems of Maryland towns and villages bordering said District, the Commissioners are authorized to enter into an agreement with the proper authorities of the state of Maryland for the drainage of such sewerage systems into and through the sewerage system of the District of Columbia; and the said Commissioners are further authorized to permit connections of Maryland sew-

ers with the District of Columbia sewerage system at or near the District line whenever, in their judgment, the sanitary conditions of streams flowing into and through such United States government parks and reservations in the District of Columbia are such as to demand the elimination of such pollution: *Provided,* That all cost of construction of such sewers to and connection with the sewerage system of the District of Columbia shall be paid by the proper authorities of the state of Maryland, and that said state shall enter into such agreement with the Commissioners and shall guarantee the protection of the District of Columbia sewerage system from unauthorized connections thereto, and shall reimburse the District of Columbia for the actual cost of pumping and handling such sewerage by annual payments for such service as determined by the commissioners in such agreement; all such sums collected therefor to be paid into the treasury of the United States through the Collector of Taxes to the credit of the District of Columbia. (Sept. 1, 1916, 39 Stat. 717, ch. 433, § 9.)

CODIFICATION

Act July 11, 1940, 54 Stat. 748, ch. 579, grants the consent of Congress to the States of Maryland and West Virginia and the Commonwealths of Virginia and Pennsylvania and the District of Columbia as signatory bodies, to enter into a compact for the creation of a Potomac Valley Conservancy District and the establishment of the Interstate Commission on the Potomac River basin.

CROSS REFERENCES

Contracts with Maryland and Virginia municipalities for use of District refuse incinerators, see § 6–511.

Dulles International Airport Sewage Project, see §§ 43–1620 to 43–1624.

§ 1–817a. Contracts for removal of certain byproducts of the District of Columbia sewage-treatment plant.

The Commissioners of the District of Columbia are hereby authorized to provide for the removal of sludge, a byproduct of the District of Columbia sewage-treatment plant, deposited or proposed to be deposited at the District of Columbia Reformatory, Lorton, Virginia, by contract or otherwise, and to enter into contract or contracts for such removal, for periods not exceeding five years. (Mar. 24, 1950, 64 Stat. 35, ch. 74, § 1.)

§ 1–817c. Sewerage agreement with Virginia authorized.

For the protection of the Potomac River and its tributary streams within the metropolitan area of the District of Columbia from pollution by sewage or other liquid wastes originating in Virginia, and for the protection of the health of the residents of the District of Columbia and of the employees of the United States Government residing in such metropolitan area, the Commissioners of the District of Columbia are authorized in their discretion, from time to time, to enter into and renew agreements, for such periods as they deem advisable, with the proper authorities of the Commonwealth of Virginia, including county, municipal, and other governmental units thereof, for the drainage of such sewage or other liquid wastes into the sewerage system of the District of Columbia for treatment and disposal: *Provided,* That to the extent and in the manner determined by such agreements, the proper authorities of such Commonwealth, county, municipal, or other governmental units shall pay part or all of the costs of construction, expansion, relocation, replacement, repair, maintenance, and operation (including administrative expenses, interest, and amortization) of such sewers and other facilities as may be necessary or appropriate to convey and treat such sewage or other liquid wastes either separately or with sewage or other liquid wastes originating in said District or elsewhere. All payments or reimbursements made to the District of Columbia pursuant to this section and the agreements entered into hereunder shall be made to the Commissioners and shall be deposited in the Treasury of the United States to the credit of the District of Columbia Sewage Works Fund. (Aug. 21, 1958, 72 Stat. 702, Pub. L. 85–703, § 1.)

DEFINITIONS

Section 2 of act Aug. 21, 1958, defines the terms "Commissioners of the District of Columbia" and "Commissioners" to mean the Board of Commissioners of the District of Columbia or their designated agents.

CROSS REFERENCES

Dulles International Airport Sewage Project, see §§ 43–1620 to 43–1624.

Sanitary Sewage Works Fund, creation and use, see §§ 43–1602, 43–1603.

§ 1–818. Sale of property unfit for service—Proceeds credited to appropriation.

Whenever any horses, carriages, or wagons, or property, of any description may become unfit for service, in the judgment of the commissioners, the same shall be sold at auction to the highest bidder, after due advertisement, and the proceeds thereof shall be paid into the treasury of the United States to the credit of the appropriation out of which the purchase was made. (Mar. 3, 1883, 22 Stat. 470, ch. 95, § 1.)

§ 1–819. Exchange of equipment on purchase of new.

The Commissioners of the District of Columbia are hereby authorized and empowered, when in their discretion it shall be deemed to the advantage of the public service, to exchange typewriters, adding machines, pianos, machinery, and other equipment, in part or full payment for new articles of similar or improved character, credit for the value of said personal property so exchanged to be allowed on vouchers in payment for such new articles as may be purchased, the balance remaining due after said credit to be paid out of the appropriation to which said purchase is properly chargeable. (June 26, 1912, 37 Stat. 147, ch. 182.)

Chapter 9.—CLAIMS AGAINST DISTRICT

Sec.

1–901. Service of process.
1–902. Settlement of claims and suits against the District of Columbia—Cases that may be settled—Defenses.
1–903. Refund of taxes when similar assessments have been held void by court decisions—Limitations.
1–904. Settlements limited to $10,000—Report to Congress—Appropriations authorized.
1–905. Effective date.
1–906. Authority to compromise claim or suit—Limitations.

NON-LIABILITY OF DISTRICT EMPLOYEES

Sec.
1–921. Definitions.
1–922. Negligent operation of vehicles by employees—Defense of Governmental immunity—Exception.
1–923. Judgment against District as bar to action against employee—Notice of claim.
1–924. Excessive verdicts—Treatment of by Court.
1–925. Action against District employees barred for negligent operation of vehicles—Exception.
1–926. Liability of employee to District for negligent damage to its property.

§ 1–901. Service of process.

In suits commenced after June 20, 1874, against the District of Columbia, process may be served on any one of said Commissioners, until otherwise provided by law. (June 20, 1874, 18 Stat. 117, ch. 337, § 2.)

CROSS REFERENCE

Written notice condition precedent to action for unliquidated damages, see § 12–309.

RULES OF CIVIL PROCEDURE

Service of process, see Rule 4 (d).

NOTES TO DECISIONS

Jurisdiction

In federal court action for injuries to two occupants of automobile and death of owner thereof as results of collision with defendants' tractor driven by member of District of Columbia National Guard, service of copy of complaint and summons on Secretary of State of Delaware under such state's nonresident motor vehicle user statute, Rev. Code Del. 1935, § 4590, did not give federal district court of Delaware jurisdiction over District of Columbia. *O'Toole et al.* v. *United States et al.* (D.C. D.C. 1952, 106 F. Supp. 804).

Method of service exclusive

Congress having exclusive legislative authority over District of Columbia, method of service of process, provided for by federal statute in suit against such district, is exclusive, so as to preclude service on Delaware Secretary of State, who is not one of persons on whom federal statute provides that service may be made in such suits. *O'Toole et al.* v. *United States et al.* (D.C. D.C. 1952, 106 F. Supp. 804).

§ 1–902. Settlement of claims and suits against the District of Columbia—Cases that may be settled—Defenses.

The Commissioners of the District of Columbia are empowered to settle, in their discretion, claims and suits, either at law or in equity, against the District of Columbia whenever the cause of action—

(a) Arises out of the negligence or wrongful act, either of commission or omission, of any officer or employee of the District of Columbia for whose negligence or acts the District of Columbia, if a private individual, would be liable prima facie to respond in damages, irrespective of whether such negligence occurred or such acts were done in the performance of a municipal or a governmental function of said District: *Provided, however,* That nothing herein contained shall be construed as depriving the District of Columbia of any defense it may have to any suit, either at law or in equity, which may be instituted against it or to give any person, corporation, partnership, or association any right to institute any suit against the District of Columbia which did not exist prior to June 5, 1930.

(b) Arises out of the existence of facts and circumstances which place the claim or suit within the doctrines and principles of law decided by the courts of the District of Columbia or by the Supreme Court of the United States to be controlling in the District of Columbia. (Feb. 11, 1929, 45 Stat. 1160, ch. 173, § 1; June 5, 1930, 46 Stat. 500, ch. 400.)

AMENDMENT

1930—Act of June 5, 1930, added the matter in subdivision (a) following the words "District of Columbia" in line 4 of this subdivision.

NOTES TO DECISIONS

Defenses

District is not responsible when conducting a hospital in a governmental capacity and when exerting its police power in caring for the sick. *Jones* v. *District of Columbia* (1922, 279 F. 188, 51 App. D. C. 319).

Congress authorized the Commissioners to waive the statute of limitations in favor of property owners where claims were presented not later than February 11, 1930; but as to claims filed later, the District was required to avail itself of the defense of the statute. *Lake for Use of Peyser* v. *District of Columbia* (1934, 72 F. 2d 174, 63 App. D. C. 306).

Governmental function

Torts committed by officers and employees of the District of Columbia while in the exercise of governmental functions, cannot be made the basis of liability in a suit against District. Where bus passenger sued bus company for injuries arising from bus collision with automobile owned by District of Columbia and being operated by policeman, bus company could not maintain a third party action against District of Columbia for contribution notwithstanding provisions of the Financial Responsibility Act. *Capital Transit Co.* v. *District of Columbia* (1955, 225 F. 2d 38, 96 U.S. App. D.C. 199).

Police dog, injuries by

Notwithstanding that District of Columbia was in performance of governmental function, commissioners of District had authority under statutes to compromise claim by innocent citizen who was attacked by unleashed, unmuzzled police dog which had been released by police officer to arrest a suspected housebreaker running through an alley. *R. E. Harbin, Jr.* v. *District of Columbia* (1964, 336 F. 2d 950, 119 U.S. App. D.C. 31).

Settlement of claim

Section allows the Commissioners to settle claims in suits against the District for negligent or wrongful acts of its employees when the District, "if a private individual would be liable prima facie to respond in damages, irrespective of whether such negligence occurred or such acts were done in the performance of a municipal or governmental function of said District." *District of Columbia* v. *World Fire and Marine Insurance Co.* (D. C. Mun. App. 1949, 68 A. 2d 222).

Sovereign immunity

The doctrine of sovereign immunity did not bar claim against District of Columbia by innocent citizen who was attacked by unleashed, unmuzzled police dog which had been released by police officer to arrest a suspected housebreaker running through an alley. *R. E. Harbin, Jr.* v. *District of Columbia* (1964, 336 F. 2d 950, 119 U.S. App. D.C. 31).

Summary judgment

An innocent citizen suing District of Columbia for injuries sustained when he was attacked by unleashed, unmuzzled police dog which had been released by police officer to arrest a suspected housebreaker running through an alley should have been permitted to develop the question whether District had taken reasonable precautions to prevent the injuries, and summary judgment for the District should not have been granted. *R. E. Harbin, Jr.* v. *District of Columbia* (1964, 336 F. 2d 950, 119 U.S. App. D.C. 31).

Waiver of immunity

District of Columbia did not waive its defense of immunity from suit arising out of collision between private vehicle and Police Department patrol wagon by filing suit against driver of such vehicle. *Edwin M. Adams* v. *District of Columbia* (D. C. Mun. App. 1956, 122 A. 2d 765).

§ 1–903. Refund of taxes when similar assessments have been held void by court decisions—Limitations.

The Commissioners of the District of Columbia are hereby authorized and empowered to grant relief in claims for refund of taxes paid, or for cancelation of assessments heretofore made and subsequent to September 1, 1916, in such cases where like assessments, or assessments against property of similar character, have been held to be void or erroneous by decision of the United States District Court for the District of Columbia, the United States Court of Appeals for the District of Columbia, or the Supreme Court of the United States: *Provided,* That any claims for refunds of taxes paid before February 11, 1929, or for cancelations of assessments before February 11, 1929, shall be filed within one year from February 11, 1929.

Nothing contained in sections 1–902 to 1–905 shall be construed as reducing the period of the statute of limitations. (Feb. 11, 1929, 45 Stat. 1160, ch. 173, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

CROSS REFERENCE

Other provisions concerning refund of taxes and assessments, see §§ 47–1016 to 47–1018 and notes.

NOTES TO DECISIONS

Limitations

There was no reference to refunds to be made by the Commissioners, or acknowledgment of indebtedness to persons who had paid their assessments, so as to take the case out of the operation of the statute of limitations. *Lake for Use of Peyser* v. *District of Columbia* (1934, 72 F. 2d 174, 63 App. D. C. 306).

§ 1–904. Settlements limited to $10,000—Report to Congress—Appropriations authorized.

No settlement of any claim or cause of action herein authorized by sections 1–902 to 1–905 to be made by the Commissioners of the District of Columbia shall in any event exceed the sum of $10,000 and all settlements entered into by the Commissioners of the District of Columbia acting under the terms and provisions of sections 1–902 to 1–905 shall be presented to the Congress, together with a brief statement of the nature of the claim or suit, the amount claimed, and the amount of the settlement, with a summary of the evidence and circumstances under which the settlement was made. Appropriations for the payment of such settlements are hereby authorized, payment thereof to be made in the same manner as are other expenditures for the District of Columbia. (Feb. 11, 1929, 45 Stat. 1160, ch. 173, § 3; July 31, 1951, 65 Stat. 131, ch. 274, § 1.)

AMENDMENT

1951—Act July 31, 1951, substituted "$10,000" for "$5,000."

§ 1–905. Effective date.

Sections 1–902 to 1–905 shall take effect from and after February 11, 1929, but nothing herein contained shall be construed as prohibiting the Commissioners of the District of Columbia from proceeding according to the terms and provisions hereof to settle any claim or suit pending on February 11, 1929, irrespective of the date of presentation of the claim to the Commissioners of the District of Columbia or the date of the filing of the suit. (Feb. 11, 1929, 45 Stat. 1161, ch. 173, § 4.)

§ 1–906. Authority to compromise claim or suit—Limitations.

Upon a report by the corporation counsel of the District of Columbia showing in detail the just and true amount and condition of any claim or suit which the District of Columbia may on July 31, 1951, or thereafter have against any person, firm, association, or corporation, and the terms upon which the same may be compromised, and stating that in his opinion a compromise of such claim or suit would be for the best interest of the District of Columbia, the Commissioners of the District of Columbia be, and they hereby are, authorized to compromise such claim or suit accordingly: *Provided, however,* That no claim or suit so compromised shall be reduced by an amount greater than $10,000: *And provided further,* That this section shall not apply to claims or suits for taxes or special assessments. (July 31, 1951, 65 Stat. 131, ch. 274, § 2.)

NON-LIABILITY OF DISTRICT EMPLOYEES

§ 1–921. Definitions.

As used in sections 1–921 to 1–926 the term—

(a) "Commissioners" means the Commissioners of the District of Columbia, or their designated agent.

(b) "Court" means either the United States District Court for the District of Columbia or the District of Columbia Court of General Sessions, depending upon the amount involved in an action under the authority of sections 1–921 to 1–926 as related to the limits of jurisdiction of the said courts.

(c) "District" means the Government of the District of Columbia, a municipal corporation.

(d) "Emergency run" means the movement of a District-owned vehicle, by direction of the operator or of some other authorized person or agency, under circumstances which lead the operator or such person or agency to believe that such vehicle should proceed expeditiously upon a particular mission or to a designated location for the purpose of dealing with a supposed fire or other emergency, an alleged violation of a statute or regulation, or other incident requiring emergency action, or the prompt transportation to a place of treatment or greater safety of an alleged sick or injured person.

(e) "Emergency vehicle" means a vehicle assigned (1) to the Fire Department of the District or to the Metropolitan Police Department and not designated by the Commissioners as a nonemergency vehicle; or (2) to other departments or officials of the District and designated by the Commissioners as an emergency vehicle.

(f) "Employee" means a person serving as an officer or employee of the District, whether or not

paid by the District, or a person formerly so engaged, or the representative of a deceased officer or employee of the District.

(g) "Vehicle" means every type of conveyance or machine capable of movement on land, or in water or air, including an animal being ridden and any animal-drawn machinery or conveyance. (July 14, 1960, 74 Stat. 519, Pub. L. 86–654, § 2; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

EFFECTIVE DATE

Section 8 of act July 14, 1960, provided that: "This Act [sections 1–921 to 1–926] shall take effect thirty days after its enactment [July 14, 1960]."

SHORT TITLE

Section 1 of act July 14, 1960, provided that act July 14, 1960, which added sections 1–921 to 1–926, may be cited as the "District of Columbia Employee Non-Liability Act."

§ 1–922. Negligent operation of vehicles by employees—Defense of governmental immunity—Exception.

Hereafter the District of Columbia shall not assert the defense of governmental immunity in any suit at law in which a claim is asserted against it for money only on account of damage to or loss of property or on account of personal injury or death caused by the negligent or wrongful act or omission of any employee of the District occurring as the result of the operation by such employee, within the scope of his office or employment, of a vehicle owned or controlled by the District: *Provided,* That in the case of a claim arising out of the operation of an emergency vehicle on an emergency run the District shall be liable only for gross negligence. Nothing contained in sections 1–921 to 1–926 shall be construed as depriving the District of any other defense in law or equity which it may have to any such action or give to any person, corporation, partnership, or association any right to institute or maintain any suit against the District which it did not have prior to July 14, 1960. (July 14, 1960, 74 Stat. 519, Pub. L. 86–654, § 3.)

EFFECTIVE DATE

Section effective 30 days after July 14, 1960, see section 8 of act July 14, 1960, set out as a note under section 1–921.

NOTES TO DECISIONS

Constitutionality

District of Columbia Employee Non-Liability Act which was made effective in any action pending at effective date of act, unconstitutionally deprived motorist and his insurer of common-law right of action to recover against ambulance driver for District of Columbia, who was on an emergency run at time that he struck automobile before effective date of statute on proof of ordinary negligence and allowing recovery against the District of Columbia only on proof of gross negligence. *G. P. Barrick et ano.* v. *District of Columbia* (D.C. Mun. App. 1961, 173 A. 2d 372; aff'd 302 F. 2d 927).

Claims of unconstitutionality of statute immunizing District of Columbia policemen from liability for acts performed within the scope of their employment and providing instead for an action against the District, were insubstantial, and did not require the convening of a three-judge court to dispose of them. *R. J. Rohrlack* v. *T. R. Goff, E. J. Taylor and District of Columbia* (D.C. D.C. 1961, 197 F. Supp. 670).

Construction

Defense of governmental immunity was effective bar to suit brought against District of Columbia before effective date of District of Columbia Employee Non-Liability Act for injuries sustained by driver of automobile as result of intersectional collision with fire truck responding to fire alarm and for loss of consortium of driver. *M. L. Van Voorhis et al.* v. *District of Columbia* (D.C. D.C. 1965, 240 F. Supp. 822; see also 236 F. Supp. 978).

District of Columbia Employee Non-Liability Act providing that District of Columbia "hereafter" shall not assert defense of governmental immunity in case of negligent or wrongful act or omission of employee of District of Columbia is not applicable retroactively in instance in which employee of District of Columbia was not defendant in suit pending at time of effective date of act. *Id.*

District of Columbia Employee Non-Liability Act which provides for waiver of governmental immunity and makes District of Columbia liable, in case of an emergency vehicle, only for gross negligence, had no application to accident involving police vehicle which occurred some five months prior to enactment of statute. *R. L. Gibbs* v. *District of Columbia* (D.C. Mun. App. 1962, 180 A. 2d 891).

Resolution of conflicting interests among District of Columbia employees, the District itself, and persons injured through negligence of District employees acting within scope of their employment, was a permissible legislative object, and District of Columbia Employee Non-Liability Act providing that in any pending action against an employee in which the District was not named as the defendant, the District should be joined as a defendant and the employee dismissed, was not unconstitutional in its prospective operation. *G. P. Barrick et ano.* v. *District of Columbia* (D.C. Mun. App. 1961, 173 A. 2d 372; aff'd 302 F. 2d 927).

District of Columbia Employee Non-Liability Act, which was made effective in any civil action or proceeding pending in any court in the District of Columbia as of the effective date of the act was intended to apply retroactively as well as prospectively. *Id.*

Police officer

Under District of Columbia Code barring civil action against employee of District of Columbia for injuries resulting from operation by employee of vehicle within scope of his employment, action could not be maintained against District of Columbia metropolitan police officer whose negligence while operating his own automobile on assignment as member of canine corps resulted in injury to passenger in his vehicle. *F. Weaver* v. *A. Irani and W. G. Milam* (D.C. App. 1966, 222 A. 2d 846).

Reasonableness of legislation

Statute immunizing District of Columbia policemen from liability for acts performed within the scope of their employment and providing instead an action against the District, but limiting the liability of the District for acts committed in emergency vehicles during emergency runs to acts of gross negligence, constituted a reasonable exercise of police power. *R. J. Rohrlack* v. *T. R. Goff, E. J. Taylor and District of Columbia* (D.C. D.C. 1961, 197 F. Supp. 670).

Due process prevents only such retroactive legislation as is unreasonable and fact that positions held before enactment of legislation are adversely affected by it does not render such legislation per se unreasonable. *Id.*

Retrospective application of statute immunizing District of Columbia policemen from liability for act performed within the scope of their employment resulting in dismissal of action against policeman who had been involved in automobile collision, was not unreasonable where there was no claim that plaintiff's conduct would have been different if immunity rule had been known or change foreseen at time of accident. *Id.*

Retroactive application of law

The District of Columbia Employee Non-Liability Act applies retroactively as well as prospectively, where it provides that if action against employee of District of Columbia for personal injury or property damage is pending

as of effective date of act and the District of Columbia has not been named as defendant, the District of Columbia should be joined as defendant and action should be dismissed as to employee. *M. L. Van Voorhis and J. H. Van Voorhis* v. *District of Columbia* (D.C. D.C. 1965, 236 F. Supp. 978).

Retroactive application of the District of Columbia Employee Non-Liability Act to action by motorist and her husband against District of Columbia for injuries sustained by motorist in collision with fire department truck of District of Columbia and for loss of consortium does not deprive motorist and her husband of vested right and does not result in unconstitutionality since cause of action of motorist and her husband is not against driver of fire truck but against District of Columbia. *Id.*

§ 1–923. Judgment against District as bar to action against employee—Notice of claim.

The judgment in any such action shall constitute a complete bar to any action by the claimant by reason of the same subject matter against the employee of the District whose act or omission gave rise to the claim. No suit shall be instituted involving any claim described in section 1–922 unless the claimant shall have first given notice to the District in accordance with section 12–208 and shall have presented to the District in writing a claim for money damages in connection therewith, and the District has had six months from the date of such filing within which to make final disposition of such claim. The administrative disposition of a claim by the District shall not be competent evidence of liability or amount of damages in proceedings on any such claim. (July 14, 1960, 74 Stat. 519, Pub. L. 86–654, § 4.)

REFERENCES IN TEXT

Section 12–208, referred to in this section, was repealed by Act Dec. 23, 1963, 77 Stat. 620, Pub. L. 88–241, § 21(a), and is now covered by section 12–309.

EFFECTIVE DATE

Section effective 30 days after July 14, 1960, see section 8 of act July 14, 1960, set out as a note under section 1–921.

§ 1–924. Excessive verdicts—Treatment of by court.

In any case involving any claim described in section 1–922 in which the trial court shall consider the verdict excessive, the court may order a remittitur of so much of the amount of such verdict or judgment, as the case may be, as it considers excessive, and either permit the party in whose favor the verdict was rendered or the party recovering such judgment, as the case may be, to file a remittitur. (July 14, 1960, 74 Stat. 520, Pub. L. 86–654, § 5.)

EFFECTIVE DATE

Section effective 30 days after July 14, 1960, see section 8 of act July 14, 1960, set out as a note under section 1–921.

§ 1–925. Action against District employees barred for negligent operation of vehicles—Exception.

After the effective date of sections 1–921 to 1–926, no civil action or proceeding shall be brought or be maintained against an employee of the District for loss of or damage to property or for personal injury, including death, resulting from the operation by such employee of any vehicle if it be alleged in the complaint or develop in a later stage of the proceeding that the employee was acting within the scope of his office or employment, unless the District shall, in an action brought against it for such damage or injury, including death, specifically deny liability on the ground that the employee was not, at the time and place alleged, acting within the scope of his office or employment. If in any such civil action or proceeding pending in a court in the District of Columbia as of the effective date of sections 1–921 to 1–926 the District has not been named as a defendant, said District shall be joined as a defendant and after its answer has been filed and subject to the provisions of the preceding sentence, the action shall be dismissed as to the employee and the case shall proceed as if the District had been a party defendant from the inception thereof. (July 14, 1960, 74 Stat. 520, Pub. L. 86–654, § 6.)

EFFECTIVE DATE

Section effective 30 days after July 14, 1960, see section 8 of act July 14, 1960, set out as a note under section 1–921.

NOTES TO DECISIONS

Constitutionality

District of Columbia Employee Non-Liability Act which was made effective in any action pending at effective date of act, unconstitutionally deprived motorist and his insurer of common-law right of action to recover against ambulance driver for District of Columbia, who was on an emergency run at time that he struck automobile before effective date of statute on proof of ordinary negligence and allowing recovery against the District of Columbia only on proof of gross negligence. *G. P. Barrick et ano.* v. *District of Columbia* (D.C. Mun. App. 1961, 173 A. 2d 372).

Construction

District of Columbia Employee Non-Liability Act which provides for waiver of governmental immunity and makes District of Columbia liable, in case of an emergency vehicle, only for gross negligence, had no application to accident involving police vehicle which occurred some five months prior to enactment of statute. *R. L. Gibbs* v. *District of Columbia* (D.C. Mun. App. 1962, 180 A. 2d 891).

Resolution of conflicting interests among District of Columbia employees, the District itself, and persons injured through negligence of District employees acting within scope of their employment, was a permissible legislative object, and District of Columbia Employee Non-Liability Act providing that in any pending action against an employee in which the District was not named as the defendant, the District should be joined as a defendant and the employee dismissed, was not unconstitutional in its prospective operation. *G. P. Barrick et ano.* v. *District of Columbia* (D.C. Mun. App. 1961, 173 A. 2d 372).

District of Columbia Employee Non-Liability Act, which was made effective in any civil action or proceeding pending in any court in the District of Columbia as of the effective date of the act was intended to apply retroactively as well as prospectively. *Id.*

Police officer

Under District of Columbia Code barring civil action against employee of District of Columbia for injuries resulting from operation of employee of vehicle within scope of his employment, action could not be maintained against District of Columbia metropolitan police officer whose negligence while operating his own automobile on assignment as member of canine corps resulted in injury to passenger in his vehicle. *F. Weaver* v. *A. Irani and W. G. Milam* (D.C. App. 1966, 222 A. 2d 846).

Retroactive application of law

The District of Columbia Employee Non-Liability Act applies retroactively as well as prospectively, where it provides that if action against employee of District of Columbia for personal injury or property damage is pending as of effective date of act and the District of Columbia has not been named as defendant, the District of Columbia should be joined as defendant and action should be dismissed as to employee. *M. L. Van Voorhis and J. H. Van Voorhis* v. *District of Columbia* (D.C. D.C. 1965, 236 F. Supp. 978).

Retroactive application of the District of Columbia Employee Non-Liability Act to action by motorist and her husband against District of Columbia for injuries sustained by motorist in collision with fire department truck of District of Columbia and for loss of consortium does not deprive motorist and her husband of vested right and does not result in unconstitutionality since cause of action of motorist and her husband is not against driver of fire truck but against District of Columbia. *Id.*

§ 1–926. Liability of employee to District for negligent damage to its property.

Nothing in sections 1–921 to 1–926 shall be construed so as to relieve any District employee from liability to the District for negligent damage to or loss of District property. (July 14, 1960, 74 Stat. 520, Pub. L. 86–654, § 7.)

EFFECTIVE DATE

Section effective 30 days after July 14, 1960, see section 8 of act July 14, 1960, set out as a note under section 1–921.

Chapter 10.—NATIONAL CAPITAL PLANNING COMMISSION

Sec.

1–1001. General purposes, findings, and definitions.
1–1002. The Commission—Composition—Functions.
1–1003. Omitted.
1–1004. Comprehensive plan for the National Capital—Elements—Procedure.
1–1005. Proposed Federal and District developments and projects.
1–1006. Thoroughfare plan.
1–1007. Public works program.
1–1008. Zoning and subdivision functions.
1–1009. Transfers from predecessor agency.
1–1010. Appropriations.
1–1011. Acquisition of land by commission—Advice of Commission of Fine Arts—Approval of President.
1–1012. Appropriation for acquisition of such lands—Control—Use.
1–1013. Report of commission to Congress—Estimate for Bureau of the Budget.

§ 1–1001. General purposes, findings, and definitions.

(a) It is the purpose of this chapter to secure comprehensive planning for the physical development of the National Capital and its environs; to provide for the participation of the appropriate planning agencies of the environs in such planning; and to establish the agency and procedures requisite to the administration of the functions of the Federal and District of Columbia governments related to such planning. The Congress hereby finds that the location of the seat of government in the District of Columbia has brought about the development of a metropolitan region extending well into adjoining territory in Maryland and Virginia; that effective comprehensive planning is necessary on a regional basis and of continuing importance to the Federal establishment; that the distribution of Federal installations throughout the region has been and will continue to be a major influence in determining the extent and character of development; that there is needed a central planning agency for the National Capital region to coordinate certain developmental activities of the many different agencies of the Federal and District Governments so that such activities may conform with general objectives; that there is an increasing mutuality of interest and responsibility between the various levels of government that calls for coordinate and unified policies in planning both Federal and local development in the interest of order and economy; that there are developmental problems of an interstate character, the planning of which requires collaboration between Federal, State, and local governments in the interest of equity and constructive action; and that the instrumentalities and procedures herein provided will aid in providing the Congress from time to time with information and advice requisite to legislation. The general objective of this chapter is to enable appropriate agencies to plan for the development of the Federal establishment at the seat of government in a manner consistent with the nature and function of the National Capital and with due regard for the rights and prerogatives of the adjoining States and local governments to exercise control appropriate to their functions, and in a manner which will, in accordance with present and future needs, best promote public health, safety, morals, order, convenience, prosperity, and the general welfare, as well as efficiency and economy in the process of development.

(b) As used in this chapter, (1) "region" or "National Capital region" means the District of Columbia; Montgomery and Prince Georges Counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties in Virginia; and all cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries of the combined area of said counties; (2) "environs" means the territory surrounding the District of Columbia included within the National Capital region; (3) "National Capital" means the District of Columbia and territory owned by the United States within the environs; and (4) "planning agency" means any city, county, bi-county, part-county, or regional planning agency authorized under State and local laws to make and adopt comprehensive plans whether or not its jurisdiction is exclusive or concurrent. (June 6, 1924, 43 Stat. 463, ch. 270, § 1; Feb. 26, 1925, 43 Stat. 983, ch. 339, § 3; Apr. 30, 1926, 44 Stat. 374, ch. 198; May 24, 1928, 45 Stat. 726, ch. 726; Ex. Ord. No. 6166, § 2, June 10, 1933; Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a); July 19, 1952, 66 Stat. 781, ch. 949, § 1.)

CODIFICATION

Section is also classified to 40 U.S.C. § 71.

AMENDMENTS

1952—Amended section generally to restate the general purposes of this chapter, and to substitute entirely new provisions for former provisions, which related to creation and duties of the former National Capital Park and Planning Commission. The latter provisions, which were subsequently classified to § 8–101, were later transferred back to this chapter, relating to the creation, and setting forth the powers and duties, of the National Capital Planning Commission, successor to the National Capital Park and Planning Commission. See § 1–1002 et seq.

1949—Act Oct. 28, 1949, § 1106(a), which was a part of the Classification Act of 1949, and which has since been repealed, substituted "Classification Act of 1949" for "Classification Act of 1923" in former provisions of this section.

TRANSFER OF FUNCTIONS

All functions of all other officers of the Department of the Interior, and all functions of all agencies and employ-

ees of that Department, were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by 1950 Reorg. Plan No. 3, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262. The National Park Service, formerly referred to in this section, is an agency of the Department of the Interior.

Ex. Ord. No. 6166 abolished the Office of Public Buildings and Public Parks of the National Capital and transferred the functions thereof to the Office of National Parks, Buildings and Reservations of the Department of the Interior, and act Mar. 2, 1934, changed the name of the latter office to National Park Service.

Act May 24, 1928, amended act June 6, 1924, and provided that the Director of Public Buildings and Public Parks of the National Capital should be the executive and disbursing officer of the National Capital Park and Planning Commission.

Act June 6, 1924, providing for a comprehensive development of the park and playground system of the National Capital, created a National Capital Park Commission. That act was mended by act Apr. 30, 1926, which abolished the Highway Commission, transferred the functions thereof to a National Capital Park and Planning Commission, also created thereby.

Act Mar. 2, 1893, ch. 197, § 2, 27 Stat. 533, created a Highway Commission composed of the Secretaries of War and Interior, and the Chief of Engineers, to provide a permanent system of highways in the District of Columbia.

SHORT TITLE

Section 2 of act July 19, 1952, provided: "Sections 1 [sections 1–1001 to 1–1010] and 2 [sections 1–1011 to 1–1013] of this Act may be cited as the 'National Capital Planning Act of 1952.'"

§ 1–1002. The Commission—Composition—Functions.

(a) The National Capital Planning Commission, hereinafter called the "Commission", is hereby created and designated as the central planning agency for the Federal and District Governments to plan the appropriate and orderly development and redevelopment of the National Capital and the conservation of the important natural and historical features thereof.

(b) The Commission shall be composed of—

(1) ex officio, the Chief of Engineers of the Army, the Engineer Commissioner of the District of Columbia, the Director of the National Park Service, the Commissioner of Public Buildings, the Federal Highway Administrator, the chairmen of the committees on the District of Columbia of the Senate and the House of Representatives (either of which chairmen if unable to serve in person may designate another member of his committee to serve as a member of the Commission in his stead) and, in addition,

(2) five eminent citizens well qualified and experienced in city or regional planning, to be appointed by the President, at least two of whom shall be bona fide residents of the District of Columbia or the environs, including one of such residents who shall be appointed from among not less than three nominees of the Board of Commissioners of the District of Columbia: *Provided,* That the foregoing professional requirements may be waived in the case of the nominees of the Board of Commissioners if in the opinion of the Board of Commissioners said nominee has demonstrated capacity for leadership in the planning and development of the District of Columbia: *And provided further,* That appointive members of the National Capital Park and Planning Commission in office on July 19, 1952, shall serve out their unexpired terms, as members of the Commission, in lieu of an equal number of members provided for in this paragraph (2). The terms of office of other members first appointed under this paragraph (2) shall be so fixed by the President that the term of one of such five members will expire on April 30 of each of the following years, namely, 1953, 1954, 1955, 1956, 1957, and thereafter the terms of office shall expire every six years following such dates, respectively. Any member of the Commission appointed under this paragraph (2) shall, the expiration of his term notwithstanding, continue as a member, pending the appointment and qualification of the successor. Any person appointed to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The appointive members of the Commission shall receive no compensation as such, but shall be paid a per diem in lieu of subsistence and be reimbursed for the cost of travel when attending meetings of the Commission or engaged in investigations or other specific duties pertaining to its activities, in accordance with applicable law.

(c) The President shall designate the Chairman of the Commission and the Commission may elect from among its members such other officers as it deems desirable. The Commission is authorized to employ a Director, an executive officer, and such other technical and administrative personnel as it may deem necessary. Further, without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. § 5), the civil service and classification laws, or section 3109 of title 5, U.S. Code, the Commission may employ, by contract or otherwise, the temporary or intermittent (not in excess of one year) services of city planners, architects, engineers, appraisers, and other experts or organizations thereof, as may be necessary to carry out its functions, and in any such case the rate of compensation shall be fixed by the Commission so as not to exceed the rate usual for similar services.

(d) The Commission may establish, with the consent of each agency concerned as to its representation, such advisory and coordinating committees composed of representatives of such agencies of the Federal and District of Columbia Governments as may be necessary or helpful to obtain the maximum amount of cooperation and correlation of effort among the various agencies of such Governments, in order that the National Capital may be developed in accordance with the comprehensive plan. As it may deem appropriate, the Commission may invite representatives of the planning and developmental agencies of the environs to participate in the work of such committees.

(e) As hereinafter more specifically described in sections 1–1004 to 1–1008, it shall be among the principal duties of the Commission to (1) prepare, adopt, and amend a comprehensive plan for the National Capital and make related recommendations to the appropriate developmental agencies; (2) serve as the central planning agency for the Federal and District Governments, within the National Capital region, and in such capacity to review their

development programs in order to advise as to consistency with the comprehensive plan; and (3) be the representative of the Federal and District Governments for collaboration with the Regional Planning Council, as hereinafter provided. (**June 6.** 1924, ch. 270, § 2, as added July 19, 1952, 66 Stat. 782, ch. 949, § 1, and amended Aug. 3, 1956, 70 Stat. 990, ch. 937, § 2.)

REFERENCES IN TEXT

The National Capital Park and Planning Commission, referred to in subsec. (b), was established by former provisions of section 8–101. For transfer of functions, powers, etc., of that Commission to the National Capital Planning Commission created by this section, see section 1–1009.

The "civil service and classification laws", referred to in subsec. (c), are set forth in 5 U.S.C. See, particularly, 5 U.S.C. Parts II and III.

CODIFICATION

In subsec. (c), the reference "section 3109 of title 5, U.S. Code" was substituted for "section 15 of the Act of August 2, 1946 (5 U.S.C. 55a)" on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. Such § 15 of act Aug. 2, 1946 (5 U.S.C. § 55a), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554 (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by 5 U.S.C. § 3109.

Section is also classified to 40 U.S.C. § 71a.

CHANGE OF NAME

Commissioner of Public Roads redesignated Federal Highway Administrator by act Aug. 3, 1956.

ABOLISHMENT OF NATIONAL CAPITAL REGIONAL PLANNING COUNCIL

Abolishment of National Capital Regional Planning Council, referred to in this section, see Reorg. Plan No. 5, eff. Sept. 8, 1966, 31 F.R. 11857, set out in the appendix to title 1 of this Code. See, also, note under former § 1–1003.

TRANSFER OF FUNCTIONS

All functions of the Commissioner of Public Buildings and of the Commissioner of Public Roads were transferred to the Administrator of General Services, and the Public Roads Administration, to be thereafter known as the Bureau of Public Roads, was transferred to the General Services Administration by section 103(a) of act June 30, 1949, ch. 288, title I, 63 Stat. 380. The office of the Commissioner of Public Buildings was abolished by section 103(b) of that act. Section 103 is set out as section 753 of title 40, U.S Code.

The Bureau of Public Roads was transferred to the Department of Commerce to be administered by the Commissioner of Public Roads subject to the direction and control of the Secretary of Commerce under the provisions of 1949 Reorg. Plan No. 7, § 1, eff. Aug. 19, 1949, 14 F.R. 5228, 63 Stat. 1070.

A Public Buildings Service, under the direction of a Commissioner, was established December 11, 1949, by the Administrator of General Services, to supersede the abolished Public Buildings Administration.

PRIOR LAW

Provisions relating to the National Capital Park and Planning Commission and its general duties and powers, to which the National Capital Planning Commission, created by this section, succeeded under the provisions of section 1–1009, were formerly contained in section 8–101.

§ 1–1003. Omitted.

CODIFICATION

Section, act June 6, 1924, ch. 270 § 3, added July 19, 1952, 66 Stat. 783, ch. 949, § 1, which established the National Capital Regional Planning Council, and provided for its composition, services, and procedures, and for its general powers and duties, has been omitted from this Code, in view of the abolishment of such Council, together with all of its functions, by the President's 1966 Reorg. Plan No. 5, eff. Sept. 8, 1966, 31 F.R. 11857, set out in the appendix of title 1 of this Code.

§ 1–1004. Comprehensive plan for the National Capital—Elements—Procedure.

(a) The Commission is hereby charged with the duty of preparing and adopting a comprehensive, consistent, and coordinated plan for the National Capital, which plan shall include the Commission's recommendations or proposals for Federal and District developments or projects in the environs. The Commission shall collaborate with the Council in the development of those elements of the plan for the National Capital which should be incorporated in the regional plan provided for in section 1–1003. While consistency between the respective proposals of the Commission and the Council shall be sought, lack of action or agreement by the Council shall not prevent the Commission from adopting any part of its plan within the District of Columbia or any recommendation or proposal for Federal or District developments or projects in the environs. The Commission may include in its plan any portion of any plan adopted by the Council or any planning agency in the environs and from time to time make recommendations of collateral interest to the Council or to the aforesaid agencies.

(b) The Commission's plan for the National Capital shall show its recommendations for the development of the District of Columbia and may include, among other things, the general location, arrangement, character, and extent of highways, streets, bridges, viaducts, subways, major thoroughfares, and other facilities for the handling of traffic; parks, parkways and recreation areas, and the facilities for their development and use; public buildings and structures, including monuments and memorials, public reservations or property, such as airports, parking areas, institutions, and open spaces; land use, zoning, and the density or distribution of population; public utilities and services for the transportation of people and goods or the supply of community facilities; waterway and water-front development; redevelopment of obsolescent, blighted, or slum areas; neighborhood areas; projects affecting the amenities of life, the preservation and conservation of natural scenery and resources, and features of historic and scientific interest and educational value; and all other proper elements of city and regional planning. The plan may include appropriate maps, plats, charts, tables, and descriptive, interpretive and analytical matter, economic and social aspects, and trends of urban development, and such functional and sectional plans as the Commission deems necessary or desirable. The Commission's recommendations or proposals for Federal and District developments or projects in the environs may include their general location, character, size, and intensity of use and such general plans for their development as may be necessary to present the Commission's recommendations to the appropriate authorities.

(c) As a general frame of reference for the Commission in making its recommendations under the foregoing subsection (b), the Commission shall at all times give primary consideration to the broad elements of the plan which shall include, but not be limited to, generalized plans for land use, major thoroughfares, park, parkway, and recreation system, mass transportation, and community facilities

and services. These generalized plans shall also be the basis for integrating the Commission's proposals with those of the Council and for the general purpose of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the National Capital and its environs.

(d) The Commission may, as the work of preparing the comprehensive plan progresses, adopt any element or a part or parts thereof and from time to time shall review and may amend or extend the plan, in order that its recommendations may be kept up to date.

(e) Prior to the final adoption of the comprehensive plan or any element thereof, or any subsequent revision, the Commission shall present such plan, element, or revision to the appropriate Federal or District of Columbia authorities for comment and recommendations. Presentation of proposed revisions may at the Commission's discretion be made annually in a consolidated form. The said recommendations by Federal and District of Columbia authorities shall not be binding on the Commission, but it shall give careful consideration to such views and recommendations as are submitted prior to final adoption. The Commission may, in addition and at its discretion, periodically provide opportunity by public hearings, meetings, or conferences, exhibitions and publication of its plans, for review and comments by nongovernmental agencies or groups, and, in consultation with the Commissioners of the District of Columbia, encourage the formation of one or more citizen advisory councils.

In carrying out its planning functions with respect to Federal developments or projects in the environs, the Commission may act in conjunction and cooperation and enter into agreements with any State or local authority or planning agency, as the Commission may deem necessary, to effectuate the adoption of any plan or proposal and secure its realization. (June 6, 1924, ch. 270, § 4, as added July 19, 1952, 66 Stat. 785, ch. 949, § 1.)

CODIFICATION

Section is also classified to 40 U.S.C. § 71c.

ABOLISHMENT OF NATIONAL CAPITAL REGIONAL PLANNING COUNCIL

Abolishment of National Capital Regional Planning Council, referred to in this section, see Reorg. Plan No. 5, eff. Sept. 8, 1966, 31 F.R. 11857, set out in the appendix to title 1 of this Code. See, also, note under former § 1–1003.

PRIOR LAW

Provisions on the subject of the preparation and maintenance, by the former National Capital Park and Planning Commission, of a comprehensive plan for the National Capital and its environs, were formerly contained in section 8–101.

§ 1–1005. Proposed Federal and District developments and projects.

(a) In order to insure the comprehensive planning and orderly development of the National Capital, each Federal and District of Columbia agency prior to the preparation of construction plans originated by such agency for proposed developments and projects or to commitments for the acquisition of land, to be paid for in whole or in part from Federal or District funds, shall advise and consult with the Commission in the preparation by the agency of plans and programs in preliminary and successive stages which affect the plan and development of the National Capital: *Provided, however,* That the Commission shall determine in advance the type or kinds of plans, developments, projects, improvements, or acquisitions which do not need to be submitted for review by the Commission as to conformity with its plans. After receipt of such plans, maps, and data, it shall be the duty of the Commission to make promptly a preliminary report and recommendations to the agency or agencies concerned. If, after having received and considered the report and recommendations of the Commission the agency does not concur, it shall advise the Commission with its reasons therefor, and the Commission shall submit a final report. After such consultation and suitable consideration of the views of the Commission the agency may proceed to take action in accordance with its legal responsibilities and authority.

(b) The procedure prescribed in subsection (a) hereof shall not apply to projects within the Capitol grounds or to structures erected by the Department of Defense during wartime or national emergency within existing military, naval, or Air Force reservations, except that the appropriate defense agency shall consult with the Commission as to any developments which materially affect traffic or require coordinated planning of the surrounding area.

(c) The provisions of section 5–428 are extended to include public buildings erected by any agency of the Government of the District of Columbia within the boundaries of the central area of the District as said central area may be defined and from time to time redefined by concurrent action of the Commission and the Board of Commissioners of the District of Columbia.

(d) Within the environs, general plans showing the location, character, extent and intensity of use for proposed Federal and District developments and projects involving the acquisition of land, shall be submitted to the Commission for report and recommendations before final commitment to said acquisition, unless such matters shall have been specifically approved by an Act of Congress. Before acting on any general plan, the Commission shall advise and consult with the Council and the appropriate planning agency having jurisdiction over the affected part of the environs. When, in the judgment of the Commission, proposed developments or projects submitted to the Commission under subsection (a) hereof involve a major change in the character or intensity of an existing use in the environs, the Commission shall likewise advise and consult with the Council and the aforesaid planning agency. The report and recommendations required under this subsection shall be submitted within sixty days and shall be accompanied by any reports or recommendations that may have been prepared by the Council or the aforesaid planning agency.

(e) It is the intent of the foregoing provisions of this section to obtain cooperation and correlation of effort between the various agencies of the Federal and District Governments which are responsible for public developments and projects, including the acquisition of land. These agencies, therefore, shall look to the Commission and utilize it as the central planning agency for the Federal and District Governments in the National Capital region. To aid the

Commission in carrying out this function, plans, data, and records, or copies thereof, necessary to the Commission shall be furnished upon its request by such Federal and District governmental agencies; and the Commission shall likewise furnish related plans, data, and records, or copies thereof, to Federal and District of Columbia governmental agencies upon request. (June 6, 1924, ch. 270, § 5, as added July 19, 1952, 66 Stat. 787, ch. 949, § 1.)

CODIFICATION

Section is also classified to 40 U.S.C. § 71d.

ABOLISHMENT OF NATIONAL CAPITAL REGIONAL PLANNING COUNCIL

Abolishment of National Capital Regional Planning Council, referred to in this section, see Reorg. Plan No. 5, eff. Sept. 8, 1966, 31 F.R. 11857, set out in the appendix to title 1 of this Code. See, also, note under former § 1–1003.

PRIOR LAW

Provisions on the subject of the preparation and maintenance, by the former National Capital Park and Planning Commission, of a comprehensive plan for the National Capital and environs, and the cooperation between that Commission and agencies of the Federal and District Governments, were formerly contained in section 8–101.

§ 1–1006. Thoroughfare plan.

(a) As elements of the comprehensive plan described in section 1–1004, the Commission shall prepare a major thoroughfare plan and a mass transportation plan. The major thoroughfare plan may include established and proposed routes. Following the preparation and adoption by the Commission of the major thoroughfare plan, or parts thereof, it shall be submitted to the Board of Commissioners of the District of Columbia and if approved by the said Board shall be deemed to be the approved plan. Revisions in the major thoroughfare plan or parts thereof shall similarly require the adoption by the Commission and approval by the Board of Commissioners of the District of Columbia. The mass transportation plan shall be prepared, adopted, approved, or revised in the same manner as prescribed herein, for the major thoroughfare plan except that the Joint Board provided for in section 40–603 (e), shall be responsible for its approval and approval of subsequent revisions. Revision of the major thoroughfare plan or parts thereof and the mass transportation plan may be proposed by the Commission and may also be proposed by the Board of Commissioners of the District of Columbia with respect to the thoroughfare plan and by said Joint Board with respect to the mass transportation plan.

(b) Prior to final adoption of the thoroughfare plan and its submission to the Board of Commissioners of the District of Columbia for approval under the foregoing subsection, the Commission shall consult with the Council and the planning agencies affected regarding the Commission's recommendations for extension of the thoroughfare system of the District of Columbia to serve Federal and District developments and projects in the environs. Such recommendations shall be made after consultation with the Bureau of Public Roads, the National Park Service, the Board of Commissioners of the District of Columbia and the appropriate State highway agencies. The Council may review the Commission's recommendations as to consistency with its general plan for the region and submit a report thereon, which the Commission shall transmit with its own recommendations to the Bureau of Public Roads as a guide to portions of the regional thoroughfare plan included or to be included in the Federal-aid highway system. After consideration of such report and recommendations, the Bureau of Public Roads may proceed to take action in accordance with its legal responsibilities and authority. (June 6, 1924, ch. 270, § 6, as added July 19, 1952, 66 Stat. 789, ch. 949, § 1.)

CODIFICATION

Section is also classified to 40 U.S.C. § 71e.

ABOLISHMENT OF NATIONAL CAPITAL REGIONAL PLANNING COUNCIL

Abolishment of National Capital Regional Planning Council, referred to in this section, see Reorg. Plan No. 5, eff. Sept. 8, 1966, 31 F.R. 11857, set out in the appendix to title 1 of this Code. See, also, note under former § 1–1003.

PRIOR LAW

Provisions on the subject of the preparation and maintenance, by the former National Capital Park and Planning Commission, of a comprehensive plan for the National Capital and environs, including traffic, transportation, and highways, and the cooperation between that Commission and agencies of the Federal and District Governments, and State representatives, were formerly contained in 8–101.

§ 1–1007. Public works program.

The Commission shall recommend a six-year program of public works projects which it shall review annually with the agencies concerned. To this end each Federal agency and the Board of Commissioners of the District of Columbia shall submit to the Commission in the first quarter of each fiscal year a copy of its advance program of capital improvements within the National Capital and its environs. (June 6, 1924, ch. 270, § 7, as added July 19, 1952, 66 Stat. 789, ch. 949, § 1.)

CODIFICATION

Section is also classified to 40 U.S.C. § 71f.

PRIOR LAW

Provisions on the subject of the preparation and maintenance, by the former National Capital Park and Planning Commission, of a comprehensive plan for the National Capital and environs, including public works, and the cooperation between that Commission and agencies of the Federal and District Governments, were formerly contained in section 8–101.

§ 1–1008. Zoning and subdivision functions.

(a) The Commission may make a report and recommendation to the Zoning Commission of the District of Columbia on proposed amendments of the zoning regulations and maps as to the relation or conformity of such amendments with the comprehensive plan of the District of Columbia. The Commission may also submit to the said Zoning Commission proposed amendments or general revisions to the zoning regulations or the zoning map for said District.

(b) When requested by a properly authorized representative of the Commission, the Zoning Commission may at its discretion recess for a reasonable period of time any public hearing held by it to consider a proposed amendment to the zoning regulations or map, in order that the Commission or its

representative may have an opportunity to present to the Zoning Commission a further report on the proposed amendment.

(c) The functions vested in the Commission pursuant to this section may, to such extent as the Commission shall determine, and subject to confirmation by the Commission when requested by the Zoning Commission of the District of Columbia, be performed by a committee of the Commission which shall be known as the Zoning Committee of the National Capital Planning Commission and shall consist of not less than three members of the Commission designated by the Commission for the purpose. The number of members serving on the Zoning Committee may be varied from time to time.

(d) Any proposed change in or addition to the regulations or general orders regulating the platting and subdividing of lands and grounds in the District of Columbia shall first be submitted to the Commission by the Board of Commissioners of the District of Columbia for report and recommendation prior to adoption by such Board. Should the Board not concur in the recommendations of the Commission, it shall so advise the Commission with its reasons therefor and the Commission shall submit a final report within thirty days. After consideration of this final report, the Board may proceed to take action in accordance with its legal responsibilities and authority. It shall be the duty of the Commission to submit any proposed changes in or amendments to the general orders that the Commission considers appropriate and the Board of Commissioners shall treat the amendments proposed in the same manner as other proposed amendments. (June 6, 1924, ch. 270, § 8, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1.)

CODIFICATION

Section is also classified to 40 U.S.C. § 71g.

PRIOR LAW

Provisions on the subject of the preparation and maintenance, by the former National Capital Park and Planning Commission, of a comprehensive plan for the National Capital and environs, including zoning regulations, plats, and subdivisions, and the cooperation between that Commission and agencies of the Federal and District Governments were formerly contained in section 8–101.

§ 1–1009. Transfers from predecessor agency.

All other functions, powers, and duties of the National Capital Park and Planning Commission, including those formerly vested in the Highway Commission established by the sections: 7–108 to 7–112, and those formerly vested in the National Capital Park Commission by the sections 8–101, 8–102, 8–106, and 8–107, together with the personnel, records, property, and unexpended balances (available or to be made available) of appropriations, allocations, and all other funds, including trust funds, of the National Capital Park and Planning Commission, are hereby transferred to the Commission. (June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1.)

REFERENCES IN TEXT

"Commission", as used at the end of this section, refers to the National Capital Planning Commission created by section 1–1002.

For history of the former National Capital Park and Planning Commission, the former Highway Commission, and the former National Capital Park Commission, referred to in the text of this section, see notes under section 1–1001.

CODIFICATION

Section is also classified to 40 U.S.C. § 71h.

§ 1–1010. Appropriations.

There are hereby authorized to be appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated and in any appropriate appropriation Act other than the annual District of Columbia appropriation act, such sums as may be necessary to carry out the provisions of sections 1–1001 to 1–1010, any existing provisions of law to the contrary notwithstanding. (June 6, 1924, ch. 270, § 10, as added July 19, 1952, 66 Stat. 791, ch. 949, § 1.)

CODIFICATION

Section is also classified to 40 U.S.C. § 71i.

CROSS REFERENCE

Loans for carrying out purposes of this chapter, see § 9–220(b).

§ 1–1011. Acquisition of land by commission—Advice of Commission of Fine Arts—Approval of President.

Said commission or a majority thereof is authorized and directed to acquire such lands as in its judgment shall be necessary and desirable in the District of Columbia and adjacent areas in Maryland and Virginia, within the limits of the appropriations made for such purposes, for suitable development of the National Capital park, parkway, and playground system. Said commission is authorized to acquire such lands by purchase when they can be acquired at prices reasonable in the judgment of said commission, otherwise by condemnation proceedings, such proceedings to acquire lands within the District of Columbia to be in accordance with the provisions of act Aug. 30, 1890, ch. 837, 26 Stat. 412, the Chief of Engineers of the Army being, for the purposes of sections 1–1001 to 1–1013, hereby clothed with all the power vested by the said act of August 30, 1890, in the board thereby created. Said commission is hereby authorized to acquire such lands, located in Maryland or Virginia, either by purchase or condemnation proceedings, by such arrangements as to acquisition and payment for the lands as it shall determine upon by agreement with the proper officials of the States of Maryland and Virginia. In the selection of lands to be acquired the advice of the Commission of Fine Arts shall be requested. The designation of all lands to be acquired by condemnation, all contracts for purchase of lands, and all agreements between said commission and the officials of the States of Maryland and Virginia shall be subject to the approval of the President of the United States. (June 6, 1924, 43 Stat. 463, ch. 270, § 11, formerly § 2, as renumbered July 19, 1952, 66 Stat. 791, ch. 949, § 2.)

REFERENCES IN TEXT

Section 2 of act August 30, 1890, referred to in the text, created a board consisting of the Secretary of the Treasury, the Public Printer, and the Architect of the Capitol to acquire land for the accommodation of the Government Printing Office and the construction of needed storage and distributing warehouses in connection therewith. Section 3 of such act authorized the board to acquire the land by negotiation at a price not above a fair relative value as to other lands which had been sold in the immediate vicinity; or if the board were unable to purchase

said land by agreement with any one or more of the respective owners at a reasonable price within sixty days after the passage of the act, it was authorized to "make application to the Supreme Court of the District of Columbia [now the United States District Court for the District of Columbia], at any general or special term thereof, by petition for the condemnation of such land not so purchased, and for the ascertainment of its value. Such petition shall contain a particular description of the property not so purchased, and selected for the purpose aforesaid, with the name of the owner or owners thereof and their residences, so far as the same may be ascertained, together with a plan of the land proposed to be taken; and thereupon the said court is authorized and required to cite all such owners and all other persons interested to appear in said court at a time to be fixed by such court, on reasonable notice, to answer the said petition; and if it shall appear to the court that there are any owners or other persons interested who are under disability the court shall give public notice of the time at which the said court will proceed with the matter of condemnation; and at such time if it shall appear that there are any persons under disability either who have appeared or who have not appeared, the court shall appoint guardians ad litem for each such persons, and the court shall thereupon proceed to appoint three capable and disinterested commissioners to appraise the value of the respective interests of all persons concerned in such lands, under such regulations as to notice and hearing as to the court shall seem meet. Such commissioners shall thereupon, after being duly sworn for the proper performance of their duties, examine the premises and hear the persons in interest who may appear before them, and return their appraisement of the value of the interests of all persons, respectively, in such land; and in case any of the persons entitled according to the judgment of the court are under disability, or can not be found, or neglect to receive payment, the money to be paid to any of them shall be deposited in the Treasury to their credit, unless there shall be some person lawfully authorized to receive the same under the direction of the court, and when such payments are so made, or the amounts belonging to persons to whom payment shall not be made are so deposited, the said lands shall be deemed to be condemned and taken by the United States for the public use." These provisions were never executed and the appropriation therefor was suspended by act Mar. 3, 1891, ch. 542, 26 Stat. 989.

However, the provisions of section 3 of the act of Aug. 30, 1890, referred to and partly quoted above, with respect to condemnation proceeding, were rendered general and permanent by a provision of the end of that section which read as follows:

"And hereafter, in all cases of the taking of property in the District of Columbia for public use, whether herein, heretofore, or hereafter authorized, the foregoing provisions, as it respects the application by the proper officer to the supreme court of the District of Columbia [see above for change in name] and the proceedings therein shall be as in the foregoing provisions declared".

CODIFICATION

Section is also classified to 40 U.S.C. § 72.

TRANSFER OF FUNCTIONS

"Commission", as used in this section, now refers to the National Capital Planning Commission, rather than to the National Capital Park and Planning Commission, in view of the transfer of functions, powers, etc., from the latter to the former by section 1–1009. See section 1–1001, and notes thereunder.

§ 1–1012. Appropriation for acquisition of such lands—Control—Use.

There is authorized to be appropriated, each year, in the annual District of Columbia appropriation act, a sum not exceeding 1 cent for each inhabitant of the continental United States as determined by the last preceding decennial census, said sum to be used by said commission for the payment of its expenses and for the acquisition of the lands herein authorized to be acquired by said commission for the purposes named, the compensation for the land, the expense of surveys, ascertainment of title, condemnation proceedings, if any, and necessary conveyancing to be paid from said appropriations. The funds so appropriated shall be paid from the revenues of the District of Columbia and the general funds of the Treasury in the same proportion as other expenses of the District of Columbia. The land so acquired within the District of Columbia shall be a part of the park system of the District of Columbia and be under control of the Director of the National Park Service. Areas suitable for playground purposes may, in the discretion of said commission, be assigned to the control of the Commissioners of the District of Columbia for playground purposes. The land so acquired outside the District of Columbia shall be controlled as determined by agreement between said commission and the proper officers of the States of Maryland and Virginia, such agreements to be subject to the approval of the President. (June 6, 1924, 43 Stat. 463, ch. 270, § 12, formerly § 3; Feb. 26, 1925, 43 Stat. 983, ch. 339, § 3; Ex. Ord. No. 6166, § 2, June 10, 1933; Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1; renumbered July 19, 1952, 66 Stat. 791, ch. 949, § 2.)

CODIFICATION

Section is also classified to 40 U.S.C. § 73.

TRANSFER OF FUNCTIONS

The commission referred to within the section was the National Capital Park and Planning Commission. The duties of that commission were transferred to the National Capital Planning Commission by the act of July 19, 1952. See § 1–1009.

§ 1–1013. Report of commission to Congress—Estimate for Bureau of the Budget.

Said commission shall report to Congress annually on the first Monday of December the lands acquired during the preceding fiscal year, the method of acquisition, and the cost of each tract. It shall also submit to the Bureau of the Budget on or before September 15 of each year its estimate of the total sum to be appropriated for expenditure under the provisions of sections 1–1001 to 1–1013 during the succeeding fiscal year. (June 6, 1924, 43 Stat. 464, ch. 270, § 13, formerly § 4; renumbered July 19, 1952, 66 Stat. 791, ch. 949, § 2.)

CODIFICATION

Section is also classified to 40 U.S.C. § 74.

TRANSFER OF FUNCTIONS

The commission referred to within the section was the National Capital Park and Planning Commission. The duties of that commission were transferred to the National Capital Planning Commission by the act of July 19, 1952. See § 1–1009.

COMPILER'S NOTE

See note following section 1–1001.

Chapter 11.—ELECTIONS

Sec.

1–1101. Election of electors of President and Vice President, and officials of political parties.
1–1102. Definitions.
1–1103. Board of elections—Terms of office.
1–1104. Qualifications and compensation of members.
1–1105. Functions and authority of Board.
1–1106. Board independent agency—District to furnish facilities to Board—Seal.

Sec.
1–1107. Registration—Conditions for registration—Registration affidavit—Registration period—Appeal.
1–1108. Candidates for office—Form and date for filing petitions—Number of signatures required—Arrangement of ballot—Nominations for presidential electors—Names of candidates for President and Vice President to appear on ballot under party designation—Form of ballot—Candidates for electors not to appear on ballot—Nominations by nonqualifying political parties—Qualifications of electors.
1–1109. Method of voting—Place—Watchers—Challenging of votes—Appeal from challenged ballots—Handicapped and absent voters—Voting in party elections.
1–1110. Dates for holding elections—Voting hours—Method of deciding tie votes—Naming successor to official who dies, resigns, or is unable to serve—Votes cast for President and Vice President to be counted as votes for presidential electors.
1–1111. Petition for recount by candidate—Procedure—Expenses—Petition for recount by voter to United States District Court—Grounds for voiding election.
1–1112. Interference with registration and voting.
1–1113. Appropriations—Maximum expenditures by candidate—Maximum contributions receivable by committee—Maximum contributions to campaign—Statement of election expenses.
1–1114. False registration, fraud, and other corrupt practices in elections—Penalties.

§ 1–1101. Election of electors of President and Vice President, and officials of political parties.

In the District of Columbia electors of President and Vice President of the United States and the following officials of political parties in the District of Columbia shall be elected as provided in this chapter:

(1) National committeemen and national committee women;

(2) Delegates to conventions of political parties nominating candidates for the Presidency and Vice Presidency of the United States;

(3) Alternates to the officials referred to in clauses (1) and (2) above, where permitted by political party rules; and

(4) Such members and officials of local committees of political parties as may be designated by the duly authorized local committees of such parties for election at large in the District of Columbia. (Aug. 12, 1955, 69 Stat. 699, ch. 862, § 1; Oct. 4, 1961, 75 Stat. 817, Pub. L. 87–389, § 1(1).)

AMENDMENTS

1961—Section 1(1), act Oct. 4, 1961, amended the section by inserting at the beginning thereof the words: "In the District of Columbia electors of President and Vice President of the United States and".

Section 1(25), act Oct. 4, 1961, amended the title of the chapter to read as follows: "An Act to regulate the election in the District of Columbia of electors of President and Vice President of the United States and of delegates representing the District of Columbia to national political conventions, and for other purposes."

APPLICABILITY OF FEDERAL VOTING ASSISTANCE ACT

Section 2(c), act Oct. 4, 1961, provided that: "For the purposes of the Federal Voting Assistance Act of 1955, the word 'State' shall be deemed to include the District of Columbia." The Federal Voting Assistance Act of 1955, which is act Aug. 9, 1955, 69 Stat. 584, ch. 656, and which was formerly classified to 5 U.S.C. § 2171 et seq., has been transferred to title 50, U.S.C. § 1451 et seq.

CROSS REFERENCES

For definition of "State" and executives of each State as including the District of Columbia and its Board of Commissioners, see 1 U.S.C. § 21.

For provisions of constitutional amendment [Articles XXIII] granting the District of Columbia authority to appoint electors of President and Vice President, see the Constitution of United States set out preceding Part I of this Code.

§ 1–1102. Definitions.

For the purposes of this chapter—

(1) The term "District" means the District of Columbia.

(2) The term "qualified elector" means a citizen of the United States (a) who does not claim voting residence or right to vote in any State or Territory; and who, for the purpose of voting in an election under this chapter, has resided in the District continuously since the beginning of the one-year period ending on the day of such election; (b) who is, or will be on the day of the next election, twenty-one years old; (c) who has never been convicted of a felony in the United States, or if he has been so convicted, has been pardoned; and (d) who is not mentally incompetent as adjudged by a court of competent jurisdiction.

(3) The term "Board" means the Board of Elections for the District of Columbia provided for by section 1–1103. (Aug. 12, 1955, 69 Stat. 699, ch. 862, § 2; Oct. 4, 1961, 75 Stat. 820, Pub. L. 87–389, § 1(26).)

AMENDMENT

1961—Act Oct. 4, 1961, substituted the words "and who, for the purpose of voting in an election under this chapter, has resided in the District continuously since the beginning of the one-year period ending on the day of such election" for the words "and who has resided in the District continuously since the beginning of the one-year period ending on the day of the next election, or, if such period has not begun, resides in the District" in clause (a) of par. (2) of the section.

Appeal after service of sentence

Defendant, who had served sentence, was entitled to have conviction for assault reversed and case remanded, where alleged assault was committed on witness who testified against defendant at preliminary hearing at which defendant had not been accorded right to counsel, and no preliminary hearing was granted on assault charge. *R. A. Smith, Jr.* v. *United States* (1966, 361 F. 2d 74, 124 U.S. App. D.C. 57).

That defendant had served his sentence did not render case moot in view of effect of felony conviction on civil rights and punishment upon subsequent conviction. *Id.*

§ 1–1103. Board of elections—Terms of office.

There is hereby created a Board of Elections for the District of Columbia, to be composed of three members appointed by the Commissioners of the District of Columbia. The first terms of offices on the Board shall expire, as designated by the Commissioners, one at the close of December 31 of each of the first three years which begin after August 12, 1955. Subsequent terms of each such office shall be three years beginning January 1 following the expiration of the preceding term of such office. Any person appointed to fill a vacant office shall be appointed only for the unexpired term of such office. Until his successor is appointed and has qualified, a member may continue to serve even though the term of the office to which he was appointed has expired. The said Commissioners shall from time to time

designate the Chairman of the Board. (Aug. 12, 1955, 69 Stat. 699, ch. 862, § 3; Oct. 4, 1961, 75 Stat. 817, Pub. L. 87–389, § 1(2).)

AMENDMENT

1961—Section 1(2), act Oct. 4, 1961, Pub. L. 87–389, amended the section by inserting at the end thereof the following sentence: "The said Commissioners shall from time to time designate the Chairman of the Board."

§ 1–1104. Qualifications and compensation of members.

(a) No person shall be a member of the Board unless he qualifies as an elector and resides in the District. No person may be appointed to the Board unless he has resided in the District continuously since the beginning of the three-year period ending on the day he is appointed. Members of the Board shall hold no other paid office or employment in the District government and shall hold no active office, position or employment in the Federal Government. Not more than two members shall be members of the same political party.

(b) Each member of the Board shall be paid compensation of $25 per day while performing duties under this chapter. Except as provided in subsection (a) no person shall be ineligible to serve or to receive compensation as a member of the Board because he occupies another office or position or because he receives compensation (including retirement compensation) from another source. The right to compensation from another source otherwise secured to such a person under the laws of the United States shall not be abridged by the fact of his service or receipt of compensation as a member of the Board, or as an employee of the Board. (Aug. 12, 1955, 69 Stat. 699, ch. 862, § 4.)

§ 1–1105. Functions and authority of Board.

(a) The Board shall—

(1) maintain a registry, keeping it accurate and current;

(2) conduct registrations and elections;

(3) provide for recording and counting votes by means of ballots or machines or both and not less than five days before each election held pursuant to this chapter, publish in one or more newspapers of general circulation in the District a copy of the official ballot to be used in any such election;

(4) divide the District into appropriate voting precincts, each of which shall contain at least three hundred and fifty registered persons;

(5) operate polling places;

(6) develop and administer procedures for absentee registration for and voting in any election held under this chapter by any person included within the categories referred to in paragraphs (1), (2), (3), or (4) of section 101 of the Federal Voting Assistance Act of 1955 (69 Stat. 584) [50 U.S.C. § 1451].

(7) certify nominees and the results of elections; and

(8) perform such other duties as are imposed upon it by this chapter.

(b) Each member of the Board and persons authorized by the Board may administer oaths to persons executing affidavits pursuant to sections 1–1107 and 1–1108. It may provide for the administering of such other oaths as it considers appropriate to require in the performance of its functions.

(c) The Board may prescribe such regulations as it considers necessary to carry out the purposes of this chapter, including, a regulation permitting persons not absent from the District but who are physically unable to appear personally at an official registration place, to register in the manner prescribed in such regulation for the purpose of voting in any election held pursuant to this chapter.

(d) The Board may employ necessary personnel, at such rates of compensation as may be fixed by the Commissioners of the District of Columbia, without reference to the provisions of section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]. (Aug. 12, 1955, 69 Stat. 700, ch. 862, § 5; Oct. 4, 1961, 75 Stat. 817, Pub. L. 87–389, § 1 (3), (4), (5), (6).)

CODIFICATION

In subsec. (d), the reference "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

AMENDMENTS

1961—Act Oct. 4, 1961, amended par. (1) of subsec. (a) by striking out, "permanent".

Substituted the present wording of par. (3) of subsec. (a) for the words "print, distribute, and count ballots, or provide and operate suitable voting machines".

Amended the first sentence of subsec. (b) by striking the words "the Board, and persons authorized by it" and inserting in lieu thereof the words "Each member of the Board and persons authorized by the Board" and by striking the period at the end of subsection (c) and inserting the following ", including, a regulation permitting persons not absent from the District but who are physically unable to appear personally at an official registration place, to register in the manner prescribed in such regulation for the purpose of voting in any election held pursuant to this chapter."

Renumbered pars. (6) and (7) of subsec. (a) as pars. (7) and (8) and inserted a new par. (6).

§ 1–1106. Board independent agency—District to furnish facilities to Board—Seal.

(a) In the performance of its duties, the Board shall not be subject to the direction of any nonjudicial officer of the District.

(b) The District government shall furnish to the Board, upon request of the Board, such space and facilities as are available in public buildings in the District to be used as registration or polling places, and such records, information, services, personnel, offices, and equipment, and such other assistance and facilities, as may be necessary to enable the Board properly to perform its functions. Subject to the approval of the Commissioners of the District of Columbia, privately owned space, facilities and equipment may be rented for the registration, polling, and other functions of the Board.

(c) Subject to the approval of the Commissioners of the District of Columbia, the Board is authorized

to adopt and use a seal. (Aug. 12, 1955, 69 Stat. 700, ch. 862, § 6; Oct. 4, 1961, 75 Stat. 817, Pub. L. 87–389, § 1(7).)

AMENDMENT

1961—Section 1(7), act Oct. 4, 1961, amended the section by adding subsection (c).

§ 1–1107. Registration—Conditions for registration—Registration affidavit—Registration period—Appeal.

(a) A person shall be entitled to vote in an election in the District of Columbia only if he is a qualified elector and, except as provided in subsection (e) of this section, he registers in the District during the year in which such election is to be held.

(b) No person shall be registered unless—

(1) he is a qualified elector;

(2) he executes a registration affidavit by signature or mark (unless prevented by physical disability) on the form prescribed by the Board pursuant to subsection (c) showing that he meets each of the requirements specified in section 1–1102(2) for a qualified elector or qualifies under procedures established by the Board under paragraph (6) of subsection (a) of section 1–1105, and, if he desires to vote in a party election, such form shall show his political party affiliation.

(c) In administering the provisions of subsection (b) (2), the Board shall prepare and use a registration affidavit form in which each request for information is readily understandable and can be satisfied by a concise answer or mark. The Board may request additional information required to determine whether the registrant meets the requirements imposed by or referred to in subsection (b).

(d) The registry shall be open from January 1 until forty-five days before the first Tuesday following the first Monday in November during each presidential election year except the forty-five day period which ends on the first Tuesday in May, and except as provided by the Board in the case of a special election. The Board may close the registry on Saturdays, Sundays and holidays. While the registry is open, any person may apply for registration or change his registration.

(e) If a person is not permitted to register, such person, or any qualified candidate, may appeal to the Board, but not later than three days after the registry is closed for the next election. The Board shall decide within five days after the appeal is perfected whether the challenged elector is entitled to register. If the appeal is denied, the appellant may, within three days after such denial, appeal to the District of Columbia Court of General Sessions. The decision of such court shall be final and not appealable. If the appeal is upheld by either the Board or the court, the challenged elector shall be allowed to register immediately. If the appeal is pending on election day, the challenged elector may cast a ballot marked "challenged", as provided in section 1–1109 (d). (Aug. 12, 1955, 69 Stat. 700, ch. 862, § 7; Oct. 4, 1961, 75 Stat. 817, 818, Pub. L. 87–389, § 1 (8, 9, 10, 11); July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

AMENDMENTS

1961—Act Oct. 4, 1961, substituted the present wording of subsec. (a) for the words "no person shall vote in any election in the District unless he is a qualified elector and, except as provided in subsection (e), is registered in the District".

Substituted the present wording of par. (2) of subsec. (b) for the words of former par. (3) "he executes a registration affidavit by signature or mark (unless prevented by physical disability) on the form prescribed by the Board pursuant to subsection (c) showing his political affiliation, and that he meets each of the requirements specified in section 1–1102(2) for a qualified elector as well as the requirement of paragraph (2) of this subsection." and omitted former par. (3).

CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 1–1108. Candidates for office—Form and date for filing petitions—Number of signatures required—Arrangement of ballot—Nominations for presidential electors—Names of candidates for President and Vice President to appear on ballot under party designation—Form of ballot—Candidates for electors not to appear on ballot—Nominations by nonqualifying political parties—Qualifications of electors.

(a) Candidates for office participating in an election of the officials referred to in clauses (1), (2), and (3) of section 1–1101 and of officials designated pursuant to clause (4) of such section shall be the persons registered under section 1–1107 who have been nominated for such office by a petition—

(1) prepared and presented to the Board in accordance with rules prescribed by the Board, but not later than thirty days before the date of the election; and

(2) signed by not less than one hundred voters, registered under section 1–1107, and of the same political party as the nominee.

(b) No such person shall hold elected office pursuant to this chapter unless he has been a bona fide resident of the District of Columbia continuously since the beginning of the three-year period ending on the date of the next election, and is a qualified elector registered under section 1–1107.

(c) The Board shall arrange the ballot of each political party so as to enable the voters of such party—

(1) to vote for the candidates duly qualified and nominated for election by such party under this chapter; and

(2) to answer in the affirmative or negative such questions relating to the conduct of the affairs of such party as the duly authorized local committee of such party may file with the Board in writing: *Provided, however,* That the questions shall be so filed not later than thirty days before the date of the election.

(d) Each political party who has had its candidate elected as President of the United States after January 1, 1950, shall be entitled to nominate candidates for presidential electors. The executive committee of the organization recognized by the national committee of each such party as the official organization of that party in the District of Columbia shall nominate by appropriate means the presidential electors for that party. Nominations shall be made by message to the Board of Elections on or before September 1 next preceding a presidential election.

(e) The names of the candidates of each political party for President and Vice President shall be placed on the ballot under the title and device, if any, of that party as designated by the duly authorized committee of the organization recognized by the national committee of that party as the official organization of that party in the District. The form of the ballot shall be determined by that Board. The position on the ballot of names of candidates for President and Vice President shall be determined by lot. The names of persons nominated as candidates for electors of President and Vice President shall not appear on the ballot.

(f) A political party which does not qualify under subsection (d) of this section may have the names of its candidates for President and Vice President of the United States printed on the general election ballot provided a petition nominating the appropriate number of candidates for presidential electors signed by at least 5 per centum of registered qualified electors of the District of Columbia, as of July 1 of the year in which the election is to be held is presented to the Board on or before August 15 preceding the date of the presidential election.

(g) No person may be elected to the office of elector of President and Vice President pursuant to this chapter unless (1) he is a registered voter in the District and (2) he has been a bona fide resident of the District for a period of three years immediately preceding the date of the presidential election. Each person elected as elector of President and Vice President shall, in the presence of the Board, take an oath or solemnly affirm that he will vote for the candidates of the party he has been nominated to represent, and it shall be his duty to vote in such manner in the electoral college. (Aug. 12, 1955, 69 Stat. 701, ch. 682, § 8; Oct. 4, 1961, 75 Stat. 818, 819, Pub. L. 87–389, § 1 (12, 13).)

AMENDMENT

1961—Act Oct. 4, 1961, substituted the words "of the officials referred to in clauses (1), (2), and (3) of section 1–1101 and of officials designated pursuant to clause (4) of such section" for the words "held pursuant to this chapter" in subsec. (a).

Added subsecs. (d), (e), (f), and (g).

NOTES TO DECISIONS

Authority of board in relation to ballots

Board of Elections for the District of Columbia was without authority to permit official primary ballot to include what would be in effect a party presidential primary. *District of Columbia Republican Committee and Carl L. Shipley et al.* v. *The Board of Elections for the District of Columbia et al.* (1964, 336 F. 2d 939, 119 U.S. App. D.C. 20.

§ 1–1109. Method of voting—Place—Watchers—Challenging of votes—Appeal from challenged ballots—Handicapped and absent voters—Voting in party elections.

(a) Voting in all elections shall be secret.

(b) The vote of a person who is registered as a resident of the District shall be valid only if cast in the voting precinct where the residence shown on his registration is located. The Board shall by regulation permit voting for electors of President and Vice President by any registered elector who is absent from the District or who, because of his physical condition, is unable to vote in person at the polling place in his voting precinct on election day.

(c) Each qualified candidate may have a watcher at each polling place, provided the watcher presents proper credentials signed by the candidate. No one shall interfere with the opportunity of a watcher to observe the conduct of the election at that polling place and the counting of votes. Watchers may challenge prospective voters who are believed to be unqualified to vote.

(d) If the official in charge of the polling place, after hearing both parties to any such challenge or acting on his own initiative with respect to a prospective voter, reasonably believes the prospective voter is unqualified to vote, he shall allow the voter to cast a paper ballot marked "challenged". Ballots so cast shall be segregated, and no such ballot shall be counted until the challenge has been removed as provided in subsection (e).

(e) If a person has been permitted to vote only by challenged ballot, such person, or any qualified candidate, may appeal to the Board within three days after election day. The Board shall decide within seven days after the appeal is perfected whether the voter was qualified to vote. If the appeal is denied, the appellant may within three days of such denial appeal to the District of Columbia Court of General Sessions. The decision of such court shall be final and not appealable. If the Board decides that the voter was qualified to vote, the word "challenged" shall be stricken from the voter's ballot and the ballot shall be treated as if it had not been challenged.

(f) If the official in charge of the polling place is satisfied that a qualified elector is unable to record his vote by marking the ballot or operating the voting machine, two officials of the polling place shall on the request of the voter enter the voting booth and vote as directed. The officials shall tell no one how the voter voted. The official in charge of the voting place shall make a return of all such voters, giving their names and disabilities.

(g) No person shall vote more than once in any election, nor shall any person vote in an election held by a political party other than that of which he has declared himself a member.

(h) Copies of the regulations of the Board with respect to voting shall be made available to prospective voters at each polling place. (Aug. 12, 1955, 69 Stat. 702, ch. 862, § 9; Oct. 4, 1961, 75 Stat. 819, Pub. L. 87–389, § 1(14, 15, 16, 17); July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

AMENDMENTS

1961—Section 1(14), act Oct. 4, 1961, struck out the second sentence in subsection (a). The struck sentence read as follows: "Voting may be by paper ballot or voting machine."

Section 1(15) of the same act, amended subsection (b) by striking the word "ballot" and inserting in lieu thereof the word "vote" in the first sentence and by inserting at the end thereof the new sentence as above set out.

Section 1(16) of the same act amended subsection (e) by changing "municipal court of the District" to read "municipal court for the District".

Section 1(17) of the same act, amended subsection (g) by substituting the present wording of subsec. (g) for the words "No person shall vote more than once in any

election nor in an election held by a political party other than that of which he has declared himself to be a member."

CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 1–1110. Dates for holding elections—Voting hours—Method of deciding tie votes—Naming successor to official who dies, resigns, or is unable to serve—Votes cast for President and Vice President to be counted as votes for presidential electors.

(a)(1) The elections of the officials referred to in clauses (1), (2), and (3) of section 1–1101 and of officials designated pursuant to clause (4) of such section shall be held on the first Tuesday in May of each presidential election year. Any such election shall be conducted by the Board in conformity with the provisions of this chapter. Polls shall be open from 8 o'clock antemeridian to 8 o'clock postmeridian on election days.

(2) The electors of President and Vice President of the United States shall be elected on the Tuesday next after the first Monday in November in every fourth year succeeding every election of a President and Vice President of the United States. Polls shall be open from 8 o'clock antemeridian to 8 o'clock postmeridian on election day. Each vote cast for a candidate for President or Vice President whose name appears on the general election ballot shall be counted as a vote cast for the candidates for presidential electors of the party supporting such presidential and vice presidential candidate. Candidates receiving the highest number of votes in such election shall be declared the winners, except that in the case of a tie it shall be resolved in the same manner as is provided in subsection (c) of this section.

(b) Candidates receiving the highest number of votes in such elections shall be declared the winners.

(c) In the case of a tie, the candidates receiving the tie vote shall cast lots before the Board, at 12 o'clock noon on a date to be set by the Board, but not sooner than ten days following the election, and the one to whom the lot shall fall shall be declared the winner. If any candidate or candidates, receiving a tie vote, fail to appear before 12 o'clock noon on said day, the Board shall cast lots for him or them. For the purpose of casting lots any candidate may appear in person, or by proxy appointed in writing.

(d) In the event that any official elected pursuant to this chapter dies, resigns, or becomes unable to serve during his or her term of office leaving no person elected pursuant to this chapter to serve the remainder of the unexpired term of office, the successor or successors to serve the remainder of such term shall be chosen pursuant to the rules of the duly authorized party committee: *Provided,* That such successor shall have the qualifications required by this Act for such office. (Aug. 12, 1955, 69 Stat. 702, ch. 862, § 10; Oct. 4, 1961, 75 Stat. 819, Pub. L. 87–389, § 1(18, 19, 20).)

AMENDMENTS

1961—Section 1(18), act Oct. 4, 1961, amended subsection (a) by inserting the number (1) immediately after (a) and by the matter set out as par. (2) in said subsection.

Section 1(19) of the same act amended subsection (b) by changing "said election" to read "such elections."

Section 1(20) of the same act amended subsection (d) by striking the word "dies" and inserting in lieu thereof "dies, resigns, or becomes unable to serve" and by striking the words "local committee" at the end of the subsection and inserting in lieu thereof "party committee: *Provided,* That such successor shall have the qualifications required by this chapter for such office."

CROSS REFERENCE

Sale of alcoholic beverages on election days, see § 25–107.

§ 1–1111. Petition for recount by candidate—Procedure—Expenses—Petition for recount by voter to United States District Court—Grounds for voiding election.

(a) If, within seven days after the Board certifies the results of an election, any qualified candidate at such election petitions the Board to have the votes cast at such election recounted in one or more voting precincts, the Board shall order such recount. In each such case, the petitioner shall deposit a fee of $20 for each precinct petitioned to be recounted. If the cost of the recount is less than $20 per precinct, the difference shall be refunded. If the result of the election is changed as a result of the recount, the entire amount deposited by the petitioner shall be refunded. Such recounts shall be conducted in the manner prescribed by the Board by regulation.

(b) Within seven days after the Board certifies the results of an election, any person who voted in the election may petition the United States District Court for the District of Columbia to review such election. In response to such a petition, the court may set aside the results so certified and declare the true results of the election, or void the election in whole or in part. To determine the true results of an election the court may order a recount or take other appropriate action, whether or not a recount has been conducted or requested pursuant to subsection (a). The court shall void an election only for fraud, mistake, the making of expenditures by a candidate in violation of this chapter, or other defect, serious enough to vitiate the election as a fair expression of the will of the registered qualified electors voting therein. If the court voids an election it may order a special election, which shall be conducted in such manner (comparable to that prescribed for regular elections), and at such time, as the Board shall prescribe. The decision of such court shall be final and not appealable. (Aug. 12, 1955, 69 Stat. 703, ch. 862, § 11.)

§ 1–1112. Interference with registration and voting.

No one shall interfere with the registration or voting of another person, except as it may be reasonably necessary in the performance of a duty imposed by law. (Aug. 12, 1955, 69 Stat. 703, ch. 862, § 12.)

§ 1–1113. Appropriations—Maximum expenditures by candidate—Maximum contributions receivable by committee—Maximum contributions to campaign—Statement of election expenses.

(a) There are hereby authorized to be appropriated, out of any money in the Treasury to the credit of the District of Columbia not otherwise

appropriated, such amounts as may be necessary to carry out the purposes of this chapter.

(b) Subject to the penalties provided in this chapter, a candidate for elector of President and Vice President, national committeeman, national committeewoman, delegate, or alternate, in his campaign for election, shall not make expenditures in excess of $2,500.

(c) No independent committee or party committee shall receive contributions aggregating more than $100,000, or make expenditures aggregating more than $100,000 for any campaign covered by this chapter.

(d) No person shall, directly or indirectly, make contributions in an aggregate amount in excess of $5,000 in connection with any campaign for election of any elector, national committeeman, national committeewoman, delegate, or alternate.

(e) Every candidate and independent committee or party committee shall, within ten days after an election, file with the Board of Elections an itemized statement, subscribed and sworn to by the candidate or committee treasurer, as the case may be, setting forth all moneys received and expended in connection with said election, the names of persons from whom received and to whom paid, and the purpose for which it was expended. Such statement shall set forth any unpaid debts and obligations incurred by the candidate or independent committee or party committee with regard to such election, and specify the balance, if any, of such election funds remaining in his or their hands. (Aug. 12, 1955, 69 Stat. 704, ch. 862, § 13; Oct. 4, 1961, 75 Stat. 819, Pub. L. 87–389, § 1(21, 22, 23).)

AMENDMENTS

1961—Section 1(21), act Oct. 4, 1961, amended subsection (b) by inserting after the words "a candidate for" the words, "elector of President and Vice President,".

Section 1(22) of the same act amended subsection (d) by striking "any national committeeman" and inserting in lieu thereof "any elector, national committeeman".

Section 1(23) of the same act, amended subsection (e) by striking from the first sentence the words "the election" and inserting in lieu thereof "an election".

§ 1–1114. False registration, fraud, and other corrupt practices in elections—Penalties.

Any person who shall register, or attempt to register, under the provisions of this chapter and make any false representations as to his place of residence or his voting privilege in any other part of the United States, or be guilty of bribery or intimidation of any voter at the elections herein provided for, or, being registered, shall vote or attempt to vote more than once in any election so held, or shall purloin or secrete any of the votes cast in such elections, or attempt to vote in an election held by a political party other than that to which he has declared himself to be affiliated, or, if employed in the counting of votes in any election held pursuant to this chapter knowingly, make a false report in regard thereto, and every candidate, person, or official of any political committee who shall knowingly make any expenditure or contribution in violation of this chapter, shall upon conviction thereof be fined not more than $500 or be imprisoned not more than ninety days, or both. The provisions of this section shall be supplemental to and not in derogation of any penalties under other laws of the District of Columbia. (Aug. 12, 1955, 69 Stat. 704, ch. 862, § 14; Oct. 4, 1961, 75 Stat. 820, Pub. L. 87–389, § 1(24).)

AMENDMENT

1961—Section 1(24), act Oct. 4, 1961, amended the section by striking from the first sentence "if employed in the counting of votes in such elections" and inserting in lieu thereof "if employed in the counting of votes in any election held pursuant to this chapter knowingly" and by inserting the word "knowingly" before the words "make any expenditure".

Chapter 12.—PRESIDENTIAL INAUGURAL CEREMONIES

Sec.
1–1201. Definitions.
1–1202. Regulations.
1–1203. Appropriations—Expenses for which same may be used.
1–1204. Permits for use of grounds and reservations.
1–1205. Installation of electrical facilities.
1–1206. Lending of supplies by Secretary of Defense.
1–1207. Permission for installation of communication facilities—When to be removed.
1–1208. Regulations and licenses to be in force only during inaugural period—Publication of regulations—Penalties for violations.
1–1209. Nonapplicability to property under jurisdiction of Congress.
1–1210. Repealed.

§ 1–1201. Definitions.

For the purposes of this chapter—

(1) The term "inaugural period" means the period which includes the day on which the ceremony of inaugurating the President is held, the five calendar days immediately preceding such day, and the four calendar days immediately subsequent to such day;

(2) The term "Inaugural Committee" means the committee in charge of the Presidential inaugural ceremony and functions and activities connected therewith, to be appointed by the President-elect;

(3) The term "Commissioners" means the Commissioners of the District of Columbia or their designated agent or agents;

(4) The term "Secretary of Defense" means the Secretary of Defense or his designated agent or agents; and

(5) The term "Secretary of the Interior" means the Secretary of the Interior or his designated agent or agents. (Aug. 6, 1956, 70 Stat. 1049, ch. 974, § 1 (b).)

SHORT TITLE

1956—Section 1(a) of act Aug. 6, 1956, provides "That this Act [sections 1–1201 to 1–1209] may be cited as the 'Presidential Inaugural Ceremonies Act.'"

§ 1–1202. Regulations.

For each inaugural period the Commissioners are authorized and directed to make all reasonable regulations necessary to secure the preservation of public order and protection of life, health, and property; to make special regulations respecting the standing, movement, and operation of vehicles of whatever character or kind during said period; and to grant, under such conditions as they may impose, special licenses to peddlers and vendors for the privilege of selling goods, wares, and merchandise in such places in the District of Columbia, and

to charge such fees for such privilege, as they may deem proper. (Aug. 6, 1956, 70 Stat. 1049, ch. 974, § 2.)

§ 1–1203. Appropriations—Expenses for which same may be used.

There are hereby authorized to be appropriated such sums as may be necessary, payable in like manner as other appropriations for the expenses of the District of Columbia, to enable the Commissioners to provide additional municipal services in said District during the inaugural period, including employment of personal services without regard to the civil-service and classification laws; travel expenses of enforcement personnel from other jurisdictions; hire of means of transportation; meals for policemen and firemen, cost of removing and relocating streetcar loading platforms, construction, rent, maintenance, and expenses incident to the operation of temporary public comfort stations, first-aid stations, and information booths; and other incidental expenses in the discretion of the Commissioners. (Aug. 6, 1956, 70 Stat. 1049, ch. 974, § 3.)

§ 1–1204. Permits for use of grounds and reservations.

The Secretary of the Interior, with the approval of such officer as may exercise jurisdiction over any of the Federal reservations or grounds in the District of Columbia, is authorized to grant to the Inaugural Committee permits for the use of such reservations or grounds during the inaugural period, including a reasonable time prior and subsequent thereto; and the Commissioners are authorized to grant like permits for the use of public space under their jurisdiction. Each such permit shall be subject to such restrictions, terms, and conditions as may be imposed by the grantor of such permit. With respect to public space, no reviewing stand or any stand or structure for the sale of goods, wares, merchandise, food, or drink shall be built on any sidewalk, street, park, reservation, or other public grounds in the District of Columbia, except with the approval of the Inaugural Committee, and with the approval of the Secretary of the Interior or the Commissioners, as the case may be, depending on the location of such stand or structure. The reservation, ground, or public space occupied by any such stand or structure shall, after the inaugural period, be promptly restored to its previous condition. The Inaugural Committee shall indemnify and save harmless the District of Columbia and the appropriate agency or agencies of the Federal Government against any loss or damage to such property and against any liability arising from the use of such property, either by the Inaugural Committee or a licensee of the Inaugural Committee. (Aug. 6, 1956, 70 Stat. 1049, ch. 974, § 4.)

§ 1–1205. Installation of electrical facilities.

The Commissioners are authorized to permit the Inaugural Committee to install suitable overhead conductors and install suitable lighting or other electrical facilities, with adequate supports, for illumination or other purposes. If it should be necessary to place wires for illuminating or other purposes over any park or reservation in the District of Columbia, such placing of wires and their removal shall be under the supervision of the official in charge of said park or reservation. Such conductors with their supports shall be removed within five days after the end of the inaugural period. The Commissioners, or such other officials as may have jurisdiction in the premises, shall enforce the provisions of this chapter, take needful precautions for the protection of the public, and insure that the pavement of any street, sidewalk, avenue, or alley which is disturbed or damaged is restored to its previous condition. No expense or damage from the installation, operation, or removal of said temporary overhead conductors or said illumination or other electrical facilities shall be incurred by the United States or the District of Columbia, and the Inaugural Committee shall indemnify and save harmless the District of Columbia and the appropriate agency or agencies of the Federal Government against any loss or damage and against any liability whatsoever arising from any act of the Inaugural Committee or any agent, licensee, servant, or employee of the Inaugural Committee. (Aug. 6, 1956, 70 Stat. 1050, ch. 974, § 5.)

§ 1–1206. Lending of supplies by Secretary of Defense.

The Secretary of Defense is authorized to lend to the Inaugural Committee such hospital tents, smaller tents, camp appliances, hospital furniture, ensigns, flags, ambulances, drivers, stretchers, and Red Cross flags and poles (except battle flags) as may be spared without detriment to the public service, and under such conditions as he may prescribe. Such loan shall be returned within five days after the end of the inaugural period, the Inaugural Committee shall indemnify the Government for any loss or damage to any such property, and no expense shall be incurred by the United States Government for the delivery, return, rehabilitation, replacement, or operation of such equipment. The Inaugural Committee shall give a good and sufficient bond for the safe return of such property in good order and condition, and the whole without expense to the United States. (Aug. 6, 1956, 70 Stat. 1050, ch. 974, § 6.)

§ 1–1207. Permission for installation of communication facilities—When to be removed.

The Commissioners, the Secretary of the Interior, and the Inaugural Committee are authorized to permit telegraph, telephone, radio-broadcasting, and television companies to extend overhead wires to such points along the line of any parade as shall be deemed convenient for use in connection with such parade and other inaugural purposes. Such wires shall be removed within ten days after the conclusion of the inaugural period. (Aug. 6, 1956, 70 Stat. 1050, ch. 974, § 7.)

§ 1–1208. Regulations and licenses to be in force only during inaugural period—Publication of regulations—Penalties for violations.

The regulations and licenses authorized by this chapter shall be in full force and effect only during the inaugural period. Such regulations shall be published in one or more of the daily newspapers published in the District of Columbia and no penalty prescribed for the violation of any such regulation shall be enforced until five days after such

publication. Any person violating any regulation promulgated by the Commissioners under the authority of this chapter shall be fined not more than $100 or imprisoned for not more than thirty days. Each and every day a violation of any such regulation exists shall constitute a separate offense, and the penalty prescribed shall be applicable to each such separate offense. (Aug. 6, 1956, 70 Stat. 1051, ch. 974, § 8.)

§ 1–1209. Nonapplicability to property under jurisdiction of Congress.

Nothing contained in this chapter shall be applicable to the United States Capitol Buildings or Grounds or other properties under the jurisdiction of the Congress or any committee, commission or officer thereof: *Provided, however,* That any of the services or facilities authorized by or under this chapter shall be made available with respect to any such properties upon request or approval of the joint committee of the Senate and House of Representatives appointed by the President of the Senate and the Speaker of the House of Representatives to make the necessary arrangements for the Inauguration of the President-elect and the Vice President-elect. (Aug. 6, 1956, 70 Stat. 1051, ch. 974, § 9.)

§ 1–1210. Repealed. Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a).

Section, act Jan. 11, 1957, 71 Stat. 3, Pub. L. 85–1, §§ 1, 2, which, for the purpose of all statutes relating to compensation and leave of employees of United States, including legislative and judicial branches, and of District of Columbia, established Inauguration Day as a legal holiday in the metropolitan area of the District of Columbia, is now covered by 5 U.S.C. § 6103.

Chapter 13.—WASHINGTON METROPOLITAN REGION DEVELOPMENT

Sec.

1–1301. Congressional declaration—Coordination in development of Washington metropolitan region.
1–1302. Policy—Exercise of functions of all governmental authorities to be coordinated.
1–1303. Priority projects.
1–1304. All agencies of federal, district and regional governments are invited to make intensive study of final report of Joint Committee on Washington Metropolitan Problems.
1–1305. "Washington metropolitan region" defined.

§ 1–1301. Congressional declaration—Coordination in development of Washington metropolitan region.

The Congress hereby declares that, because the District which is the seat of the Government of the United States and has now become the urban center of a rapidly expanding Washington metropolitan region, the necessity for the continued and effective performance of the functions of the Government of the United States at the seat of said Government in the District of Columbia, the general welfare of the District of Columbia and the health and living standards of the people residing or working therein and the conduct of industry, trade, and commerce therein require that the development of the District of Columbia and the management of its public affairs shall, to the fullest extent practicable be coordinated with the development of the other areas of the Washington metropolitan region and with the management of the public affairs of such other areas, and that the activities of all of the departments, agencies, and instrumentalities of the Federal Government which may be carried out in, or in relation to, the other areas of the Washington metropolitan region shall, to the fullest extent practicable, be coordinated with the development of such other areas and with the management of their public affairs; all toward the end that, with the cooperation and assistance of the other areas of the Washington metropolitan region, all of the areas therein shall be so developed and the public affairs thereof shall be so managed as to contribute effectively toward the solution of the community development problems of the Washington metropolitan region on a unified metropolitan basis. (June 27, 1960, 74 Stat. 223, Pub. L. 86–527, § 2.)

SHORT TITLE

Section 1 of act June 27, 1960, provided that act June 27, 1960, which added this chapter, may be cited as the "Washington Metropolitan Region Development Act."

§ 1–1302. Policy—Exercise of functions of all governmental authorities to be coordinated.

The Congress further declares that the policy to be followed for the attainment of the objective established by section 1–1301, and for the more effective exercise by the Congress, the executive branch of the Federal Government and the Board of Commissioners of the District of Columbia and all other officers and agencies and instrumentalities of the District of Columbia of their respective functions, powers, and duties in respect of the Washington metropolitan region, shall be that all such functions, powers, and duties shall be exercised and carried out in such manner as (with proper recognition of the sovereignty of the State of Maryland and the Commonwealth of Virginia in respect of those areas of the Washington metropolitan region as are situate within their respective jurisdictions) will best facilitate the attainment of such objective of the coordinated development of the areas of the Washington metropolitan region and coordinated management of their public affairs so as to contribute effectively to the solution of the community development problems of the Washington metropolitan region on a unified metropolitan basis. (June 27, 1960, 74 Stat. 223, Pub. L. 86–527, § 3.)

§ 1–1303. Priority projects.

The Congress further declares that, in carrying out the policy pursuant to section 1–1302 for the attainment of the objective established by section 1–1301, priority should be given to the solution, on a unified metropolitan basis, of the problems of water supply, sewage disposal, and water pollution and transportation. (June 27, 1960, 74 Stat. 223, Pub. L. 86–527, § 4.)

§ 1–1304. All agencies of federal, district and regional governments are invited to make intensive study of final report of Joint Committee on Washington Metropolitan Problems.

The Congress further declares that the officers, departments, agencies, and instrumentalities of the executive branch of the Federal Government and the Board of Commissioners of the District of Columbia and the other officers, agencies, and instrumentalities of the District of Columbia, and

other agencies of government within the Washington metropolitan region are invited and encouraged to engage in an intensive study of the final report and recommendation of the Joint Committee on Washington Metropolitan Problems with a view to submitting to the Congress the specific recommendations of each of the agencies of government specified. (June 27, 1960, 74 Stat. 223, Pub. L. 86–527, § 5.)

§ 1–1305. "Washington metropolitan region" defined.

As used in sections 1–1301 to 1–1305, the term "Washington metropolitan region" includes the District of Columbia, the counties of Montgomery and Prince Georges in the State of Maryland, the counties of Arlington and Fairfax and the cities of Alexandria and Falls Church in the Commonwealth of Virginia. (June 27, 1960, 74 Stat. 224, Pub. L. 86–527, § 6.)

Chapter 14.—NATIONAL CAPITAL REGION TRANSPORTATION

SUBCHAPTER I.—NATIONAL CAPITAL TRANSPORTATION PROGRAM

PART I.—SHORT TITLE, STATEMENT OF FINDINGS AND POLICY, AND DEFINITIONS

Sec.
1–1401. Statement of findings and policy.
1–1401a. Agreements with Maryland and Virginia to develop continuing comprehensive transportation planning process.
1–1402. Definitions.

PART II.—CREATION OF NATIONAL CAPITAL TRANSPORTATION AGENCY

1–1403. National Capital Transportation Agency.
1–1404. Repealed.
1–1405. Advisory and coordinating committees.
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1–1407. Functions, duties, and powers.

PART III.—AUTHORIZATION FOR NEGOTIATION OF INTERSTATE COMPACT

1–1408. Interstate compact between Virginia, Maryland, and District of Columbia authorized.
1–1409. Separability of provisions.

SUBCHAPTER II.—COMPACT FOR MASS TRANSPORTATION

1–1410. Consent of Congress given for Virginia, Maryland, and District of Columbia to enter into compact for regulation of mass transportation in Washington metropolitan area.
1–1410a. Consent of Congress given to make certain amendments to mass transportation compact.
1–1411. Commissioners authorized and directed to enter into compact and carry out terms thereof—Appropriations authorized for District of Columbia—Commissioners may not adopt amendment to compact without prior approval of Congress.
1–1412. Suspension of certain laws for duration of compact—Reinstatement of laws upon termination of compact—Certain police powers of parties to compact and Director of National Park Service not affected—Franchise rights and obligations of D.C. Transit System, Inc., not impaired—"Public Interest" includes interest of carrier employees—Laws relating to carrier employee benefits, wages, hours and working conditions, collective bargaining rights, rights to self organization continue in force—Jurisdiction of Public Utilities Commission and Interstate Commerce Commission transferred to Washington Metropolitan Area Transit Commission.
Sec.
1–1413. Consent of Congress to certain provisions of compact conditioned on nonuse of same to break a lawful strike.
1–1414. Repealed.
1–1415. Jurisdiction to review orders of Washington Metropolitan Area Transit Commission and to enforce compact.
1–1416. Reservation of right to alter, amend or repeal—Submission of periodic report to Congress—Disclosure of information—Access to books and records.

SUBCHAPTER III.—RAIL RAPID TRANSIT

1–1421. Statement of findings and purpose.
1–1422. Facilities authorized.
1–1423. Relocation assistance.
1–1424. Appropriations authorized.
1–1425. Annual report.
1–1426. Separability.

SUBCHAPTER IV.—WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY COMPACT

1–1431. Consent of Congress given for, and adoption of, compact amending compact set out under section 1–1410.
1–1432. Authority and duty of Commissioners to execute and carry out compact.
1–1433. Transfer of functions, property documents, etc.—Appropriations—Development of plans—Advisory services.
1–1434. Jurisdiction of courts—Removal of actions.
1–1435. Amendment of laws and reorganization plans.
1–1436. Reservation of right to alter, amend or repeal—Submission of reports to Congress—Disclosure of information—Access to books and records—Audits.

SUBCHAPTER I.—NATIONAL CAPITAL TRANSPORTATION PROGRAM

PART I.—SHORT TITLE, STATEMENT OF FINDINGS AND POLICY, AND DEFINITIONS

§ 1–1401. Statement of findings and policy.

The Congress finds that an improved transportation system for the National Capital region (1) is essential for the continued and effective performance of the functions of the Government of the United States, for the welfare of the District of Columbia, for the orderly growth and development of the National Capital region, and for the preservation of the beauty and dignity of the Nation's Capital; (2) requires the planning on a regional basis of a unified system of freeways, parkways, express transit service on exclusive rights-of-way, and other major transportation facilities; (3) requires cooperation among the Federal, State, and local governments of the region and public carriers in the development and administration of major transportation facilities; (4) requires financial participation by the Federal Government in the creation of certain major transportation facilities that are beyond the financial capacity or borrowing power of the public carriers, the District of Columbia, and the local governments of the region; and (5) requires coordination of transportation facilities with other public facilities and with the use of land, public and private. The Congress therefore declares that it is the continuing policy and responsibility of the Federal Government, in cooperation with the State and local governments of the National Capital region, and making full use of private enterprise whenever

appropriate, to encourage and aid in the planning and development of a unified and coordinated transportation system for the National Capital region. (July 14, 1960, 74 Stat. 537, Pub. L. 86–669, title I, § 102.)

SHORT TITLE

Section 101 of act July 14, 1960, 74 Stat. 537, Pub. L. 86–669, title I, provided that such act, enacting this subchapter and subchapter II of this chapter, may be cited as the "National Transportation Act of 1960".

§ 1–1401a. Agreements with Maryland and Virginia to develop continuing comprehensive transportation planning process.

The Commissioners are authorized to enter into such agreements with the States of Maryland and Virginia and with political subdivisions of such States as may be necessary to develop a continuing comprehensive transportation planning process for the National Capital region for the purpose of complying with the requirements of section 134 of title 23, United States Code, except that no such agreement shall require the District of Columbia to pay more than its pro rata share of the costs of such planning process. In developing such transportation planning process the Commissioners shall consult and cooperate with the National Capital Planning Commission and the National Capital Regional Planning Council. For the purpose of this section, the term "National Capital region" shall have the same meaning as is given it in section 1–1401. (Sept. 30, 1966, 80 Stat. 859, Pub. L. 89–610, title X, § 1006.)

DEFINITION; CONSTRUCTION; SEVERABILITY OF PROVISIONS; RULES AND REGULATIONS

For definition of "Commissioners" as used in act Sept. 30, 1966, Pub. L. 89–610, enacting this section, and for construction of such act, severability of provisions with respect thereto, and authority to make rules and regulations to carry out provisions thereof, see §§ 1002—1005 of such act, set out as a note under § 25–124.

CODIFICATION

Section is not a part of the National Capital Transportation Act of 1960, which constitutes this subchapter and subchapter II of this chapter.

§ 1–1402. Definitions.

When used in this subchapter—

(a) "National Capital region" means the District of Columbia, Montgomery and Prince Georges Counties in the State of Maryland, Arlington, Fairfax, Loudoun, and Prince William Counties and the cities of Alexandria and Falls Church in the Commonwealth of Virginia, and all other cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries of the combined area of said counties and cities.

(b) "Government agency" and "government agencies" mean the Government of the United States, District of Columbia, Commonwealth of Virginia, State of Maryland, or any political subdvision, agency, or instrumentality thereof which is located within, or whose jurisdiction includes all or part of, the National Capital region; the term includes, but is not limited to, public authorities, towns, villages, cities, other municipalities, and counties. (July 14, 1960, 74 Stat. 537, Pub. L. 86–669, title I, § 103.)

PART II.—CREATION OF NATIONAL CAPITAL TRANSPORTATION AGENCY

§ 1–1403. National Capital Transportation Agency.

(a) There is hereby established the National Capital Transportation Agency (hereinafter referred to as the "Agency"). The Agency shall be subject to the direction and supervision of the President, or the head of such department or agency as he may designate. The Agency shall be headed by an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall receive compensation at a rate equal to the maximum rate for grade 18 of the General Schedule established by sections 5104 and 5332 of title 5, U.S. Code, plus $500 per annum.

(b) To assist the Administrator in the execution of the functions vested in the Agency there shall be a Deputy Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall receive compensation at a rate equal to the maximum rate for grade 18 of the General Schedule established by sections 5104 and 5332 of title 5, U.S. Code. The Deputy Administrator shall perform such duties as the Administrator may from time to time designate and shall be Acting Administrator during the absence or disability of the Administrator.

(c) No Administrator or Deputy Administrator shall, during his continuance in office, be engaged in any other business, but shall devote himself to the work of the Agency. No Administrator or Deputy Administrator or member of the Advisory Board (established in section 1–1404) shall have financial interest in any corporation engaged in the business of providing public transportation nor in any corporation engaged in the manufacture or selling of passenger transportation equipment or facilities. (July 14, 1960, 74 Stat. 538, Pub. L. 86–669, title II, § 201.)

CODIFICATION

In subsecs. (a) and (b) of this section, the reference "of the Classification Act of 1949, as amended" has been changed to "established by sections 5104 and 5332 of title 5, U.S. Code", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by various provisions of title 5, U.S.C. The General Schedule, also referred to in said subsecs. (a) and (b), is continued by 5 U.S.C. (U.S.C.A.) § 5104, and the General Schedule pay rates are set forth in 5 U.S.C. (U.S.C.A.) § 5332.

§ 1–1404. Repealed. Nov. 6, 1966, 80 Stat. 1353, Pub. L. 89–774, § 5(b).

Section, acts July 14, 1960, 74 Stat. 538, Pub. L. 86–669, title II, § 202; Sept. 8, 1965, 79 Stat. 666, Pub. L. 89–173, § 7, provided for establishment of an Advisory Board of the National Capital Transportation Agency, and the composition and duties thereof. See § 1–1431 et seq.

§ 1–1405. Advisory and coordinating committees.

(a) The Administrator is authorized to establish such advisory and coordinating committees composed of representatives of State and local governments, Federal agencies, other Government agencies, and such private organizations and persons as may be necessary or helpful to obtain the maximum

amount of cooperation and correlation of effort in order that a coordinated system of transportation be developed for the National Capital region. These advisory and coordinating committees shall consider problems referred to them by the Administrator and shall make recommendations to the Administrator concerning the activities of the Agency as they affect transit, traffic, and highway conditions, and other matters of mutual interest to the Agency and to the Government agencies, organizations, and persons represented on the advisory and coordinating committees.

(b) The advisory and coordinating committees shall serve the Agency solely in an advisory capacity. Members of such committees shall serve thereon without additional compensation. Members who are not representatives of an agency of the United States may receive travel expenses as authorized by section 5703 of title 5, U.S. Code, for persons serving without compensation. (July 14, 1960, 74 Stat. 539, Pub. L. 86–669, title 55, § 203.)

CODIFICATION

In subsec. (b), the reference "section 5703 of title 5, U.S. Code" was substituted for "section 5 of the Act of August 2, 1946, as amended (5 U.S.C. 73b–2)" on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. Such § 5 of the act of Aug. 2, 1946, as amended (5 U.S.C. § 73b–2), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted Title 5, U.S.C., into law), and is now covered by 5 U.S.C. § 5703.

§ 1–1406. Preparation and approval of transit development program.

The Agency—

(a) Shall prepare, and may from time to time revise, a Transit Development Program. The Transit Development Program shall consist of a plan or plans indicating the general location of facilities in which the Agency will participate for the transportation of persons within the National Capital region, a timetable for the provision of such facilities and comprehensive financial reports including costs, revenues, and benefits. The Transit Development Program may indicate (1) the routes of surface, subsurface, and elevated carriers, including bus and other motor vehicle carriers, rail carriers, waterborne carriers, air carriers, and other carriers, and (2) the location and extent of terminals, stations, platforms, motor vehicle parking facilities for transit users, extra-wide median strips and other rights-of-way, docks, rails or tracks or other similar facilities, bridges, tunnels, buildings or structures, powerplants, repair shops, yards, garages, and other necessary facilities relating to the transportation of persons. The Transit Development Program shall, to the extent practicable, conform to the general plan for the development of the National Capital region and to the comprehensive plan for the National Capital within the meaning of sections 1–1003, 1–1004, and 1–1005, except as may be determined by the President.

(b) Shall, in the preparation of the Transit Development Program, give special consideration to:

(1) Expanded use of existing facilities and services, including expanded use and development of existing railroad lines into the District of Columbia, and coordinated and effiicent transit service across jurisdictional boundaries and between areas served by different companies: *Provided,* That the Public Service Commission of the District of Columbia, before granting its approval to any further conversion by the D.C. Transit System, Inc., of street railway operations to bus operations as provided in section 7 of the Act of July 24, 1956 (70 Stat. 598), shall consult with the Agency on the possible use of street railway facilities and equipment in the Transit Development Program. The Commission may withhold its approval of such conversion and require the preservation of equipment and facilities already withdrawn from service if it finds that there is a substantial possibility that the Transit Development Program will provide for the continued use of street railway facilities and equipment.

(2) Early development of a subway from Union Station capable of rapid dispersal of passengers from the railhead to the principal employment centers in the District of Columbia and its immediate environs, and capable of being extended to serve other parts of the region: *Provided,* That no freeway, or new parkway more than two lanes in width, shall be built within the District of Columbia west of Twelfth Street, Northwest, and north of either the north or west legs of the proposed Inner Loop Freeway, the proposed Potomac River Expressway, or the proposed Palisades Parkway, before July 1, 1965; and the Agency shall not later than January 10, 1965, submit to the President, for transmittal to Congress, its recommendation as to whether any such freeway or parkway should thereafter be built.

(3) Acquisition and development of rights-of-way and related facilities for providing express transit lines in conjunction with major highways and bridges.

(c) Shall prepare proposals for implementing each part of the Transit Development Program, including preliminary engineering plans, descriptions of the character of services to be rendered, estimates of costs and revenues, arrangements for financing and organization, and other information setting forth the manner in which the program is to be carried out: *Provided,* That no part of the Transit Development Program shall be carried out by the Agency until a report containing a full and complete description of that part of the program has been transmitted to the Congress, and the execution of that part of the program has been expressly authorized by legislation thereafter enacted by the Congress.

(d) In order to facilitate the transition from a Federal agency to an interstate proprietary agency and to further coordination within the National Capital region, shall submit the Transit Development Program and any revision thereof: (1) to the governing bodies of the District of Columbia, Montgomery and Prince Georges Counties in the State of Maryland, and Arlington, Fairfax, Loundoun, and Prince William Counties and the cities of Alexandria and Falls Church in the Commonwealth of Virginia, and the transit regulatory bodies having jurisdiction in the National Capital region for review and comment; (2) to such organizations of government agencies or officials concerned with the solution of

the community development problems of the National Capital region on a unified metropolitan basis as are now in existence or as may be created by agreement, law, or compact for review and comment; (3) to the Commission of Fine Arts for review and comment; (4) to private companies transporting persons in the National Capital region and to unions representing the employees of such companies for review and comment; and (5) to the Governors of Maryland and Virginia or such government agencies as they may designate for approval of the location and extent of proposed Agency facilities and the timetable for the provision of such facilities within Maryland and Virginia, respectively; and except as provided in subsection (e) of this section, the Agency shall not acquire, construct, or operate property, rights-of-way, or facilities indicated in the Transit Development Program or a revision thereof within the State in which such property, rights-of-way, or facilities are located unless prior thereto the Governor of the State involved or such government agency as he may designate shall have approved the Transit Development Program or the pertinent revision thereof.

(e) Until the Transit Development Program has been approved by the Governor of Maryland or Virginia as provided in subsection (d) of this section, shall, when it proposes to acquire, construct, or operate property, rights-of-way, or facilities located in Virginia or Maryland, first submit plans and other information showing in detail the purposes for which such property, rights-of-way, or facilities are to be used to the Governor of the State in which the property, rights-of-way, or facilities are to be located, or to such government agency as may be designated by the Governor. In implementing programs approved by the Congress in accordance with subsection (c) of this section, the Agency may acquire, construct, or operate such property, rights-of-way, or facilities, as the case may be, in the State upon approval of the Governor thereof, or of the designated government agency.

(f) Shall conduct research, surveys, experimentation, evaluation, design and development, in cooperation with other Government agencies and private organizations when appropriate, on the needs of the region for transportation; on facilities, equipment, and services to meet those needs; on organization and financial arrangements for regional transportation; and on other matters relating to the movement of persons in the region. The Agency's studies shall include a continuation of the work begun in the mass transportation survey conducted by the National Capital Planning Commission and the National Capital Regional Planning Council, pursuant to the Second Supplemental Appropriations Act of 1955 (69 Stat. 33), and shall include further studies as may be necessitated by changed conditions, the availability of new techniques, and the response of Government agencies and the public to the transportation plan adopted by the Commission and Council. The Agency's studies shall also include evaluations of the transportation system recommended in the transportation plan, and of alternative facilities and kinds of services.

(g) Shall submit to the President for transmittal to Congress, not later than November 1, 1962, recommedations for organization and financial arrangements for transportation in the National Capital region. The Agency shall consider the following organizational alternatives, among others: a Federal corporation, an organization established by interstate compact, and continuation or modification of the organization established by this subchapter. In preparing its recommendations the Agency shall consult with the governments of the District of Columbia, Maryland, and Virginia, the local governments of the National Capital region, and the Federal agencies having an interest in transportation in the National Capital region: *Provided,* That any recommendations submitted by the Agency shall provide as far as possible for the payment of all costs by persons using or benefiting from regional transportation facilities and services, and shall provide for the equitable sharing of any remaining costs among the Federal, State, and local governments. (July 14, 1960, 74 Stat. 539, Pub. L. 86–669, title II, § 204; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88–503, § 21.)

CHANGE OF NAME

Act Aug. 30, 1964, substituted "Public Service Commission of the District of Columbia" for "Public Utilities Commission of the District of Columbia." See section 2–2418.

§ 1–1407. Functions, duties, and powers.

(a) Subject to the provisions of this part, the Agency—

(1) in order to implement those parts of the Transit Development Program approved by statute in accordance with section 1–1406(c), and except as provided in the proviso of paragraph (2) of this subsection, may acquire (by purchase, lease, condemnation, or otherwise) or construct transit facilities, property, and rights-of-way for the transportation of persons within the National Capital region. Such facilities, property, and rights-of-way may include those enumerated under section 1–1406(a) or any other necessary transit facilities, property, or rights-of-way relating to transportation of persons. The Agency many contribute funds for the acquisition of rights-of-way for, and the construction of limited amounts of freeway, parkway, and other arterial highway facilities, including construction incidental to the use and protection of such rights-of-way for transit facilities, to the government agencies having jurisdiction thereof if, in the opinion of the Agency, such contributions are necessary to the fulfillment of the objectives of this subchapter;

(2) may operate all facilities acquired or constructed by it, or may enter into agreements with government agencies, private transit companies, railroads, or other persons for the operation of its facilities, the use of its operating rights, or the provision of transit services making use of other facilities and operating rights: *Provided,* That the Agency shall not operate any transit facilities, or provide by agreement for the operation of transit facilities, until the Congress shall establish for the Agency a labor relations policy, de-

fining labor's right to organize, to bargain collectively, to arbitrate disputes, and to safeguard job rights: *Provided further,* That the Agency shall not acquire the facilities, property or rights-of-way of private motorbus companies and persons; or operate buses or similar motor vehicles or make agreements for the provision of motorbus services competitive with private transit companies; but may make agreements for the provision of service which is not competitive with services of private transit companies and persons;

(3) shall encourage private transit companies to provide needed services in a manner consistent with the Transit Development Program;

(4) may lease space or property owned or acquired by the Agency, or may contract with persons for the purpose of constructing and operating facilities, which, in the opinion of the Agency, will encourage or facilitate the use of transit facilites of the Agency. Rentals or other fiscal arrangements in connection with such leases or contracts shall be adjusted so that undue competitive advantage is not given over other persons in the National Capital region: *Provided,* That in the operation of such facilities, the lessee or franchise holder shall comply with all applicable Federal, State, and local building and zoning laws, ordinances, and regulations;

(5) may enter into and perform contracts, leases, and agreements, and other transactions with any government agency, private transit company, railroad, or other persons;

(6) may sell or lease advertising space or may contract with responsible persons for the sale or lease of such space: *Provided,* That the lessee or contractee shall comply with all applicable Federal, State, and local zoning and advertising laws, ordinances, and regulations;

(7) shall cooperate with government agencies to facilitate coordination of location, design, and construction of freeways, parkways, and other arterial highway facilities with the Transit Development Program. The purpose of such coordination is to assure the comprehensive development of transportation facilities best suited to meet the objectives of this subchapter and to achieve maximum benefits from moneys available for such purposes. The responsibility and authority for location, design, construction, and operation of freeways, parkways, and other arterial highway facilities shall remain with the government agencies having jurisdiction thereof, but all Federal agencies' plans for location and design of highway facilities shall be forwarded to the Agency, and all State and local agencies' plans for location and design of highway facilities may be requested by the Agency for its review and comment. The Agency shall cooperate with all planning agencies of the National Capital region and the appropriate government transportation regulatory agencies including the Washington Metropolitan Area Transit Commission in the development of transportation facilities and, wherever feasible and desirable, develop joint plans with such agencies;

(8) may initiate proposals for regulating and coordinating the flow of traffic in the National Capital region so as to promote the optimum use of the highway network and other transportation facilities;

(9) may make or participate in studies of all phases of transportation into, within, and out of the National Capital region, including transit vehicle research and development and fiscal research studies. The Agency may publicize and make available the results of such studies and other information relating to transportation;

(10) may appoint and fix the compensation of officers, attorneys, agents, and employees; may define their powers and duties; may require bonds for the faithful performance of their duties; may employ experts and consultants or organizations thereof to the same extent as is authorized for the departments by section 3109 of title 5, U.S. Code, but at rates not to exceed the usual rates for similar services;

(11) Repealed October 4, 1961, 75 Stat. 787, Pub. L. 87–367, § 103(4).

(12) may make such expenditures at the seat of government and elsewhere as may be necessary for the exercise and performance of the powers and duties vested in the Agency and as from time to time may be appropriated for by the Congress, including expenditures for (1) rent and personal services at the seat of government and elsewhere; (2) travel expenses; (3) office furniture, equipment and supplies, lawbooks, newspapers, periodicals, and books of reference (including the exchange thereof); and (4) printing and binding; and

(13) may, by agreement with the Board of Commissioners of the District of Columbia, designate such Board as the instrumentality through and by which facilities of the Agency in the District of Columbia are to be designed and constructed.

(b) The Agency, its property, income, and transactions are expressly exempted from taxation in any manner or form or from the imposition of any licenses or fees of any kind whatsoever by any State or political subdivision thereof and by the District of Columbia but such exemption shall not extend to contractors for, or lessees of, the Agency, or to any person, company or association which engages in any business activity pursuant to any franchise, grant or agreement of the Agency.

(c) Every agency or instrumentality of the Government of the United States and of the government of the District of Columbia may enter into agreements with the Agency in respect of any matter for which such agreements are authorized pursuant to this subchapter.

(d) The provisions of section 355 of the Revised Statutes, as amended (40 U.S.C. § 255), shall be applicable to property acquired by the Agency. Proceedings in behalf of the Agency for the condemnation of property in the District of Columbia shall be instituted and maintained under sections 16–619 to 16–644, as amended; and of property elsewhere, under the Act of August 1, 1888, as amended (40 U.S.C. § 257), the Act of February 26, 1931 (46 Stat. 1421 and the following, 40 U.S.C. § 258), or any other

applicable Act. This subsection shall apply to both real and personal property: *Provided,* That no action in condemnation of any property shall be commenced in behalf of the Agency until a reasonable effort has been made to negotiate with the owner of the property.

(e) Subject to the provisions of section 1–1406(c) such sums as shall be required to carry out the purposes of this part are authorized to be appropriated. (July 14, 1960, 74 Stat. 541, Pub. L. 86–669, title II, § 205.)

REFERENCES IN TEXT

Sections 16–619 to 16–644, referred to in this section, were repealed by Act Dec. 23, 1963, 77 Stat. 620, Pub. L. 88–241, § 21(a), and are now covered by sections 16–1301 and 16–1351—16–1368.

SAVINGS PROVISIONS

Section 104 of act Oct. 4, 1961, Pub. L. 87–367, provided:

"(a) The changes in existing law made by section * * * 103 of this title [repealing subsection (a)(11)] shall not affect any position existing immediately prior to the effective date of such changes in existing law, the compensation attached to such position, and any incumbent thereof, his appointment thereto, and his entitlement to receive the compensation attached thereto, until appropriate action is taken in accordance with this title.

"(b) Positions in grades 16, 17, or 18, as the case may be, of the General Schedule of the Classification Act of 1949, as amended, immediately prior to the effective date of this section [Oct. 4, 1961], shall remain, on and after such effective date, in their respective grades, until appropriate action is taken under section 505 of the Classification Act of 1949 as in effect on and after such effective date."

CODIFICATION

In subsec. (a)(10), the reference "section 3109 of title 5, U.S. Code" was substituted for "section 55a of title 5, U.S. Code" on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. Such § 55a of title 5, U.S.C. (act Aug. 2, 1946, 60 Stat. 810, ch. 744, § 15), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by 5 U.S.C. § 3109.

The above-quoted § 104 of the act of Oct. 4, 1961, was repealed as executed by § 8(a) of act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, of which § 1 enacted revised Title 5, U.S.C., into law. Rights then existing under all laws repealed by said act of Sept. 6, 1966, were preserved, however, by other provisions of said § 8 thereof, 5 U.S.C. § — note. The Classification Act of 1949, as amended, referred to in the above-quoted § 104 of the 1961 act, was also repealed by said § 8(a) of act Sept. 6, 1966, and is now covered by 5 U.S.C. § 305, chapter 51, subchapter III of chapter 53, and §§ 5341, 5342, 5504, 5509, and 7154; and § 505 of the Classification Act of 1949, specifically referred to in the above-quoted § 104 of the 1961 act, and repealed as stated above, is now covered by 5 U.S.C. § 5108.

PART III.—AUTHORIZATION FOR NEGOTIATION OF INTERSTATE COMPACT

§ 1–1408. Interstate compact between Virginia, Maryland, and District of Columbia authorized.

(a) It is the intent of Congress to promote and encourage the solution of problems of a regional character in the National Capital region by means of an interstate compact entered into by the State of Maryland, the Commonwealth of Virginia and the Board of Commissioners of the District of Columbia, with the consent of Congress. To further this policy, the consent of Congress is hereby given to the State of Maryland and the Commonwealth of Virginia and the Board of Commissioners of the District of Columbia to negotiate a compact for the establishment of an organization to serve as a means of consultation and cooperation among the Federal, State, and local governments in the National Capital region, to formulate plans and policies for the development of the region, and to perform governmental functions of a regional character, including but not limited to the provision of regional transportation facilities. No such compact shall be binding upon the parties thereto unless and until it has been approved by the Congress.

(b) As promptly as practicable after the State of Maryland and the Commonwealth of Virginia have approved a compact for the establishment of an organization empowered to provide regional transportation facilities, the President shall submit to the Congress such recommendations as may be necessary or desirable to transfer to such organization such real and personal property, personnel, records, other assets, and liabilities as are appropriate in order that such organization may assume the functions and duties of the Agency.

(c) The President shall appoint a person to participate in the compact negotiations and to represent the United States generally. The Federal representative shall report to the President either directly or through such agency or official of the Government as the President may specify.

(d) The Federal representative, if not otherwise employed by the United States, shall receive for his services, when actually engaged in the performance of his duties, compensation at a rate not in excess of the per diem equivalent of the maximum rate for grade 18 of the General Schedule established by sections 5104 and 5332 of title 5, U.S. Code, together with travel expenses as authorized by section 5703 of title 5, U.S. Code, for persons employed intermittently as consultants or experts and receiving compensation on a per diem when actually employed basis: *Provided,* That if the Federal representative shall be an employee of the United States he shall serve without additional compensation.

(e) The Federal representative shall be provided with office space, consulting, engineering, and stenographic service, and other necessary administrative services.

(f) The compensation of the Federal representative shall be paid from the current appropriation for salaries in the White House Office. Travel and other expenses provided for in subsections (d) and (e) of this section shall be paid from any current appropriation or appropriations selected by the head of such agency or agencies as may be designated by the President to provide for such expenses.

(g) The State and Federal representatives appointed to participate in the compact negotiations are authorized to request from the Agency any information they deem necessary to carry out their functions under this section; and the Agency is authorized to cooperate with the compact representatives and, to the extent permitted by law, to furnish such information upon request made by the compact representatives. (July 14, 1960, 74 Stat. 554, Pub. L. 86–669, title III, § 301.)

CODIFICATION

In subsec. (d), the reference "established by sections 5104 and 5332 of title 5, U.S. Code" was substituted for "of the Classification Act of 1949, as amended" on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in

note under § 1–251. The Classification Act of 1949, as amended, was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by various provisions of title 5, U.S.C. The "General Schedule", also referred to in subsec. (d) of this section, is continued by 5 U.S.C. § 5104, and the General Schedule pay rates are set forth in 5 U.S.C. § 5332.

Further, in subsec. (d), the reference "section 5703 of title 5, U.S. Code" was substituted for "section 73b–2 of title 5, U.S. Code" on authority of § 7(b) of act Sept. 6, 1966, referred to in the preceding paragraph of this note. Section 73b–2 of title 5, U.S. Code (act Aug. 2, 1946, 60 Stat. 808, ch. 744, § 5, as amended) was also repealed by § 8(a) of act Sept. 6, 1966, referred to in the preceding paragraph of this note, and is now covered by 5 U.S.C. § 5703.

CROSS REFERENCE

Transfer of functions and duties of National Capital Transportation Agency to Washington Metropolitan Agency to Washington Metropolitan Area Transit Authority, as required by subsec. (b) of this section, to take place on Sept. 30, 1967, see § 1–1433(a).

§ 1–1409. Separability of provisions.

If any part of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the applicability of such part to other persons and circumstances and the constitutionality or validity of every other part of the chapter shall not be affected thereby. (July 14, 1960, 74 Stat. 545, Pub. L. 86–669, title III, § 302.)

SUBCHAPTER II.—COMPACT FOR MASS TRANSPORTATION

§ 1–1410. Consent of Congress given for Virginia, Maryland and District of Columbia to enter into compact for regulation of mass transportation in Washington metropolitan area.

The consent and approval of Congress is hereby given to the States of Virginia and Maryland and to the District of Columbia to enter into a compact, substantially as follows,[1] for the regulation and improvement of mass transit in the Washington metropolitan area, which compact, known as the Washington metropolitan area transit regulation compact, has been negotiated by representatives of the States and the District of Columbia and has been adopted by the State of Virginia (ch. 627, 1958 Acts of Assembly), and in substance by the State of Maryland. (Sept. 15, 1960, 74 Stat. 1031, Pub. L. 86–794, § 1.)

PREAMBLE TO ACT SEPT. 15, 1960

"Whereas the regulation of mass transit service in the metropolitan area of Washington, District of Columbia, is divided among the public utility regulatory agencies of the States of Virginia, Maryland, and the District of Columbia and the Interstate Commerce Commission; and

"Whereas such divided regulatory responsibility is not conducive to the development of an adequate system of mass transit for the entire metropolitan area, which is in fact a single integrated, urban community; and

"Whereas the Legislatures of Virginia and Maryland and the Board of Commissioners of the District of Columbia in 1954 created a Joint Commission to study, among other things, whether joint action by Maryland, Virginia, and the District of Columbia is necessary or desirable in connection with the regulation of passenger carrier facilities operating in such areas and the provision of adequate, nondiscriminatory and uniform service therein; and

"Whereas said Joint Commission has actively participated in the mass transit study authorized by the Congress (Public Law 24 and Public Law 573, Eighty-fourth Congress), and in furtherance thereof said Joint Commission has negotiated the Washington metropolitan area transit regulation compact, set forth in full below, providing for the establishment of a single organization as the common agency of the signatories to regulate transit and alleviate traffic congestion, which compact has been enacted by Virginia (ch. 627, 1958 Act of Assembly) and in substantially the same language by Maryland (ch. 613, Acts of General Assembly 1959); and

"Whereas said compact adequately protects the national interest in mass transit service in the metropolitan area of the Nation's Capital and properly accommodates the National and State interests in and obligations toward mass transit in the metropolitan area: Now, therefore, be it"

PROPOSED COMPACT BETWEEN THE STATES OF MARYLAND AND VIRGINIA AND THE DISTRICT OF COLUMBIA

Act Sept. 15, 1960, provided that:

"The States of Maryland and Virginia and the District of Columbia, hereinafter referred to as signatories, do hereby covenant and agree as follows:

"TITLE I

"GENERAL COMPACT PROVISIONS

"ARTICLE I

"There is hereby created the Washington Metropolitan Area Transit District, hereinafter referred to as Metropolitan District, which shall embrace the District of Columbia, the cities of Alexandria and Falls Church, the counties of Arlington and Fairfax, and political subdivisions of the State of Virginia located within those counties, and the counties of Montgomery and Prince Georges, in the State of Maryland and political subdivisions of the State of Maryland located within said counties. [See amendments to this article set out as a note to section 1–1410a.]

"ARTICLE II

"The signatories hereby create the 'Washington Metropolitan Area Transit Commission', hereinafter called the Commission, which shall be an instrumentality of the District of Columbia, the Commonwealth of Virginia and the State of Maryland, and shall have the powers and duties set forth in this compact and such additional powers and duties as may be conferred upon it by subsequent action of the signatories. The Commission shall have jurisdiction coextensive with the Metropolitan District for the regulation and improvement of transit and the alleviation of traffic congestion within the Metropolitan District on a coordinated basis, without regard to political boundaries within the Metropolitan District, as set forth herein.

"ARTICLE III

"1. The Commission shall be composed of three members, one member each to be appointed by the Governors of Virginia and Maryland and by the Board of Commissioners of the District of Columbia, from that agency of each signatory having jurisdiction over the regulation of mass transit within each such jurisdiction. The member so appointed shall serve for a term coincident with the term of that member on such agency of the signatory and any Commissioner may be removed or suspended from office as provided by the law of the signatory from which he shall be appointed. Vacanies shall be filled for an unexpired term in the same manner as an original appointment.

"2. No person in the employment of or holding any official relation to any person or company subject to the jurisdiction of the Commission or having any interest of any nature in any such person or company or affiliate or associate thereof, shall be eligible to hold the office of Commissioner or to serve as an employee of the Commission or to have any power or duty or to receive any compensation in relation thereto.

"3. The Commission shall select a chairman from its membership annually. Such chairman is vested with the responsibility for the discharge of the Commission's work and to that end he is empowered with all usual powers to discharge his duties.

[1] The compact is set out as a note under this section.

"4. Each signatory hereto may pay the Commissioner therefrom such salary or expenses, if any, as it deems appropriate.

"5. The Commission may employ such engineering, technical, legal, clerical, and other personnel on a regular, part-time, or consulting basis as in its judgment may be necessary for the discharge of its functions. The Commission shall not be bound by any statute or regulation of any signatory in the employment or discharge of any officer or employee of the Commission, except as such may be contained in this compact.

"6. The Commission shall establish its office for the conduct of its affairs at a location to be determined by the Commission within the Metropolitan District and shall publish rules and regulations governing the conduct of its operations.

"ARTICLE IV

"1. The expenses of the Commission shall be borne by the signatories in the manner hereinafter set forth. The Commission shall submit to the Governor of Virginia, the Governor of Maryland and the Board of Commissioners of the District of Columbia, at such time or times as shall be requested, a budget of its requirements for such period as may be required by the laws of the signatories for presentation to the legislature thereof. The expenses of the Commission shall be allocated among the signatories in the proportion that the population of each signatory within the Metropolitan District bears to the total population of the Metropolitan District. The allocation shall be made by the Commission and approved by the Governors of the two states and the Board of Commissioners of the District of Columbia, and shall be based on the latest available population statistics of the Bureau of the Census; provided, however, that if current population data are not available, the Commission may, upon the request of any signatory, employ estimates of population prepared in a manner approved by the Commission and by the signatory making such request.

"2. The signatories agree to appropriate for the expenses of the Commission their proper proportion of the budget determined in the manner set forth herein and to pay such appropriation to the Commission. There shall not be included in the budget of the Commission or in the appropriations therefor any sums for the payment of salaries or expenses of the Commissioners or members of the Traffic and Highway Board created by Article V of this Title I and payments to such persons, if any, shall be within the discretion of each signatory. The provisions of section 2–27 of the Code of Virginia shall not apply to any official or employee of the Commonwealth of Virginia acting or performing services under this Act.

"3. The expenses allocable to a signatory shall be reduced in an amount to be determined by the Commission if a signatory, upon request of the Commission, makes available personnel, services or material to the Commission which the Commission would otherwise have to employ or purchase. If such services in kind are rendered, the Commission shall return to such signatory an amount equivalent to the savings to the Commission represented by the contribution in kind.

"4. The Commission shall keep accurate books of account, showing in full its receipts and disbursements, and said books of account shall be open at any reasonable time for inspection by such representatives of the respective signatories as may be duly constituted for that purpose.

"ARTICLE V

"1. There is hereby created in addition to the Commission a Traffic and Highway Board, hereinafter referred to as Board. This Board shall be composed of the Chairman of the Commission created by article II, who shall be chairman of this Board, and the heads of the traffic and highway departments of each of the signatories and of the counties and cities encompassed within the Metropolitan District, a representative of the National Capital Planning Commission, a representative of the National Capital Regional Planning Council, and a representative of each local and regional planning commission within the District. The representatives of the various planning commissions shall be designated by each such commission. The official in charge of the traffic and highway department of each of the signatories may appoint a member of his staff to serve in his stead with full voting powers.

"2. The Board shall make recommendations to the Commission with respect to traffic engineering, including the selection and use of streets for transit routing, the requirements for transit service throughout the Metropolitan District, and related matters. The Board shall also consider problems referred to it by the Commission and shall continuously study means and methods of shortening transit travel time, formulate plans with respect thereto, and keep the Compact Commission fully advised of its plans and conclusions.

"3. The Board shall serve the Commission solely in an advisory capacity. The Commission shall not direct or compel the Board or its members to take any particular action with respect to effectuating changes in traffic engineering and related matters, but the members of the Board in their capacity as officials of local government agencies shall use their best efforts to effectuate the recommendations and objectives of the Commission.

"4. The members of the Board shall serve with or without additional compensation as determined by their respective signatories.

"ARTICLE VI

"No action by the Commission shall be of effect unless a majority of the members concur therein; provided, that any order entered by the Commission pursuant to the provisions of title II hereof, relating to or which affect operations or matters solely intrastate or solely within the District of Columbia, shall not be effective unless the Commissioner from the signatory affected concurs therein. Two members of the Commission shall constitute a quorum.

"ARTICLE VII

"Nothing herein shall be construed to amend, alter, or in any wise affect the power of the signatories and the political subdivisions thereof to levy and collect taxes on the property or income of any person or company subject to this Act or upon any material, equipment or supplies purchased by such person or companies or to levy, assess and collect franchise or other similar taxes, or fees for the licensing of vehicles and the operation thereof.

"ARTICLE VIII

"This compact shall be adopted by the signatories in the manner provided by law therefor. This compact shall become effective ninety (90) days after its adoption by the signatories and consent thereto by the Congress of the United States, including the enactment by the Congress of such legislation, if any, as it may deem necessary to grant this Commission jurisdiction over transportation in the District of Columbia and between the signatories and over the persons engaged therein, to suspend the applicability of the Interstate Commerce Act, the laws of the District of Columbia, and any other laws of the United States, to the persons, companies and activities which are subject to this Act, to the extent that such laws are inconsistent with, or in duplication of, the jurisdiction of the Commission or any provision of this Act, or any rule, regulation or order lawfully prescribed or issued under this Act, and to make effective the enforcement and review provisions of this Act.

"ARTICLE IX

"1. This compact may be amended from time to time without the prior consent or approval of the Congress and any such amendment shall be effective unless, within one year thereof, the Congress disapproves such an amendment. No amendment shall be effective unless adopted by each of the signatories hereto.

"2. Any signatory may withdraw from the compact upon one year's written notice to that effect to the other signatories. In the event of a withdrawal of one of the signatories from the compact, the compact shall be terminated.

"3. Upon the termination of this compact, the jurisdiction over the matters and persons covered by this Act shall revert to the signatories and the Federal Government, as their interests may appear, and the applicable laws of the signatories and the Federal Government shall be reactivated without further legislation.

"ARTICLE X

"Each of the signatories pledges to each of the other signatory parties faithful cooperation in the solution and control of transit and traffic problems within the Metropolitan District and, in order to effect such purposes, agrees to enact any necessary legislation to achieve the objectives of the compact to the mutual benefit of the citizens living within said Metropolitan District and for the advancement of the interests of the signatories hereto.

"ARTICLE XI

"1. If any part or provision of this compact or the application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this compact or the application thereof to other persons or cirumstances and the signatories hereby declare that they would have entered into this compact or the remainder thereof had the invalidity of such provision or application thereof been apparent.

"2. In accordance with the ordinary rules for construction of interstate compacts, this compact shall be liberally construed to eliminate the evils described therein and to effectuate the purposes thereof.

"TITLE II

"COMPACT REGULATORY PROVISIONS

"ARTICLE XII

"Transportation Covered

"1. (a) This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service, except—

"(1) transportation by water;

"(2) transportation by the Federal Government, the signatories hereto, or any political subdivision thereof;

"(3) transportation by motor vehicles employed solely in transporting school children and teachers to or from public or private schools;

"(4) transportation performed in the course of an operation over a regular route, the major portion of which is outside the Metropolitan District except where a major portion of the passenger traffic begins and ends within the Metropolitan District;

"(5) transportation performed by a common carrier by railroad subject to part I of the Interstate Commerce Act, as amended.

"(b) No transportation or person, otherwise subject to this Act, shall be exempt by reason of the fact that any part (not a major part as conditionally exempted by paragraph (a)(4) of this section) of the route between points in the Metropolitan District lies outside of the Metropolitan District; provided, however, that the provisions of this title II shall not apply to transportation as specified in this section solely within the Commonwealth of Virginia and to the activities of persons engaged in such transportation, nor shall any provision of this title II be construed to infringe the exercise of any powers or the discharge of any duties conferred or imposed upon the State Corporation Commission of the Commonwealth of Virginia by the Virginia constitution.

"(c) Notwithstanding the provisions of paragraph (a) of this section, this Act shall apply to taxicabs and other vehicles having a seating capacity of eight passengers or less in addition to the driver thereof with respect only to (i) the rates or charges for transportation from one signatory to another within the confines of the Metropolitan District, and (ii) requirements for minimum insurance coverage. [See amendments to this section set out as a note to section 1–1410a.]

"Definitions

"2. As used in this Act—

"(a) The term 'carrier' means any person who engages in the transportation of passengers for hire by motor vehicle, street railroad, or other form or means of conveyance.

"(b) The term 'motor vehicle' means any automobile, bus, or other vehicle propelled or drawn by mechanical or electrical power on the public streets or highways of the Metropolitan District and used for the transportation of passengers.

"(c) The term 'street railways' means any streetcar, bus, or other similar vehicle propelled or drawn by electrical or mechanical power on rails and use for transportation of passengers.

"(d) The term 'taxicab' means any motor vehicle for hire (other than a vehicle operated, with the approval of the Commission, between fixed termini on regular schedules) designed to carry eight persons or less, not including the driver, used for the purpose of accepting or soliciting passengers for hire in transportation subject to this Act, along the public streets and highways, as the passengers may direct.

"(e) The term 'person' means any individual, firm, copartnership, corporation, company, association or joint stock association; and includes any trustee, receiver, assignee, or personal representative thereof.

"General Duties of Carriers

"3. It shall be the duty of every carrier to furnish transportation subject to this Act as authorized by its certificate and to establish reasonable through routes with other carriers; to provide safe and adequate service, equipment, and facilities in connection with such transportation; to establish, observe, and enforce just and reasonable individual and joint fares, and just and reasonable regulations and practices relating thereto; and, in case of joint fares, to establish just[1] reasonable, and equitable devisions[2] thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such carriers.

"Certificates of Public Convenience and Necessity; Routes and Services

"4. (a) No person shall engage in transportation subject to this Act unless there is in force a certificate of public convenience and necessity issued by the Commission authorizing such person to engage in such transportation; provided, however, that if any person was bona fide engaged in transportation subject to this Act on the effective date of this Act, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within 90 days after the effective date of this Act. Pending the determination of any such application, the continuance of such operation shall be lawful.

"(b) When an application is made under this section for a certificate except with respect to a service being rendered upon the effective date of this Act, the Commission shall issue a certificate to any qualified applicant therefor, authorizing the whole or any part of the transportation covered by the application, if it finds, after hearing held upon reasonable notice, that the applicant is fit, willing and able to perform such transportation properly and to conform to the provisions of this Act and the rules, regulations, and requirements of the Commission thereunder, and that such transportation is or will be required by the public convenience and necessity; otherwise such application shall be denied. The Commission shall act upon applications under this subsection as speedily as possible. The Commission shall have the power to attach to the issuance of a certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require; provided, however, That no terms, conditions, or limitations shall restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini, or within the territory specified in the certificate, as the development of the business and the demands of the public shall require.

"(c) Application for a certificate under this section shall be made in writing to the Commission and shall be so verified, shall be in such form, and shall contain such

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[1] So in original. Probably should have a comma.

[2] So in original. Probably should read "divisions".

information, as the Commission by regulations shall require. The Commission shall prescribe such reasonable requirements as to notices, publication, proof of service, and information as in its judgment may be necessary.

"(d)(1) Any certificate issued by the Commission shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, the carrier is authorized to operate.

"(2) A certificate for the transportation of passengers may include authority to transport in the same vehicle with the passengers, newspapers, baggage of passengers, express, or mail, or to transport baggage of passengers in a separate vehicle.

"(3) To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need, the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority for such service. Such temporary authority unless suspended or revoked for good cause, shall be valid for such time as the Commission shall specify, but for not more than an aggregate of 180 days and create no presumption that corresponding permanent authority will be granted thereafter.

"(e) The Commission may, if it finds that the public convenience and necessity so require, require any person subject to this Act to extend any existing service or provide any additional service over additional routes within the Metropolitan District; provided, however, that no certificate shall be issued to operate over the routes of any holder of a certificate until it shall be proved to the satisfaction of the Commission, after hearing, upon reasonable notice, that the service rendered by such certificate holder, over such route, is inadequate to the requirements of the public necessity and convenience; and provided, further, if the Commission shall be of opinion that the service rendered by such certificate holder over such route is in any respect inadequate to the requirements of the public necessity and convenience, such certificate holder shall be given reasonable time and opportunity to remedy such inadequacy before any certificate shall be granted to operate over such route; and further provided that no person subject to this Act may be required to extend any existing service or provide any additional service over additional routes within the Metropolitan District unless the carrier is currently earning a reasonable return on its operation as a whole in performing transportation subject to this Act.

"(f) The Commission may refer to the Traffic and Highway Board created under Title I hereof any service proposed under an application for a certificate. The Board shall as speedily as possible give the Commission its recommendations with respect to the proposed service, but such recommendations shall be advisory only.

"(g) Certificates shall be effective from date specified therein and shall remain in effect until suspended or terminated as herein provided. Any such certificate, may, upon application of the holder thereof, in the discretion of the Commission, be amended or revoked, in whole or in part, or may, upon complaint, or on the Commission's own initiative, after notice and hearing, be suspended, changed, or revoked, in whole or in part, for wilful failure to comply with any lawful order, rule, or regulation of the Commission, or with any term, condition, or limitation of such certificate; provided however, that no certificate shall be revoked (except upon application of the holder) unless the holder thereof wilfully fails to comply, within a reasonable time, not less than 30 days, to be fixed by the Commission, with a lawful order of the Commission commanding obedience to the rules or regulations or orders of the Commission, or to the terms, conditions, or limitations of such certificate found by the Commission to have been violated by such holder. No certificate shall be issued to an applicant proposing to operate over the routes of any holder of a certificate unless and until it shall be proved to the satisfaction of the Commission, after hearing upon reasonable notice, that the service rendered by such certificate holder, over such route, is inadequate to the requirements of the public convenience and necessity; and provided, further, if the Commission shall be of the opinion that the service rendered by such certificate holder over such route is in any respect inadequate to the requirements of the public convenience and necessity, such certificate holder shall be given reasonable time and opportunity to remedy such inadequacy before any certificate shall be granted to an applicant proposing to operate over such route.

"(h) No certificate under this section may be transferred unless such transfer is approved by the Commission as being consistent with the public interest.

"(i) No carrier shall abandon any route specified in a certificate issued to such carrier under this section, unless such carrier is authorized to do so by an order issued by the Commission. The Commission shall issue such order, if upon application by such carrier, and after notice and opportunity for hearing, it finds that the abandonment of such route is consistent with the public interest. The Commission, by regulations or otherwise, may authorize such temporary suspensions of routes as may be consistent with the public interest. The fact that a carrier is operating a route or furnishing a service at a loss shall not, of itself, determine the question of whether abandonment of the route or service over the route is consistent with the public interest as long as the carrier earns a reasonable return.

"Schedule of Fares, Regulations, and Practices

"5. (a) Each carrier shall file with the Commission, and print, and keep open to public inspection, tariffs showing (1) all fares it charges for transportation subject to this Act, including any joint fares established for through routes over which it performs transportation subject to this Act in conjunction with another carrier, and (2) to the extent required by regulations of the Commission, the regulations and practices of such carrier affecting such fares. Such tariffs shall be filed, posted, and published in such form and manner, and shall contain such information, as the Commission by regulations shall prescribe. The Commission may reject any tariff so filed which is not consistent with this section and such regulations. Any tariff so rejected shall be void.

"(b) Each carrier which, immediately prior to the effective date of this section, was engaged in transportation specified in section 1(a) of this Title II, shall file a tariff in compliance with paragraph (a) of this Section 5 within ninety (90) days after such date. The fares shown in such tariff shall be the fares which such carrier was authorized to charge, immediately prior to such date, under the law under which it was then regulated, and the regulations and practices affecting such fares which shall be shown in such tariff shall be such of the regulations and practices, then in effect under such law, as the Commission shall by regulations require. Such tariff shall become effective upon filing. Pending the filing of such tariff, the fares which such carrier was authorized to charge immediately prior to the effective date of this Act under the law under which it was then regulated, and the regulations and practices relating to such fares, shall be the lawful fares and practices and regulations.

"(c) Every carrier shall keep currently on file with the Commission, if the Commission so requires, the established divisions of all joint fares for transportation subject to this Act in which such carrier participates.

"(d) No carrier shall charge, for any transportation subject to this Act, any fare other than the applicable fare specified in a tariff filed by it under this section and in effect at the time. During the period before a tariff filed by it under this section has become effective, no carrier referred to in subsection (b) shall charge, for any transportation subject to this Act, any fare other than the fare which it was authorized to charge for such transportation immediately prior to the effective date of this section, under the law, under which it was then regulated.

"(e) Any carrier which desires to change any fare specified in a tariff filed by it under this section, or any regulation or practice specified in any such tariff affecting such a fare, shall file a tariff in compliance with this section, showing the change proposed to be made and shall give notice to the public of the proposed change by posting and filing such tariff in such manner as the Commission may by rule, regulation or order provide. Each tariff filed under this subsection shall state a date on which the new tariff shall take effect, and such date

shall be at least thirty (30) days after the date on which the tariff is filed, unless the Commission by order authorizes its taking effect on an earlier date.

"Power to Prescribe Fares, Regulations, and Practices

"6. (a)(1) The Commission, upon complaint or upon its own initiative, may suspend any fare, regulation, or practice shown in a tariff filed with it under Section 5 (except a tariff to which Section 5(b) applies), at any time before such fare, regulation, or practice would otherwise take effect. Such suspension shall be accomplished by filing with the tariff, and delivered to the carrier or carriers affected thereby, a notification in writing of such suspension. In determining whether any proposed change shall be suspended, the Commission shall give consideration to, among other things, the financial condition of the carrier, its revenue requirements, and whether the carrier is being operated economically and efficiently. The period of suspension shall terminate ninety (90) days after the date on which the fare, regulation, or practice involved would otherwise go into effect, unless the Commission extends such period as provided in paragraph (2).

"(2) If, after hearing held upon reasonable notice, the Commission finds that any fare, regulation or practice relating thereto, so suspended is unjust, unreasonable, or unduly preferential or unduly discriminatory either between riders or sections of the Metropolitan District, it shall issue an order prescribing the lawful fare, regulation, or practice to be in effect. The fare, regulation, or practice so prescribed shall take effect on the date specified in such order. If such an order has not been issued within the ninety (90) day suspension period provided for in paragraph (1), the Commission may from time to time extend such period, but in any event the suspension period shall terminate, no later than one hundred and twenty (120) days after the date the fare, regulation or practice involved was suspended. If no such order is issued within the suspension period (including any extension thereof), the fare, regulation or practice involved shall take effect at the termination of such period.

"(3) In the exercise of its power to prescribe just and reasonable fares and regulations and practices relating thereto, the Commission shall give due consideration, among other factors, to the inherent advantages of transportation by such carriers; to the effect of rates upon the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient transportation service by such carriers at the lowest cost consistent with the furnishing of such service; and to the need of revenue sufficient to enable such carriers, under honest, economical, and efficient management, to provide such service.

"(4) It is hereby declared as a matter of legislative policy that in order to assure the Metropolitan District of an adequate transportation system operating as private enterprises the carriers therein, in accordance with standards and rules prescribed by the Commission, should be afforded the opportunity of earning such return as to make the carriers attractive investments to private investors. As an incident thereto, the opportunity to earn a return of at least 6½ per centum net after all taxes properly chargeable to transportation operations, including but not limited to income taxes, on gross operating revenues, shall not be considered unreasonable.

"(b) Whenever, upon complaint, or upon its own initiative, and after hearing held upon reasonable notice, the Commission finds that any individual or joint fare in effect for transportation subject to this Act, or any regulation or practice affecting such fare, is unjust, unreasonable or unduly preferential or unduly discriminatory, the Commission shall issue an order prescribing the lawful fare, regulation, or practice thereafter to be in effect.

"Through Routes, Joint Fares

"7. (a) In order to encourage and provide adequate transit service on a Metropolitan District-wide basis, any carrier may establish through routes and joint fares with any other carrier subject to this Act or the jurisdiction of the Interstate Commerce Commission, the State Corporation Commission of the Commonwealth of Virginia, or the Public Service Commission of the State of Maryland.

"(b) Whenever required by the public convenience and necessity, the Commission, upon complaint or upon its own initiative, and after hearing held upon reasonable notice, may establish through routes and joint fares for transportation subject to this Act, and the regulations or practices affecting such fares, and the terms and conditions under which such through routes shall be operated.

"(c) Whenever, upon complaint or upon its own initiative, and after hearing upon reasonable notice, the Commission is of the opinion that the divisions of any joint fare for transportation subject to this Act are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the participating carriers, the Commission shall prescribe the just, reasonable and equitable divisions thereof to be received by the participating carriers. The Commission may require the adjustment of divisions between such carriers from the date of filing the complaint or entry of the order of investigation, or such other date subsequent thereto as the Commission finds to be just, reasonable and equitable.

"Taxicab Fares

"8. The Commission shall have the duty and the power to prescribe reasonable rates for transportation by taxicab only between a point in the jurisdiction of one signatory party and a point in the jurisdiction of another signatory party provided both points are within the Metropolitan District. The fare or charge for such transportation may be calculated on a mileage basis, a zone basis, or on any other basis approved by the Commission; provided, however, that the Commission shall not require the installation of a taximeter in any taxicab when such a device is not permitted or required by the jurisdiction licensing and otherwise regulating the operation and service of such taxicab.

"Security for the Protection of the Public

"9. (a) No certificate of public convenience and necessity shall be issued under Section 4, and no certificate issued under such section shall remain in force, unless the person applying for or holding such certificate complies with such reasonable regulations as the Commission shall prescribe governing the filing and approval of surety bonds, policies of insurance, qualifications as a self-insurer or other securities or agreements, in such reasonable amount as the Commission may require, conditioned to pay, within the amount of such surety bonds, policies of insurance, qualifications as a self-insurer or other securities or agreements, any final judgment recovered against such motor carrier for bodily injuries to or the death of any person, or for loss or damage to property of others, resulting from the operation, maintenance, or use of motor vehicles, street cars, or other equipment or facilities utilized in furnishing transportation subject to this Act.

"(b) No taxicab shall be permitted to transport passengers between a point in the jurisdiction of a signatory to a point in the jurisdiction of another signatory within the Metropolitan District unless the taxicab and the person or persons licensed by any signatory to own and/or operate such taxicab shall comply with such reasonable regulations as the Commission shall prescribe governing the filing and approval of surety bonds, policies of insurance, qualifications as a self-insurer, or other securities or agreements, in such reasonable amounts as the Commission may require, conditioned to pay within the amount of such surety bonds, policies of insurance, qualifications as a self-insurer or other securities or agreements, any final judgment recovered against such taxicab for bodily injuries to or the death of any person, or for loss or damage to property of others, resulting from the operation, maintenance or use of taxicabs utilized in furnishing transportation subject to this Act.

"Accounts, Records and Reports; Depreciation

"10. (a) The Commission may require annual or other periodic reports, and special reports, from any carrier; prescribe the manner and form in which such reports shall be made; and require from any such carrier specific answers to all questions upon which the Commission deems information to be necessary. Such reports shall be under oath whenever the Commission so requires.

"(b) Each carrier subject to the Commission shall keep such accounts, records, and memoranda with respect to activities in which it is engaged (whether or not such

activities constitute transportation subject to this Act), including accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of money, as the Commission by regulation prescribes. The Commission shall by regulation prescribe the form of such accounts, records, and memoranda, and the length of time that such accounts, records, and memoranda shall be preserved.

"(c) The Commission shall prescribe regulations requiring carriers to maintain appropriate accounting reserves against depreciation. The Commission may prescribe the classes of property for which depreciation charges may properly be included under operating expenses and the rate of depreciation which shall be charged with respect to each of such classes of property, and may classify the carriers as it may deem proper for this purpose. The Commission may, when it deems necessary, modify the classes and rates so prescribed. Carriers shall not charge to operating expenses any depreciation charges on classes of property other than those prescribed by the Commission, or charge with respect to any class of property a rate of depreciation other than that prescribed therefor by the Commission, and no carrier shall include under operating expenses any depreciation charge other than as prescribed by the Commission.

"(d) At all times the Commission and each of its members shall have access to all lands, buildings, and equipment of all carriers, and to all accounts, records, and memoranda kept by such carriers. When authorized by the Commission to do so, any employee of the Commission may inspect any such land, buildings, equipment, accounts, records, and memoranda. This section shall apply, to the extent found by the Commission to be reasonably necessary for the administration of this Act, to any person controlling, controlled by or under common control with, any carrier.

"(e) Any carrier which operates both inside and outside of the metropolitan area and which has its principal office outside of the metropolitan area, may keep all of its accounts, records, and memoranda at such principal office but shall produce such accounts, records, and memoranda before the Commission whenever the Commission shall so direct.

"(f) Nothing in this section shall relieve any carrier from the obligations imposed upon it with respect to the matters covered in this section by any State or Federal regulatory commission in connection with transportation service rendered outside the Metropolitan District.

"Issuance of Securities

"11. (a) As used in this section the term 'securities' means stocks; stock certificates; or bonds, mortgages, other evidences of indebtedness payable in more than one year from the date of issuance, except obligations covered by conditional sales contracts, or any guaranty of or assumption of liability on any of the foregoing.

"(b) Subject to subsection (g) of this section, no carrier subject to this Act shall issue any securities, or directly or indirectly receive any money, property, or services in payment of securities issued or to be issued by it, until the Commission, by order, shall have approved the issuance of such securities.

"(c) Upon application made to it by any such carrier for approval of the issuance of securities, the Commission, after affording reasonable opportunity for hearing to interested parties, shall by order approve or disapprove the issuance of such securities. The Commission shall give its approval if it finds that the proposed issuance of securities is not contrary to the public interest.

"(d) Any such order of the Commission approving the issuance of securities shall specify the purposes for which the proceeds from the sale or other disposition thereof are to be used and the terms and conditions under which such securities shall be issued and disposed of. It shall be unlawful for the applicant to apply such proceeds, or to issue or dispose of such securities, in any manner other than as specified by the Commission in its order.

"(e) Any securities issued in violation of this section shall be void.

"(f) Nothing in this Act shall impair any authority of the Interstate Commerce Commission, the Public Service Commission of Maryland, or the State Corporation Commission of Virginia to regulate the issuance of securities by any carrier which does not operate exclusively in the Metropolitan District, or relieve any carrier from the obligations imposed by the Securities Act of 1933, as amended (Act of May 27, 1933, C. 38 Title I, 48 Stat. 74, as amended), or from the obligations imposed by any Blue Sky or similar laws of the signatories.

"(g) The Commission may by regulation, order or otherwise, to the extent deemed by it to be consistent with the public interest, exempt from the operation of this section any carrier which does not operate exclusively in such area and which, before issuing securities, must obtain the approval of the Interstate Commerce Commission, the Public Service Commission of Maryland, or the State Corporation Commission of Virginia.

"Consolidations, Mergers, and Acquisition of Control

"12. (a) It shall be unlawful, without approval of the Commission in accordance with this section—

"(1) for two or more carriers, any one of which operates in the Metropolitan District, to consolidate or merge their properties or franchises, or any part thereof, into one person for the ownership, management, or operation of properties theretofore under separate ownership, management, or operation; or

"(2) for any carrier which operates in the Metropolitan District or any person controlling, controlled by, or under common control with, such a carrier (i) to purchase, lease, or contract to operate the properties, or any substantial part thereof, of any carrier which operates in such Metropolitan District, or (ii) to acquire control, through ownership of its stock or otherwise, of any carrier which operates in such Metropolitan District.

"(b) Any person seeking approval of any transaction to which subsection (a) applies shall make application to the Commission in accordance with such regulations as the Commission shall prescribe. If, after hearing held upon reasonable notice, the Commission finds that, subject to such terms, conditions, and modifications as it shall find to be necessary, the proposed transaction is consistent with the public interest, it shall enter an appropriate order approving and authorizing such transaction as so conditioned.

"(c) It shall be unlawful to continue to maintain or exercise any ownership, management, operation or control accomplished or effectuated in violation of subsection (a) of this section.

"(d) Pending the determination of an application filed with the Commission for approval of a consolidation or merger of the properties of two or more motor carriers, or of a purchase, lease, or contract to operate the properties of one or more motor carries, the Commission may, in its discretion, and without hearings or other proceedings, grant temporary approval, for a period not exceeding 180 days of the operation of the motor carrier properties sought to be acquired by the person proposing in such pending application to acquire such properties, if it shall appear that failure to grant such temporary approval may result in destruction of or injury to such motor carrier properties sought to be acquired, or to interfere substantially with their future usefulness in the performance of adequate and continuous service to the public.

"Complaints and Investigations by the Commission

"13. (a) Any person may file with the Commission a complaint in writing with respect to anything done or omitted to be done by any person in contravention of any provision of this Act, or of any requirement established pursuant thereto. If the person complained against shall not satisfy the complaint and there shall appear to be any reasonable grounds for an investigation, the Commission shall investigate the matters complained of. Whenever the Commission is of the opinion that any complaint does not state facts which warrant action on its part, it may dismiss the complaint without hearing. At least ten (10) days before the date it sets a time and place for a hearing on a complaint, the Commission shall notify the person complained of that the complaint has been made.

"(b) The Commission may investigate any facts, conditions, practices, or matters which it may find necessary

or proper in order to determine whether any person has violated or is about to violate any provision of this Act or any rule, regulation, or order thereunder, or to aid in the enforcement of the provisions of this Act or in prescribing rules or regulations thereunder, or in obtaining information to serve as a basis for recommending further legislation. The Commission shall have the same power to proceed with any investigation instituted on its own motion as though it had been appealed to by complaint.

"(c) If, after affording to interested persons reasonable opportunity for hearing, the Commission finds in any investigation instituted upon complaint or upon its own initiative, that any person has failed to comply with any provision of this Act or any requirement established pursuant thereto, the Commission shall issue an appropriate order to compel such person to comply therewith.

"(d) For the purpose of any investigation or any other proceeding under this Act, any member of the Commission, or any other officer designated by it, is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which the Commission finds relevant or material to the inquiry.

"Hearings; Rules of Procedure

"14. Hearings under this Act may be held before the Commission, any member or members thereof, or any representative of the Commission designated by it, and appropriate records thereof shall be kept. All hearings, investigations, and proceedings under this Act shall be governed by rules of practice and procedure to be adoptd by the Commission, and in the conduct thereof the technical rules of evidence need not be applied. No informality in any hearing, investigation, or proceeding or in the manner of taking testimony shall invalidate any order, decision, rule, or regulation issued under the authority of this Act.

"Administration Powers of Commission; Rules, Regulations and Orders

"15. The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this Act. Such rules and regulations may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed. Unless a different date is specified therein, rules and regulations of the Commission shall be effective thirty (30) days after publication in the manner which the Commission shall prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe. For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable business hours.

"Reconsideration of Orders

"16. Any person affected by any final order or decision of the Commission may, within thirty days after the publication thereof, file with the Commission an application in writing requesting a reconsideration of the matters involved, and stating specifically the errors claimed as grounds for such reconsideration. No person shall in any court urge or rely on any ground not so set forth in such application. The Commission, within thirty (30) days after the filing of such application, shall either grant or deny it. If such application is granted, the Commission, after giving notice thereof to all interested persons, shall, either with or without hearing, rescind, modify, or affirm its order or decision. The filing of such an application shall act as a stay upon the execution of the order or decision of the Commission until the final action of the Commission upon the application, except that upon written consent of the applicant such order or decision shall not be stayed unless otherwise ordered by the Commission. No appeal shall lie from any order of the Commission until an application for reconsideration has been made and determined.

"Judicial Review

"17. (a) Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the court of appeals of the United States for the fourth circuit, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty (60) days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside. A copy of such petition shall forthwith be served upon any member of the Commission and thereupon the Commission shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendations, if any, for the modification or setting aside of the original order. The court may affirm or set aside any such order of the Commission, and state the reasons therefor, and such judgment shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (28 U.S.C. §§ 346, 347).

"(b) The commencement of proceedings under subsection (a) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

"(c) The Commission shall not, nor shall any of its members, officers, agents, or employees, be taxed with any costs, nor shall they or any of them be required to give any supersedeas bond or security for cost or damages on any appeal whatsoever taken under this compact. Said Commission, or any of its members, officers, agents, or employees, shall not be liable to suit or action or for any judgment or decree for any damages, loss, or injury claimed by any person resulting from action taken under this compact, nor required in any case arising under this compact to make any deposit for costs or pay for any service to the clerks of any court or to the marshal of the United States.

"Enforcement of Act; Penalty for Violations

"18. (a) Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this Act, or of any rule, regulation, or order thereunder, it may, in its discretion, bring an action in the United States District Court for any district in which such person resides or carries on business or in which the violation occurred, to enjoin such acts or practices and to enforce compliance with this Act or any rule, regulation or order thereunder, and upon a proper showing a permanent or temporary injunction or decree or restraining order shall be granted without bond.

"(b) Upon application of the Commission, the United States District Court for any district in which such person resides or carries on business, or in which the violation occurred, shall have jurisdiction to issue appropriate order or orders commanding any person to comply with the provisions of this Act or any rule, regulation, or order of the Commission thereunder.

"(c) The Commission may employ such attorneys as it finds necessary for proper legal aid and service of the

Commission or its members in the conduct of their work, or for proper representation of the public interest in investigations made by it, or cases or proceedings pending before it, whether at the Commission's own instance or upon complaint, or to appear for or represent the Commission in any case in court; and the expenses of such employment shall be paid out of any funds of the Commission.

"(d) Any person knowingly and willfully violating any provision of this statute, or any rule, regulation, requirement, or order thereto, or any term or condition of any certificate shall, upon conviction thereof, be fined not more than $100 for the first offense and not more than $500 for any subsequent offense. Each day of such violation shall constitute a separate offense.

"Expenses of Investigations and Other Proceedings

"19. (a) All reasonable expenses of any investigation, or other proceeding of any nature, conducted by the Commission, of or concerning any carrier, and all expenses of any litigation, including appeals, arising from any such investigation or other proceeding, shall be borne by such carrier. Such expenses, with interest at not to exceed 6 per centum (6%) per annum may be charged to operating expenses and amortized over such period as the Commission shall deem proper and be allowed for in the rates to be charged by such carrier. When any such investigation or other proceeding has been initiated it shall be the duty of the carrier to pay to the Commission, from time to time, such reasonable sum or sums as, in the opinion of the Commission, are necessary to cover the expenses which by this section are required to be borne by such carrier. The money so paid by the carrier shall be deposited in the name and to the credit of the Commission, in any bank or other depository located in the Metropolitan District designated by the Commission, and may be disbursed by the Commission for the purpose of defraying expenses of the investigation, proceeding, or litigation in question. Any unexpended balance of the sum or sums so paid by such carrier remaining after the payment of such expenses shall be returned to such carrier.

"(b) The amount expended by the Commission in any calendar year in all investigations or other proceedings of or concerning any one carrier shall not exceed—

"(1) one-half of one per centum of the gross operating revenues of such carrier, derived from transportation subject to this Act, for its last preceding fiscal year; or

"(2) in the case of a carrier which was not engaged in such transportation during the whole of its last preceding fiscal year, one-half of 1 per centum of the average gross operating revenues, derived from transportation subject to this Act, of all other carriers (exclusive of carriers to which this subparagraph (2) applies) for their last preceding fiscal year.

"(c) For the purpose of subsections (a) and (b) of this section—

"The provisions of this section shall apply to any person engaged in transportation subject to the Act and any person who makes application under Section 4 for a certificate of public convenience and necessity.

"Applicability of Other Laws

"20. (a) Upon the date this Act becomes effective, the applicability of all laws of the signatories, relating to or affecting transportation subject to this Act and to persons engaged therein, and all rules, regulations and orders promulgated or issued thereunder, shall except to the extent in this Act specified, be suspended, except that—

"(1) The laws of the signatories relating to inspection of equipment and facilities, wages and hours of employees, insurance or similar security requirements, school fares, and free transportation for policemen and firemen shall remain in force and effect.

"(2) Upon the date this Act becomes effective, Certificates of Public Convenience and Necessity or Permits issued by the Interstate Commerce Commission to any carrier subject to the jurisdiction of this Commission shall be suspended only during the existence of this compact, provided such suspension shall not affect the authority of such certificate or permit-holder to transport special and chartered parties as now authorized by the Interstate Commerce Act and the rules and regulations promulgated thereunder by the Interstate Commerce Commission, not withstanding any other provisions of this Act.

"(b) In the event any provision or provisions of this Act exceed the limits imposed upon the legislature of any signatory by the Constitution of such signatory, the obligations, duties, powers or jurisdiction sought to be conferred by such provision or provisions upon the Commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the signatory and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective. Such agency, however, in order to achieve the objective of this compact to effectuate the regulation of mass transit on a unified and coordinated basis throughout the Metropolitan District, shall refer to the Commission for its recommendations all matters arising under this Title so reserved to such signatory and all matters exempted from this Title pursuant to the proviso clause of Section 1(b) of this Title. The recommendations of the Commission with respect to such matters shall be advisory only.

"Existing Rules, Regulations, Orders, and Decisions

"21. All rules, regulations, orders, decisions, or other action prescribed, issued, made, or taken by the Interstate Commerce Commission, the Public Utilities Commission of the District of Columbia, the Public Service Commission of Maryland, or the State Corporation Commission of Virginia, and which are in force at the time this section takes effect, with respect to transportation or persons subject to this Act, shall remain in effect, and be enforceable under this Act and in the manner specified by this Act, according to their terms, as though they had been prescribed, issued, made, or taken by the Commission pursuant to this Act, unless and until otherwise provided by such Commission in the exercise of its powers under this Act.

"Transfer of Records

"22. The Public Utilities Commission of the District of Columbia, the Interstate Commerce Commission, the State Corporation Commission of Virginia, and the Public Service Commission of Maryland shall transfer or make available to the Commission such of their records as pertain to matters which by this Act are placed under the jurisdiction of the latter Commission.

"Pending Actions or Proceedings

"23. (a) No suit, action, or other judicial proceeding commenced prior to the date this Act takes effect by or against the Public Utilities Commission of the District of Columbia, the Interstate Commerce Commission, the Public Service Commission of Maryland, or the State Corporation Commission of Virginia, or any officer of any such commission in his official capacity or in relation to his discharge of official duties, shall be affected by the enactment of this compact and same shall be prosecuted and determined in accordance with the law applicable at the time such proceeding was commenced.

"(b) To the extent that the Commission determines such action to be necessary or appropriate in the exercise of the powers and duties vested in or imposed upon it by this Act, such Commission shall continue and carry to a conclusion any proceeding, hearing, or investigation which, at the time this compact takes effect, is pending before the Public Utilities Commission of the District of Columbia, the Interstate Commerce Commission, the Public Service Commission of Maryland, or the State Corporation Commission of Virginia. In the event the Commission assumes jurisdiction in any such case, it shall be governed by the provisions of this compact and not by the provisions of law applicable at the time the proceedings were instituted.

[*Change of name.* The name of the Public Utilities Commission, referred to in pars. 21–23 of this article, was changed to "Public Service Commission of the District of Columbia" by Act Aug. 30, 1964, 78 Stat. 634, Pub. L. 88–503, § 21. See § 2–2418.]

"Annual Report of the Commission

"24. The Commission shall make an annual report to the Governor of Virginia and the Governor of Maryland, and to the Board of Commissioners of the District of Columbia as soon as practicable after the 1st day of January of each year, which shall contain, in addition to a report of the work performed under this Act, such other information and recommendations concerning passenger transportation within the Metropolitan District, as the Commission deems advisable." [See amendments to this section set out as a note to section 1–1410a.]

TITLE III OF COMPACT

For title III of compact between Maryland, Virginia and the District of Columbia set out as a note under this section, see such title, known as the Washington Metropolitan Area Transit Authority Compact, set out as a note under § 1–1431.

NOTES TO DECISIONS

Abuse of discretion

On application for certificate of convenience and necessity to operate buses on sightseeing tours under grandfather clause of statute on ground that applicant, which ordinarily operated limousines, had engaged in some bus operations with chartered buses, Commission did not abuse its discretion in allowing parties having interest in proceeding to intervene therein or in giving public notice of application. *Holiday Tours, Inc.* v. *Washington Metropolitan Area Transit Commission* (1965, 352 F. 2d 672, 122 U.S. App. D.C. 196).

Appeal

On appeal from orders of Washington Area Transit Commission denying application for certificate of convenience and necessity to operate buses on sightseeing tours under grandfather clause of statute, Court of Appeals could not properly direct Commission to make particular finding, but Court of Appeals could and would return case to Commission for reconsideration of its factual conclusion in denying application. *Holiday Tours, Inc.* v. *Washington Metropolitan Area Transit Commission* (1965, 352 F. 2d 672, 122 U.S. App. D.C. 196).

Authority of Commission

On application for certificate of convenience and necessity to operate buses on sightseeing tours under grandfather clause of statute on ground that applicant, which ordinarily operated limousines, had engaged in some bus operations with chartered buses, Commission could properly consider facts that applicant did not own bus business and did not hold operating certificates from federal and state authorities, along with all other relevant facts. *Holiday Tours, Inc.* v. *Washington Metropolitan Area Transit Commission* (1965, 352 F. 2d 672, 122 U.S. App. D.C. 196).

Washington Metropolitan Area Transit Commission, to which carrier applied for certificate while making simultaneous motion to dismiss on ground that its operation was exempt from regulation, could not, upon determining that operation was not exempt, grant motion and thus compel carrier to pursue application, since carrier might not wish to seek regulated operation. *Montgomery Charter Service Inc.* v. *The Washington Metropolitan Area Transit Commission et al.* (1962, 302 F. 2d 906, 112 U.S. App. D.C. 321).

Washington Metropolitan Area Transit Commission could not order carrier, which was applying for certificate, to cease unauthorized operations, absent evidence in record that carrier was engaged in such operations, although record contained reference to claimed admission by carrier's president and counsel. *Id.*

Determination of issue

On application for certificate of convenience and necessity to operate buses on sightseeing tours under grandfather clause of statute on ground that applicant, which ordinarily operated limousines, had engaged in some bus operations with chartered buses, issue whether applicant controlled bus operations was not to be determined exclusively by facts that buses carried markings of owner and that applicant posted no signs that buses were under its control, but such facts could be considered. *Holiday Tours, Inc.* v. *Washington Metropolitan Area Transit Commission* (1965, 352 F. 2d 672, 122 U.S. App. D.C. 196).

Findings of Commission

On application for certificate of convenience and necessity to operate buses on sightseeing tours under grandfather clause of statute on ground that applicant, which ordinarily operated limousines, had engaged in some bus operations with chartered buses, Commission should make findings whether applicant sold bus tours in its own name and issued its own tickets, whether bus drivers were required to conform to routes, and applicant's responsibility to tour group. *Holiday Tours, Inc.* v. *Washington Metropolitan Area Transit Commission* (1965, 352 F. 2d 672, 122 U.S. App. D.C. 196).

On application for certificate of convenience and necessity to operate buses on sightseeing tours under grandfather clause of statute on ground that applicant, which ordinarily operated limousines, had engaged in some bus operations with chartered buses, Commission should make findings as to whether bus operations were openly conducted without attempts at concealment, and whether applicant intended to comply or believed that it had complied with all applicable federal and state law. *Id.*

On application for certificate of convenience and necessity to operate buses on sightseeing tours under grandfather clause of statute on ground that applicant, which ordinarily operated limousines, had engaged in some bus operation with chartered buses, findings should be made by Commission whether applicant would have been responsible to passengers for negligent operation of bus, for failure to conduct tour as outlined in brochure, and whether bus company was serving public directly. *Id.*

Good faith

On application for certificate of convenience and necessity to operate buses on sightseeing tours under grandfather clause of statute on ground that applicant, which ordinarily operated limousines, had engaged in some bus operations with chartered buses, mere fact that applicant may have engaged in bus operations without required certificate was not necessarily conclusive of applicant's lack of good faith. *Holiday Tours, Inc.* v. *Washington Metropolitan Area Transit Commission* (1965, 352 F. 2d 672, 122 U.S. App. D.C. 196).

Requirements of applicant

On application for certificate of convenience and necessity to operate buses on sightseeing tours under grandfather clause of statute on ground that applicant, which ordinarily operated limousines, had engaged in some bus operations with chartered buses, applicant was required to show that it controlled and directed bus transportation to such extent as to make applicant responsible to passengers and to public for bus operations. *Holiday Tours, Inc.* v. *Washington Metropolitan Area Transit Commission* (1965, 352 F. 2d 672, 122 U.S. App. D.C. 196).

Requirements of Commission

On application for certificate of convenience and necessity to operate buses on sightseeing tours under grandfather clause of statute, Commission was required to make factual determinations, not on basis of legal technicalities, but on such things as absence of evasiveness and of deliberate and knowing disregard of requirements of the law. *Holiday Tours, Inc.* v. *Washington Metropolitan Area Transit Commission* (1965, 352 F. 2d 672, 122 U.S. App. D.C. 196).

Rulings of Commission

On application for certificate of convenience and necessity to operate buses on sightseeing tours under grandfather clause of statute, Commission did not err in ruling out detailed evidence as to applicant's operations after effective date of statute, since essential inquiry necessarily related to applicant's operations prior to and on date of effective date of statute. *Holiday Tours, Inc.* v. *Washington Metropolitan Area Transit Commission* (1965, 352 F. 2d 672, 122 U.S. App. D.C. 196).

§ 1–1410a. Consent of Congress given to make certain amendments to mass transportation compact.

The consent of Congress is hereby given to the State of Maryland and the Commonwealth of Virginia to effectuate the foregoing [1] amendments to the

[1] The amendments are set out as a note to this section.

compact, and the Commissioners of the District of Columbia are authorized and directed to effectuate said amendments on behalf of the United States for the District of Columbia. (Oct. 9, 1962, 76 Stat. 765, Pub. L. 87–767, § 1.)

CONGRESSIONAL RESERVATION

Section 3, act of Oct. 9, 1962, Pub. L. 87–767, provides as follows: "The right of Congress to alter, amend, or repeal this Act is hereby expressly reserved."

PREAMBLE TO ACT OCT. 9, 1962, PUB. L. 87–767.

Whereas the State of Maryland and the Commonwealth of Virginia have entered into a compact, known as the Washington Metropolitan Area Transit Regulation Compact, hereinafter called compact, creating the Washington Metropolitan Area Transit Commission, hereinafter called Commission; and

Whereas Congress, by Public Law 86–794 (74 Stat. 1031) [§ 1–1410], consented to the entry into the compact by the State of Maryland and the Commonwealth of Virginia, and authorized and directed the Board of Commissioners of the District of Columbia to enter into and execute the compact on behalf of the United States for the District of Columbia; and

Whereas the Commission has recommended specific amendments to the compact, to wit:

(1) To include within the Washington metropolitan area transit district the Dulles International Airport and all cities which lie within the metropolitan district;

(2) To exempt from the Commission's jurisdiction transportation performed by a carrier whose only transportation is between points outside the metropolitan district and points inside the metropolitan district;

(3) To clarify the Commission's jurisdiction over interstate taxicab operations;

(4) To provide that the annual reports of the Commission be submitted on a fiscal year basis; and

Whereas the State of Maryland and the Commonwealth of Virginia have by legislation (chapter 114, Acts of Maryland General Assembly, 1962; and chapter 67, Acts of Virginia General Assembly, 1962) adopted identical amendments to the compact, to become effective upon consent of Congress, by which article I, and sections 1 and 24 of article XII, respectively, of the compact are amended to read as follows: [*Amendments To Compact Authorized By Act Oct. 9, 1962.*]

ARTICLE I

There is hereby created the Washington Metropolitan Area Transit District, hereinafter referred to as Metropolitan District, which shall embrace the District of Columbia, the cities of Alexandria and Falls Church, the counties of Arlington and Fairfax, and political subdivisions of the State of Virginia located within those counties and that portion of Loudoun County, Virginia, occupied by the Dulles International Airport and the counties of Montgomery and Prince Georges, in the State of Maryland and political subdivisions of the State of Maryland located within said counties, and all other cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the other boundaries of the combined area of said counties, cities and airport.

ARTICLE XII

Transportation Covered

1. (a) This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service, except—

(1) transportation by water;

(2) transportation by the Federal Government, the signatories hereto, or any political subdivision thereof;

(3) transportation by motor vehicles employed solely in transporting school children and teachers to or from public or private schools;

(4) transportation performed in the course of an operation over a regular route, between a point in the Metropolitan District and a point outside the Metropolitan District, including transportation between points on such regular route within the Metropolitan District as to interstate and foreign commerce, if authorized by certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission, and any carrier whose only transportation within the Metropolitan District is within this exemption shall not be deemed to be a carrier subject to the Compact; provided, however, if the primary function of a carrier's entire operations is the furnishing of mass transportation service within the Washington Metropolitan Area Transit District, then such operations in the Metropolitan District shall be subject to the jurisdiction of the Commission;

(5) transportation performed by a common carrier by railroad subject to Part I of the Interstate Commerce Act, as amended.

(b) The provisions of this Title II shall not apply to transportation as specified in this section solely within the Commonwealth of Virginia and to the activities of persons engaged in such transportation, nor shall any provision of this Title II be construed to infringe the exercise of any power or the discharge of any duties conferred or imposed upon the State Corporation Commission of the Commonwealth of Virginia by the Virginia Constitution.

(c) Notwithstanding the provisions of paragraph (a) of this section, this Act shall apply to taxicabs and other vehicles used in performing a bona fide taxicab service having a seating capacity of eight passengers or less in addition to the driver thereof with respect only to (i) the rate or charges for transportation from one signatory to another within the confines of the Metropolitan District, and (ii) requirements for minimum insurance coverage.

Annual Report of the Commission

24. The Commission shall make an annual report for each fiscal year ending June thirtieth, to the Governor of Virginia and the Governor of Maryland, and to the Board of Commissioners of the District of Columbia as soon as practicable after June thirtieth, but no later than the 1st day of January of each year, which shall contain, in addition to a report of the work performed under this Act, such other information and recommendations concerning passenger transportation within the Metropolitan District, as the Commission deems advisable.

§ 1–1411. Commissioners authorized and directed to enter into compact and carry out terms thereof—Appropriations authorized for District of Columbia—Commissioners may not adopt amendment to compact without prior approval of Congress.

The Commissioners of the District of Columbia are authorized and directed to enter into and execute on behalf of the United States for the District of Columbia a compact substantially as set forth above [1] with the States of Virginia and Maryland and are further authorized and directed to carry out and effectuate the terms and provisions of said compact, and there are hereby authorized to be appropriated such funds as are necessary to carry out the obligations of the District of Columbia in accordance with the terms of the said compact: *Provided,* That the said Commissioners shall not adopt any amendment to the said compact for the District of Columbia under the provisions of section 1 of article IX of the compact unless the said amendment has had the consent or approval of the Congress. (Sept. 15, 1960, 74 Stat. 1050, Pub. L. 86–794, § 2.)

CROSS REFERENCE

Authority of Commissioners to enter into agreements with Maryland and Virginia to develop continuing transportation planning process for National Capital region, see § 1–1401a.

[1] The compact is set out as a note under § 1–1410.

§ 1–1412. Suspension of certain laws for duration of compact—Reinstatement of laws upon termination of compact—Certain police powers of parties to compact and Director of National Park Service not affected—Franchise rights and obligations of D.C. Transit System, Inc., not impaired—"Public Interest" includes interest of carrier employees—Laws relating to carrier employee benefits, wages, hours and working conditions, collective bargaining rights, rights to self organization continue in force—Jurisdiction of Public Service Commission and Interstate Commerce Commission transferred to Washington Metropolitan Area Transit Commission.

Upon the effective date of the compact and so long thereafter as the compact remains effective, the applicability of the laws of the United States, and the rules, regulations, and orders promulgated thereunder, relating to or affecting transportation under the compact and to the persons engaged therein, including those provisions of section 40–603(e), relating to the powers of the Public Service Commission of the District of Columbia and the Joint Board created under such section, is suspended, except as otherwise specified in the compact, to the extent that such laws, rules, regulations, and orders are inconsistent with or in duplication of the provisions of the compact: *Provided,* That upon the termination of the compact, the suspension of such laws, rules, regulations, and orders, if not theretofore repealed, shall terminate and such laws, rules, regulations, and orders shall thereupon again become applicable and legally effective without further legislative or administrative action: *Provided further,* That nothing in this subchapter or in the compact shall affect the normal and ordinary police powers of the signatories and of the political subdivisions thereof and of the Director of the National Park Service with respect to the regulation of vehicles, control of traffic and use of streets, highways, and other vehicular facilities: *Provided further,* That nothing in this subchapter or in the compact consented to and approved hereby shall impair or affect the rights, duties, and obligations created by the Act of July 24, 1956 (ch. 669, 70 Stat. 598), granting a franchise to D.C. Transit System, Inc.: *Provided further,* That the term "public interest" as used in section 12(b) of article XII, title 11 of the Compact shall be deemed to include, among other things, the interest of the carrier employees affected: *And provided further,* That nothing herein shall be deemed to render inapplicable any laws of the United States providing benefits for the employees of any carrier subject to this compact or relating to the wages, hours, and working conditions of employees of any carrier, or to collective bargaining between the carriers and said employees, or to the rights to self-organization, including, but not limited to, the Labor-Management Relations Act, 1947, as amended, and the Fair Labor Standards Act, as amended. Notwithstanding any provision of this section to the contrary, the jurisdiction of the Public Service Commission of the District of Columbia and of the Interstate Commerce Commission over all carriers and persons subject to the provisions of the Washington Metropolitan Area Transit Regulation Compact are hereby transferred, as and to the extent provided therein, to the Washington Metropolitan Area Transit Commission. (Sept. 15, 1960, 74 Stat. 1050, Pub. L. 86–794, § 3; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88–503, § 21.)

REFERENCES IN TEXT

The Labor-Management Relations Act, 1947, as amended, referred to in the text, is classified to 29 U.S.C. ch. 5.

The Fair Labor Standards Act, as amended, referred to in the text, is classified to 29 U.S.C. ch. 8.

CHANGE OF NAME

Act Aug. 30, 1964, substituted "Public Service Commission of the District of Columbia" for "Public Utilities Commission of the District of Columbia." See section 2–2418.

§ 1–1413. Consent of Congress to certain provisions of compact conditioned on nonuse of same to break a lawful strike.

The consent and approval of Congress set forth in section 1–1410 is given on the express condition that sections 4(d)(3) and 12(d) of article XII of such compact shall not be used to break a lawful strike by the employees of any carrier authorized to provide service pursuant to such compact. (Sept. 15, 1960, 74 Stat. 1050, Pub. L. 86–794, § 4.)

§ 1–1414. Repealed. Oct. 5, 1962, 76 Stat. 765, Pub. L. 87–767, § 2.

Section act Sept. 15, 1960, 74 Stat. 1051, Pub. L. 86–794, § 5, provided that the consent of Congress to the mass transportation compact was conditioned on section 1(a)(4) of article XII of the compact being amended, in the respects therein specified, within three years from Sept. 15, 1960. See amendments to compact set out as a note to § 1–1410a.

§ 1–1415. Jurisdiction to review orders of Washington Metropolitan Area Transit Commission and to enforce compact.

Jurisdiction is hereby conferred (1) upon the United States Court of Appeals for the Fourth Circuit and the United States Court of Appeals for the District of Columbia Circuit, respectively, to review orders of the Washington Metropolitan Area Transit Commission as provided by section 17, article XII, title II, of the Washington metropolitan area transit regulation compact, and (2) upon the United States district courts to enforce the provisions of said title II as provided in section 18, article XII, title II, of said compact. (Sept. 15, 1960, 74 Stat. 1051, Pub. L. 86–794, § 6.)

§ 1–1416. Reservation of right to alter, amend or repeal—Submission of periodic report to Congress—Disclosure of information—Access to books and records.

(a) The right to alter, amend, or repeal this subchapter is hereby expressly reserved.

(b) The Washington Metropolitan Area Transit Commission shall submit to Congress copies of all periodic reports made by that Commission to the Governors, the Commissioners of the District of Columbia and/or the legislatures of the compacting States.

(c) The Congress or any committee thereof shall have the right to require the disclosure and furnishing of such information by the Washington Metropolitan Area Transit Commission as is deemed appropriate by the Congress or any of its committees. Further, Congress or any of its committees shall have

access to all books, records and papers of the Washington Metropolitan Area Transit Commission as well as the right of inspection of any facility use, owned, leased, regulated or under the control of said Commission. (Sept. 15, 1960, 74 Stat. 1051, Pub. L. 86–794, § 7.)

SUBCHAPTER III.—RAIL RAPID TRANSIT

§ 1–1421. Statement of findings and purpose.

To further the objectives of subchapter I of this chapter, the Congress hereby finds and declares that—

(a) A coordinated system of rail rapid transit, bus transportation service, and highways is essential in the National Capital region (as defined in section 1–1402) for the satisfactory movement of people and goods, the alleviation of present and future traffic congestion, the economic welfare and vitality of all parts of the region, the effective performance of the functions of the United States Government located within the region, the orderly growth and development of the region, the comfort and convenience of the residents and visitors to the region, and the preservation of the beauty and dignity of the Nation's Capital.

(b) Such a coordinated system should be developed cooperatively by the Federal, State, and local governments of the National Capital region as part of a balanced system of transportation utilizing to their best advantage highways and other transit facilities, and the cost of improved mass transit facilities should be financed, as far as possible, by persons using or benefiting from such facilities and their remaining costs should be shared equitably among the Federal, State, and local governments.

(c) Various steps have already been taken to bring such a system into being, including the preparation by the National Capital Transportation Agency (hereinafter referred to as the "Agency") of a Transit Development Program for the National Capital region, and authorization of the negotiation by the Board of Commissioners of the District of Columbia, the State of Maryland and the Commonwealth of Virginia of an interstate compact to establish a regional transportation organization under the terms of sections 1–1408 and 1–1409, and approval by the Congress of the Washington Metropolitan Area Transit Regulation Compact (sections 1–1410 to 1–1416). Nothing in this Subchapter and the amendments to sections 1–1404 and 9–220 shall be construed as altering or amending the Washington Metropolitan Area Transit Regulation Compact.

(d) While the negotiation of an interstate compact to establish a regional transportation organization has not been completed, and plans for the development of improved mass transit facilities throughout the National Capital region are still being developed, the Agency has prepared a satisfactory Transit Development Program for the establishment, principally within the District of Columbia, of a system of rail rapid transit lines and related facilities which are capable of being extended to serve other parts of the region, and the design and construction of such facilities should now proceed as contemplated by the National Capital Transportation Act of 1960. [Sections 1–1401 to 1–1409]

(e) In developing such improved transportation facilities, it is necessary that the operation of rail rapid transit and bus services be coordinated, and that the creation and operation of public rail rapid transit facilities be accomplished with the least possible adverse effect on the private companies transporting persons in the National Capital region, on their employees, and on persons, families and businesses displaced by the construction of such facilities. (Sept. 8, 1965, 79 Stat. 663, Pub. L. 89–173, § 2.)

Short Title

Section 1, act Sept. 8, 1965, provided: "This Act [sections 1–1421 to 1–1426 and amendments of sections 1–1404 and 9–220] may be cited as the "National Capital Transportation Act of 1965."

§ 1–1422. Facilities authorized.

(a) In accordance with section 1–1406(c), the Agency is hereby authorized, subject to the availability of funds, to design, engineer, construct, equip, and take other action as authorized in this Act necessary to provide for the establishment of the system of rail rapid transit lines and related facilities described in the Agency's report entitled "Rail Rapid Transit for the Nation's Capital, January 1965", transmitted to the Congress by the President on February 10, 1965: *Provided,* That the cost of constructing and equipping such lines and facilities, excluding interest costs, shall not exceed $431,000,000.

(b) The work authorized by this section shall be subject to the provisions of the National Capital Transportation Act of 1960 [sections 1–1401 to 1–1409] shall be carried out substantially in accordance with the plans and schedules contained in the aforesaid report, and shall be subject to the following:

(1) No portion of any rail rapid transit line or related facility authorized hereunder shall be constructed within the United States Capitol Grounds except upon approval of the Commission for Extension of the United States Capitol.

(2) All construction work performed in, on, under, or over public space in the District of Columbia under the authority of this Act shall, in the interest of public convenience and safety, be performed in accordance with schedules agreed upon, and set forth in one or more written agreements, between the Agency and the Board of Commissioners of the District of Columbia, to the end that such construction work will be coordinated with other construction work in such public space, and consistent with such agreement or agreements, the said Board of Commissioners shall so exercise its jurisdiction and control over such public space as to facilitate the Agency's use and occupation thereof for the purposes of this Act.

(3) The rail rapid transit lines and related facilities authorized by this Act shall not be operated except under contract by private transit companies, private railroads, or other private persons. Such contracts shall be entered into only after formal advertisement and negotiations with all interested and qualified parties, including private mass transportation companies in the National Capital region, and only if the Secretary of Labor

certifies that terms and conditions, as prescribed in section 10(c) of the Urban Mass Transportation Act of 1964 (49 U.S.C. § 1609(c); 78 Stat. 302, 307), to protect the interests of employees affected by any such contract for the operation of the facilities authorized by this Act, are specified in such contract.

(4) If the contractor selected to operate the facilities authorized by this Act contracts for the construction, alteration and/or repair of such facilities, the agency which lets the contract to operate the rail rapid transit lines and related facilities shall take such action as may be necessary to insure that all laborers and mechanics employed in the performance of such construction, alteration, and/or repair shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended. The Secretary of Labor shall have with respect to the labor standards specified herein the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267; 5 U.S.C. 913) and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948, as amended; 40 U.S.C. § 276(c)).

(c) Nothing in this Act shall be construed to affect any right to damages which any common carrier engaged in the private transportation of persons in the National Capital region may have by virtue of Public Law 757 of the Eighty-fourth Congress (70 Stat. 598) or sections 1–1401 to 1–1409.

(d) The protection accorded the private bus companies under the provisions of sections 1–1401 to 1–1409, and particularly under section 1–1407(a)(2) thereof, shall not be impaired by this Act. (Sept. 8, 1965, 79 Stat. 664, Pub. L. 89–173, § 3.)

REFERENCES IN TEXT

"This Act" referred to in text consists of sections 1–1421 to 1–1426 and the amendments of sections 1–1404 and 9–220 made by the act of Sept. 8, 1965.

The Davis-Bacon Act referred to in text is set out in 40 U.S.C. §§ 276a to 276a–5.

CODIFICATION

In subsec. (b)(4), the reference "5 U.S.C. 913", within the parentheses, was substituted for "5 U.S.C. 133z–15" on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. Section 133z–15 of title 5, U.S.C., was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C. into law), and is now covered by 5 U.S.C. § 913.

§ 1–1423. Relocation assistance.

Sections 5–728 to 5–732 authorizing the Commissioners of the District of Columbia to provide relocation services to individuals, families, business concerns, and nonprofit organizations which may be or have been displaced from real property by actions of the United States or of the District of Columbia, and all regulations made under the authority of such sections are hereby made applicable to individuals, families, business concerns, and nonprofit organizations displaced from real property by actions of the Agency and the Agency shall pay the District of Columbia Relocation Assistance Office for the cost of such relocations: *Provided,* That in the case of any such displacements from real property located in the State of Maryland or the Commonwealth of Virginia the Agency is authorized to make relocation payments directly to the displaced individual, family, business concern, or nonprofit organization, as the case may be, in accordance with the schedule of payments contained in the said sections, and such rules and regulations as may be prescribed by the Administrator. In the event real property is acquired for the Agency by another Federal agency or by any State or local agency or authority, the Agency is authorized to reimburse the acquiring agency for relocation payments made by it, up to the amounts specified in the aforesaid sections. (Sept. 8, 1965, 79 Stat. 665, Pub. L. 89–173, § 4.)

§ 1–1424. Appropriations authorized.

The cost of designing, engineering, constructing, and equipping the facilities authorized in section 1–1422 hereof shall be financed in part by the Federal and District of Columbia Governments, as follows:

(1) To finance the United States portion there is hereby authorized to be appropriated to the Agency not to exceed $100,000,000, which shall remain available until expended;

(2) To finance the District of Columbia portion there is hereby authorized to be appropriated to the Agency out of the general fund of the District of Columbia not to exceed $50,000,000, which shall remain available until expended. (Sept. 8, 1965, 79 Stat. 665, Pub. L. 89–173, § 5(a).)

CODIFICATION

Subsection (b) of this section is classified to section 9–220.

CROSS REFERENCES

Authority of appropriations to Department of Housing and Urban Development, and to District of Columbia, for payment to Washington Metropolitan Area Transit Authority, of any unappropriated portions of authorizations specified in pars. (1) and (2) of this section, see § 1–1433(b).

Loans for carrying out purposes of this subchapter, see § 9–220(b).

§ 1–1425. Annual report.

The Agency shall submit to the President for transmission to the Congress at the beginning of each regular session of the Congress an annual report of its operations under this title. (Sept. 8, 1965, 79 Stat. 666, Pub. L. 89–173, § 6.)

§ 1–1426. Separability.

If any part of this Act is declared unconstitutional the constitutionality of no other part of the Act shall be affected thereby. (Sept. 8, 1965, 79 Stat. 666, Pub. L. 89–173, § 8.)

REFERENCES IN TEXT

"This Act" referred to in text consists of sections 1–1421 to 1–1426 and the amendments of sections 1–1404 and 9–220 made by the act of Sept. 8, 1965.

SUBCHAPTER IV.—WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY COMPACT

§ 1–1431. Consent of Congress given for, and adoption of, compact amending compact set out under section 1–1410.

The Congress hereby consents to, adopts and enacts for the District of Columbia an amendment to

the Washington Metropolitan Area Transit Regulation Compact, for which Congress heretofore has granted its consent (subchapter II of this chapter) by adding thereto title III, known as the Washington Metropolitan Area Transit Authority Compact (referred to in this subchapter as title III), substantially as set out below. (Nov. 6, 1966, 80 Stat. 1324, Pub. L. 89–774, § 1.)

CODIFICATION

In the original, words "substantially as set out below" read "substantially as follows:". The words first quoted have been subtituted for purpose of convenient text classification of the provisions of this section. The "amendment" referred to, known as the Washington Metropolitan Area Transit Authority Compact, is set out in note below.

PREAMBLE

The preamble to act Nov. 6, 1966, 80 Stat. 1324, Pub. L. 89–774, provided:

"Whereas Congress heretofore has declared in the National Capital Transportation Act of 1960 (Public Law 86–669, 74 Stat. 537 [D.C. Code § 1–1401 et seq.]) and in the National Capital Transportation Act of 1965 (Public Law 89–173, 79 Stat. 663 [D.C. Code § 1–1421 et seq.]) that a coordinated system of rail rapid transit, bus transportation service, and highways is essential in the National Capital Region for the satisfactory movement of people and goods, the alleviation of present and future traffic congestion, the economic welfare and vitality of all parts of the Region, the effective performance of the functions of the United States Government located within the Region, the orderly growth and development of the Region, the comfort and convenience of the residents and visitors to the Region, and the preservation of the beauty and dignity of the Nation's Capital and that such a system should be developed cooperatively by the Federal, State, and local governments of the National Capital Region, with the costs of the necessary facilities financed, as far as possible, by persons using or benefiting from such facilities and the remaining costs shared equitably among the Federal, State, and local governments;

"Whereas in furtherance of this policy, Congress, in title III of the National Capital Transportation Act of 1960 [D.C. Code §§ 1–1408, 1–1409], authorized the District of Columbia, the Commonwealth of Virginia, and the State of Maryland to negotiate a Compact for the establishment of an organization, empowered, inter alia, to provide regional transportation facilities;

"Whereas, it is the sense of the Congress that the Mass Transit Plan authorized by the Compact and this Act shall conform to the fullest extent practicable with the Comprehensive Plan for the National Capital and the general plan for the development of the National Capital Region prepared pursuant to the National Capital Planning Act of 1952 (Public Law 82–592, 66 Stat. 781 [D.C. Code § 1–1001 et seq.]); and

"Whereas, the District of Columbia, the Commonwealth of Virginia and the State of Maryland, with a representative of the United States appointed by the President, have negotiated such a Compact, known as the Washington Metropolitan Area Transit Authority Compact, which amends the Washington Metropolitan Area Transit Regulation Compact [D.C. Code § 1–1410 note], heretofore consented to by the Congress (Public Law 86–794, 74 Stat. 1031, as amended by Public Law 87–767, 76 Stat. 764) [D.C. Code § 1–1410 et seq.]), by adding thereto a title III and said Compact has been enacted by Maryland (Ch. 869, Acts of General Assembly 1965) and in substantially the same language by Virginia (Ch. 2, 1966 Acts of Assembly): Now, therefore, be it" (etc.).

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY COMPACT

The Washington Metropolitan Area Transit Authority Compact, referred to in this section, and constituting title III of the Washington Metropolitan Area Transit Regulation Compact of which titles I and II are set out as a note under § 1–1410, constituted the remainder of this section. The compact is as follows:

"TITLE III

"ARTICLE I

"DEFINITIONS

"1. As used in this Title, the following words and terms shall have the following meanings, unless the context clearly requires a different meaning:

"(a) 'Board' means the Board of Directors of the Washington Metropolitan Area Transit Authority;

"(b) 'Director' means a member of the Board of Directors of the Washington Metropolitan Area Transit Authority;

"(c) 'Private transit companies' and 'private carriers' means corporations, persons, firms or associations rendering transit service within the Zone pursuant to a certificate of public convenience and necessity issued by the Washington Metropolitan Area Transit Commission or by a franchise granted by the United States or any signatory party to this Title;

"(d) 'Signatory' means the State of Maryland, the Commonwealth of Virginia and the District of Columbia;

"(e) 'State' includes District of Columbia;

"(f) 'Transit facilities' means all real and personal property located in the Zone, necessary or useful in rendering transit service between points within the Zone, by means of rail, bus, water or air and any other mode of travel, including without limitation, tracks, rights of way, bridges, tunnels, subways, rolling stock for rail, motor vehicle, marine and air transportation, stations, terminals and ports, areas for parking and all equipment, fixtures, buildings and structures and services incidental to or required in connection with the performance of transit service;

"(g) 'Transit services' means the transportation of persons and their packages and baggage by means of transit facilities between points within the Zone and includes the transportation of newspapers, express and mail between such points but does not include taxicab, sightseeing or charter service; and

"(h) 'WMATC' means Washington Metropolitan Area Transit Commission.

"ARTICLE II

"PURPOSE AND FUNCTIONS

"Purpose

"2. The purpose of this Title is to create a regional instrumentality, as a common agency of each signatory party, empowered, in the manner hereinafter set forth, (1) to plan, develop, finance and cause to be operated improved transit facilities, in coordination with transportation and general development planning for the Zone, as part of a balanced regional system of transportation, utilizing to their best advantage the various modes of transportation, (2) to coordinate the operation of the public and privately owned or controlled transit facilities, to the fullest extent practicable, into a unified regional transit system without unnecessary duplicating service, and (3) to serve such other regional purposes and to perform such other regional functions as the signatories may authorize by appropriate legislation.

"ARTICLE III

"ORGANIZATION AND AREA

"Washington Metropolitan Area Transit Zone

"3. There is hereby created the Washington Metropolitan Area Transit Zone which shall embrace the District of Columbia, the cities of Alexandria, Falls Church and Fairfax and the counties of Arlington and Fairfax and political subdivisions of the Commonwealth of Virginia located within those counties, and the counties of Montgomery and Prince George's in the State of Maryland and political subdivisions of the State of Maryland located in said counties.

"Washington Metropolitan Area Transit Authority

"4. There is hereby created, as an instrumentality and agency of each of the signatory parties hereto, the Washington Metropolitan Area Transit Authority which shall be a body corporate and politic, and which shall have the

powers and duties granted herein and such additional powers as may hereafter be conferred upon it pursuant to law

"Board Membership

"5. (a) The Authority shall be governed by a Board of six Directors consisting of two Directors for each signatory. For Virginia, the Directors shall be appointed by the Northern Virginia Transportation Commission; for the District of Columbia, by the Commissioners of the District of Columbia; and for Maryland, by the Washington Suburban Transit Commission. In each instance the Director shall be appointed from among the members of the appointing body and shall serve for a term coincident with his term on the body by which he was appointed. A Director may be removed or suspended from office only as provided by the law of the signatory from which he was appointed. The appointing authorities shall also appoint an alternate for each Director, who may act only in the absence of the Director for whom he has been appointed an alternate, and each alternate shall serve at the pleasure of the appointing authority. In the event of a vacancy in the Office of Director or alternate, it shall be filled in the same manner as an original appointment.

"(b) Before entering upon the duties of his office each Director and alternate director shall take and subscribe to the following oath (or affirmation) of office or any such other oath or affirmation, if any, as the Constitution or laws of the signatory he represents shall provide:

" 'I, ----------, hereby solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and Laws of the state or political jurisdiction from which I was appointed as a director (alternate director) of the Board of Washington Metropolitan Area Transit Authority and will faithfully discharge the duties of the office upon which I am about to enter.'

"Compensation of Directors and Alternates

"6. Members of the Board and alternates shall serve without compensation but may be reimbursed for necessary expenses incurred as an incident to the performance of their duties.

"Organization and Procedure

"7. The Board shall provide for its own organization and procedure. It shall organize annually by the election of a Chairman and Vice-Chairman from among its members. Meetings of the Board shall be held as frequently as the Board deems that the proper performance of its duties requires and the Board shall keep minutes of its meetings. The Board shall adopt rules and regulations governing its meeting, minutes and transactions.

"Quorum and Actions by the Board

"8. (a) Four Directors or alternates consisting of at least one Director or alternate appointed from each Signatory, shall constitute a quorum and no action by the Board shall be effective unless a majority of the Board, which majority shall include at least one Director or alternate from each Signatory, concur therein; provided, however, that a plan of financing may be adopted or a mass transit plan adopted, altered, revised or amended by the unanimous vote of the Directors representing any two Signatories.

"(b) The actions of the Board shall be expressed by motion or resolution. Actions dealing solely with internal management of the Authority shall become effective when directed by the Board, but no other action shall become effective prior to the expiration of thirty days following its adoption; provided, however, that the Board may provide for the acceleration of any action upon a finding that such acceleration is required for the proper and timely performance of its functions.

"Officers

"9. (a) The officers of the Authority, none of whom shall be members of the Board, shall consist of a general manager, a secretary, a treasurer, a comptroller and a general counsel and such other officers as the Board may provide. Except for the office of general manager and comptroller, the Board may consolidate any of such other offices in one person. All such officers shall be appointed and may be removed by the Board, shall serve at the pleasure of the Board and shall perform such duties and functions as the Board shall specify. The Board shall fix and determine the compensation to be paid to all officers and, except for the general manager who shall be a full-time employee, all other officers may be hired on a full-time or part-time basis and may be compensated on a salary or fee basis, as the Board may determine. All employees and such officers as the Board may designate shall be appointed and removed by the general manager under such rules of procedure and standards as the Board may determine.

"(b) The general manager shall be the chief administrative officer of the Authority and, subject to policy direction by the Board, shall be responsible for all activities of the Authority.

"(c) The treasurer shall be the custodian of the funds of the Authority, shall keep an account of all receipts and disbursements and shall make payments only upon warrants duly and regularly signed by the Chairman or Vice-Chairman of the Board, or other person authorized by the Board to do so, and by the secretary or general manager; provided, however, that the Board may provide that warrants not exceeding such amounts or for such purposes as may from time to time be specified by the Board may be signed by the general manager or by persons designated by him.

"(d) An oath of office in the form set out in Section 5(b) of this Article shall be taken, subscribed and filed with the Board by all appointed officers.

"(e) Each Director, officer and employees specified by the Board shall give such bond in such form and amount as the Board may require, the premium for which shall be paid by the Authority.

"Conflict of Interests

"10. (a) No Director, officer or employee shall:

"(1) be financially interested, either directly or indirectly, in any contract, sale, purchase, lease or transfer of real or personal property to which the Board or the Authority is a party;

"(2) in connection with services performed within the scope of his official duties, solicit or accept money or any other thing of value in addition to the compensation or expenses paid to him by the Authority;

"(3) offer money or any thing of value for or in consideration of obtaining an appointment, promotion or privilege in his employment with the Authority.

"(b) Any Director, officer or employee who shall willfully violate any provision of this section shall, in the discretion of the Board, forfeit his office or employment.

"(c) Any contract or agreement made in contravention of this section may be declared void by the Board.

"(d) Nothing in this section shall be construed to abrogate or limit the applicability of any federal or state law which may be violated by any action prescribed by this section.

"ARTICLE IV

"PLEDGE OF COOPERATION

"11. Each Signatory pledges to each other faithful cooperation in the achievement of the purposes and objects of this Title.

"ARTICLE V

"GENERAL POWERS

"Enumeration

"12. In addition to the powers and duties elsewhere described in this Title, and except as limited in this Title, the Authority may:

"(a) Sue and be sued;

"(b) Adopt and use a corporate seal and alter the same at pleasure;

"(c) Adopt, amend, and repeal rules and regulations respecting the exercise of the powers conferred by this Title;

"(d) Construct, acquire, own, operate, maintain, control, sell and convey real and personal property and any interest therein by contract, purchase, condemnation, lease, license, mortgage or otherwise but all of said property shall be located in the Zone and shall be necessary or useful in rendering transit service or in activities incidental thereto;

"(e) Receive and accept such payments, appropriations, grants, gifts, loans, advances and other funds, properties and services may be transferred or made available to it by any signatory party, any political subdivision or agency thereof, by the United States, or by any agency thereof, or by any other public or private corporation or individual, and enter into agreements to make reimbursement for all or any part thereof;

"(f) Enter into and perform contracts, leases and agreements with any person, firm or corporation or with any political subdivision or agency of any signatory party or with the federal government, or any agency thereof, including, but not limited to, contracts or agreements to furnish transit facilities and service;

"(g) Create and abolish offices, employments and positions (other than those specifically provided for herein) as it deems necessary for the purposes of the Authority, and fix and provide for the qualification, appointment, removal, term, tenure, compensation, pension and retirement rights of its officers and employees without regard to the laws of any of the signatories;

"(h) Establish, in its discretion, a personnel system based on merit and fitness and, subject to eligibility, participate in the pension and retirement plans of any signatory, or political subdivision or agency thereof, upon terms and conditions mutually acceptable;

"(i) Contract for or employ any professional services;

"(j) Control and regulate the use of facilities owned or controlled by the Authority, the service to be rendered and the fares and charges to be made therefor;

"(k) Hold public hearings and conduct investigations relating to any matter affecting transportation in the Zone with which the Authority is concerned and, in connection therewith, subpena witnesses, papers, records and documents; or delegate such authority to any officer. Each director may administer oaths or affirmations in any proceeding or investigation;

"(l) Make or participate in studies of all phases and forms of transportation, including transportation vehicle research and development techniques and methods for determining traffic projections, demand motivations, and fiscal research and publicize and make available the results of such studies and other information relating to transportation; and

"(m) Exercise, subject to the limitations and restrictions herein imposed, all powers reasonably necessary or essential to the declared objects and purposes of this Title.

"ARTICLE VI

"PLANNING

"Mass Transit Plan

"13. (a) The Board shall develop and adopt, and may from time to time review and revise, a mass transit plan for the immediate and long-range needs of the Zone. The mass transit plan shall include one or more plans designating (1) the transit facilities to be provided by the Authority, including the locations of terminals, stations, platforms, parking facilities and the character and nature thereof; (2) the design and location of such facilities; (3) whether such facilities are to be constructed or acquired by lease, purchase or condemnation; (4) a timetable for the provision of such facilities; (5) the anticipated capital costs; (6) estimated operating expenses and revenues relating thereto; and (7) the various other factors and considerations, which, in the opinion of the Board, justify and require the projects therein proposed. Such plan shall specify the type of equipment to be utilized, the areas to be served, the routes and schedules of service expected to be provided and the probable fares and charges therefor.

"(b) In preparing the mass transit plan, and in any review of revision thereof, the Board shall make full utilization of all data, studies, reports and information available from the National Capital Transportation Agency and from any other agencies of the federal government, and from signatories and the political subdivisions thereof.

"Planning Process

"14. (a) The mass transit plan, and any revisions, alterations or amendments thereof, shall be coordinated, through the procedures hereinafter set forth, with

"(1) other plans and programs affecting transportation in the Zone in order to achieve a balanced system of transportation, utilizing each mode to its best advantage;

"(2) the general plan or plans for the development of the Zone; and

"(3) the development plans of the various political subdivisions embraced within the Zone.

"(b) It shall be the duty and responsibility of each member of the Board to serve as liaison between the Board and the body which appointed him to the Board. To provide a framework for regional participation in the planning process, the Board shall create technical committees concerned with planning and collection and analyses of data relative to decision-making in the transportation planning process and the Commissioners of the District of Columbia, the component governments of the Northern Virginia Transportation District and the Washington Suburban Transit District shall appoint representatives to such technical committees and otherwise cooperate with the Board in the formulation of a mass transit plan, or in revisions, alterations or amendments therof.

"(c) The Board, in the preparation, revision, alteration or amendment of a mass transit plan, shall

"(1) consider data with respect to current and prospective conditions in the Zone, including, without limitation, land use, population, economic factors affecting development plans, goals or objectives for the development of the Zone and the separate political subdivisions, transit demands to be generated by such development, travel patterns, existing and proposed transportation and transit facilities, impact of transit plans on the dislocation of families and businesses, preservation of the beauty and dignity of the Nation's Capital, factors affecting environmental amenities and aesthetics and financial resources;

"(2) cooperate with and participate in any continous, comprehensive transportation planning process cooperatively established by the highway agencies of the signatories and the local political subdivisions in the Zone to meet the planning standards now or hereafter prescribed by the Federal-Aid Highway Acts; and

"(3) to the extent not inconsistent with or duplicative of the planning process specified in subparagraph (2) of this paragraph (c), cooperate with the National Capital Planning Commission, the National Capital Regional Planning Council, the Washington Metropolitan Council of Governments, the Washington Metropolitan Area Transit Commission, the highway agencies of the Signatories, the Maryland-National Capital Park and Planning Commission, the Northern Virginia Regional Planning and Economic Development Commission, the Maryland State Planning Department and the Commission of Fine Arts. Such cooperation shall include the creation, as necessary, of technical committees composed of personnel, appointed by such agencies, concerned with planning and collection and analysis of data relative to decisionmaking in the transportation planning process.

"Adoption of Mass Transit Plan

"15. (a) Before a mass transit plan is adopted, altered, revised or amended, the Board shall transmit such proposed plan, alteration, revision or amendment for comment to the following and to such other agencies as the Board shall determine:

"(1) the Commissioners of the District of Columbia, the Northern Virginia Transportation Commission and the Washington Suburban Transit Commission;

"(2) the governing bodies of the Counties and Cities embraced within the Zone;

"(3) the highway agencies of the Signatories;

"(4) the Washington Metropolitan Area Transit Commission;

"(5) the Washington Metropolitan Council of Governments;

"(6) the National Capital Planning Commission;

"(7) The National Capital Regional Planning Council;

"(8) the Maryland-National Capital Park and Planning Commission;

"(9) the Northern Virginia Regional Planning and Economic Development Commission;

"(10) the Maryland State Planning Department; and

"(11) the private transit companies operating in the Zone and the Labor Unions representing the employees of such companies and employees of contractors providing service under operating contracts.

"Information with respect thereto shall be released to the public. A copy of the proposed mass transit plan, amendment or revision, shall be kept at the office of the Board and shall be available for public inspection. After thirty days' notice published once a week for two successive weeks in one or more newspapers of general circulation within the Zone, a public hearing shall be held with respect to the proposed plan, alteration, revision or amendment. The thirty days' notice shall begin to run on the first day the notice appears in any such newspapers. The Board shall consider the evidence submitted and statements and comments made at such hearing and may make any changes in the proposed plan, amendment or revision which it deems appropriate and such changes may be made without further hearing.

"ARTICLE VII

"FINANCING

"Policy

"16. With due regard for the policy of Congress for financing a mass transit plan for the Zone set forth in Section 204(g) of the National Capital Transportation Act of 1960 (74 Stat. 537), it is hereby declared to be the policy of this Title that, as far as possible, the payment of all costs shall be borne by the persons using or benefiting from the Authority's facilities and services and any remaining costs shall be equitably shared among the federal, District of Columbia and participating local governments in the Zone. The allocation among such governments of such remaining costs shall be determined by agreement among them and shall be provided in the manner hereinafter specified.

"Plan of Financing

"17. (a) The Authority, in conformance with said policy, shall prepare and adopt a plan for financing the construction, acquisition, and operation of facilities specified in a mass transit plan adopted pursuant to Article VI hereof, or in any alteration, revision or amendment thereof. Such of financing shall specify the facilities to be constructed or acquired, the cost thereof, the principal amount of revenue bonds, equipment trust certificates, and other evidences of debt proposed to be issued, the principal terms and provisions of all loans and underlying agreements and indentures, estimated operating expenses and revenues, and the proposed allocation among the federal, District of Columbia, and participating local governments of the remaining costs and deficits, if any, and such other information as the Commission may consider appropriate.

"(b) Such plan of financing shall constitute a proposal to the interested governments for financial participation and shall not impose any obligation on any government and such obligations shall be created only as provided in Section 18 of this Article VII.

"Commitments for Financial Participation

"18. (a) Commitments on behalf of the portion of the Zone located in Virginia shall be by contract or agreement by the Authority with the Northern Virginia Transportation District, or its component governments, as authorized in the Transportation District Act of 1964 (Ch. 631, 1964 Acts of Virignia Assembly), to contribute to the capital required for the construction and/or acquisition of facilities specified in a mass transit plan adopted as provided in Article VI, or any alteration, revision or amendment thereof, and for meeting expenses and obligations in the operation of such facilities. No such contract or agreement, however, shall be entered into by the Authority with the Northern Virginia Transportation District unless said District has entered into the contracts or agreements with its member governments, as contemplated by Section 1(b)(4) of Article 4 of said Act, which contracts or agreements expressly provide that such contracts or agreements shall inure to the benefit of the Authority and shall be enforceable by the Authority in accordance with the provisions of Section 2, Article 5 of said Act, and such contracts or agreements are acceptable to the Board. The General Assembly of Virginia hereby authorizes and designates the Authority as the agency to plan for and provide transit facilities and services for the area of Virginia encompassed within the Zone within the contemplation of Article 1, Section 3(c) of said Act.

"(b) Commitments on behalf of the portion of the Zone located in Maryland shall be by contract or agreement by the Authority with the Washington Suburban Transit District, pursuant to which the Authority undertakes to provide transit facilities and service in consideration for the agreement by said District to contribute to the capital required for the construction and/or acquisition of facilities specified in a mass transit plan adopted as provided in Article VI, or in any alteration, revision or amendment thereof, and for meeting expenses and obligations incurred in the operation of such facilities.

"(c) With respect to the District of Columbia and the federal government, the commitment or obligation to render financial assistance shall be created by appropriation or in such other manner, or by such other legislation, as the Congress shall determine. If prior to making such commitment by or on behalf of the District of Columbia, legislation is enacted by the Congress granting the governing body of the District of Columbia plenary power to create obligations and levy taxes, the commitment by the District of Columbia shall be by contract or agreement between the governing body of the District of Columbia and the Authority, pursuant to which the Authority undertakes, subject to the provisions of Section 20 hereof, to provide transit facilities and service in consideration for the undertaking by the District of Columbia to contribute to the capital required for the construction and/or acquisition of facilities specified in a mass transit plan adopted as provided in Article VI, or in any alteration, revision or amendment thereof, and for meeting expenses and obligations incurred in the operation of such facilities.

"Administrative Expenses

"19. Prior to the time the Authority has receipts from appropriations and contracts or agreements as provided in Section 18 of this Article VII, the expenses of the Authority for administration and for preparation of a mass transit and financing plan, including all engineering, financial, legal and other services required in connection therewith, shall, to the extent funds for such expenses are not provided through grants by the federal government, be borne by the District of Columbia, by the Washington Suburban Transit District and the component governments of the Northern Virginia Transportation District. Such expenses shall be allocated among such governments on the basis of population as reflected by the latest available population statistics of the Bureau of the Census; provided, however, that upon the request of any Director the Board shall make the allocation upon estimates of population acceptable to the Board. The allocations shall be made by the Board and shall be included in the annual current expense budget prepared by the Board.

"Acquisition of Facilities from Federal or Other Agencies

"20. (a) The Authority is authorized to acquire by purchase, lease or grant or in any manner other than condemnation, from the federal government, or any agency thereof, from the District of Columbia, Maryland or Virginia, or any political subdivision or agency thereof, any transit and related facilities, including real and personal property and all other assets, located within the Zone, whether in operation or under construction. Such acquisition shall be made upon such terms and conditions as may be agreed upon and subject to such authorization or approval by the Congress and the governing body of the District of Columbia, as may be required; provided, however, that if such acquisition imposes or may impose any further or additional obligation or liability upon the Washington Suburban Transit District, the Northern Virginia Transportation District, or any component government thereof, under any contract with the Authority, the Authority shall not make such acquisition until any such affected contract has been appropriately amended.

"(b) For such purpose, the Authority is authorized to assume all liabilities and contracts relating thereto, to assume responsibility as primary obligor, endorser or guarantor on any outstanding revenue bonds, equipment trust certificates or other form of indebtedness authorized in this Act issued by such predecessor agency or agencies and, in connection therewith, to become a party to, and assume the obligations of, any indenture or loan agreement underlying or issued in connection with any outstanding securities or debts.

"Temporary Borrowing

"21. The Board may borrow, in anticipation of receipts, from any signatory, the Washington Suburban Transit District, the Northern Virginia Transportation District, or any component government thereof, or from any lending institution for any purposes of this Title, including administrative expenses. Such loans shall be for a term not to exceed two years and at a rate of interest not to exceed six percent per annum. The signatories and any such political subdivision or agency may, in its discretion, make such loans from any available money.

"Funding

"22. The Board shall not construct or acquire any of the transit facilities specified in a mass transit plan adopted pursuant to the provisions of Article VI of this Title, or in any alteration, revision or amendment thereof, nor make any commitments or incur any obligations with respect thereto until funds are available therefor.

"ARTICLE VIII

"BUDGET

"Capital Budget

"23. The Board shall annually adopt a capital budget, including all capital projects it proposes to undertake or continue during the budget period, containing a statement of the estimated cost of each project and the method of financing thereof.

"Current Expense Budget

"24. The Board shall annually adopt a current expense budget for each fiscal year. Such budget shall include the Board's estimated expenditures for administration, operation, maintenance and repairs, debt service requirements and payments to be made into any funds required to be maintained. The total of such expenses shall be balanced by the Board's estimated revenues and receipts from all sources, excluding funds included in the capital budget or otherwise earmarked for other purposes.

"Adoption and Distribution of Budgets

"25. (a) Following the adoption by the Board of annual capital and current expense budgets, the general manager shall transmit certified copies of such budgets to the principal budget officer of the federal government, the District of Columbia, the Washington Suburban Transit District and of the component governments of the Northern Virginia Transportation Commission at such time and in such manner as may be required under their respective budgetary procedures.

"(b) Each budget shall indicate the amounts, if any, required from the federal government, the Government of the District of Columbia, the Washington Suburban Transit District and the component governments of the Northern Virginia Transportation District, determined in accordance with the commitments made pursuant to Article VII, Section 18 of this Title, to balance each of said budgets.

"Payments

"26. Subject to such review and approval as may be required by their budgetary or other applicable processes, the federal government, the Government of the District of Columbia, the Washington Suburban Transit District and the component governments of the Northern Virginia Transportation District shall include in their respective budgets next to be adopted and appropriate or otherwise provide the amounts certified to each of them as set forth in the budgets.

"ARTICLE IX

"REVENUE BONDS

"Borrowing Power

"27. The Authority may borrow money for any of the purposes of this Title, may issue its negotiable bonds and other evidences of indebtedness in respect thereto and may mortgage or pledge its properties, revenues and contracts as security therefor.

"All such bonds and evidences of indebtedness shall be payable solely out of the properties and revenues of the Authority. The bonds and other obligations of the Authority, except as may be otherwise provided in the indenture under which they were issued, shall be direct and general obligations of the Authority and the full faith and credit of the Authority are hereby pledged for the prompt payment of the debt service thereon and for the fulfillment of all other undertakings of the Authority assumed by it to or for the benefit of the holders thereof.

"Funds and Expenses

"28. The purposes of this Title shall include, without limitation, all costs of any project or facility or any part thereof, including interest during a period of construction and for a period not to exceed two years thereafter and any incidental expenses (legal, engineering, fiscal, financial, consultant and other expenses) connected with issuing and disposing of the bonds; all amounts required for the creation of an operating fund, construction fund, reserve fund, sinking fund, or other special fund; all other expenses connected with administration, the planning, design, acquisition, construction, completion, improvement or reconstruction of any facility or any part thereof; and reimbursement of advances by the Board or by others for such purposes and for working capital.

"Credit Excluded; Officers, State, Political Subdivisions and Agencies

"29. The Board shall have no power to pledge the credit of any signatory party, political subdivision or agency thereof, or to impose any obligation for payment of the bonds upon any signatory party, political subdivision or agency thereof, but may pledge the contracts of such governments and agencies; provided, however, that the bonds may be underwritten in whole or in part as to principal and interest by the United States, or by any political subdivision or agency of any signatory; provided, further, that any bonds underwritten in whole or in part as to principal and interest by the United States shall not be issued without approval of the Secretary of the Treasury. Neither the Directors nor any person executing the bonds shall be liable personally on the bonds of the Authority or be subject to any personal liability or accountability by reason of the issuance thereof.

"Funding and Refunding

"30. Whenever the Board deems it expedient, it may fund and refund the bonds and other obligations of the Authority whether or not such bonds and obligations have matured. It may provide for the issuance, sale or exchange of refunding bonds for the purpose of redeeming or retiring any bonds (including the payment of any premium, duplicate interest or each cash adjustment required in connection therewith) issued by the Authority or issued by any other issuing body, the proceeds of the sale of which have been applied to any facility acquired by the Authority or which are payable out of the revenues of any facility acquired by the Authority. Bonds may be issued partly to refund bonds and other obligations then outstanding, and partly for any other purpose of the Authority. All provisions of this Title applicable to the issuance of bonds are applicable to refunding bonds and to the issuance, sale or exchange thereof.

"Bonds; Authorization Generally

"31. Bonds and other indebtedness of the Atuhority shall be authorized by resolution of the Board. The validity of the authorization and issuance of any bonds by the Authority shall not be dependent upon nor affected in any way by: (i) the deposition of bond proceeds by the Board or by contract, commitment or action taken with respect to such proceeds; or (ii) the failure to complete any part of the project for which bonds are authorized to be issued. The Authority may issue bonds

in one or more series and may provide for or more consolidated bond issues, in such principal amounts and with such terms and provisions as the Board may deem necessary. The bonds may be secured by a pledge of all or any part of the property, revenues and franchises under its control. Bonds may be issued by the Authority in such amount, with such maturities and in such denominations and form or forms, whether coupon or registered, as to principal alone or as to both principal and interest, as may be determined by the Board. The Board may provide for redemption of bonds prior to maturity on such notice and at such time or times and with such redemption provisions, including premiums, as the Board may determine.

"Bonds; Resolutions and Indentures Generally

"32. The Board may determine and enter into indentures or adopt resolutions providing for the principal amount, date or dates, maturities, interest rate, or rates, denominations, form, registration, transfer, interchange and other provisions of the bonds and coupons and the terms and conditions upon which the same shall be executed, issued, secured, sold, paid, redeemed, funded and refunded. The resolution of the Board authorizing any bond or any indenture so authorized under which the bonds are issued may include all such covenants and other provisions not inconsistent with the provisions of this Title, other than any restriction on the regulatory powers vested in the Board by this Title, as the Board may deem necessary or desirable for the issue, payment, security, protection or marketing of the bonds, including without limitation covenants and other provisions as to the rates or amounts of fees, rents and other charges to be charged or made for use of the facilities; the use, pledge, custody, securing, application and disposition of such revenues, of the proceeds of the bonds, and of any other moneys or contracts of the Authority; the operation, maintenance, repair and reconstruction of the facilities and the amounts which may be expended therefor; the sale, lease or other disposition of the facilities; the insuring of the facilities and of the revenues derived therefrom; the construction or other acquisition of other facilities; the issuance of additional bonds or other indebtedness; the rights of the bondholders and of any trustee for the bondholders upon default by the Authority or otherwise; and the modification of the provisions of the indenture and of the bonds. Reference on the face of the bonds to such resolution or indenture by its date of adoption or the apparent date on the face thereof is sufficient to incorporate all of the provisions thereof and of this Title into the body of the bonds and their appurtenant coupons. Each taker and subsequent holder of the bonds or coupons, whether the coupons are attached to or detached from the bonds, has recourse to all of the provisions of the indenture and of this Title and is bound thereby.

"Maximum Maturity

"33. No bond or its terms shall mature in more than fifty years from its own date and in the event any authorized issue is divided into two or more series or divisions, the maximum maturity date herein authorized shall be calculated from the date on the face of each bond separately, irrespective of the fact that different dates may be prescribed for the bonds of each separate series or division of any authorized issue.

"Tax Exemption

"34. All bonds and all other evidences of debt issued by the Authority under the provisions of this Title and the interest thereon shall at all times be free and exempt from all taxation by or under authority of any signatory parties, except for transfer, inheritance and estate taxes.

"Interest

"35. Bonds shall bear interest at a rate of not to exceed six percent per annum, payable annually or semiannually.

"Place of Payment

"36. The Board may provide for the payment of the principal and interest of bonds at any place or places within or without the signatory states, and in any specified lawful coin or currency of the United States of America.

"Execution

"37. The Board may provide for the execution and authentication of bonds by the manual, lithographed or printed facsimile signature of members of the Board, and by additional authentication by a trustee or fiscal agent appointed by the Board; provided, however, that one of such signatures shall be manual. If any of the members whose signatures or countersignatures appear upon the bonds or coupons cease to be members before the delivery of the bonds or coupons, their signatures or countersignatures are nevertheless valid and of the same force and effect as if the members had remained in office until the delivery of the bonds and coupons.

"Holding Own Bonds

"38. The Board shall have power out of any funds available therefor to purchase its bonds and may hold, cancel or resell such bonds.

"Sale

"39. The Board may fix terms and conditions for the sale or other disposition of any authorized issue of bonds. The Board may sell bonds at less than their par or face value but no issue of bonds may be sold at an aggregate price below the par or face value thereof if such sale would result in a net interest cost to the Authority calculated upon the entire issue so sold of more than six percent per annum payable semiannually, according to standard tables of bond values. All bonds issued and sold pursuant to this Title may be sold in such manner, either at public or private sale, as the Board shall determine.

"Negotiability

"40. All bonds issued under the provisions of this Title are negotiable instruments.

"Bonds Eligible for Investment and Deposit

"41. Bonds issued under the provisions of this Title are hereby made securities in which all public officers and public agencies of the signatories and their political subdivisions and all banks, trust companies, savings and loan associations, investment companies and others carrying on a banking business, all insurance companies and insurance associations and others carrying on an insurance business, all administrators, executors, guardians, trustees and other fiduciaries, and all other persons may legally and properly invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any officer of any signatory, or of any agency or political subdivision of any signatory, for any purpose for which the deposit of bonds or other obligations of such signatory is now or may hereafter be authorized by law.

"Validation Proceedings

"42. Prior to the issuance of any bonds, the Board may institute a special proceeding to determine the legality of proceedings to issue the bonds and their validity under the laws of any of the signatory parties. Such proceeding shall be instituted and prosecuted in rem and the final judgment rendered therein shall be conclusive against all persons whomsoever and against each of the signatory parties.

"Recording

"43. No indenture need be recorded or filed in any public office, other than the office of the Board. The pledge of revenues provided in any identure shall take effect forthwith as provided therein and irrespective of the date of receipt of such revenues by the Board of the indenture trustee. Such pledge shall be effective as provided in the indenture without physical delivery of the revenues to the Board of to the indenture trustee.

"Pledged Revenues

"44. Bond redemption and interest payments shall, to the extent provided in the resolution or indenture, constitute a first, direct and exclusive charge and lien on all revenues received from the use and operation of the facility, and on any sinking or other funds created therefrom. All such revenues, together with interest thereon, shall constitute a trust fund for the security and payment of such bonds and except as and to the

extent provided in the indenture with respect to the payment therefrom of expenses for other purposes including administration, operation, maintenance, improvements or extensions of the facilities or other purposes shall not be used or pledged for any other purpose so long as such bonds, or any of them, are outstanding and unpaid.

"Remedies

"45. The holder of any bond may for the equal benefit and protection of all holders of bonds similarly situated: (1) by mandamus or other appropriate proceedings require and compel the performance of any of the duties imposed upon the Board or assumed by it, its officers, agents or employees under the provisions of any indenture, in connection with the acquisition, construction, operation, maintenance, repair, reconstruction or insurance of the facilities, or in connection with the collection, deposit, investment, application and disbursement of the revenues derived from the operation and use of the facilities, or in connection with the deposit, investment and disbursement of the proceeds received from the sale of bonds; or (2) by action or suit in a court of competent jurisdiction of any signatory party require the Authority to account as if it were the trustee of an express trust, or enjoin any acts or things which may be unlawful or in violation of the rights of the holders of the bonds. The enumeration of such rights and remedies does not, however, exclude the exercise or prosecution of any other rights or remedies available to the holders of bonds.

"ARTICLE X

"EQUIPMENT TRUST CERTIFICATES

"Power

"46. The Board shall have power to execute agreements, leases and equipment trust certificates with respect to the purchase of facilities or equipment such as cars, trolley buses and motor buses, or other craft, in the form customarily used in such cases and appropriate to effect such purchase, and may dispose of such equipment trust certificates in such manner as it may determine to be for the best interests of the Authority. Each vehicle covered by an equipment trust certificate shall have the name of the owner or lessor plainly marked upon both sides thereof, followed by the words 'Owner and Lessor'.

"Payments

"47. All monies required to be paid by the Authority under the provisions of such agreements, leases and equipment trust certificates shall be payable solely from the revenue to be derived from the operation of the transit system or from such grants, loans, appropriations or other revenues, as may be available to the Board under the provisions of this Title. Payment for such facilities or equipment, or rentals thereof, may be made in installments, and the deferred installments may be evidenced by equipment trust certificates as aforesaid, and title to such facilities or equipment may not vest in the Authority until the equipment trust certificates are paid.

"Procedure

"48. The agreement to purchase facilities or equipment by the Board may direct the vendor to sell and assign the equipment to a bank or trust company, duly authorized to transact business in any of the signatory States, or to the Housing and Home Finance Administrator, as trustee, lessor or vendor, for the benefit and security of the equipment trust certificates and may direct the trustee to deliver the facilities and equipment to one or more designated officers of the Board and may authorize the trustee simultaneously therewith to execute and deliver a lease of the facilities or equipment to the Board.

"Agreements and Leases

"49. The agreements and leases shall be duly acknowledged before some person authorized by law to take acknowledgements of deeds and in the form required for acknowledgement of deeds and such agreements, leases, and equipment trust certificates shall be authorized by resolution of the Board and shall contain such covenants, conditions and provisions as may be deemed necessary or appropriate to insure the payment of the equipment trust certificates from the revenues to be derived from the operation of the transit system and other funds.

"The covenants, conditions and provisions of the agreements, leases and equipment trust certificates shall not conflict with any of the provisions of any resolution or trust agreement securing the payment of bonds or other obligations of the Authority then outstanding or conflict with or be in derogation of the rights of the holders of any such bonds or other obligations.

"Law Governing

"50. The equipment trust certificates issued hereunder shall be governed by Laws of the District of Columbia and for this purpose the chief place of business of the Authority shall be considered to be the District of Columbia. The filing of any documents required or permitted to be filed shall be governed by the Laws of the District of Columbia.

"ARTICLE XI

"OPERATION OF FACILITIES

"Operation by Contract or Lease

"51. The Authority shall not perform transit service, nor any of the functions, such as maintenance of equipment and right of way normally associated with the providing of such service, with any transit facilities owned or controlled by it but shall provide for the performance of transit service with such facilities by contract or contracts with private transit companies, private railroads, or other persons. Any facilities and properties owned or controlled by the Authority, other than those utilized in performing transit service, may be operated by the Authority or by others pursuant to contract or lease as the Board may determine. All operations of such facilities and properties by the Authority and by its Contractor and lessees shall be within the Zone.

"The Operating Contract

"52. Without limitation upon the right of the Board to prescribe such additional terms and provisions as it may deem necessary and appropriate, the operating contract shall;

"(a) specify the services and functions to be performed by the Contractor;

"(b) provide that the Contractor shall hire, supervise and control all personnel required to perform the services and functions assumed by it under the operating contract and that all such personnel shall be employees of the Contractor and not of the Authority;

"(c) require the Contractor to assume the obligations of the labor contract or contracts of any transit company which may be acquired by the Authority and assume the pension obligations of any such transit company;

"(d) require the Contractor to comply in all respects with the labor policy set forth in Article XIV of this Title;

"(e) provide that no transfer of ownership of the capital stock, securities or interests in any Contractor, whose principal business is the operating contract, shall be made without written approval of the Board and the certificates or other instruments representing such stock, securities or interest shall contain a statement of this restriction;

"(f) provide that the Board shall have the sole authority to determine the rates or fares to be charged, the routes to be operated and the service to be furnished;

"(g) specify the obligations and liabilities which are to be assumed by the Contractor and those which are to be the responsibility of the Authority;

"(h) provide for an annual audit of the books and accounts of the Contractor by an independent certified public accountant to be selected by the Board and for such other audits, examinations and investigations of the books and records, procedures and affairs of the Contractor at such times and in such manner as the Board shall require, the cost of such audits, examinations and investigations to be borne as agreed by the parties in the operating contract; and

"(i) provide that no operating contract shall be entered into for a term in excess of five years; provided, that any such contract may be renewed for successive terms, each of which shall not exceed five years. Any such operating contract shall be subject to termination by the Board for cause only.

"Compensation for Contractor

"53. Compensation to the Contractor under the operating contract may, in the discretion of the Board, be in the form of (1) a fee paid by the Board to the Contractor for services, (2) a payment by the Contractor to the Board for the right to operate the system, or (3) such other arrangement as the Board may prescribe; provided, however, that the compensation shall bear a reasonable relationship to the benefits to the Authority and to the estimated costs the Authority would incur in directly performing the functions and duties delegated under the operating contract; and provided, further, that no such contract shall create any right in the Contractor (1) to make or change any rate or fare or alter or change the service specified in the contract to be provided or (2) to seek judicial relief by any form of original action, review or other proceedings from any rate or fare or service prescribed by the Board. Any assertion, or attempted assertion, by the Contractor of the right to make or change any rate or fare or service prescribed by the Board shall constitute cause for termination of the operating contract. The operating contract may provide incentives for efficient and economical management.

"Selection of Contractor

"54. The Board shall enter into an operating contract only after formal advertisement and negotiations with all interested and qualified parties, including private transit companies rendering transit service within the Zone; provided, however, that, if the Authority acquires transit facilities from any agency of the federal or District of Columbia governments, in accordance with the provisions of Article VII, Section 20 of this Title, the Authority shall assume the obligations of any operating contract which the transferor agency may have entered into.

"ARTICLE XII

"COORDINATION OF PRIVATE AND PUBLIC FACILITIES

"Declaration of Policy

"55. It is hereby declared that the interest of the public in efficient and economical transit service and in the financial well-being of the Authority and of the private transit companies requires that the public and private segments of the regional transit system be operated, to the fullest extent possible, as a coordinated system without unnecessary duplicating service.

"Implementation of Policy

"56. In order to carry out the legislative policy set forth in Section 55 of this Article XII

"(a) The Authority—

"(1) except as herein provided, shall not, directly or through a Contractor, perform transit service by bus or similar motor vehicles;

"(2) shall, in cooperation with the private carriers and WMATC, coordinate to the fullest extent practicable, the schedules for service performed by its facilities with the schedules for service performed by private carriers; and

"(3) shall enter into agreements with the private carriers to establish and maintain, subject to approval by WMATC, through routes and joint fares and provide for the division thereof, or, in the absence of such agreements, establish and maintain through routes and joint fares in accordance with orders issued by WMATC directed to the private carriers when the terms and conditions for such through service and joint fares are acceptable to it.

"(b) The WMATC, upon application, complaint, or upon its own motion, shall—

"(1) direct private carriers to coordinate their schedules for service with the schedules for service performed by facilities owned or controlled by the Authority;

"(2) direct private carriers to improve or extend any existing services or provide additional service over additional routes;

"(3) authorize a private carrier, pursuant to agreement between said carrier and the Authority, to establish and maintain through routes and joint fares for transportation to be rendered with facilities owned or controlled by the Authority if, after hearing held upon reasonable notice, WMATC finds that such through routes and joint fares are required by the public interest; and

"(4) in the absence of such an agreement with the Authority, direct a private carrier to establish and maintain through routes and joint fares with the Authority, if, after hearing held upon reasonable notice, WMATC finds that such through service and joint fares are required by the public interest; provided, however, that no such order, rule or regulation of WMATC shall be construed to require the Authority to establish and maintain any through route and joint fare.

"(c) WMATC shall not authorize or require a private carrier to render any service, including the establishment or continuation of a joint fare for a through route service with the Authority which is based on a division thereof between the Authority and private carrier which does not provide a reasonable return to the private carrier, unless the carrier is currently earning a reasonable return on its operation as a whole in performing transportation subject to the jurisdiction of WMATC. In determining the issue of reasonable return, WMATC shall take into account any income attributable to the carrier, or to any corporation, firm or association owned in whole or in part by the carrier, from the Authority whether by way of payment for services or otherwise.

"(d) If the WMATC is unable, through the exercise of its regulatory powers over the private carriers granted in paragraph (b) hereof or otherwise, to bring about the requisite coordination of operations and service between the private carriers and the Authority, the Authority may in the situations specified in paragraph (b) hereof, cause such transit service to be rendered by its Contractor by bus or other motor vehicle, as it shall deem necessary to effectuate the policy set forth in Section 55 hereof. In any such situation, the Authority, in order to encourage private carriers to render bus service to the fullest extent practicable, may, pursuant to agreement, make reasonable subsidy payments to any private carrier.

"Rights of Private Carriers Unaffected

"57. Nothing in this Title shall restrict or limit such rights and remedies, if any, that any private carrier may have against the Authority arising out of acts done or actions taken by the Authority hereunder. In the event any court of competent jurisdiction shall determine that the Authority has unlawfully infringed any rights of any private carrier or otherwise caused or permitted any private carrier to suffer legally cognizable injury, damages or harm and shall award a judgment therefor, such judgment shall constitute a lien against any and all of the assets and properties of the Authority.

"Financial Assistance to Private Carriers

"58. (a) The Board may accept grants from and enter into loan agreements with the Housing and Home Finance Administrator, pursuant to the provisions of the Urban Mass Transportation Act of 1964 (78 Stat. 302), or with any successor agency or under any law of similar purport, for the purpose of rendering financial assistance to private carriers.

"(b) An application by the Board for any such grant or loan shall be based on and supported by a report from WMATC setting forth for each private carrier to be assisted (1) the equipment and facilities to be acquired, constructed, reconstructed, or improved, (2) the service proposed to be rendered by such equipment and facilities, (3) the improvement in service expected from such facilities and equipment, (4) how the use of such facilities and equipment will be coordinated with the transit facilities owned by the Authority, (5) the ability of the affected private carrier to repay any such loans or grants and (6) recommend terms for any such loans or grants.

"(c) Any equipment or facilities acquired, constructed, reconstructed or improved with the proceeds of such grants or loans shall be owned by the Authority and may be made available to private carriers only by lease or other agreement which contain provisions acceptable to the Housing and Home Finance Administrator assuring that the Authority will have satisfactory continuing control over the use of such facilities and equipment.

"ARTICLE XIII

"JURISDICTION; RATES AND SERVICE

"Washington Metropolitan Area Transit Commission

"59. Except as provided herein, this Title shall not affect the functions and jurisdiction of WMATC, as granted by Titles I and II of this Compact, over the transportation therein specified and the persons engaged therein and the Authority shall have no jurisdiction with respect thereto.

"Public Facilities

"60. Service performed by transit facilities owned or controlled by the Authority, and the rates and fares to be charged for such service, shall be subject to the sole and exclusive jurisdiction of the Board and, notwithstanding any other provision in this Compact contained, WMATC shall have no authority with respect thereto, or with respect to any contractor in connection with the operation by it of transit facilities owned or controlled by the Authority. The determinations of the Board with respect to such matters shall not be subject to judicial review nor to the processes of any court.

"Standards

"61. Insofar as practicable, and consistent with the provision of adequate service at reasonable fares, the rates and fares and service shall be fixed by the Board so as to result in revenues which will:

"(a) pay the operating expenses and provide for repairs, maintenance and depreciation of the transit system owned or controlled by the Authority;

"(b) provide for payment of all principal and interest on outstanding revenue bonds and other obligations and for payment of all amounts to sinking funds and other funds as may be required by the terms of any indenture or loan agreement;

"(c) provide for the purchase, lease or acquisition of rolling stock, including provisions for interest, sinking funds, reserve funds, or other funds required for payment of any obligations incurred by the Authority for the acquisition of rolling stock; and

"(d) provide funds for any purpose the Board deems necessary and desirable to carry out the purposes of this Title.

"Hearings

"62. (a) The Board shall not make or change any fare or rate, nor establish or abandon any service except after holding a public hearing with respect thereto.

"(b) Any signatory, any political subdivision thereof, any agency of the federal government and any person, firm or association served by or using the transit facilities of the Authority and any private carrier may file a request with the Board for a hearing with respect to any rates or charges made by the Board or any service rendered with the facilities owned or controlled by the Authority. Such request shall be in writing, shall state the matter on which a hearing is requested and shall set forth clearly the matters and things on which the request relies. As promptly as possible after such a request is filed, the Board, or such officer or employee as it may designate, shall confer with the protestant with respect to the matters complained of. After such conference, the Board, if it deems the matter meritorious and of general significance, may call a hearing with respect to such request.

"(c) The Board shall give at least thirty days' notice for all hearings. The notice shall be given by publication in a newspaper of daily circulation throughout the Zone and such notice shall be published once a week for two successive weeks. The notice shall start with the day of first publication. In addition, the Board shall post notices of the hearing in its offices, all stations and terminals, and in all of its vehicles and rolling stock in revenue service.

"(d) Prior to calling a hearing on any matter specified in this section, the Board shall prepare and file at its main office and keep open for public inspection its report relating to the proposed action to be considered at such hearing. Upon receipt by the Board of any report submitted by WMATC, in connection with a matter set for hearing, pursuant to the provisions of Section 63 of this Article XIII, the Board shall file such report at its main office and make it available for public inspection. For hearings called by the Board pursuant to paragraph (b), above, the Board also shall cause to be lodged and kept open for public inspection the written request upon which the hearing is granted and all documents filed in support thereof.

"Refrence of Matters to WMATC

"63. To facilitate the attainment of the public policy objectives for operation of the publicly and privately owned or controlled transit facilities as stated in Article XII, Section 55, prior to the hearing provided for by Section 62 hereof—

"(a) The Board shall refer to WMATC for its consideration and recommendations, any matter which the Board considers may affect the operation of the publicly and privately owned or controlled transit facilities as a coordinated regional transit system and any matter for which the Board has called a hearing, pursuant to Section 62 of this Article XIII, except that temporary or emergency changes in matters affecting sevice shall not be referred; and

"(b) WMATC, upon such reference of any matter to it, shall give the referred matter preference over any other matters pending before it and shall, as expeditiously as practicable, prepare and transmit its report thereon to the Board. The Board may request WMATC to reconsider any part of its report or to make any supplemental reports it deems necessary. All of such reports shall be advisory only.

"(c) Any report submitted by WMATC to the Board shall consider, without limitation, the probable effect of the matter or proposal upon the operation of the publicly and privately owned or controlled transit facilities as a coordinated regional system, passenger movements, fare structures, service and the impact on the revenues of both the public and private facilities.

"ARTICE XIV

"LABOR POLICY

"Construction

"64. The Board shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors in the construction, alteration or repair, including painting and decorating, of projects, buildings and works which are undertaken by the Authority or are financially assisted by it, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5), and every such employee shall receive compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in any workweek in excess of eight hours in any workday or forty hours in any workweek, as the case may be. A provision stating the minimum wages thus determined and the requirement that overtime be paid as above provided shall be set out in each project advertisement for bids and in each bid proposal form and shall be made a part of the contract covering the project, which contract shall be deemed to be a contract of the character specified in Section 103 of the Contract Work Hours Standards Act (76 Stat. 357), as now or as may hereafter be in effect. The Secretary of Labor shall have, with respect to the administration and enforcement of the labor standards specified in this provision, the supervisory, investigatory and other authority and functions set forth in Reorganization Plan No. 14 of 1950 (15 F.R. 3176, 64 Stat. 1267, 5 U.S.C. 133z-15), and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948, as amended; 40 U.S.C. 276(c)). The requirements of this section shall also be applicable with respect to the employment of laborers and mechanics in the construction, alteration or repair, including painting and decorating, of the transit facilities owned or controlled by the Authority where such activities are performed by a Contractor pursuant to agreement with the operator of such facilities.

"Equipment and Supplies

"65. Contracts for the manufacture or furnishing of materials, supplies, articles and equipment shall be subject to the provisions of the Walsh-Healey Public Contracts Act (41 U.S.C. 35 et seq.), as now or as may hereafter be in effect.

"Operations

"66. It shall be a condition of the operation of the transit facilities owned or controlled by the Authority that the provisions of section 10(c) of the Urban Mass Transportation Act of 1964 (49 U.S.C. 1609(c) shall be applicable to any contract or other arrangement for the operation of such facilities.

"ARTICLE XV

"RELOCATION ASSISTANCE

"Relocation Program and Payments

"67. Section 7 of the Urban Mass Transportation Act of 1964, and as the same may from time to time be amended, and all regulations promulgated thereunder, are hereby made applicable to individuals, families, business concerns and nonprofit organizations displaced from real property by actions of the Authority without regard to whether financial assistance is sought by or extended to the Authority under any provision of that Act; provided, however, that in the event real property is acquired for the Authority by an agency of the federal government, or by a State or local agency or instrumentality, the Authority is authorized to reimburse the acquiring agency for relocation payments made by it.

"Relocation of Public or Public Utility Facilities

"68. Notwithstanding the provisions of Section 67 of this article XV, any highway or other public facility or any facilities of a public utility company which will be dislocated by reason of a project deemed necessary by the Board to effectuate the authorized purposes of this Title shall be relocated if such facilities are devoted to a public use, and the reasonable cost of relocation, if substitute facilities are necessary, shall be paid by the Board from any of its monies.

"ARTICLE XVI

"GENERAL PROVISIONS

"Creation and Administration of Funds

"69. (a) The Board may provide for the creation and administration of such funds as may be required. The funds shall be disbursed in accordance with rules established by the Board and all payments from any funds shall be reported to the Board. Monies in such funds and other monies of the Authority shall be deposited, as directed by the Board, in any state or national bank located in the Zone having a total paid-in capital of at least one million dollars ($1,000,000). The trust department of any such state or national bank may be designated as a depositary to receive any securities acquired or owned by the Authority. The restriction with respect to paid-in capital may be waived for any such bank which agrees to pledge federal securities to protect the funds and securities of the Authority in such amounts an pursuant to such arrangements as may be acceptable to the Board.

"(b) Any monies of the Authority may, in the discretion of the Board and subject to any agreement or covenant between the Authority and the holders of any of its obligations limiting or restricting classes of investments, be invested in bonds or other obligations of, or guaranteed as to interest and principal by, the United States, Maryland, Virginia or the political subdivisions or agencies thereof.

"Annual Independent Audit

"70. (a) As soon as practical after the closing of the fiscal year, an audit shall be made of the financial acaccounts of the Authority. The audit shall be made by qualified certified public accountants selected by the Board, who shall have no personal interest direct or indirect in the financial affairs of the Authority or any of its officers or employees. The report of audit shall be prepared in accordance with generally accepted auditing principles and shall be filed with the Chairman and other officers as the Board shall direct. Copies of the report shall be distributed to each Director, to the Congress, to the Board of Commissioners of the District of Columbia, to the Governors of Virginia and Maryland, to the Washington Suburban Transit Commission, to the Northern Virginia Transportation Commission and to the governing bodies of the political subdivisions located within the Zone which are parties to commitments for participation in the financing of the Authority and shall be made available for public distribution.

"(b) The financial transactions of the Board shall be subject to audit by the United States General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where the accounts of the Board are kept.

"(c) Any Director, officer or employee who shall refuse to give all required assistance and information to the accountants selected by the Board or who shall refuse to submit to them for examination such books, documents, records, files, accounts, papers, things or property as may be requested shall, in the discretion of the Board forfeit his office.

"Reports

"71. The Board shall make and publish an annual report on its programs, operations and finances, which shall be distributed in the same manner provided by Section 70 of this Article XVI for the report of annual audit. It may also prepare, publish and distribute such other public reports and informational materials as it may deem necessary or desirable.

"Insurance

"72. The Board may self-insure or purchase insurance and pay the premiums therefore against loss or damage to any of its properties; against liability for injury to persons or property; and against loss of revenue from any cause whatsoever. Such insurance coverage shall be in such form and amount as the Board may determine, subject to the requirements of any agreement arising out of issuance of bonds or other obligations by the Authority.

"Purchasing

"73. Contracts for the construction, reconstruction or improvement of any facility when the expenditure required exceeds ten thousand dollars ($10,000) and contracts for the purchase of supplies, equipment and materials when the expenditure required exceeds two thousand five hundred dollars ($2,500) shall be advertised and let upon sealed bids to the lowest responsible bidder. Notice requesting such bids shall be published in a manner reasonably likely to attract prospective bidders, which publication shall be made at least ten days before bids are received and in at least two newspapers of general circulation in the Zone. The Board may reject any and all bids and readvertise in its discretion. If after rejecting bids the Board determines and resolves that, in its opinfon, the supplies, equipment and materials may be purchased at a lower price in the open market, the Board may give each responsible bidder an opportunity to negotiate a price and may proceed to purchase the supplies, equipment and materials in the open market at a negotiated price which is lower than the lowest rejected bid of a responsible bidder, without further observance of the provisions requiring bids or notice. The Board shall adopt rules and regulations to provide for purchasing from the lowest responsible bidder when sealed bids, notice and publication are not required by this section. The Board may suspend and waive the provisions of this section requiring competitive bids whenever:

"(a) the purchase is to be made from or the contract is to be made with the federal or any State government or any agency or political subdivision thereof or pursuant to any open end bulk purchase contract of any of them;

"(b) the public exigency requires the immediate delivery of the articles;

"(c) only one source of supply is available; or

"(d) the equipment to be purchased is of a technical nature and the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts in the public interest.

"Rights of Way

"74. The Board is authorized to locate, construct and maintain any of its transit and related facilities in, upon, over, under or across any streets, highways, freeways, bridges and any other vehicular facilities, subject to the applicable laws governing such use of such facilities by

public agencies. In the absence of such laws, such use of such facilities by the Board shall be subject to such reasonable conditions as the highway department or other affected agency of a signatory party may require; provided, however, that the Board shall not construct or operate transit or related facilities upon, over, or across any parkways or park lands without the consent of, and except upon the terms and conditions required by, the agency having jurisdiction with respect to such parkways and park lands, but may construct or operate such facilities in a subway under such parkways or park lands upon such reasonable terms and conditions as may be specified by the agency having jurisdiction with respect thereto.

"Compliance with Laws, Regulations and Ordinances

"75. The Board shall comply with all laws, ordinances and regulations of the signatories and political subdivisions and agencies thereof with respect to use of streets, highways and all other vehicular facilities, traffic control and regulation, zoning, signs and buildings.

"Police

"76. The Board is authorized to employ watchmen, guards and investigators as it may deem necessary for the protection of its properties, personnel and passengers and such employees, when authorized by any jurisdiction within the Zone, may serve as special police officers in any such jurisdiction. Nothing contained herein shall relieve any signatory or political subdivision or agency thereof from its duty to provide police service and protection or to limit, restrict or interfere with the jurisdiction of or performance of duties by the existing police and law of enforcement agencies.

"Exemption from Regulation

"77. Except as otherwise provided in this Title, any transit service rendered by transit facilities owned or controlled by the Authority and the Authority or any corporation, firm or association performing such transit service pursuant to an operating contract with the Authority, shall, in connection with the performance of such service, be exempt from all laws, rules, regulations and orders of the signatories and of the United States otherwise applicable to such transit service and persons, except that laws, rules, regulations and orders relating to inspection of equipment and facilities, safety and testing shall remain in force and effect; provided, however, that the Board may promulgate regulations for the safety of the public and employees not inconsistent with the applicable laws, rules, regulations or orders of the signatories and of the United States.

"Tax Exemption

"78. It is hereby declared that the creation of the Authority and the carrying out of the corporate purposes of the Authority is in all respects for the benefit of the people of the signatory states and is for a public purpose and that the Authority and the Board will be performing an essential governmental function, including, without limitation, proprietary, governmental and other functions, in the exercise of the powers conferred by this Title. Accordingly, the Authority and the Board shall not be required to pay taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession or supervision or upon its activities in the operation and maintenance of any transit facilities or upon any revenues therefrom and the property and income derived therefrom shall be exempt from all federal, State, District of Columbia, municipal and local taxation. This exemption shall include, without limitation, all motor vehicle license fees, sales taxes and motor fuel taxes.

"Free Transportation and School Fares

"79. All laws of the signatories with respect to free transportation and school fares shall be applicable to transit service rendered by facilities owned or controlled by the Authority.

"Liability for Contracts and Torts

"80. The Authority shall be liable for its contracts and for its torts and those of its Directors, officers, employees and agent committed in the conduct of any proprietary function, in accordance with the law of the applicable signatory (including rules on conflict of laws), but shall not be liable for any torts occurring in the performance of a governmental function. The exclusive remedy for such breach of contracts and torts for which the Authority shall be liable, as herein provided, shall be by suit against the Authority. Nothing contained in this Title shall be construed as a waiver by the District of Columbia, Maryland, Virginia and the counties and cities within the Zone of any immunity from suit.

"Jurisdiction of Courts

"81. The United States District Courts shall have original jurisdiction, concurrent with the Courts of Maryland and Virginia, of all actions brought by or against the Authority and to enforce subpoenas issued under this Title. Any such action initiated in a State Court shall be removable to the appropriate United States District Court in the manner provided by Act of June 25, 1948, as amended (28 U.S.C. 1446).

"Condemnation

"82. (a) The Authority shall have the power to acquire by condemnation, whenever in its opinion it is necessary or advantageous to the Authority to do so, any real or personal property, or any interest therein, necessary or useful for the transit system authorized herein, except property owned by the United States, by a signatory, or any political subdivision thereof, or by a private transit company.

"(b) Proceedings for the condemnation of property in the District of Columbia shall be instituted and maintained under the Act of December 23, 1963 (77 Stat. 577–581, D.C. Code 1961, Supp. IV, Sections 1351–1368). Proceedings for the condemnation of property located elsewhere within the Zone shall be instituted and maintained, if applicable, pursuant to the provisions of the Act of August 1, 1888, as amended (25 Stat. 357, 40 U.S.C. 257) and the Act of June 25, 1948 (62 Stat. 935 and 937, 28 U.S.C. 1358 and 1403) or any other applicable Act; provided, however, that if there is no applicable Federal law, condemnation proceedings shall be in accordance with the provisions of the State law of the signatory in which the property is located governing condemnation by the highway agency of such state. Whenever the words 'real property,' 'realty,' 'land,' 'easement,' 'right-of-way,' or words of similar meaning are used in any applicable federal or state law relating to procedure, jurisdiction and venue, they shall be deemed, for the purposes of this Title, to include any personal property authorized to be acquired hereunder.

"(c) Any award or compensation for the taking of property pursuant to this Title shall be paid by the Authority, and none of the signatory parties nor any other agency, instrumentality or political subdivision thereof shall be liable for such award or compensation.

"Enlargement and Withdrawal; Duration

"83. (a) When advised in writing by the Northern Virginia Transportation Commission or the Washington Suburban Transit Commission that the geographical area embraced therein has been enlarged, the Board, upon such terms and conditions as it may deem appropriate, shall by resolution enlarge the Zone to embrace the additional area.

"(b) The duration of this Title shall be perpetual but any signatory thereto may withdraw therefrom upon two years' written notice to the Board.

"(c) The withdrawal of any signatory shall not relieve such signatory, any transportation district, county or city or other political subdivision thereof from any obligation to the Authority, or inuring to the benefit of the Authority, created by contract or otherwise.

"Amendments and Supplements

"84. Amendments and supplements to this Title to implement the purposes thereof may be adopted by legislative action of any of the signatory parties concurred in by all of the others.

"Construction and Severability

"85. The provisions of this Title and of the agreements thereunder shall be severable and if any phrase, clause, sentence or provision of this Title or any such agreement is declared to be unconstitutional or the applicability thereof to any signatory party, political subdivision

or agency thereof is held invalid, the constitutionality of the remainder of this Title or any such agreement and the applicability thereof to any other signatory party, political subdivision or agency thereof or circumstance shall not be affected thereby. It is the legislative intent that the provisions of this Title be reasonably and liberally construed.

"Effective Date; Execution

"86. This Title shall be adopted by the signatories in the manner provided by law therefor and shall be signed and sealed in four duplicate original copies. One such copy shall be filed with the Secretary of State of each of the signatory parties or in accordance with laws of the State in which the filing is made, and one copy shall be filed and retained in the archives of the Authority upon its organization. This Title shall become effective ninety days after the enactment of concurring legislation by or on behalf of the District of Columbia, Maryland and Virginia and consent thereto by the Congress and all other acts or actions have been taken, including the signing and execution of the Title by the Governors of Maryland and Virginia and the Commissioners of the District of Columbia."

EXECUTION OF COMPACT

According to information received, the Compact set out in note above was signed as follows: By the Governor of Maryland, November 17, 1966; by the Governor of Virginia, November 21, 1966, and by the President of the Board of Commissioners of the District of Columbia, November 22, 1966.

§ 1–1432. Authority and duty of Commissioners to execute and carry out compact.

The Commissioners of the District of Columbia are authorized and directed to enter into and execute an amendment to the Compact substantially as set forth above with the States of Virginia and Maryland and are further authorized and directed to carry out and effectuate the terms and provisions of said Title III, and there are hereby authorized to be appropriated out of District of Columbia funds such amounts as are necessary to carry out the obligations of the District of Columbia in accordance with the terms of the said Title III. (Nov. 6, 1966, 80 Stat. 1352, Pub. L. 89–774, § 2.)

REFERENCES IN TEXT

Words "amendment to the Compact substantially as set forth above" and "Title III", as used in this section, refer to the Washington Metropolitan Area Transit Authority Compact, set out as a note under § 1–1431.

§ 1–1433. Transfer of function, property, documents, etc.—Appropriations—Development of Plans—Advisory services.

(a) To assure uninterrupted progress in the development of the facilities authorized by the National Capital Transportation Act of 1965, the transfer of the functions and duties of the National Capital Transportation Agency (herein referred to as the Agency) to the Washington Metropolitan Area Transit Authority (herein referred to as the Authority) as required by section 1–1408(b) shall take place on September 30, 1967.

(b) Upon the effective date of the transfer of functions and duties authorized by subsection (a) of this section, the President is authorized to transfer to the Authority such real and personal property, studies, reports, records, and other assets and liabilities as are appropriate in order that the Authority may assume the functions and duties of the Agency and, further, the President shall make provision for the transfer to the Authority of the unexpended balance of the appropriations, and of other funds, of the Agency for use by the Authority but such unexpended balances so transferred shall be used only for the purpose for which such appropriations were originally made. Subsequent to said effective date, there is authorized to be appropriated to the Department of Housing and Urban Development, for payment to the Authority, any unappropriated portion of the authorization specified in section 1–1424(a)(1). There is also authorized to be appropriated to the District of Columbia out of the general fund of the District of Columbia, for payment to the Authority, any unappropriated portion of the authorization specified in section 1–1424(a)(2). Any such appropriations shall be used only for the purposes for which such authorizations were originally made.

(c) Pending the assumption by the Authority of the functions and duties of the Agency, the Agency is authorized and directed, in the manner herein set forth, fully to cooperate with and assist the Authority, the Northern Virginia Transportation Commission and the Washington Suburban Transit Commission in the development of plans for the extensions, new lines and related facilities required to expand the basic system authorized by the National Capital Transportation Act of 1965 into a regional system, but pending such transfer of functions and duties, nothing in this subchapter shall be construed to impair the performance by the Agency of the functions and duties imposed by the National Capital Transportation Act of 1965.

(d) In order to provide the cooperation and assistance specified in subsection(c) of this section, the Agency is authorized to perform, on a reimbursable basis, planning, engineering and such other services for the Authority, as the Authority may request, or to obtain such services by contract, but all such assistance and services shall be rendered in accordance with policy determinations made by the Authority and shall be advisory only.

(e) Amounts received by the Agency from the Authority as provided in subsection (d) of this section shall be available for expenditure by the Agency in performing services for the Authority. (Nov. 6, 1966, 80 Stat. 1352, Pub. L. 89–774, § 3.)

REFERENCES IN TEXT

The National Capital Transportation Act of 1965, referred to in subsecs. (a) and (c), is classified to § 1–1421 et seq.

§ 1–1434. Jurisdiction of courts—Removal of actions.

The United States District Courts shall have original jurisdiction, concurrent with the Courts of Maryland and Virginia, of all actions brought by or against the Authority and to enforce subpoenas issued pursuant to the provisions of Title III. Any such action initiated in a State court shall be removable to the appropriate United States District Court in the manner provided by section 1446 of title 28, U.S. Code. (Nov. 6, 1966, 80 Stat. 1353, Pub. L. 89–774, § 4.)

REFERENCES IN TEXT

"Title III", as used in this section, refers to the Washington Metropolitan Area Transit Authority Compact, which is set out as a note under § 1–1431.

§ 1–1435. Amendment of laws and reorganization plans.

(a) All laws or parts of laws of the United States and of the District of Columbia inconsistent with the provisions of Title III are hereby amended for the purpose of this subchapter to the extent necessary to eliminate such inconsistencies and to carry out the provisions of this subchapter and Title III and all laws or parts of laws and all reorganization plans of the United States are hereby amended and made applicable for the purpose of this subchapter to the extent necessary to carry out the provisions of this subchapter and Title III. (Nov. 6, 1966, 80 Stat. 1353, Pub. L. 89–774, § 5(a).)

REFERENCES IN TEXT

"Title III", as used in this section, refers to the Washington Metropolitan Area Transit Authority Compact, which is set out as a note under § 1–1431.

§ 1–1436. Reservation of right to alter, amend or repeal—Submission of reports to Congress—Disclosure of information—Access to books and records—Audits.

(a) The right to alter, amend or repeal this subchapter is hereby expressly reserved.

(b) The Authority shall submit to Congress and the President copies of all annual and special reports made to the Governors, the Commissioners of the District of Columbia and/or the legislatures of the compacting States.

(c) The President and the Congress or any committee thereof shall have the right to require the disclosure and furnishing of such information by the Authority as they may deem appropriate. Further, the President and Congress or any of its committees shall have access to all books, records and papers of the Authority as well as the right of inspection of any facility used, owned, leased, regulated or under the control of said Authority.

(d) In carrying out the audits provided for in section 70(b) of the Compact the representatives of the General Accounting Office shall have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Board and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, agents, and custodians. (Nov. 6, 1966, 80 Stat. 1353, Pub. L. 89–774, § 6.)

REFERENCES IN TEXT

The Compact, referred to in subsec. (d) of this section, is the Washington Metropolitan Area Transit Authority Compact, which, along with § 70(b) thereof, also referred to in this section, is set out as a note under § 1–1431.

REORGANIZATION PLANS AND ORDERS FOR DISTRICT OF COLUMBIA

REORGANIZATION PLAN NO. 5 OF 1952

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 1, 1952, pursuant to the provisions of the Reorganization Act of 1949, approved June 29, 1949 (such act since repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554(a), and is now covered by 5 U.S.C. § 901 et seq.). The plan became effective July 1, 1952.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

SECTION 1. *Functions transferred to the Board of Commissioners.*—There are hereby transferred to the Board of Commissioners of the District of Columbia (hereafter in this reorganization plan referred to as the Board of Commissioners) all functions of the following named offices and agencies of the Government of the District of Columbia, including in the case of each the functions of all officers, employees, and subordinate agencies:

Alcoholic Beverage Control Board
Anatomical Board
Board of Accountancy
Board of Assistant Assessors
Board of Barber Examiners for the District of Columbia
Board for the Condemnation of Dangerous and Unsafe Buildings
Board for the Condemnation of Insanitary Buildings in the District of Columbia
Board of Dental Examiners
Board of Equalization and Review
Board of Examiners and Registrars of Architects
Board of Examiners of Steam and other Operating Engineers
Board of Examiners of Veterinary Medicine
Board of Optometry
Board of Parole
Board of Pharmacy
Board of Podiatry Examiners
Board of Police and Fire Surgeons
Board of Public Welfare
Board of Revocation and Review of Hackers Identification Cards
Board of Revocation, Suspension and Restoration of Operators Permits
Board of Special Appeals
Board of Tax Appeals
Bridge Division
Budget Office
Building Inspection Division
Central Garage and Shops
Central Permit Bureau
Commission on Licensure to Practice the Healing Art in the District of Columbia
Committee on Special Assessment Appeals
Construction Division
Department of Construction
Department of Corrections
Department of Highways
Department of Inspections
Department of Insurance
Department of Sanitary Engineering
Department of Vehicles and Traffic
Department of Weights, Measures, and Markets
Disbursing Office
District Boxing Commission
District of Columbia Board of Cosmetology
District of Columbia Board of Registration for Professional Engineers
District of Columbia Educational Agency for Surplus Property
District of Columbia Pound
District of Columbia Repair Shop
District Personnel Board
District Unemployment Compensation Board
Division of Printing and Publications
Electrical Division
Electrical Examining Board
Electrical Inspection Division
Elevator Inspection Division
Executive Office of the Board of Commissioners of the District of Columbia
Fire Department
Fire Safety Division
Fire Trial Board
Gallinger Municipal Hospital
Glenn Dale Sanatorium
Health Department
License Bureau
Metropolitan Police Department
Minimum Wage and Industrial Safety Board
Motion-Picture Operators Examining Board
Motor Vehicle Parking Agency
Municipal Architect
Nurses Examining Board
Office of the Administrator of Rent Control
Office of the Assessor
Office of the Auditor
Office of the Chief Clerk, Public Works
Office of Civil Defense
Office of the Collector of Taxes
Office of the Coroner
Office of the Corporation Counsel
Office of the Secretary to the Board of Commissioners of the District of Columbia
Office of the Surveyor
Office of the Water Registrar
Plumbing Board
Plumbing Inspection Division
Police and Firemen's Retiring and Relief Board
Police Trial Board
Purchasing Office
Real Estate Commission
Registrar of Titles and Tags
Sanitation Division
Sewage Treatment Plant
Sewer Division
Smoke and Boiler Inspection Division
Street Division
Superintendent of District Buildings
Trees and Parking Division
Tuberculosis Hospital
Undertakers' Examining Committee
Veterans' Service Center
Water Division

SEC. 2. *Abolition of agencies.*—(a) The offices and agencies listed in section 1 hereof, including the offices of the heads of such agencies, are abolished. The provisions of the foregoing sentence with respect to any such office or agency shall become effective at such time as the Board of Commissioners shall specify, but in no event later than June 30, 1953.

(b) The Office of People's Counsel established by section 3 of the act of December 15, 1926 (D. C. Code, 1940 edition, § 43–205) and its functions are abolished.

(c) The Board of Commissioners shall make such provisions as the said Board may deem necessary with respect to winding up the affairs of any office or agency abolished by the provisions of this section.

SEC. 3. *Performance of functions of Board.*—(a) Except as otherwise provided in this section, the Board of Commissioners is hereby authorized to make from time to time such provisions as it deems appropriate to authorize the performance of any of its functions, including any function transferred to or otherwise vested in the Board of

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Commissioners by this reorganization plan, by any member of the Board of Commissioners, or by any other officer, employee, or agency of the Government of the District of Columbia, except the courts thereof.

(b) The Board of Commissioners shall not provide for the performance by any member of the Board of Commissioners, or by any other officer, employee, or agency of: (1) any function vested in the said Board by Act of Congress with respect to making and adopting regulations except those pertaining to the administration of or procedure before any agency of the Government of the District of Columbia; (2) the function of approving any contract in excess of $50,000; (3) the function of appointing or removing the head of any agency responsible directly to the Board of Commissioners; or (4) the function of approving the budget for the District of Columbia.

(Subsec. (b) amended by Act Oct. 11, 1962, 76 Stat. 910, Pub. L. 87–802, § 1, by striking $25,000 and inserting in lieu $50,000.)

SEC. 4. *Establishment of new offices.*—(a) There are hereby established in the Government of the District of Columbia so many agencies and offices, and with such names or titles, as the Board of Commissioners shall from time to time determine. The said offices shall be filled by appointment by, or under the authority of, the Board of Commissioners. Each officer so appointed shall perform the functions delegated to him in accordance with this reorganization plan and shall receive compensation to be fixed in accordance with the classification laws, as now or hereafter amended, except that the compensation for not to exceed fifteen such offices at any one time may be fixed without regard to the numerical limitations on positions set forth in section 505 of the Classification Act of 1949 (5 U.S.C. § 1105).

(b) There are hereby established in the Government of the District of Columbia two new offices one of which shall have the title of "Chief of Police" and the other the title of "Fire Chief." The Chief of Police and the Fire Chief shall each be appointed by the Board of Commissioners and shall each receive compensation fixed by the said Board at a rate of not in excess of $12,800 per annum.

SEC. 5. *Transfer of personnel, property, records, and funds.*—With respect to personnel, property, records, and unexpended balances of appropriations, allocations, and other funds, available or to be made available, relating to functions transferred, or authorized to be delegated, by the provisions hereof, the Board of Commissioners from time to time may effect such transfers between agencies of the Government of the District of Columbia (including transfers between the Board of Commissioners and any other agency of the Government of the District of Columbia) as the Board may deem necessary in order to carry out the provisions of this reorganization plan.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 5 of 1952, prepared in accordance with the provisions of the Reorganization Act of 1949. This plan will enable the Board of Commissioners of the District of Columbia to bring about a basic simplification and improvement of the government of the District of Columbia.

While the plan will reorganize the District government, it does not, and cannot under the authority conferred by the Reorganization Act, provide for home rule. As is well known, I strongly believe that the citizens of the District of Columbia are entitled to self-government. I have repeatedly recommended, and I again recommend, enactment of legislation to provide home rule for the District of Columbia. Local self-government is both the right and the responsibility of free men. The denial of self-government does not befit the National Capital of the world's largest and most powerful democracy. Not only is the lack of self-government an injustice to the people of the District of Columbia, but it imposes a needless burden on the Congress and it tends to controvert the principles for which this country stands before the world.

Vigorous efforts have been made in the last four sessions of the Congress to obtain legislation providing home rule and a modern and effective governmental organization for the District of Columbia. It has been my hope that these two much-needed reforms could be accomplished in one measure. But each time the combination of the two has been used to help to defeat the legislation. As a result, the Senate last year separated the issues and passed a bill dealing only with home rule.

While I consider both home rule and reorganization essential for the District, the structure of the District government has become so complicated, confused, and obsolete that a thorough reorganization cannot further be delayed. I have concluded that the Reorganization Act of 1949 affords the most appropriate procedure for accomplishing the needed organizational improvements.

The present organization of the District government is the product of almost 80 years of piecemeal, planless growth. It has its origin in an act of 1874 which terminated self-government in the District. That act established an appointive, three-member Commission to conduct the affairs of the District until a new permanent plan of local government could be developed. Four years later, no plan having been formulated, this interim, emergency arrangement was modified slightly and made permanent. Since then the population and the functions of the District have multiplied and the structure of the District government has grown continually more complex; yet little has been done to effect a significant improvement in the organization and bring it into line with present-day requirements.

The failure to modernize the District government has not been for want of careful surveys and well-developed plans. In no community has the local government been subject to fuller or more frequent analysis. Within the last 25 years there have been no less than six comprehensive studies of the organization of the District government. While the recommendations growing out of these studies have differed in detail, all have agreed on the necessity of integrating the many activities performed by the District government.

The present organization of the District government is seriously deficient in a number of respects. The first and most obvious defect is the extraordinary number of agencies among which the business of the District is scattered. There are no less than 80 separate agencies in the government of the District of Columbia—one-third more than all the departments and agencies now in the executive branch of the Federal Government. Some of the agencies have been created by law and others by action of the Commissioners. Generally those established by the Commissioners have been recognized later in appropriation acts. Many of the activities and functions have been expanded or modified by subsequent congressional action. As a result, through the years, the legal status of many agencies has become extremely complicated and obscure.

Many District agencies are almost completely autonomous and uncontrolled. Among those agencies are about 50 boards or commissions, a considerable number of which are not even subject to budgetary control by the Board of Commissioners or the Congress; they have their own funds and operate with permanently appropriated receipts. While the Board of Commissioners is nominally the executive head of the District government, its authority over agencies ranges from complete control to virtually no control.

This plan constitutes an important first step in strengthening the organization of the government of the District of Columbia. By transferring to the Board of Commissioners the functions of most of the existing agencies, abolishing those agencies, and granting the Board broad authority to delegate its functions, the plan permits a major realinement of the administrative structure of the District government. It is the intention of the Board of Commissioners to assign the functions of many of the existing agencies to a much smaller number of departments.

A few District agencies are excluded from the operation of the plan. Principal of these are the judicial agencies, which are not subject to the Reorganization Act, the National Guard, the Board of Library Trustees, the Board of Education, the Zoning Board, the Recreation Board, and the Public Utilities Commission.

The plan empowers the Board of Commissioners to provide for the performance of most of its executive func-

tions by officers, agencies, and employees of the District government. This provision authorizes appropriate delegation of authority, both with and without the right of redelegation as the Commissioners may decide. and the withdrawal or modification of such delegation at any time. Regulatory functions vested in the Commissioners by statute are to be retained in the Board of Commissioners, as well as budget control, approval of contracts in excess of $25,000, and the appointment and removal of the heads of agencies reporting directly to the Board of Commissioners. Under all delegations the Board will, of course, retain ultimate authority and responsibility.

Like the head of any large organization, the Board of Commissioners should be given adequate top-level assistance in carrying on the operations of the District government. The success of the reorganization plan will to a considerable extent depend upon the ability to fill key positions with the best qualified persons. In order to do so it is necessary to make provision for more adequate salaries for such officers. The plan provides that not to exceed 15 officers may be compensated without regard to the numerical limitations on positions set forth in section 505 of the Classification Act of 1949, as amended. This provision will enable the Chairman of the Civil Service Commission, or the President as the case may be, to approve rates of pay for these officers in excess of the rates established in the Classification Act of 1949 for grade GS–15 whenever standards of the classification laws so permit.

After investigation I have found and hereby declare that each reorganization included in Reorganization Plan No. 5 of 1952 is necessary to accomplish one or more of the purposes set forth in section 2 (a) of the Reorganization Act of 1949.

I have found and hereby declare that it is necessary to include in the accompanying reorganization plan, by reason of reorganizations made thereby, provisions for the appointment and compensation of officers specified therein. The rates of compensation fixed for these officers are not in excess of those which I have found to prevail in respect of comparable officers in the executive branch of the Federal Government.

The plan abolishes the office of People's Counsel and its functions (sec. 3 of the act of December 15, 1926, D. C. Code, 1940 edition, sec. 43–205). These functions duplicate responsibilities of the Public Utilities Commission.

The Board of Commissioners will carry out the basic reorganization made possible by this plan as soon as practicable without disrupting the operation of the District government and will complete the reorganization no later than June 30, 1953. Thereafter organizational adjustments can be made as conditions require.

The primary benefits from this reorganization plan will take the form of improvements in administration and service. Many benefits in improved operations are to be expected in future years which will result in a reduction of expenditures as compared with those that would be otherwise necessary. Any itemization of these reductions, in advance of actual experience under this plan, is not practicable.

["Public Utilities Commission", wherever it appears in this message, was changed to "Public Service Commission of the District of Columbia" by Act Aug. 30, 1964, 78 Stat. 634, Pub. L. 88–503, § 21. See § 2–2418.]

REORGANIZATION PLAN NO. 4 OF 1966

(31 F.R. 11137, F.R. Doc. 66–9167; Filed, Aug. 22, 1966; 8:48 a.m.)

Prepared by the President and transmitted to the Senate and House of Representatives in Congress assembled, June 13, 1966, pursuant to the provisions of the Reorganization Act of 1949, approved June 29, 1949, 63 Stat. 203, as amended (such act since repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a), and now covered by 5 U.S.C. § 901 et seq.). The plan became effective Aug. 23, 1966.

National Zoological Park Buildings and Bridges

All those functions of the Board of Commissioners of the District of Columbia which were vested in the municipal architect of the District of Columbia by the provisions of the Act of August 24, 1912, ch. 355, 37 Stat. 437 (20 U.S.C. 84; D.C. Code § 8–134), in respect of buildings of the National Zoological Park, and all functions of that Board which were vested in the engineer of bridges of the District of Columbia by those provisions in respect of bridges of the National Zoological Park, are hereby transferred to the Smithsonian Institution.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 4 of 1966, prepared in accordance with the Reorganization Act of 1949, as amended, and providing for a reorganization relating to the National Zoological Park located in the District of Columbia.

Today, all responsibilities for the administration of the park are vested in the Smithsonian Institution with one exception—the function of preparing plans and specifications for the construction of buildings and bridges at the zoo. That statutory responsibility is now conducted by the Board of Commissioners of the District of Columbia.

Under the accompanying reorganization plan, the responsibility for the preparation of these plans and specifications would be transferred from the District of Columbia Board of Commissioners to the Smithsonian. The complete administration of the park would then be vested in one agency—the Smithsonian Institution. This will allow the more efficient and effective development and management of the park.

In 1912, the functions to be transferred were vested in the Municipal Architect of the District of Columbia and in the Engineers of the Bridges of the District of Columbia. In 1952, they were transferred to the Board of Commissioners.

When the 1912 act was passed, the District of Columbia shared the costs of capital improvements in the National Zoological Park. In 1961, it ceased sharing these costs, and the Federal Government assumed complete responsibility for financing the improvements. Accordingly, the District government retains no capital improvement responsibilities for the National Zoological Park except those functions relating to construction plans and specifications for buildings and bridges, as specified in the 1912 statute. Upon the transfer of these remaining functions to the Smithsonsian Institution, the administration of the National Zoological Park will, at last, be fully centered in one agency. It is not practicable at this time, however, to itemize the resulting reduction in expenditures.

I have found, after investigation, that each reorganization included in the accompanying reorganization plan is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949, as amended.

I recommend that the Congress allow the reorganization plan to become effective.

REORGANIZATION PLAN NO. 5 OF 1966

(31 F.R. 11857; F.R. Doc. 66–9951; Filed, Sept. 8, 1966; 8:50 a.m.)

Prepared by the President and transmitted to the Senate and House of Representatives in Congress assembled, June 29, 1966, pursuant to the provisions of the Reorganization Act of 1949, approved June 29, 1949, 63 Stat. 203, as amended (such act since repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a), and now covered by 5 U.S.C. § 901 et seq. The plan became effective Sept. 8, 1966.

National Capital Regional Planning Council

Section 1. *Abolition.*—The National Capital Regional Planning Council (66 Stat. 783), together with all of its functions, is hereby abolished.

Sec. 2. *Liquidation.*—The National Capital Planning Commission shall make such provisions as it shall deem necessary respecting the winding up of the outstanding affairs of the National Capital Regional Planning Council.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I am transmitting Reorganization Plan No. 5 of 1966, prepared in accordance with the Reorganization Act of 1949, as amended.

The time has come to recognize the readiness of local governments in the Washington area to undertake a role which is properly and rightfully theirs. To that end, I am submitting a reorganization plan to abolish the National Capital Regional Planning Council.

Comprehensive regional planning is vital to the orderly development of our metropolitan areas. Nowhere is it more important than in the National Capital region.

To be most effective, regional planning must be a responsibility of the area's State and local governments acting together to solve mutual problems of growth and change. It should not be a Federal function, although the Federal Government should support and advance it.

The need for cooperative planning was recognized years ago in the National Capital region. The establishment of the National Capital Regional Planning Council in 1952 to prepare a comprehensive development plan was a major step in meeting that need.

However, the Council was designed for conditions which no longer exist. It was established by Federal law as a Federal agency financed by Federal funds because the various local jurisdictions then felt they were not in a position to provide the financing necessary for areawide comprehensive planning.

The situation that existed in 1952 has been changed by two major developments—

The founding of the Metropolitan Washington Council of Governments; and

The inauguration of a nationwide urban planning assistance program, commonly referred to as the "701 Program."

The Metropolitan Washington Council of Governments, established in 1957, is a voluntary association of elected officials of local governments in the area. It has a competent professional staff and has done constructive work on areawide development matters. It had a budget of nearly a quarter of a million dollars for fiscal year 1965, mostly derived from local government contributions, and has developed to the point where it can fully carry out the State and local aspects of regional planning.

The urban planning assistance program provides for Federal financing of two-thirds of the cost of metropolitan planning. The National Capital Regional Planning Council, as a Federal agency, is not eligible for assistance under this program. The Metropolitan Washington Council of Governments, however, became eligible for that assistance under the terms of the Housing and Urban Development Act of 1965. Accordingly, the elected local governments of the National Capital region have declared their intention of undertaking the responsibility for areawide comprehensive planning through the Council of Governments.

The reorganization plan will not alter the basic responsibilities of the National Capital Planning Commission. That Commission will continue to represent the Federal interest in the planning and development of the region. Indeed, its work should increase as comprehensive regional planning by the Council of Governments is accelerated. In accord with the reorganization plan, the Commission will work closely with the Council of Governments in regional planning. The Commission will also deal directly with the suburban jurisdictions and assume the liaison functions now exercised by the National Capital Regional Planning Council.

The reorganization plan will improve existing organizational arrangements of and promote more effective and efficient planning for the National Capital region.

It will also result in long-range savings to the Federal Government. The regional planning effort of the Council of Governments is supported in part by local contributions. The same work done by the National Capital Regional Planning Council has been supported totally with Federal funds. The loan will eliminate this overlapping effort.

Annual savings of at least $25,000 should result from the reorganization plan.

The functions to be abolished by the reorganization plan are provided for in sections 2(e), 3, 4, 5(d), and 6(b) of the act approved June 6, 1924, entitled "An Act providing for a comprehensive development of the park and playground system of the National Capital" (43 Stat. 463), as amended (66 Stat. 783, 40 U.S.C. 71a(e), 71b, 71c, 71d(d), and 71E(b)).

I have found, after investigation, that each reorganization included in the accompanying reorganization plan is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganiaztion Act of 1949, as amended.

I recommend that the Congress allow the reorganization plan to become effective.

REORGANIZATION ORDERS OF THE BOARD OF COMMISSIONERS OF THE DISTRICT OF COLUMBIA

Reorg. Ord. Nos.

1. Redelegation of functions.
2. Citizens' Advisory Council [Redesignated as Org. Ord. No. 136].
3. Department of General Administration.
4. Assessment for services performed by the Department of General Administration.
5. Transfer of balances.
6. Fire Chief.
7. Chief of Police [Replaced by Org. Ord. No. 153].
8. Management Office.
9. Office of Chief Clerk, Public Works abolished, assignment of functions.
10. Wharf Committee.
11. Change in membership of Public Space Committee.
12. Change in membership of Wage Board.
13. Committee on Microfilming and Disposal of Obsolete Records, relief of member.
14. Bond Committee, change in membership.
15. Secretary to the Contract Board-Special Assistant, Department of General Administration.
16. District of Columbia Safety Committee, change of membership and appointment of chairman.
17. Parking Space Committee.
18. Administrative Services Office.
19. Internal Audit Office.
20. Finance Office.
21. Personnel Office.
22. Board of Revocation and Review of Hackers' Identification Licenses—Additional members.
23. Deposits of securities by insurance companies.
24. Budget Office.
25. Transfer of functions of Auditor to Finance Office.
26. Transfer of funds to Department of General Administration.
27. Office of Surveyor.
28. Department of Sanitary Engineering [Redesignated as Org. Ord. No. 147].
29. Procurement Office.
30. Maintenance, preservation, and disposal of records of all components of the District of Columbia Government covered by Reorganization Plan No. 5 of 1952 [Rescinded].
31. Police and Firemen's Retirement and Relief Board.
32. District of Columbia Department of Veterans' Affairs.
33. Board of Parole.
34. Department of Corrections.
35. Alcoholic Beverage Control Board.
36. Minimum Wage and Industrial Safety Board.
37. District Unemployment Compensation Board.
38. Fire Department.
39. Fire Trial Boards.
40. Executive Office of the Board of Commissioners.
41. Office of the Secretary.
42. Department of Buildings and Grounds.
43. Department of Insurance.
44. Office of the Administrator of Rent Control.
45. Citizens' Civil Defense Advisory Council.
46. Metropolitan Police Department [Replaced by Org. Ord. No. 153].
47. Board of Police and Fire Surgeons.
48. Police Trial and Review Boards.
49. Office of Civil Defense.
50. Office of the Corporation Counsel.
51. Office of the Coroner.
52. District of Columbia Pound [Redesignated as Org. Ord. No. 141].
53. Department of Highways and Traffic [Redesignated as Org. Ord. No. 122].
54. Department of Vehicles and Traffic.
55. Department of Licenses and Inspections.

Reorg. Ord. Nos.

56. Board for the Condemnation of Insanitary Buildings [Abolished and replaced by Org. Ord. No. 102].
57. Department of Public Health [Redesignated as Org. Ord. No. 141].
58. Department of Public Welfare [Redesignated as Org. Ord. No. 140].
59. Boards, Commissions and Committee.
60. Public Health Advisory Council [Rescinded and replaced by Org. Ord. No. 142].
61. Public Welfare Advisory Council.
62—100. [These numbers have not been used].

ORGANIZATION ORDERS OF THE BOARD OF COMMISSIONERS OF THE DISTRICT OF COLUMBIA

Org. Ord. Nos.

101. Office of the Recorder of Deeds.
102. Board for the Condemnation of Insanitary Buildings.
103. Condemnation Review Board.
104. Department of Vocational Rehabilitation.
105. Department of Motor Vehicles.
106. Motor Vehicle Parking Agency.
107. Hackers' Board.
108. Citizens' Traffic Board.
109. Establishing position of Assistant Engineer Commissioner for Urban Renewal and establishing an Office of Urban Renewal.
110. Commissioners' Urban Renewal Council [Rescinded and replaced by Org. Ord. No. 139].
111. Urban Renewal Operations Committee.
112. Board of Appeals and Review.
113. Professional Vocational Rehabilitation Advisory Council [Rescinded].
114. General Vocational Rehabilitation Advisory Council [Rescinded].
115. Refrigeration and Air Conditioning Board.
116. Inter-Departmental Statistical Committee.
117. Commissioners' Advisory Council on Fire Prevention.
118. Emergency Ambulance Service.
119. Emergency Ambulance Service Committee.
120. Charitable Solicitation Advisory Council.
121. Department of General Administration, Finance Office.
122. Department of Highways and Traffic.
123. Hospital Advisory Council [Rescinded and replaced by Org. Ord. No. 142].
124. Public Information Unit.
125. Commissioners' Council on Human Relations.
126. Commissioners' Advisory Committee on Practical Nursing.
127. Committee on Employee Conduct.
128. Commissioners' Committee on Community Renewal.
129. Committee on Mental Health Needs [Rescinded and replaced by Org. Ord. No. 142].
130. Office of Recorder of Deeds, Real Estate Recordation Tax [Repealed. See Org. Ord. No. 101].
131. Manpower Advisory Committee for D.C.
132. Committee on Youth Opportunity and Community Improvement.
133. [Vacated].
134. Advisory Council on Vocational Rehabilitation.
135. Commissioners' Advisory Committee on Physical Therapy.
136. Citizens Council for the District of Columbia.
137. Public Welfare Advisory Committee on Day Care.
138. Labor-Management Advisory Committee on D.C. Apprenticeship Information Center.
139. Commissioners' Planning and Urban Renewal Advisory Council.
140. Department of Public Welfare.
141. Department of Public Health.
142. Public Health Advisory Council.
143. Commissioners' Advisory Council on Higher Education in the District of Columbia.
144. Interdepartmental Committee on Aging.
145. Committee on Special Events.
146. Relocation Advisory Committee.
147. Department of Sanitary Engineering.
148. Commissioners' Inter-Agency Committee on Beautification Programs.
149. Interdepartmental Committee on Medicare.
150. Technical Advisory Committee on Adult Literacy (Ad Hoc).
151. Interdepartmental Operating Committee on Adult Literacy (Ad Hoc).
152. Committee on Special Investigations.
153. Metropolitan Police Department.

REORGANIZATION ORDER NO. 1.—REDELEGATION OF FUNCTIONS

Reorg. Ord. No. 1, C. O. 302, 853/11, July 1, 1952, ordered that:

All functions, duties, powers and authority vested in any officer, agency, or employee of the Government of the District of Columbia at the time of the taking effect of Reorganization Plan No. 5 of 1952, and which were transferred to the Board of Commissioners of the District of Columbia by said Plan, are hereby delegated to, and shall, until otherwise ordered, continue to be vested in, such officer, agency or employee.

REORGANIZATION ORDER NO. 2.—CITIZENS' ADVISORY COUNCIL

[Amended and redesignated as Org. Ord. No. 136.]

REORGANIZATION ORDER NO. 3.—DEPARTMENT OF GENERAL ADMINISTRATION

Reorganization Ord. No. 3, C.O. 302,970, Aug. 28, 1952, as amended Jan. 26, 1965, ordered:

1. That there is hereby established in the Government of the District of Columbia, under the direction and control of the Board of Commissioners, a new agency, "The Department of General Administration," headed by the new office of "Director of General Administration" (hereinafter referred to as "Director"). There is also established the corresponding new position of "Director, Department of General Administration," which position is allocated in bureau number 65–1–1, grade GS–301–17–1.

2*a*. There are hereby transferred to the Director all functions of the following named offices and agencies (hereinafter referred to as agencies) including in the case of each the functions, duties, powers and authorities of all officers, employees, and subordinate agencies:

Budget Office,
Disbursing Office,
District of Columbia Educational Agency for Surplus Property,
District Personnel Board,
Division of Printing and Publications,
Office of the Assessor,
Board of Assistant Assessors,
Board of Equalization and Review,
Committee on Special Assessment Appeals,
Office of the Auditor,
Office of the Collector of Taxes,
Police and Firemen's Retiring and Relief Board,
Purchasing Office.

b. All positions, personnel, property, records, and unexpended balances of appropriations, allocations and other funds available or to be made available relating to functions transferred, are hereby transferred to the Department of General Administration and the Director from time to time may effect such transfers between such agencies as he deems necessary. Until otherwise ordered by the Director such agencies, including all functions, duties, powers and authorities vested therein or in any officer, employee or subordinate agency thereof, shall continue to function as presently constituted, but as subordinate agencies of the Department of General Administration and subject to the direction and control of the Director.

c. The Director of General Administration shall have the primary responsibility, with the authority to redelegate, for the development of an active, continuing records management program. He shall:

(1) Coordinate to overall records management program for the District Government components and evaluate program effectiveness.

(2) Provide advice and staff assistance to other District Government officials responsible for records management.

(3) Assist District Government departments and agencies in the development of records disposal schedules, obtain required approvals of the Corporation Counsel and of any other District officer deemed by the Director to be officially concerned, disseminate approved schedules for use by District Government officials and employees, and monitor their use by receiving and reviewing reports from department and agency heads.

(4) Plan and formulate basic District Government-wide records management policies, systems, standards, and procedures.

(5) Authorize and arrange for the transfer of records material (a) between District Government components; (b) directly to the National Archives; and (c) to the General Services Administration Federal Records Center.

(6) Represent the District Government in contacts with the General Services Administration, the General Accounting Office, the Bureau of the Budget, and other organizations, public and private, on matters relating to records management.

3. Except as otherwise provided by the Board of Commissioners, the Director is hereby authorized to make from time to time such provisions as he deems appropriate to authorize the performance of any functions of any agency of the Department of General Administration by any officer, employee, or agency of the Department of General Administration.

4. There are hereby established in the Department of General Administration so many agencies and offices, and with such names or titles, as the Director shall from time to time determine. Such offices shall be filled by or under the authority of the Director. Each officer so appointed shall perform the functions delegated to him and shall receive compensation to be fixed in accordance with the classification laws, as now or hereafter amended.

5. Notwithstanding any other provisions of this Order, the following shall not be effected without the prior approval of the Board of Commissioners:

a. Changes from the basic reorganization plan approved by the Commissioners, as described in the "Hearing Before the Committee on Government Operations, United States Senate, on the Reorganization of the District of Columbia," May 15 and 20, 1952.

b. Appoint, promote or remove employees in grade 10 or above.

c. Transfer of funds between appropriations.

6. This order shall be effective on and after September 2, 1952.

REORGANIZATION ORDER NO. 4.—ASSESSMENT FOR SERVICES PERFORMED BY THE DEPARTMENT OF GENERAL ADMINISTRATION

[Text Omitted]

This order provided that the appropriations of named departments and agencies of the Government of the District of Columbia would be assessed in specified amounts for services performed for them by the Department of General Administration.

REORGANIZATION ORDER NO. 5.—TRANSFER OF BALANCES

[Text Omitted]

This order provided for a transfer of balances to the Department of General Administration.

REORGANIZATION ORDER NO. 6.—FIRE CHIEF

Reorg. Ord. No. 6, C.O. 302,853/14, Sept. 16, 1952, ordered that:

Section 1. All functions, duties, powers and authority now vested in the Chief Engineer of the Fire Department are hereby transferred to and vested in the Fire Chief.

Section 2. Millard H. Sutton, Chief Engineer of the Fire Department, is hereby appointed Fire Chief and shall receive compensation at the rate of $12,000 per annum, and hereafter, any Fire Chief who has not attained the maximum scheduled rate of compensation in which his position has been placed, shall be advanced in compensation successively at the rate of $200 per annum at the beginning of the next pay period following the completion of each 18 months of service, not to exceed the rate of $12,800 per annum.

Section 3. The office of the Chief Engineer of the Fire Department is hereby abolished.

Section 4. (a) The Deputy Chief Engineer of the Fire Department shall hereafter be designated and known as the "Deputy Fire Chief".

(b) The Battalion Chief Engineer of the Fire Department shall hereafter be designated and known as the "Battalion Fire Chief".

Section 5. This order shall become effective September 16, 1952.

REORGANIZATION ORDER NO. 7.—CHIEF OF POLICE

Reorg. Ord. No. 7, C.O. 302,853/14, Sept. 16, 1952, was replaced by Organization Order No. 153, as set out in this appendix.

REORGANIZATION ORDER NO. 8.—MANAGEMENT OFFICE

Reorganization Ord. No. 8, C.O. 302,970.a, Sept. 25, 1952, as amended Aug. 24, 1961, ordered that:

1. (a) There is hereby established in the Department of General Administration, District of Columbia Government, under the direction and control of the Director of General Administration, a "Management Office" headed by a "Management Officer".

(b) The Management Office is established for the purpose of planning, developing, coordinating, and directing the management program and related management activities for the District of Columbia Government, covering the complete range of functions contained therein, with the major objectives of economy and increased efficiency. This office shall also be responsible for making studies and recommendations for developing the organizational structure, distribution and redistribution of functions, lines of authority, staffing, space, methods and procedures necessary for an orderly implementation of Reorganization Plan No. 5 of 1952, requiring a thorough study of existing agencies and departments of the District of Columbia Government and the integration into new staff and operating departments of all functions of the organization to assure efficient and economical operations.

(c) The Management Office is responsible for planning, developing, directing, and coordinating a program for the effective use of automatic data processing systems and equipment throughout the entire District of Columbia Government.

2. (a) There are hereby transferred to the Management Officer all the functions of the Management Section of the Budget Office, including the functions, duties, powers and authorities of all employees therein.

(b) All positions, personnel, property, records and unexpended balances of appropriations, allocations and other funds available or to be made available relating to the functions transferred are hereby transferred to the Management Office.

(c) The existing Management Section of the Budget Office is hereby abolished.

3. There are hereby established in the Management Office so many sections and positions with such names or titles as the Director of General Administration and the Management Officer shall from time to time determine. All positions in such sections shall be filled by or under the authority of the Director of General Administration subject to the prior approval of the Board of Commissioners to appoint, promote or remove employees in grade 10 or above.

4. Except as otherwise provided by the Board of Commissioners or the Director of General Administration, the Management Officer is hereby authorized to make from time to time such provisions as he deems appropriate to authorize the performance of any functions of the Management Office by any officer or employee thereof.

5. This order shall become effective on and after September 29, 1952.

REORGANIZATION ORDER NO. 9.—OFFICE OF CHIEF CLERK, PUBLIC WORKS ABOLISHED; ASSIGNMENT OF FUNCTIONS

Reorg. Ord. No. 9, C.O. 302,970/5, Sept. 25, 1952, ordered:

That pursuant to authority contained in Reorganization Plan No. 5 of 1952, it is hereby ordered that the Office of Chief Clerk, Public Works, is abolished and its functions, duties, powers, and authorities, together with

the related personnel, property, records and funds are assigned as follows:

1. Contract and Bond Section to Department of General Administration:

Positions involved:

Grade	*Bu. No.*	*Title*
GS–9	11–9–2	Asst. Chief Clerk
GS–6	11–9–7	Sr. Clerk
GS–4	11–9–4	Clerk
GS–4	11–9–19	Clerk-Stenographer
GS–4	11–9–9	Clerk-Stenographer
GS–3	11–9–14	Clerk-Typist

2. Records Section to Department of General Administration:

Positions involved:

Grade	*Bu. No.*	*Title*
GS–4	11–9–3	Clerk
GS–3	11–9–10	File Clerk
GS–3	11–9–11	Clerk-Typist
CPC–3	11–9–13	Messenger

3. Safety Section to Department of General Administration:

Position involved:

Grade	*Bu. No.*	*Title*
GS–7	11–9–15	Safety Engineer

4. Wage Board Section to Department of General Administration:

Position involved:

Grade	*Bu. No.*	*Title*
GS–4	11–9–12	Clerk-Personnel

5. Special Section:

a. That portion pertaining to secretarial service furnished the Office of the Engineer Commissioner to the Executive Office.

Positions involved:

Grade	*Bu. No.*	*Title*
GS–5	11–9–5	Secretary
GS–5	11–9–8	Secretary

b. That portion pertaining to the clerical service furnished the Central Permit Bureau to that office.

Positions involved:

Grade	*Bu. No.*	*Title*
GS–5	11–9–17	Chief Counter Clerk
GS–4	11–9–18	Asst. Ch. Counter Clerk

6. Wharves Administration:

a. All responsibility for repairs and maintenance to the Bridge Division of the Highway Department, subject to reimbursement from the General Fund.

b. All functions, property, records and all available funds related to the supervision and leasing of the Wharves and also including funds for repairs and maintenance to the Property Acquisition and Survey Section, Office of the Auditor.

7. All positions not herein transferred, be abolished.

Positions involved:

Grade	*Bu. No.*	*Title*
GS–12	11–9–1	Chief Clerk
GS–2	11–9–6	Clerk-Typist

8. All funds not otherwise allocated herein, are transferred to the Department of General Administration for appropriate disposition pursuant to law and regulations.

9. This order shall be effective on and after September 29, 1952.

REORGANIZATION ORDER NO. 10.—WHARF COMMITTEE

[Text Omitted]

This order relieved a member and appointed a substitute member of the committee.

REORGANIZATION ORDER NO. 11.—CHANGE IN MEMBERSHIP OF PUBLIC SPACE COMMITTEE

[Text Omitted]

This order named a new person to the committee.

REORGANIZATION ORDER NO. 12.—CHANGE IN MEMBERSHIP OF WAGE BOARD

[Text Omitted]

This order named a new person to the committee.

REORGANIZATION ORDER NO. 13.—COMMITTEE ON MICROFILMING AND DISPOSAL OF OBSOLETE RECORDS, RELIEF OF MEMBER

[Text Omitted]

This order eliminated a member from the committee.

REORGANIZATION ORDER NO. 14.—BOND COMMITTEE, CHANGE IN MEMBERSHIP

[Text Omitted]

The order relieved a member and made a substitution.

REORGANIZATION ORDER NO. 15.—SECRETARY TO THE CONTRACT BOARD—SPECIAL ASSISTANT, DEPARTMENT OF GENERAL ADMINISTRATION

[Text Omitted]

The order concerned the appointments of the Secretary to the Contract Board, an assistant secretary to the Board, and an assistant special assistant in the Department of General Administration.

REORGANIZATION ORDER NO. 16.—DISTRICT OF COLUMBIA SAFETY COMMITTEE, CHANGE OF MEMBERSHIP AND APPOINTMENT OF CHAIRMAN

[Text Omitted]

This order relieved a member of the committee and named a new chairman.

REORGANIZATION ORDER NO. 17.—PARKING SPACE COMMITTEE

Reorg. Ord. No. 17, C. O. 302,853/14, C. O. 302,970/5, E.D. 248463–112, Oct. 14, 1952 ordered:

That all previous Commissioners' Orders appointing Parking Space Committees are hereby cancelled, and the following order issued in lieu thereof:

That a Parking Space Committee is hereby appointed consisting of the three Administrative Assistants to the Commissioners, and the Superintendent of District Buildings; the function of said Committee being to allot spaces for the parking of official and private motor vehicles, and to prepare rules and regulations pertaining thereto.

The Chairman of this Committee shall be selected from among its own members.

REORGANIZATION ORDER NO. 18.—ADMINISTRATIVE SERVICES OFFICE

Reorganization Ord. No. 18, C.O. 302, 970B, C.O. 302, 853/14, Oct. 23, 1952, as amended July 27, 1953, Dec. 6, 1956, Dec. 27, 1956, July 14, 1960, Apr. 15, 1965, and July 8, 1965, ordered that:

PART I

A. There is hereby established in the Department of General Administration, District of Columbia Government, under the direction and control of the Director of General Administration, an "Administrative Services Office", headed by an "Administrative Services Officer" who shall have full authority over such office and all personnel assigned thereto, including power of redelegation. The authority herein granted shall be exercised in accordance with applicable laws, rules and regulations.

B. The Administrative Services Office is established for the purpose of promoting maximum efficiency in the performance of various housekeeping functions common to nearly all departments, and shall perform such duties in conformance with policies of the Board of Commissioners thereon. Initially, such duties shall consist of those represented by the transfer of functions listed in Parts II and III hereof. The ultimate scope of such duties, however, shall be as follows:

(1) Perform, review, or make recommendations for furnishing all District printing, duplicating, binding, blueprinting, photostating, microfilming, and the selection of necessary equipment therefor.

(2) Provide a Mail and Messenger Service which shall receive and dispatch all mail as assigned and install and operate such internal mail and messenger systems as may be authorized by the Commissioners after study.

(3) Review all space needs, except public space, and submit reports and recommendations for assignments to the Director of General Administration (and to the Board of Commissioners when appropriate) and execute control of approved assignments. Coordinate moving of

office and other equipment in consequence of space assignments or reassignments by the Commissioners which shall include, among others, such matters as fixing the date of moving, and insuring public notice thereof where necessary. Departments and Offices having facilities for assisting in the performance of such moving shall, upon request of the Administrative Services Officer, contribute them to such purpose to the limit of their capabilities.

(4) Review and promote the most effective assignment of office equipment and establish its useful life for purpose of replacement.

(5) Maintain records of the assignment of all District-owned passenger carrying vehicles, except those assigned to the Police and Fire Departments, and continually study the utilization of them for the purpose of recommending reassignment or retirement.

(6) Maintain complete records of space allotted to District employees for parking privately owned motor vehicles on District or Federally owned property, review requests for and make recommendations for assignments and execute control of approved assignments.

(7) Develop and execute a complete program for property administration covering all real and personal property of the District Government, performing the work on a centralized basis for real property, but developing and supervising an effective decentralized program for personal property. This program shall include the acquisition of all real property, except condemnation proceedings and dedications of streets, alleys, etc.; outleasing and disposition of real property; demolition of abandoned or condemned structures on District Government land; sale or disposition of unserviceable, surplus or trade-in equipment and scrap material; acquisition and distribution of surplus property for educational, public health, civil defense and other purposes authorized by law; and inventory control procedures. Supplementing but excluded from jurisdiction of the program are the fiscal control accounts required in the chief accountant's office for purposes of effective internal controls.

PART II

A. There are hereby transferred to the Administrative Services Office the following agency, division, sections, and functions, including the duties, powers and authorities of all officers and employees assigned thereto:

Division of Printing and Publications,
Mails Section, Superintendent of District Buildings,
Duplicating Section, Superintendent of District Buildings,
District of Columbia Educational Agency for Surplus Property,
Property Acquisition and Survey Section, Auditor's Office,
Assignment function of District passenger vehicles, Central Garage,
Records Section, Secretary's Office,
Records Section, Department of General Administration.

B. All positions, personnel, property, records and unexpended balances of appropriations, allocations and other funds available or to be made available relating to the functions transferred are hereby transferred to the Administrative Services Office. Nothing herein shall be construed as changing the status of the following accounts and fund:

Miscellaneous Trust Fund, Deposits, D. C., Operating Account-Printing,
Miscellaneous Trust Fund, Deposits, D. C., Operating Account-Blueprinting,
Working Capital Fund, Educational Agency for Surplus Property, D. C.

C. The division, agency, and sections listed in Paragraph A. of Part II are hereby abolished.

PART III

A. The following committees are hereby abolished in their present capacity and their duties, functions and records transferred to the Administrative Services Office which will function as the operating staff for performing the functions transferred. These committees are hereby reestablished with present membership as advisory committees to the Director of General Administration to advise and counsel him and the Board of Commissioners on matters within the subject area of their respective fields, especially on all major policy matters and significant or controversial operating problems.

Parking Space Committee,
Real Estate Committee [Abolished].
Wharf Committee [Abolished].

B. The Space Assignment Committee previously established by this Order on October 23, 1952, shall continue to function as an advisory committee to the Board of Commissioners and the Director of General Administration on all major policy matters and significant or controversial operating problems concerning the assignment of space in District-owned buildings provided, however, that said Committee shall be designated the Space Assignment Advisory Committee, and provided further that said Committee shall consist of not more than five members to be appointed by the Director of General Administration.

C. The Real Estate Committee and the Wharf Committee, mentioned in paragraph A of this Part III, are abolished effective July 14, 1960.

PART IV

There are hereby established in the Administrative Services Office so many divisions, sections, and positions with such titles and duties as the Director of General Administration and the Administrative Services Officer shall from time to time determine.

PART V

The Administrative Services Office shall continually study the activities of all departments as to the housekeeping functions described in Part I B and, as appropriate, submit through the Director of General Administration to the Board of Commissioners, recommendation as to District-wide policies that should be established and any additional transfers of housekeeping functions which should be made to the Administrative Services Office.

PART VI

This order shall become effective on and after November 9, 1952.

REORGANIZATION ORDER NO. 19.—INTERNAL AUDIT OFFICE

Reorg. Ord. No. 19, C.O. 302,970D, C.O. 302,853/14, Nov. 10, 1952, as amended Aug. 28, 1958, and June 5, 1962, ordered that:

PART I

There is established in the Department of General Administration, District of Columbia, under the direction and control of the Director of General Administration, an Internal Audit Office headed by an Internal Audit Officer. The Internal Audit Officer shall have full authority over such Office and all personnel assigned thereto, including the power to redelegate to other officials of the Internal Audit Office such of the powers herein delegated as, in his judgment, are warranted in the interest of efficiency and good administration. This authority shall be exercised in accordance with applicable laws, rules and regulations.

PART II

Purpose.—The Internal Audit Office is established for the purpose of developing and maintaining a system for the continuous or periodic examinations of the accounts and financial practices of the District of Columbia Government to the end that the Board of Commissioners, the Director of General Administration, and the various Department and Office Heads will be informed as to the currency, accuracy, and integrity of financial accounts and records in conformance with policies of the Board of Commissioners.

PART III

Organization.—There shall be established in the Internal Audit Office so many organizational components, and positions with such duties and titles as the Internal Audit Officer with the approval of the Director of General Administration shall from time to time determine.

PART IV

Functions.—The responsibilities of the Internal Audit Office shall be to:

(1) Verify transactions and balances pertaining to income, expenditures and transfer of all appropriated

funds, special limitations imposed by Congress, special and trust funds, and allotments to the extent necessary to ascertain compliance with established laws, regulations, policies and procedures.

(2) Prepare periodic reports relative to the conditions of the accounting systems, the propriety of operations and transactions, and any defalcations or other failures to account for funds.

(3) Make specific recommendations for correcting deficiencies in the accounting systems, as these are revealed by either the continuous or the periodic audits.

(4) Review and appraise existing accounting policies and procedures in terms of their adequacy and effectiveness in controlling income, expenditures, funds, property and other assets including costs, and in disclosing financial information to management at various levels.

(5) Serve in an advisory capacity in matters pertaining to internal accounting and control.

(6) Pursuant to the provisions of Public Law 561, 85th Congress, 2d Session, approved July 28, 1958, serves as the designated agent of the Board of Commissioners in certifying as to the accuracy of the financial statement required of the Armory Board by Section 10 of the District of Columbia Stadium Act of 1957.

(7) Acting for the Director of General Administration, coordinates with District departments concerned, all audit reports submitted by the General Accounting Office in their review of District Government activities.

PART V

a. The following positions under the responsibility of the existing Auditor are transferred to the Internal Audit Office. The duties, powers and authorities of all officers and employees assigned thereto shall continue insofar as they relate to the functions enumerated herein.

First Deputy Auditor, GS–14, No. 7–1–2
1 Secretary, GS–4, No. 7–1–5
1 Assistant Chief of the Auditing Division, GS–11, No. 7–4–2
1 Chief Field Examiner, GS–10, No. 7–4–4
1 Assistant Chief Field Examiner, GS–8, No. 7–4–5
8 Field Examiner & Gas Tax Inspector, GS–7, No. 7–4–7, 7–4–9, and 7–4–11 to 7–4–16
5 Assistant Field Auditors, GS–5, No. 7–4–18, 7–4–19, and 7–4–21 to 7–4–23

b. All personnel, property, records and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the positions listed in this Part are hereby transferred to the Internal Audit Office.

PART VI

This order shall become effective on and after November 10, 1952.

REORGANIZATION ORDER NO. 20.—FINANCE OFFICE

[*Superseded by Organization Order No. 121, Dec. 12, 1957*]

Reorg. Ord. No. 20, C.O. 302,970.E, C.O. 302,853/14, Nov. 10, 1952, as amended Dec. 30, 1952, Mar. 19, 1953, Oct. 5, 1954, Jan. 31, 1956, and May 9, 1956, provided that:

PART I

There is established in the Department of General Administration, District of Columbia, under the direction and control of the Director of General Administration, a Finance Office head by a Finance Officer (who also shall be the Assessor). The Finance Officer shall have full authority over such Office and all personnel assigned thereto, including the power to re-delegate to other officials to the Finance Office such of the powers herein delegated as, in his judgment, are warranted in the interest of efficiency and good administration. This authority shall be exercised in accordance with applicable laws, rules and regulations.

PART II

Purpose.—The Finance Office is established for the purpose of administering laws government tax, fee and other types of assessments, designing, installing and maintaining accounting systems and procedures in the District Government, collecting revenues and depositing them in appropriate depositories, and pre-auditing of, certifying to, and properly disbursing D. C. funds.

PART III

Organization.—a. The Finance Office shall be composed as follows: Office of the Assessor headed by an Assessor (who also shall be the Finance Officer), Office of the Collector of Taxes headed by a Collector of Taxes, Disbursing Office headed by a Disbursing Officer, and Accounting Office headed by an Accounting Officer.

b. The following Boards are established under the Assessor:

(1) The Board of Assistant Assessors (Real Estate), composed of the Assessor (ex-officio member and chairman) and all Asistant Assessors with the exception of three who shall be known as the Board of Personal Tax Appraisers, who shall assess all real property, taxable and exempt, in the District of Columbia, as required by law.

(2) The Board of Personal Tax Appraisers, composed of the Assessor (ex-officio member and Chairman) and three Assistant Assessors, who shall assess all taxable tangible personal property including motor vehicle, motor vehicle, and trailer excise taxes, gross earnings of banks and building associations, gross receipts of public utility and title companies, and fees to be paid by foreign building associations and note brokers.

(3) The Board of Equalization and Review, composed of the Assessor (ex-officio member and Chairman), Deputy Assessor and all Assistant Assessors, who shall equalize real estate assessments and shall hear and act upon complaints against real estate assessment, as required by law. Any three of said Board of Equalization and Review shall constitute a quorum for business.

c. There shall be established in the Finance Office such additional organizational components and positions, with such duties and titles as the Finance Officer with the approval of the Director of General Administration shall from time to time determine.

PART IV

Functions.—The functions to be performed by the Finance Office include, but are not limited to the following:

a. *Office of the Assessor.*—(1) The Office of the Assessor is responsible for the administration and execution of the laws relating to various taxes, licenses, fees, rents and special assessments. Such functions shall include the levying of assessments, the rendition of bills, the maintenance of individual ledger accounts reflecting amounts due, payments and unpaid balances, the maintenance of control accounts, the recording of erroneous payments and over-payments, the preparation of refund vouchers, and other related or incidental duties or procedures as may be required by law or which may be necessary for proper administration.

(2) The function of approving the levying of special assessments for curb and gutter, sidewalks and alleys, previously performed by the Board of Commissioners, is hereby delegated to the Assessor.

(3) Upon written notification from the Director of Licenses and Inspections or the Director of Public Health that a nuisance has been abated or an illegal condition has been corrected, including a statement of the exact cost of such abatement or correction, levies the proper assessment, as provided by law.

b. *Office of the Collector of Taxes.*—(1) The Office of the Collector of Taxes is responsible for the collections of revenues of the Government of the District of Columbia, including the processing, acocunting, and distribution of all payments and receipts into respective revenue accounts, and daily depositing of all funds so collected and received with the Treasurer of the United States. The Collector is held responsible, under bond in amount of $100,000, for collection of all taxes, except such taxes as he may not be able to collect after duly complying with requirements of existing law.

(2) Responsibility for the custody of trust fund securities heretofore delegated to the Accounting Officer (formerly Auditor) and the Secretary to the Board of Commissioners pursuant to the action by the Board of Commissioners on March 18, 1942, is hereby transferred to the Collector of Taxes.

c. *Disbursing Office.*—(1) The Disbursing Office is responsible for performing the functions of disbursement of monies of the District of Columbia.

(2) Disburse monies in cash or by checks drawn on the Treasurer of the United States, only upon, and in strict

accordance with, vouchers and payrolls duly certified by the Accounting Officer, D. C., or by an employee of his office authorized in writing to certify such vouchers and payrolls.

(3) Make such examination of vouchers and payrolls as may be necessary to determine they are in proper form, duly certified, and be held accountable accordingly.

(4) The Disbursing Officer is hereby authorized, under bond in amount of $50,000, to discharge the duties of his office according to existing laws and such rules and regulations that are prescribed in conformity to law.

d. *Accounting Office.*—(1) The Accounting Office is responsible for creating, installing and technically supervising accounting systems in the District Government, developing and directing the operation of all cost accounting systems, directing and assisting in the technical training of personnel engaged in accounting work, preauditing and certifying the correctness and propriety of obligations and expenditures, preparing and certifying payrolls of employees, maintaining records and reports pertinent to retirement accounting, and developing, compiling and preparing accounting information and reports for the purpose of revealing the financial status and condition of the District Governments or any of its parts.

(2) The Accounting Officer shall be bonded in the amount of $20,000 as Accounting Officer and Certifying Officer.

PART V

a. There are transferred to the Finance Office all functions of the following named offices and boards, including the functions of all officers, employees, and subordinate agencies of each:

Office of the Assessor
Disbursing Office
Board of Assistant Assessors
Board of Equalization and Review

b. The functions of the Office of the Collector of Taxes, except those functions relating to the sale of dog licenses which are hereby transferred to the Superintendent of Licenses, are transferred to the Finance Office. The functions of the officers, employees and subordinate agencies assigned thereto shall continue.

c. The functions of the following divisions, section and positions under the responsibility of the existing Auditor, including the functions of all officers, employees, and subordinate agencies of each, are transferred to the Finance Office.

Accounting Division
Retirement and Payroll Division
Voucher Pre-Audit Section, Auditing Division
1 Secretary, GS–6, 7–1–4
1 Mail & Files Control Clerk, GS–3, 7–1–6

d. All personnel, property, records and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the functions nd positions transferred in *a, b,* and *c,* above are hereby transferred to the Finance Office.

e. The position of Clerk, GS–2, No. 6–1–11, including the person, property, records and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the functions and position transferred, are hereby transferred to the License Bureau.

f. The following named offices, including the offices of the heads thereof, are abolished:

Office of the Assessor
Disbursing Office
Office of the Collector of Taxes
Office of the Auditor

g. The following named Boards, including the offices of the heads thereof, are abolished:

Board of Assistant Assessors
Board of Equalization and Review

PART VI

a. Pursuant to the provisions of Public Law No. 744, 75th Congress, approved June 25, 1938, entitled "An Act Relating to the Levying and Collecting of Taxes and Assessments, and for Other Purposes", an Assistant Corporation Counsel designated by the Corporation Counsel, the Assessor and the Collector of Taxes, shall constitute a committee, to be known as the Committee on Special Assessment Appeals, to act as agents of the Commissioners with the powers and duties which may be performed by the agents designated by the Commissioners under said Act. The Assistant Corporation Counsel shall be Chairman of this Committee. The Committee shall also consider petitions filed pursuant to Section 7 of said Act, and shall submit its recommendations to the Commissioners.

b. The previously existing Committee on Special Assessment Appeals, including the office of the head thereof, is abolished.

PART VII

This order shall become effective on and after November 10, 1952, except that the abolishment of the office of the head of the existing Office of the Assessor and the establishment of the position of Finance Officer (who also shall be the Assessor) shall become effective on and after November 12, 1952.

REORGANIZATION ORDER NO. 21.—PERSONNEL OFFICE

Reorg. Ord. No. 21, C.O. 302,970.C, C.O. 302,853/14, Nov. 20, 1952, as amended Oct. 26, 1954, and Apr. 7, 1955, ordered that:

PART I

There is established in the Department of General Administration, District of Columbia, under the direction and control of the Director of General Administration, a Personnel Office headed by a Personnel Officer. The Personnel Officer shall have full authority over such Office and all functions and personnel assigned thereto, including the power to redelegate to other officials of the Personnel Office such of the powers herein delegated as, in his judgment, are warranted in the interests of efficiency and good administration. For the same reasons, the Director of General Administration may redelegate in whole or in part to Heads of Departments and offices the functions including the duties, powers, and authorities set forth in Part IV, Sections (1), (2) and (6) hereof. These authorities shall be exercised in accordance with applicable laws, rules and regulations.

PART II

Purpose.—The Personnel Office is established for the purpose of assisting in the promotion of outstanding public service by the District Government, the achievement of efficiency and economy, and the development of high employee competence and enthusiasm. The Office shall seek to fulfill its purpose through forward-looking, equitable personnel policies; practical, up-to-date procedures and efficiently conducted personnel activities. This office shall work with the departments to develop personnel policies and programs for consideration by the Board of Commissioners. It shall give staff advice and assistance to the Board of Commissioners and to the departments on personnel matters. In addition, it shall itself perform certain centralized personnel activities.

PART III

Organization.—There shall be established in the Personnel Office as many organizational components and positions with such duties and titles as the Personnel Officer, with the approval of the Director of General Administration, shall from time to time determine.

PART IV

Scope and functions.—The scope of the Personnel Office will encompass all categories of positions, employees, and officers in or under the District of Columbia Government with respect to those personnel functions heretofore and hereafter vested in the Board of Commissioners by law or transferred to the Board by Reorganization Plan No. 5.

(1) *Classification and pay administration.*—a. Develop and administer a position classification program to assure that the principle of equal pay for substantially equal work is followed, and that individual positions are so grouped and identified that the resulting system can be used in all phases of personnel administration. The Personnel Officer, through the Director of General Administration, is delegated authority to classify finally each position up to and including GS–15 and CPC–10, subject to appeal to the Board of Commissioners or the Civil Service Commission.

b. Identify and evaluate all wage board positions and furnish information to the D. C. Wage Scale Board re-

garding appropriate rate schedules on the basis of surveys or other administrative determinations.

(2) *Employment and placement.*—a. Plan, develop, and administer an employment and placement program to obtain, under open competitive opportunities, the best available qualified employees, and to maintain fair and effective promotion policies and procedures. The Personnel Officer, through the Director of General Administration, is delegated authority to approve, on recommendation by the appropriate department or office heads, appointments to all classified positions up to and including grade GS–13 and CPC–10; to all wage board positions; to uniformed positions in the police and fire departments up to and including the rank of lieutenant, and such other position categories as the Board of Commissioners may determine. Such authority is delegated for the purpose of insuring compliance with established job qualification standards and Commissioners' policies, and to assist department and office heads in the selection process. He shall have advisory responsibility to the Board of Commissioners on all appointments to positions above grade GS–13 and above the rank of lieutenant in the Police and Fire Departments.

b. Plan, develop and, when approved by the Board of Commissioners, administer a program for the separation of employees consistent with the needs and best interest of the organization, with governing legal and regulatory requirements, and with sound personnel policies. This program shall include reduction-in-force, resignation, retirement and other types of separations.

(3) *Employee training.*—Plan and coordinate employee training programs and provide assistance to supervisors at all levels in exercising their fundamental responsibility for training subordinate employees. Such assistance will be given in connection with determination of training needs, development of training program content and schedules, provision of competent instruction, and evaluation of results.

(4) *Employee relations.*—Develop and administer an employee relations program to safeguard the rights of the employee, to inform him of things which affect him, to assure him that his well being is a matter of concern and to help bring about a realization on the part of management of its obligations in this respect. Included under this function are: the development of a system of employee participation on personnel matters; the improvement of working conditions; the provision for counseling services for employees; the adjustment of grievances; the handling of disciplinary matters; and the planning and administration of a program for special incentives.

(5) *Performance evaluation.*—Plan and administer a program for evaluating employee performance.

(6) *Records and reports.*—Process personnel actions, maintain official personnel records and files (except payroll, leave and retirement records) and prepare periodic and special reports, or provide for the performance of such functions by other organizations.

(7) *Advisory duties.*—Serve in an advisory capacity on all personnel matters to the Board of Commissioners, the Director of General Administration and the various departments and offices of the D. C. Government.

PART V

There is hereby established a District of Columbia Wage Scale Board, consisting of the Personnel Officer as Chairman and not to exceed nine other members to be appointed by the Director of General Administration. The function of such Board shall be to advise the Board of Commissioners, through the Director of General Administration, as to the wage rates that should be paid those employees authorized by law to be employed under wage board procedures.

PART VI

The Personnel Officer is authorized to establish, with the approval of the Director of General Administration, such other advisory committees and boards as deemed necessary.

PART VII

(1) There are hereby transferred to the Personnel Office the functions, including the duties, powers and authorities of all officers and employees assigned thereto, of the following:

District Personnel Board
Wage Scale Board
Safety Section, Dept. of General Administration
Agency Committee on Deferment of D. C. Government Employees
Loyalty Committee
Civil Service Liaison Section, Secretary's Office
Employee's Compensation Sub-Section, Investigation Section, Office of Corporation Counsel

(2) All positions, personnel, property, records and unexpended balances of appropriations, allocations and other funds available or to be made available relating to the above functions are hereby transferred to the Personnel Office.

(3) The Sections, Sub-Section, Boards and Committees listed in this part, including the office of the head of the District Personnel Board, are abolished.

This order shall become effective on and after November 23, 1952.

REORGANIZATION ORDER NO. 22.—Superseded by Organization Order No. 107, which will be found under Reorganization Order No. 54

REORGANIZATION ORDER NO. 23.—DEPOSITS OF SECURITIES BY INSURANCE COMPANIES

Reorg. Ord. No. 23, C. O. 273,696, C. O. 302,853/14, Dec. 30, 1952, ordered:

That the Internal Audit Officer or his first deputy and the Disbursing Officer or his first deputy are hereby designated, in lieu of the Secretary to the Board of Commissioners of the District of Columbia and the Auditor of the District of Columbia, to perform certain functions in connection with deposits of securities made by insurance companies pursuant to Sections 35–415, 35–416, and 35–417, D. C. Code, 1951 Edition.

REORGANIZATION ORDER NO. 24.—BUDGET OFFICE

Reorg. Ord. No. 24, C.O. 302,853/14, C.O. 302,970.F, C.O. 300,857, Dec. 30, 1952, as amended Oct. 25, 1960, ordered that:

PART I

There is established in the Department of General Administration, under the direction and control of the Director of General Administration, a Budget Office headed by a Budget Officer. The Budget Officer shall have full authority over such office and all personnel assigned thereto, including the power to re-delegate to other officials of the Budget Office such of the powers herein delegated as, in his judgment, are warranted in the interest of efficiency and good administration. This authority shall be exercised in accordance with applicable laws, rules and regulations.

PART II

Purpose.—The Budget Office is established for the purpose of assisting and advising the Board of Commissioners and the Heads of the Departments and Offices in the development and implementation of improved budgetary policies, practices, and procedures; administering central internal budgetary coordination and control for the D. C. Government; analyzing budget requests and recommending specific budget estimates which adequately meet program and performance requirements; preparing the budget for the District Government as approved by the Board of Commissioners and assisting and participating in the presentation of budget estimates and justifications before the Bureau of the Budget and Appropriations Committees of the Congress.

PART III

Organization.—There shall be established in the Budget Office as many organizational components and positions with such duties and titles as the Budget Officer with the approval of the Director of General Administration shall from time to time determine.

PART IV

Functions.—The functions to be performed by the Budget Office are to:

(a) Develop and prepare, for consideration by the Board of Commissioners, policies, procedures, and practices governing the preparation and administration of the budget in the D. C. Government.

(b) Advise and assist the Departments and Offices in the preparation of budget estimates and supporting data.

(c) Analyze budget estimates prepared by the Departments and Offices to insure that they properly reflect the financial requirements of the D. C. Government, and to assist in the presentation of such estimates before the Board of Commissioners.

(d) Advise and assist the Board of Commissioners in determining all D. C. Government budget estimates.

(e) Prepare the budget estimates for the District Government as approved by the Board of Commissioners.

(f) Arrange for and participate in the presentation of budget estimates at hearings before the Congressional appropriations committees.

(g) Serve as liaison between the D. C. Government and the Bureau of the Budget and the appropriations committees on budgetary matters.

(h) Maintain budgetary controls over funds appropriated to the D. C. Government, including the making of apportionments of appropriations or changes therein, and the establishment of budgetary and administrative reserves. The actions of the Budget Officer in making apportionments of appropriations or changes therein will be reviewed by the Director of General Administration upon the request of a department head and will be further reviewed by the Board of Commissioners when requested in writing by a department head.

(i) Prescribe systems of records and reports for budget purposes.

(j) Receive and compile the annual, supplemental and deficiency budget estimates for the District of Columbia.

(k) Advise as to anticipated D. C. revenues and the availability of such revenues for general, special, and trust fund purposes.

(*l*) Advise as to proposed legislation involving revenues and expenditures, by cooperation with the Corporation Counsel and other interested officials.

(m) Prepare budgetary reports as required by the Board of Commissioners, the Budget Bureau and the Congress; prepare such other budgetary reports as may be required for internal administrative use.

(n) Prepare the Annual Report of the D. C. Government.

(o) Establishes accounting standards for the District Government and develops an overall system of accounting to reflect the assets and liabilities and financial operations of the District of Columbia; advises and assists departments and agencies in developing and installing internal accounting systems, including systems for the measurement of costs, in conformance with and auxiliary to the overall system of accounting.

PART V

(a) There are transferred to the Budget Office all functions, including the functions of all officers and employees, of the existing Budget Office.

(b) All positions, personnel, property, records and unexpended balance of appropriations, allocations, and other funds available or to be made available, relating to the functions and positions transferred, are hereby transferred to the Budget Office.

(c) The existing Budget Office, including the office of the head thereof, is abolished.

PART VI

This order shall become effective on and after December 31, 1952.

REORGANIZATION ORDER NO. 25.—TRANSFER OF FUNCTIONS OF AUDITOR TO FINANCE OFFICE

Reorg. Ord. No. 25, C.O. 302,853/14, C.O. 302,970.E, Dec. 30, 1952, which amended Reorg. Ord. No. 20, was superseded by Organization Ord. No. 121, Dec. 12, 1957.

REORGANIZATION ORDER NO. 26.—TRANSFER OF FUNDS TO THE DEPARTMENT OF GENERAL ADMINISTRATION

[Text Omitted]

The order transferred specified amounts to the Department of General Administration.

REORGANIZATION ORDER NO. 27.—OFFICE OF SURVEYOR

Reorg. Ord. No. 27, C. O. 302,853/14, C. O. 302,970.G, Apr. 3, 1953, as amended Apr. 10, 1953 and July 27, 1954, ordered that:

PART I

Office of the Surveyor.—There is established under the direction and control of the Engineer Commissioner, an Office of the Surveyor headed by a Surveyor. The Surveyor shall have full authority over such office and all personnel assigned thereto, including the power to redelegate to other officials of the Office of the Surveyor such of the powers herein delegated as, in his judgment, may be warranted in the interest of efficiency and good administration. However, the power to authorize the approval for record of all plats and subdivisions in the official records of the District of Columbia, as agent for the Board of Commissioners, shall be limited to the Surveyor or, in his absence, the Acting Surveyor. This authority, including all powers delegated thereunder, shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

Purpose.—The Office of the Surveyor is established to provide a legal office of record for such plats and subdivisions of public and private property in the District of Columbia as may be authorized or required by law or regulations, and to perform such other functions as may from time to time be assigned to it.

PART III

Organization.—There shall be established in the Office of the Surveyor so many organizational components, and positions with such duties and titles as the Surveyor, with the approval of the Engineer Commissioner, shall from time to time determine.

PART IV

Functions.—The functions of the Office of the Surveyor shall be to:

1. Prepare the necessary data and plats for all subdivisions of property.

2. Prepare plats of streets, roads, and alleys acquired by dedication, condemnation, or purchase; closings of streets and alleys; transfers of jurisdiction between government agencies; and changes in the Plan of the Permanent System of Highways of the District of Columbia.

3. Prepare plats for private persons based upon property surveys, condemnation action, or existing office records.

4. Make field surveys for private persons, District Government departments and offices, and Federal departments and agencies.

5. Make computations to be used as the basis for determination of areas and dimensions of lots, squares, and tracts of unsubdivided land; make computations to determine location of dedicated and condemned streets.

6. Determine fees for work performed on basis of fee schedules promulgated by the Board of Commissioners, except that the Surveyor shall execute surveying work for the District of Columbia without charge, upon the written request of the department or agency concerned.

7. Maintain official record files; maintain appropriate records of work performed and fees collected.

8. Initiate and develop policies, for consideration by the Board of Commissioners, concerning the relationship between the Office of the Surveyor and the general public, Federal departments and agencies, and District Government departments and offices.

9. Furnish information and advice to the Board of Commissioners, District Government departments and offices, Federal departments and agencies, and the general public, on matters pertaining to field surveys, subdivision of property, and related functions of the Office of the Surveyor.

Authorize, as agent for the Board of Commissioners, the approval for record of all plats and subdivisions in the official records of the District of Columbia.

PART V

The making of abstracts of wills, deeds, and court orders for use in the preparation of assessment and taxation plats, and preparation of assessment and taxation plats shall continue to be delegated to the Office of the Assessor until such time as a determination to the contrary may be made by the Board of Commissioners.

PART VI

Transfer of positions.—A. All positions in or under the existing Office of the Surveyor, including the duties, powers and authorities of all officers and employees assigned thereto, are transferred to the new Office of the Surveyor, except the following positions which are hereby abolished:

Surveying and Cartographic Engineer, GS–7, No. 11–15–27
Surveying and Cartographic Aid, GS–2, No. 11–15–19
Surveying and Cartographic Aid, GS–2, No. 11–15–38
Surveying and Cartographic Aid, GS–1, No. 11–15–40

B. All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the positions listed for transfer in A of this Part, are transferred to the Office of the Surveyor.

C. The existing Office of the Surveyor, including the office of the head thereof, is abolished.

PART VII

Repeal of previous orders.—All Commissioners' Orders or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed.

PART VIII

Effective date.—This order shall become effective on and after April 12, 1953.

REORGANIZATION ORDER NO. 28.—DEPARTMENT OF SANITARY ENGINEERING

Reorganization Ord. No. 28, C.O. 302,980.H, C.O. 302,853/14, Apr. 3, 1953, as amended Aug. 4, 1953, Jan. 31, 1956, Jan. 17, 1961, Oct. 17, 1961, Nov. 27, 1962, and Apr. 7, 1964, ordered that: [This reorganization order was amended and redesignated as organization order 147, by order No. 65–1154, dated Aug. 19, 1965.]

REORGANIZATION ORDER NO. 29.—PROCUREMENT OFFICE

Reorganization Ord. No. 29, C.O. 302,970.I, and C.O. 302,-853/14, Apr. 14, 1953, as amended June 4, 1953, Sept. 17, 1953, Feb. 2, 1954, June 1, 1954, Mar. 27, 1956, Oct. 30, 1956, June 24, 1958, Dec. 22, 1958, July 28, 1959, July 12, 1960, Mar. 9, 1961, Oct. 30, 1962, Feb. 8, 1963, Mar. 13, 1963, Mar. 26, 1963, Aug. 13, 1964, Dec. 1, 1964, Dec. 17, 1964, and May 13, 1965, ordered that:

PART I

Procurement office.—(a) There is established in the Department of General Administration, District of Columbia Government, under the direction and control of the Director of General Administration, a Procurement Office headed by a Procurement Officer. The Procurement Officer shall have full authority over such Office and all personnel assigned thereto, including the power to re-delegate to other officials of the Procurement Office such of the powers delegated in Part IV herein, as, in his judgment, are warranted in the interest of efficiency and good administration. This authority shall be exercised in accordance with applicable laws, rules and regulations.

(b) The Deputy Procurement Officer and the Assistant Deputy Procurement Officer are authorized to exercise all the powers vested in the Procurement Officer, during the disability or other absence from duty of said Officer, and also from the date of separation of said Officer from the services of the District of Columbia Government and until the successor to said Officer is appointed, but said Assistant Deputy Procurement Officer shall exercise the powers and authority herein vested only during the disability or other absence from duty of the Deputy Procurement Officer.

PART II

Purpose.—The Procurement Office is established for the purpose of obtaining the maximum advantages of centralized purchasing and for developing, installing, and supervising effective and simplified purchasing policies and procedures for departments and offices of the District of Columbia Government.

PART III

Organization.—There shall be established in the Procurement Office so many organizational components and positions with such duties and titles as the Procurement Officer, with the approval of the Director of General Administration, shall from time to time determine.

PART IV

Scope and functions.—(a) The Procurement Officer will perform those purchasing functions heretofore vested in the Board of Commissioners by law or transferred to the Board by Reorganization Plan No. 5 with respect to all departments and offices in or under the District of Columbia Government. Contracting Officers appointed by the Board of Commissioners as provided for in Part VI herein, shall perform the functions herein or hereafter assigned to them, subject to all applicable laws, rules, and regulations, and such instructions as the Board of Commissioners may from time to time give.

(b) The functions of the Procurement Office shall be to:

(1) Enter into and administer contracts on behalf of the District of Columbia, including approval of performance bonds when such bonds are required, for all supplies, materials, equipment, and services except as provided in Part V of this order. Such contracts shall be subject to certification by the Accounting Officer that they are correct and proper for payment in the verified amount, determination as to legal sufficiency in such manner as meets the requirements of the Corporation Counsel, and, in the case of each contract in excess of $50,000, subjected also to approval of the executed formal contract by the Board of Commissioners.

(2) Execute change orders under contracts, subject to certification by the Accounting Officer that they are correct and proper for payment in the verified amount, determination as to legal sufficiency in such manner as meets the requirements of the Corporation Counsel, and, in the case of each change order in excess of $10,000, subject also to approval of the written change order by the Board of Commissioners.

(3) Purchase, in accordance with such instructions as the Director of General Administration may from time to time give, surplus and excess Federal personal property for departments and offices of the District of Columbia Government.

(4) Initiate and develop, in collaboration with departments and offices, up-to-date and effective purchasing policies and programs for consideration by the Board of Commissioners.

(5) Create and adopt, subject to the approval of the Director of General Administration, the most simplified purchasing procedures in the interest of economizing on administrative costs and expediting action.

(6) Collaborate with Contracting Officers, appointed by the Board of Commissioners as provided for in Part VI herein, in developing and implementing effective contracting procedures which are designed to expedite the work of the Contracting Officers.

(7) Maintain adequate inventories of certain construction materials purchased from the revolving fund as authorized by District of Columbia Appropriation Act for the fiscal year 1912; furnish such materials to District of Columbia departments, offices, and agencies subject to reimbursement of the revolving fund from appropriations of such using departments, offices and agencies; and maintain the sufficiency and integrity of the said revolving fund.

(8) Perform centralized services in connection with contract administration for departments and offices of the District of Columbia Government such as advertising for competitive bids, opening and tabulating bids, preparing formal contracts and bonds after awards are made by the authorized Contracting Officer, and preparing all types of contractual documents, except leases for real property. All such services shall be performed in accordance with operating procedures and administrative requirements as are established by the Procurement Officer, subject to the approval of the Director of General Administration and after transmittal to the Corporation Counsel for comment and advice.

(9) Prepare periodic economic reports dealing with the field of purchasing, and furnish estimated price data when requested by the Budget Officer, D. C.; prepare such other reports as required for internal administrative use or as requested by the Director of General Administration.

(10) Serve as one of the District of Columbia representatives on the Federal Supply Board of the General Services Administration along with such other representatives and with such duties in connection therewith as may from time to time be designated by the Director of General Administration. Collaborate with the Administrative Services Officer in the procurement of surplus and excess Federal personal property.

(11) Serve in an advisory capacity to the Board of Commissioners, the Director of General Administration, and department and office heads in matters pertaining to purchasing and contracting.

(12) Conduct a continuous program of analysis, appraisal, and cataloging of materials and supplies procured for District departments and offices in the interest of standardization and economy. Keep informed on new products manufactured and technological changes and improvements in manufacturing processes and, on the basis of such information, consider, in collaboration with using agencies, alternate or substitute materials.

(13) Furnish, and certify as true, copies of contracts, bonds, and other documents which are in the official custody of the Procurement Office upon application and payment, by persons other than officials of the District of Columbia, of such fees as may be established by the Commissioners.

(14) Administer all functions dealing with the bonding of District employees for faithful performance of their official duties, including the fixing of penal sums of bonds wherein such bonding is dictated by existing laws, Commissioners' Orders, and other elements consistent with the public interest. Create and adopt the most economical and simplified system and procedures for administering all matters connected therewith.

PART V

Purchasing by departments and offices.—(a) Subject to all applicable statutes, regulations and directives, including controls established by the Procurement Officer, with the approval of the Director of General Administration.

(1) Heads of departments and offices are authorized to purchase or contract for supplies, materials, equipment and services in amounts not exceeding $100.

(2) Such heads of departments and offices as may from time to time be determined in writing by the Director of General Administration are authorized to purchase or contract for such supplies, materials, equipment and services, in such manner, subject to such restrictions, and in such amounts in excess of $100 but not exceeding $1,000, as may be specified in such written determination.

(b) When the public exigencies require the immediate delivery of supplies, materials, or equipment or performance of services, the Director of Buildings and Grounds, D. C., the Director of Highways, D. C., and the Director of Sanitary Engineering, D. C., may purchase or contract for the same in amounts not exceeding $50,000, subject, when the amount of any such purchase or contract exceeds $500, to approval by the Engineer Commissioner, D. C., or by one of his Assistants, unless such Director shall certify that it was impractical to obtain such approval.

(c) Authority vested in heads of departments and offices pursuant to paragraph (a) of this Part V may be redelegated by such heads of departments and offices to other officials or employees within their respective organizations.

PART VI

Appointment of contracting officers.—

(a) The employees occupying each of the following positions are hereby appointed Contracting Officers for the District of Columbia, subject to all applicable laws, rules, and regulations, and such instructions as the Commissioners may from time to time give:

(1) Director of Buildings and Grounds, D.C.

(2) Director of Highways and Traffic.

(3) Director of Sanitary Engineering, D.C.

(4) Chief, Real Estate Division, Administrative Services Office, Department of General Administration.

(5) Chief, Personal Property Utilization Division, Administrative Services Office, Department of General Administration.

(b) The employees occupying the following positions are appointed Alternate Contracting Officers, and each is authorized to exercise all the powers vested by paragraph (c) of this Part in the Contracting Officer for whom he is named Alternate, subject to all limitations upon the powers of such Contracting Officer, during the unavailability of such Contracting Officer and at such times and for such purposes as such Contracting Officer may designate in writing and also from the date of separation of such Contracting Officer from the services of the District of Columbia and until the successor to such Contracting Officer is appointed:

(1) Deputy Director of Buildings and Grounds, and Chief, Office of Design and Engineering, as Alternates for Director of Buildings and Grounds, D.C., but said Chief, Office of Design and Engineering shall exercise the powers and authority herein vested only during the disability or other absence from duty of the Deputy Director of Buildings and Grounds and then only as specifically designated in writing.

(2) Deputy Director of Highways and Traffic, and Deputy Director of Design, Engineering and Research as alternates for Director of Highways and Traffic, but said Deputy Director for Design, Engineering and Research shall exercise the powers and authority herein vested only during the disability or other absence from duty of the Deputy Director of Highways and Traffic and then only as specifically designated in writing.

(3) Deputy Director of Sanitary Engineering, and Superintendent, Office of Planning, Design and Engineering as alternates for Director of Sanitary Engineering, D.C., but said Superintendent, Office of Planning, Design and Engineering shall exercise the powers and authority herein vested only during the disability or other absence from duty of the Deputy Director of Sanitary Engineering and then only as specifically designated in writing.

(4) Supervisor, Acquisition Section, as alternate for the Chief, Real Estate Division, Administrative Services Office, on all contracts for acquisition by purchase of real property; and Supervisor, Management and Disposal Section, as alternate for the Chief, Real Property Division, Administrative Services Office, on all contracts for demolition of improvements on real property and for managing, leasing, or disposing of real property.

(c) Each Contracting Officer is authorized to:

(1) Enter into and administer contracts on behalf of the District of Columbia, including approval of performance bonds when required, with respect to all types or classes of work now or hereafter placed under his supervision. Such contracts shall be subject to certification by the Accounting Officer that they are correct and proper for payment in the verified amount, determination as to legal sufficiency in such manner as meets the requirements of the Corporation Counsel, and, in the case of each contract in excess of $50,000, subject also to approval of the executed formal contract by the Board of Commissioners.

(2) Execute change orders under such contracts, subject to certification by the Accounting Officer that they are correct and proper for payment in the verified amount, determination as to legal sufficiency in such manner as meets the requirements of the Corporation Counsel, and, in the case of each change order in excess of $10,000, subject also to approval of the written change order by the Board of Commissioners.

(3) Whenever 50 per centum of the work required under a contract for construction has been completed and payments therefor have been made, the contracting officer, in his sole discretion, may authorize subsequent payments to be made to the contractor without withholding from such subsequent payments 10 per centum thereof as required by Section 1–807, D.C. Code, 1951 ed. [now 1967 ed.], or the said contracting officer may authorize retention from such subsequent payments of less than 10 per centum thereof; and the said contracting officer, in his sole discretion, may further authorize payment in full, including retained percentages, for each separate building or public work on which the price is stated separately in the contract upon completion and acceptance of such building or work.

(d) Whenever a question arises either as to the type or class of work embraced by a particular proposed contract, or whether a particular proposed contract is for

equipment, materials, or supplies, such question(s) shall be decided by the Chairman, or in his absence, the Alternate Chairman, of the Contract Advisory Committee; and the said Chairman, or Alternate Chairman, is hereby authorized, by separate action in each specific instance, to place particular items of work under the supervision of any of the Contracting Officers herein appointed, solely for the purpose of entering into and administering contracts on behalf of the District of Columbia for such items of work, even though such item is not of a class or type otherwise under the supervision of such Contracting Officer. In any case where action hereunder by the Chairman or Alternate Chairman is unsatisfactory to any Contracting Officer such action shall, at the request of such Contracting Officer, be referred to the Director of General Administration for decision, or for further referral to the Board of Commissioners for its decision. As used in this subsection "Contracting Officer" shall include the Procurement Officer.

PART VII

Contract Appeals Board, D.C.—

(a) There is established a Contract Appeals Board, D.C., consisting of an Assistant Corporation Counsel designated by the Corporation Counsel, an Assistant to the Engineer Commissioner designated by the Engineer Commissioner, and any one of two or more persons appointed by the Board of Commissioners from among active or retired District of Columbia officers or employees who have had practical experience in the administration of Government contracts, as may be designated from time to time by the Chairman of the Contract Appeals Board. Any two members shall constitute a quorum for the transaction of any business of the Board.

No person shall serve as a member of the Board in any case in which the appeal has been taken from the action of a Contracting Officer or Alternate Contracting Officer of the Department of which he is, or at the time of his retirement was, the Director or an employee. The Assistant Corporation Counsel member shall serve as Chairman of the Contract Appeals Board, and in his absence the Assistant to the Engineer Commission shall serve as Chairman.

(b) The functions of the Contract Appeals Board shall be to hear, to review, and to decide upon all protests and appeals from actions by Contracting Officers, including the Procurement Officer, where the contracting officer is unable to satisfy the contractor that the action taken was a proper action, and such other contractual appeals, or classes thereof, as the Board of Commissioners may from time to time order. Upon request of the contractor or of the contracting officer, and with the consent of the other, the subject matter of an appeal shall be remanded to the contracting officer who shall thereupon reconsider his appealed decision, and upon such remand the appeal shall be dismissed. The decision of the Contract Appeals Board in every case shall be final subject to the limitations of Section 3(b)(2) of Reorganization Plan No. 5 of 1952.

(c) The Contract Appeals Board is authorized to formulate rules governing its own procedures, including the establishment of time limitations and the development of methods of perfecting appeals to it.

(d) The Chairman of the Contract Appeals Board shall be responsible for obtaining the necessary secretarial assistance for the Board, and shall maintain centralized custody over all records pertaining to meetings held and actions taken.

(e) The activities of the Board shall be considered investigations or examinations of municipal matters within the meaning of the Act of July 1, 1902 (D. C. Code, 1951 ed., § 1–237 [now 1966 ed.], and the members of said Board shall possess the powers vested in the Commissioners by said Act of July 1, 1902.

PART VIII

Contract Advisory Committee.—(a) There is established a Contract Advisory Committee, consisting of the Director of Buildings and Grounds who shall serve as Chairman, and such other members as the Chairman from time to time shall select from among the various District Government departments and offices. The Director of Highways and Traffic shall serve as Alternate Chairman of the Contract Advisory Committee during the absence of the Chairman. Any three members of the said Committee shall constitute a quorum for the transaction of business.

(b) The purpose of the Contract Advisory Committee is to make available to the Board of Commissioners, the Director of General Administration, and the Contracting Officers appointed by the Board of Commissioners, assistance and advice on all contracting matters.

(c) The Procurement Officer shall be responsible for providing the necessary secretarial assistance for the Committee, and for maintaining a central file of its records and reports.

PART IX

Authority to determine fair market prices for products and services of the industrial enterprises of the D. C. Workhouse and Reformatory.—(a) Pursuant to the provisions of Section 3 (a) of Reorganization Plan No. 5 of 1952, effective July 1, 1952, authority is hereby delegated, effective August 12, 1952, to the Director of Corrections, D. C., in collaboration with the Procurement Officer, D. C., to determine, on and after this date, the fair market prices to be charged by the Department of Corrections for products and services of the Industrial Enterprises of the D. C. Workhouse and Reformatory. Should the Director of Corrections and the Procurement Officer fail to agree as to the fair market price of any such product or services, their respective recommendations, with reasons therefor, shall be submitted to the Board of Commissioners, D. C., for final determination.

(b) Commissioners' Order P. O. 4315 dated August 12, 1952, is hereby superseded.

(c) The Director, Department of Corrections, is hereby appointed as contracting officer for the District of Columbia subject to all appropriate laws, rules and regulations and such instructions as the Commissioners may from time to time give: *Provided,* That his authority as contracting officer is limited to execution and administration of contracts with the various departments of the District of Columbia and the Federal Government and with any State or subdivision of a State, of any Commonwealth, Territory or possession of the United States for the sale of products and services produced by the Industries Division of the Department of Corrections. The Director, Department of Corrections is authorized to redelegate to other officials of the Department of Corrections the authority contained herein to act as contracting officer, provided such redelegation be in writing and filed in the Procurement Office and in the Accounting Office.

PART X

Transfer of functions and positions.—(a) All positions under the existing Purchasing Officer are transferred to the Procurement Office. The duties, powers, and authorities of all officers and employees assigned thereto shall continue insofar as they relate to the functions enumerated in Part IV herein.

(b) All functions and positions including the duties, powers, and authorities of all employees assigned thereto of the Contract and Bond Section, Department of General Administration, are transferred to the Procurement Office.

(c) All functions, duties, powers, authorities, property, and records of the existing Contract Board not otherwise herein provided for are transferred to the Procurement Office.

(d) All records of the existing Automobile Board are transferred to the Procurement Office.

(e) All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the functions and positions referred to in (a) and (b) in this Part are transferred to the Procurement Office.

PART XI

Abolition of agencies.—The following listed Office, Section and Boards are abolished:

Purchasing Office, including the office of the head thereof.

Contract and Bond Section, Department of General Administration.

Automobile Board.

Contract Board.

PART XII

Repeal of previous orders.—All Commissioners' Orders, or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed.

PART XIII

Effective date.—This order becomes effective September 17, 1953.

REORGANIZATION ORDER NO. 30.—MAINTENANCE, PRESERVATION AND DISPOSAL OF RECORDS OF ALL COMPONENTS OF THE DISTRICT OF COLUMBIA GOVERNMENT COVERED BY REORGANIZATION PLAN NO. 5 OF 1952

This order was rescinded by order No. 65–108, dated Jan. 26, 1965. For provisions of order see 1961 Edition of the Code.

REORGANIZATION ORDER NO. 31.—POLICE AND FIREMEN'S RETIREMENT AND RELIEF BOARD

Reorganization Ord. No. 31, C.O. 274,993, C.O. 302,853/14, C.O. 302,970.C, P.D. 01.9542, Apr. 30, 1953, as amended July 20, 1954, June 28, 1955, Sept. 5, 1957, Nov. 22, 1960, and June 21, 1962, ordered that:

PART I

Police and Firemen's Retirement and Relief Board.—(a) There is established in the Government of the District of Columbia, under the administrative supervision of the Director of General Administration a Police and Firemen's Retirement and Relief Board, to be composed of the following: Personnel Officer, Director of Public Health, Corporation Counsel, Chief of Police, and Fire Chief.

(b) In all cases of relief and retirement of members of the United States Park Police force, a member of the United States Park Police force, designated by the Superintendent, National Capital Parks, may sit as a member of the Police and Firemen's Retirement and Relief Board; and in all cases relief and retirement of members of the White House Police Force or of members of the United States Secret Service who contribute to the policemen and firemen's relief fund, District of Columbia, a member of the White House Police Force or a member of the United States Secret Service, as appropriate, designated by the Chief, United States Secret Service, may sit as a member of the Police and Firemen's Retirement and Relief Board.

(c) Each member of the said Board is authorized to designate an alternate representative or representatives from among officials and employees within his organization, to exercise, at the meeting of the Board, all the powers vested in the respective member, except that no more than one alternate for each member shall participate at a single Board meeting. Each such alternate shall be a senior assistant of the Member concerned.

(d) The Personnel Officer shall serve as Chairman of the said Board, and the Director of Public Health shall serve as Vice-Chairman, and in the absence of both, the authorized alternate of the Personnel Officer shall serve as Chairman, and in his absence, the alternate to the Director of Public Health shall serve as Chairman.

(e) All authorities and powers exercised by members of the Police and Firemen's Retirement and Relief Board, including those individuals who are designated, from time to time, as alternate members, shall be in accordance with applicable laws, rules and regulations.

PART II

Purpose and scope.—The Police and Firemen's Retirement and Relief Board is established for the purpose of insuring that fair and equitable policies and practices are established and applied in connection with the retirement and the relief of members of the Police and Fire Departments of the District of Columbia, the United States Park Police force, the White House Police force, and the United States Secret Service who contribute to the Policemen and Firemen's Relief Fund of the District of Columbia.

PART III

Functions.—The functions of the Police and Firemen's Retirement and Relief Board shall be to:

(1) Consider all cases for the retirement and the relief of members of the Police and Fire Departments of the District of Columbia, the United States Park Police force, the White House Police force, and the United States Secret Service who contribute to the Policemen and Firemen's Fund of the District of Columbia; consider all cases of retirees of said organization who are seeking an increase in the pension relief allowance which they are already receiving; consider all cases of retirees of said organization who are required to undergo periodic medical examinations in connection with determining whether the relief allowance in such cases should be continued, increased, decreased, or discontinued; and consider all applications for the relief of widows and children under eighteen years of age of said members.

(2) Approve or disapprove all such cases, and fix the amount of pension relief in each instance, as appropriate, except that proposed actions in connection with the relief or the retirement of the Chief of Police and the Fire Chief shall be submitted to the Board of Commissioners for its approval or disapproval, and provided that, at all times, any action taken by the Retirement and Relief Board shall be subject to review by the Board of Commissioners, including final authority to concur in, reject, modify, or reverse such action.

(3) Develop and submit to the Board of Commissioners for its consideration, through the Director of General Administration, over-all policies to insure equitable treatment in the retirement and the relief of individuals coming within the purview of the Police and Firemen's Retirement and Relief Board; and serve in an advisory capacity to the Board of Commissioners, the Director of General Administration, and the department and office heads in all matters pertaining to the retirement and the relief of such individuals.

(4) Perfect and adopt, subject to approval of the Director of General Administration, rules of procedure for the conduct and the guidance of the Police and Firemen's Retirement and Relief Board.

PART IV

Subpoena powers.—The Police and Firemen's Retirement and Relief Board is authorized and empowered to summon any person before it to give testimony, under oath or affirmation, as to any matter affecting retirement or relief of any individual whose retirement or relief is being considered; and any member of the said Board shall have power to administer oaths or affirmations to witnesses appearing before it. Such summons shall be served by a member of the Metropolitan Police or Fire Departments.

PART V

Secretarial assistance.—The Chairman of the Police and Firemen's Retirement and Relief Board shall be responsible for arranging for necessary secretarial assistance for the Board, and for seeing that reports and records are prepared and maintained in connection with meetings held, findings and recommendations made, and actions taken.

PART VI

Abolition of existing Board.—The existing Police and Firemen's Retiring and Relief Board, including the Office of the Chairman thereof, is abolished.

PART VII

Repeal of previous orders.—All Commissioners' Orders, or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed.

PART VIII

Effective date.—This order shall become effective on and after June 1, 1953.

PART IX

The Police and Firemen's Retirement and Relief Board established herein is hereby designated, as agent of the Commissioners, to make all findings of fact necessary in the determination of eligibility for retirement and survivor annuities pursuant to Public Law 85–157 [See §§ 4–521 to 4–535, Chap. 5, D.C. Code], 85th Congress, as approved August 21, 1957, and to take final action in such cases subject to provisions for review set forth in Reorganization Order No. 31, as amended.

In making such findings of fact the Board shall consider the written opinion submitted to it by the Board of Police and Fire Surgeons concerning the physical or mental condition, or both, of the member for whom involuntary separation or retirement is sought, together with all records and testimony of the Board of Police and Fire Surgeons relating to such member, and such records and testimony of any other person bearing on the matter before the Police and Firemen's Retirement and Relief Board.

The authority set forth in subsection "(i)" of the Policemen and Firemen's Retirement and Disability Act (P.L. 85–157; § 4–529, D.C. Code, 1961 ed. [now 1967 ed.]) to express a judgment as to the disability of a member from performing further duty in his department is hereby delegated exclusively to the Police and Firemen's Retirement and Relief Board.

REORGANIZATION ORDER NO. 32.—DISTRICT OF COLUMBIA DEPARTMENT OF VETERANS' AFFAIRS

Reorg. Ord. No. 32, C. O. 302,853/14, C. O. 301,931, Apr. 30, 1953, as amended Mar. 15, 1957, ordered that:

PART I

*Veterans' Service Center.**—There is established, under the direction and control of the Engineer Commissioner, a Veterans' Service Center headed by a Director. The Director shall have full authority over such Center and all functions and personnel assigned thereto, including the power to redelegate to other officials of the Veterans' Service Center such of the powers herein delegated as, in his judgment, may be warranted in the interests of efficiency and good administration. This authority shall be exercised in accordance with applicable laws, rules and regulations.

PART II

Organization.—There shall be established in the Veterans' Service Center so many organizational components and positions with such duties and responsibilities as its Director, with the approval of the Engineer Commissioner, shall from time to time determine.

PART III

Functions.—The Veterans' Service Center established by this order shall perform the functions previously assigned to the Division of Services to Veterans (including the existing D. C. Veterans' Service Center).

PART IV

Transfer of positions.—(a) There are transferred to the Veterans' Service Center all functions, including the duties, powers, and authorities of all officers and employees assigned thereto, of the existing Division of Services to Veterans (including the existing D. C. Veterans' Service Center).

(b) All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the functions and positions transferred are hereby transferred to the Veterans' Service Center.

(c) The existing Division of Services to Veterans (including the existing D. C. Veterans' Service Center), and the office of the head thereof, are abolished.

PART V

Repeal of previous orders.—All Commissioners' Orders or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed.

PART VI

Effective date.—This Order shall become effective on and after May 10, 1953.

REORGANIZATION ORDER NO. 33.—BOARD OF PAROLE

Reorganization Ord. No. 33, C.O. 273,705, C.O. 302,853/14, May 28, 1953, as amended July 21, 1960, and June 22, 1965, ordered that:

PART I

Board of Parole—A. There is established a Board of Parole under the direction and control of a Commissioner. The Board shall consist of five members who shall be appointed by the Commissioners, one of whom, the Parole Executive, shall serve for an indefinite term on a full-time paid basis. The other members shall serve on an intermittent basis and shall be known as public members, one of whom shall be elected chairman. A quorum shall consist of any three members, at least two of whom shall be physically present at any hearing. Every public member who is serving on the Board as of July 31, 1966, shall continue to serve until his successor is appointed and has qualified. Of the persons appointed to succeed such members, one (1) shall be appointed for a period of one (1) year, such term to expire July 31, 1967; two (2) for a period of two (2) years, such terms to expire July 31, 1968; and one (1) for a period of three (3) years, such term to expire July 31, 1969. Thereafter, the terms of office for each public member shall be for three years. Any vacancy shall be filled only for the unexpired term. No public member who has served six years or more consecutively shall be reappointed as such member until after the expiration of one year from the end of such service. After the expiration of his term, each public member shall continue to serve until his successor is appointed and has qualified.

B. The members of the Board shall have full authority over the organization and all personnel assigned thereto, including the power to redelegate to the Parole Executive or any member of said Board the powers herein delegated, except that the authority to release a prisoner on parole and determine the terms and conditions of such parole, or the authority to terminate a parole or conditional release, or modify the terms or conditions thereof, or to establish procedural rules and regulations for the Board may not be redelegated.

C. Public members shall be compensated in accordance with the provisions of the Act entitled "An Act to authorize certain administrative expenses in the Government service, and for other purposes," approved Aug. 2, 1946 (60 Stat. 806), as amended, or other applicable laws.

PART II

Purpose.—The Board of Parole is established for the purpose of developing and administering an effective parole system—a system sufficiently flexible to permit the release of an offender at the time when his release under supervision is in the best interest of society; a system free from influence, staffed by persons of professional competence, and administered in such a manner as to foster a constructive public attitude toward the parolee.

PART III

Scope.—The Board of Parole is authorized to exercise and perform such powers, duties and authorities as are exercised and performed by the existing Board of Parole and any member thereof including the member acting as the Parole Executive.

PART IV

Organization.—There shall be established under the Parole Executive so many organizational components and positions with such duties and responsibilities as the Board of Parole, with the approval of the Commissioner concerned, shall from time to time determine.

PART V

Hearings.—The Board of Parole shall conduct hearings on all applications for parole. Hearings shall be conducted by at least three members of the Board except in cases in which a third member is not available for this purpose, two members of the Board may conduct the hearing and cast their votes, in which case a transcript of the hearing shall be made and referred to the third member of the Board for his consideration, review and vote. No decision in any case shall be entered until such third member has read the transcript of the hearing and cast his vote. A decision shall be by majority vote.

PART VI

Cooperation of other District Government departments and officials.—The Department of Corrections, and all other agencies and officials of the District shall cooperate with the Board and shall furnish the Board with such information, files, and records as it may deem necessary

*Name of Veterans' Service Center changed to Department of Veterans' Affairs, by C.O. 57–471, Mar. 15, 1957

in the performance of its duties, provided that confidential information and records shall not be required to be produced.

PART VII

Transfer of positions.—A. All positions under the existing Board of Parole, including the duties, powers, and authorities of all officers and employees assigned thereto, are transferred to the new Board of Parole.

B. All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the positions listed for transfer in A. of this Part, are transferred to the new Board of Parole.

PART VIII

Abolition of the existing board.—The existing Board of Parole, including the office of the head thereof, is abolished.

PART IX

Effective date.—This order shall become effective on and after June 21, 1953.

REORGANIZATION ORDER NO. 34.—DEPARTMENT OF CORRECTIONS

Reorganization Ord. No. 34, C.O. 302,089, C.O. 302,853/14, May 28, 1953, as amended Dec. 10, 1953, Aug. 12, 1954, May 17, 1956, July 14, 1960, May 4, 1961, and Apr. 18, 1963, ordered that:

PART I

Department of Corrections.—There is established, under the direction and control of a Commissioner, a Department of Corrections headed by a Director. The Director shall have full authority over such Department and all personnel assigned thereto, including the power to redelegate to other officials of the Department such of the powers herein delegated as, in his judgment, may be warranted in the interest of efficiency and good administration. This authority, including all powers delegated thereunder, shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

Purpose.—The Department of Corrections is established to provide for the custody, care, discipline, and instruction of all persons committed to the Workhouse, Lorton Reformatory, Women's Reformatory, and the D. C. Jail in such a manner as to achieve their maximum rehabilitation and reformation.

PART III

Organization.—There shall be established in the Department of Corrections the organizational components listed in Part IV herein, and so many positions with such duties and responsibilities as the Director, with the approval of the Commissioner concerned, shall from time to time determine.

PART IV

Functions.—The functions to be performed by the Department of Corrections shall include the following:

A. *Office of the Director.*—Provide executive direction for all activities of the Department. The Director shall make, adopt, and enforce such regulations pertaining to the administration of the institutions of the Department as may be necessary to permit the proper and effective operation thereof.

B. *Workhouse Division.*—Operate an institution for the detention of male misdemeanants and felons, including provision for the custody, rehabilitation, care, discipline, and instruction of such persons.

C. *Women's Reformatory Division.*—Operate an institution for the detention of female misdemeanants and felons, including provision for the custody, rehabilitation, care, discipline, and instruction of such persons.

D. *Lorton Reformatory Division.*—Operate an institution for the detention of male felons, including provision for the custody, rehabilitation, care, discipline, and instruction of such persons.

E. *Jail Division.*—(1) Operate an institution which shall insure maximum security in the detention of male and female misdemeanants and felons, including provision for the custody, rehabilitation, care, discipline, and instruction of such persons. (2) Provide for the custody and discipline of, and care for persons awaiting trial, sentence, or transfer to other institutions.

F. *Industries Division.*—Provide for the vocational training and rehabilitation of inmates by means of the operation of manufacturing and service activities.

G. *Engineering Division.*—Provide for the maintenance of buildings and grounds, the construction of new buildings, the operation of utilities and railroad facilities, and the supervision of telephone and radio communications.

H. *Business Division.*—Provide for accounting, purchasing and warehousing services for the Workhouse, Women's Reformatory, and Lorton Reformatory Divisions.

I. *Agricultural Division.*—Operate the institutional farm in connection with the Workhouse for the rehabilitation of inmates, and for providing farm produce for the feeding of inmates in the Lorton Reformatory, the Women's Reformatory, the Workhouse, and the Jail.

J. *Transportation Division.*—Operate and maintain vehicular, engineering, construction, and farm equipment.

K. *Health Division.*—Provides for the operation of a public health program for the inmates confined in the institutions, including provision for their medical, dental, and nursing care. Insures that the medical, dental, and nursing programs of the Department of Corrections are in conformance with the overall public health programs of the Department of Public Health, as far as practicable in a prison system.

L. *Personnel Division.*—Plans, directs, coordinates, and administers, under established administrative and penological policies, a comprehensive program of personnel operations and activities for all employees of the Department.

M. *Youth Center Division.*—Operate an institution for the detention of male prisoners committed under the Federal Youth Corrections Act, and for other male prisoners sentenced under other penalty provisions, who are considered by the Director of the Department of Corrections to be suitable for confinement therein, and for such other offenders as may be committed by the Courts for diagnosis and study, prior to further Court action, including provision for custody, diagnostic study, rehabilitation, care, discipline and instruction of such persons.

PART V

Support of District prisoners in institutions not under D. C. Government.—The Department of Corrections shall summarize and evaluate background of inmates and, where appropriate, make recommendations to representative of the Attorney General for placement of prisoners in institutions not under the District of Columbia Government. In addition, it shall process vouchers submitted by Federal agencies for care and treatment of District of Columbia prisoners and advise the Accounting Office of propriety of payment.

PART VI

Inmate Welfare Fund.—A. The Department of Corrections is hereby authorized to operate canteens for the purpose of selling merchandise to inmates and employees of the several institutions operated by said Department at a nominal profit which shall be deposited in the Inmate Welfare Fund, said fund to be used in the discretion of the Director of the Department for the general welfare of the inmates.

B. The Director of the Department shall keep records covering the operation of canteens and the provision of services of the type referred to in this Part, shall establish such rules and regulations consistent with good prison practice as will provide for strict accountability of all funds, and will submit the accounts to the Internal Audit Office for audit not less than once each six months.

PART VII

Transfers to new Department.—A. All positions under the existing Department of Corrections, including the duties, powers, and authorities of all officers and employees assigned thereto, are transferred to the new Department of Corrections.

B. All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the positions listed for transfer in A. of this part, are transferred to the new Department of Corrections.

PART VIII

Abolition of the existing Department.—The existing Department of Corrections, including the office of the head thereof, is abolished.

PART IX

Repeal of previous orders.—All Commissioners' Orders, or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed.

PART X

Effective date.—This order shall become effective on and after June 21, 1953.

PART XI

Institute for Criminological Research.—A. There is hereby established as an organizational component of the Department of Corrections an Institute for Criminological Research, including an Advisory Council for Criminological Research. The Director, Department of Corrections shall serve as the Research Coordinator for said Institute.

B. The Institute for Criminological Research is established for the purposes of conducting research into the causes and motivations of crime and the individual traits of offenders, and to evaluate scientifically the correctional and reformative practices of the Department of Corrections.

C. The Advisory Council for Criminological Research shall consist of such members with wide knowledge of and interest in the field of criminology as the Board of Commissioners may from time to time appoint. The functions of said Council shall be to provide guidance and advice to the Institute.

D. On July 14, 1960, the terms of all present members shall expire but each shall continue to serve until his successor is appointed and has qualified. Every appointment thereafter shall be for a term of three years, and every vacancy shall be filled only for the unexpired portion of the term, but after the expiration of his term each such member shall continue to serve until his successor is appointed and has qualified. No person who has served six years or more consecutively as a member shall be reappointed as such member until after the expiration of one year from the end of such service, but this limitation shall not apply to persons selected for membership from among officers and employees of the District of Columbia or of the Federal Government.

REORGANIZATION ORDER NO. 35.—ALCOHOLIC BEVERAGE CONTROL BOARD

Reorganization Ord. No. 35, G.F. 25–100, C.O. 302,853/14, June 16, 1953, as amended Dec. 20, 1962, ordered that:

PART I

Alcoholic Beverage Control Board.—A. There is established, under the direction and control of a Commissioner, an Alcoholic Beverage Control Board consisting of three members who shall be appointed by the Board of Commissioners, and which shall be headed by a Chairman designated by the Board of Commissioners from among the three members. All appointments shall be for terms of four years, except such appointments as may be made for the remainder of unexpired terms. A quorum shall consist of any two members. Each member of the Alcoholic Beverage Control Board shall be of good moral character, shall have resided in the District of Columbia for at least three years immediately preceding his appointment, and shall maintain residence in the District of Columbia during the term for which he was appointed. At least one member of the Board shall be a member of the bar of the United States District Court for the District of Columbia. No person shall be appointed as a member of such Board who at any time during the two-year period immediately preceding such appointment was an employee of such Board.

B. The members of the present Alcoholic Beverage Control Board are hereby reappointed to the new Board and shall continue to serve for the terms of office as previously appointed.

C. The Alcoholic Beverage Control Board shall have full authority over all functions and personnel assigned thereto, including the power to redelegate to its employees such ministerial duties and responsibilities as said Board, with the approval of the Commissioner to whom assigned, shall from time to time determine. This authority shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

Organization.—There shall be established under the Alcoholic Beverage Control Board so many positions with such duties and responsibilities as the said Board, with the approval of the Commissioner to whom assigned, shall from time to time determine.

PART III

Powers, authorities, and jurisdiction.—All powers and authorities authorized by statute or by the Board of Commissioners to be exercised by the existing Alcoholic Beverage Control Board, including its chairman and members, shall be hereinafter vested in the new Alcoholic Beverage Control Board.

PART IV

Appeals.—All appeals from actions of the Alcoholic Beverage Control Board now authorized by law to be made to the Board of Commissioners, shall continue to be made to the Board of Commissioners.

PART V

Transfers to new Board.—A. There are transferred to the Alcoholic Beverage Control Board all functions, including the duties, powers, and authorities of all officers and employees assigned thereto, of the existing Alcoholic Beverage Control Board.

B. All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the functions transferred are transferred to the Alcoholic Beverage Control Board.

PART VI

Abolition of existing board.—The existing Alcoholic Beverage Control Board, including the office of the Chairman thereof, is abolished.

PART VII

Repeal of previous orders.—All Commissioners' Orders or parts of Commissioners' Orders in conflict with provisions of this Order are, to the extent of such conflict, repealed.

PART VIII

Effective date.—This Order shall become effective on and after June 16, 1953.

REORGANIZATION ORDER NO. 36.—MINIMUM WAGE AND INDUSTRIAL SAFETY BOARD

Reorg. Ord. No. 36, C.O. 302,853/14, June 16, 1953, as amended Sept. 20, 1956, July 14, 1960, Sept. 20, 1960, and Jan. 7, 1966, ordered that:

PART I

Minimum Wage and Industrial Safety Board.—A. There is established, under the direction and control of a Commissioner, a Minimum Wage and Industrial Safety Board consisting of three members who shall be appointed by the Board of Commissioners. As far as practicable, the members shall be so chosen that one will be representative of employees, one representative of employers, and one representing the public. The Board shall elect a chairman from among its own members. A quorum shall consist of any two members.

B. The term of office for each member of the Board shall be three years. Every vacancy shall be filled only for the unexpired portion of the term, but after expiration of his term each member shall continue to serve until his successor is appointed and has qualified. No person who has served six years or more consecutively as a member shall be reappointed as a member until after the expiration of one year from the end of such service.

C. The Minimum Wage and Industrial Safety Board shall have full authority over all functions and personnel assigned thereto, including the power to redelegate to other officials and employees of said Board such powers herein delegated as, in its judgment, may be warranted in the interest of efficiency and good administration. This authority shall be exercised in accordance with applicable laws, rules, and regulations.

D. Members shall be compensated in accordance with the provisions of the Act entitled "An Act to authorize certain administrative expenses in the Government service, and for other, purposes," approved Aug. 2, 1946 (60 Stat. 806), as amended, or other applicable laws.

PART II

Organization.—There shall be established in the Minimum Wage and Industrial Safety Board so many organizational components and positions with such duties and responsibilities as the Board, with the approval of the Commissioner to whom assigned, shall from time to time determine.

PART III

Transfers to new Board.—A. There are transferred to the Minimum Wage and Industrial Safety Board all functions, including the duties, powers, and authorities of all officers and employees assigned thereto, of the existing Minimum Wage and Industrial Safety Board: *Provided,* That effective on and after January 7, 1966, the Board established by this order shall no longer be authorized to make regulations other than wage orders, but shall develop and propose to the Commissioners such regulations other than wage orders as the Board may deem necessary to enable it to perform its functions: *Provided further,* That regulations adopted and promulgated by the Board prior to January 7, 1966, shall continue in full force and effect until amended or rescinded by the Commissioners. With respect to wage orders, those made by the Board prior to January 7, 1966, shall continue in full force and effect, and the Board shall continue to have authority to make and promulgate wage orders in accordance with procedures outlined in the Act of September 19, 1918, as amended (title 36, chapter 4, D.C. Code), without referring such wage orders to the Commissioners for their consideration.

B. All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the functions and positions transferred are transferred to the Minimum Wage and Industrial Safety Board.

PART IV

Abolition of existing Board.—The existing Minimum Wage and Industrial Safety Board, including the office of the Chairman thereof, is abolished.

PART V

Repeal of previous orders.—All Commissioners' Orders or parts of Commissioners' Orders in conflict with provisions of this Order are, to the extent of such conflict, repealed.

PART VI

Payment and collection of wages.—The Board shall administer the Act to provide for the payment and collection of wages in the District of Columbia, Public Law 953, 84th Congress, 2d Session (§§ 36.601 to 36.610). This authority shall include, but not be limited to, the following functions:

1. To develop and propose to the Board of Commissioners any regulations that may be necessary.

2. To investigate and hold hearings on any alleged violations, including claims that wages have not been paid in accordance with the act, and that such unpaid wages constitute enforceable claims against employers.

3. In its discretion, upon request of an employee, to take an assignment in trust of wages found by the Board to be due, together with any claim for liquidated damages. Upon such assignment, the Board shall have power to settle and adjust any such claim or claims on such terms as it may deem just or to initiate appropriate legal action.

4. To administer oaths and examine witnesses under oath, issue subpenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony, and to take depositions and affidavits in any proceedings before it.

PART VII

Effective date.—This Order shall become effective on and after June 16, 1953.

REORGANIZATION ORDER NO. 37.—DISTRICT UNEMPLOYMENT COMPENSATION BOARD

Reorg. Ord. No. 37, C. O. 302,853/14, June 16, 1953, ordered that:

PART I

District Unemployment Compensation Board.—A. There is hereby established the District Unemployment Compensation Board, under the direction and control of the Board of Commissioners, to be composed of the Commissioners of the District as members ex-officio, and one representative of employees and one representative of employers to be appointed by the Commissioners. Each such representative shall be a resident of the District and shall hold office for a term of three years from the date of appointment; except that any representative appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed only for the remainder of such term.

B. The President of the Board of Commissioners of the District shall serve as Chairman of the said Board.

C. The representatives of employers and employees serving as members of the present District Unemployment Compensation Board are hereby reappointed to the new Board and shall continue to serve for the terms of office as previously appointed.

D. The District Unemployment Compensation Board shall have full authority over said Board and all functions and personnel assigned thereto including the power to redelegate to other officials and employees of the District Unemployment Compensation Board such of the powers herein delegated as, in their judgment, may be warranted in the interests of efficiency and good administration. This authority shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

*Organization and functions.**—A. There is established in the District Unemployment Compensation Board the position of Executive Officer, and such other organizational components and positions with such duties and responsibilities as said Board may from time to time determine.

B. The Executive Officer shall be appointed by said Board and shall serve as Secretary, and shall act in the name of said Board in all matters specifically delegated by said Board, including the performance of functions previously assigned to the Executive Officer of the existing District Unemployment Compensation Board.

PART III

Transfers to new Board.—A. There are transferred to the District Unemployment Compensation Board all functions and positions, including the duties, powers, and authorities of all officers and employees assigned thereto, of the existing District Unemployment Compensation Board.

B. All positions, personnel, property, records, and unexpended balances of appropriation, allocations, and other funds available or to be made available relating to the functions and positions transferred are hereby transferred to the District Unemployment Compensation Board.

PART IV

Abolition of existing Board.—The existing District Unemployment Compensation Board is abolished.

PART V

Repeal of previous orders.—All Commissioners' Orders or parts of Commissioners' Orders in conflict with the provisions of this Order, are, to the extent of such conflict, hereby repealed.

PART VI

Effective date.—This Order shall become effective on and after June 16, 1953.

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*[See Organization Order No. 105, Part IV.A.9 re administration of non-resident employer process service provisions of the D.C. Unemployment Act, as amended.]

REORGANIZATION ORDER NO. 38.—FIRE DEPARTMENT

Reorganization Ord. No. 38, L. S. 3089–B, June 18, 1953, as amended Aug. 27, 1957, and Oct. 17, 1961, ordered that:

PART I

Fire Department.—A. There is hereby established, under the direction and control of the President of the Board of Commissioners, a Fire Department, headed by the Fire Chief. The Fire Chief shall have full authority over such Department including:

1. The power to redelegate to other officials of the Department such of the powers herein delegated as, in his judgment, may be warranted in the interest of efficiency and good administration.

2. Expenditure of appropriated and other funds, regardless of their source, which are provided for carrying out the functions of the Fire Department and its constituent units.

3. Supervision and control over equipment and property, both personal and real.

4. Operation and maintenance of special-use buildings and facilities under the exclusive jurisdiction of the Department, including the maintenance of adjacent grounds, and the providing of necessary protective, elevator, custodial and other related services, except Fire Alarm Headquarters which is operated and maintained by the Department of Buildings and Grounds pursuant to Reorganization Order No. 42, as amended.

B. All authority vested in the Fire Chief shall be exercised in accordance with applicable laws, rules and regulations.

PART II

Purpose.—The Fire Department is established for the purpose of providing the maximum protection of life and property in the community, with particular reference to the prevention of fires before they occur and to the expeditious extinguishing of fires after they occur, and also with reference to providing various emergency services in connection with protecting life and property. The work of fire prevention, detection, and suppression is especially important during periods of disaster; therefore, in order to prepare for the most effective utilization of the fire services during emergencies and for civil defense purposes, the mission of the Fire Department includes special natural disaster and civil defense planning activities such as developing emergency water supplies, inspecting the storage of explosives and flammables, developing and conducting fire-fighting training programs, and providing or recommending provision for emergency equipment and facilities which may be needed by the fire services in civil defense or in connection with natural disaster.

The Fire Department shall have coordinating supervision over the District of Columbia Emergency Ambulance Service.

PART III

Organization.—There are hereby established in the Fire Department the following organizational components:

A. Office of the Fire Chief.
B. Fire Fighting Division.
C. Fire Prevention Division.
D. Apparatus Division.
E. Training Division.
F. Administrative Division.

PART IV

Functions.—A. *Office of the Fire Chief:*

1. Develops and proposes for consideration by the Board of Commissioners, major programs and policies on fire prevention and fire suppression.

2. Plans, prescribes departmental policies of, coordinates, directs, controls, and is responsible for all of the fire prevention and fire fighting programs, services, and operations of the District of Columbia.

3. Advises and assists the President of the Board of Commissioners or all District of Columbia matters relating to fire prevention and fire fighting.

4. Develops, presents, and justifies departmental budget estimates.

5. Represents the President of the Board of Commissioners in coordinating fire prevention and the fire fighting programs, services, and facilities of the District of Columbia with those of other communities in the Washington Metropolitan area, and with the Federal Government.

6. Supervises the operation of the District of Columbia Emergency Ambulance Service, including supervision of the Department of Public Health ambulances and crews assigned thereto, and including coordination and dispatching of emergency ambulances made available to the Service by private voluntary hospitals in accordance with the "Operating Instructions for Emergency Ambulances" (including present and future amendments) adopted August 3, 1948 by the Board of Commissioners, D. C.

B. *Fire Fighting Division:*

1. Extinguishes fires in the District of Columbia.

2. Cooperates with authorities and fire fighting organizations of adjacent counties in extinguishing fires in surrounding areas.

3. Conducts routine inspections of buildings and other property for the purpose of eliminating potential fire hazards.

4. Performs rescue activities arising from causes other than fire such as a train wreck, an explosion, or the collapse of a building.

5. Operates the Fire Department ambulances assigned to the District of Columbia Emergency Ambulance Service, and exercises operational authority over Department of Public Health emergency ambulance vehicles, equipment and crews when they are based in and operating from Fire Department facilities.

C. *Fire Prevention Division:*

1. Enforces laws and regulations pertaining to the protection of life and property from fire.

2. Inspects all buildings and structures in the District of Columbia for fire hazards and protective equipment, except private dwellings and buildings, and structures owned or entirely occupied by the Federal Government.

3. Investigates the cause, origin, and circumstances of all local fires; maintains appropriate records of such fires.

4. Initiates appropriate action to secure and maintain modern fire prevention and protection laws and regulations.

5. Collaborates with the head of the Administrative Division and other officials in developing and installing required forms and reports necessary to assure accurate cost and performance data for performance evaluation, productivity, accounting and budgetary control purposes.

D. *Apparatus Division:*

1. Maintains and repairs all vehicles, equipment, and appliances which are owned and used by the Fire Department.

2. Supervises periodic inspections and tests of equipment and apparatus.

3. Assists the Administrative Division in the preparation of technical specifications for the purchase of new apparatus and equipment.

4. Collaborates with the head of the Administrative Division and other officials in developing and installing required forms and reports necessary to assure accurate cost and performance data for performance evaluation, productivity, accounting and budgetary control purposes.

E. *Training Division:*

1. Makes recommendations to the Fire Chief regarding additions, changes, or elimination in the curricula of fire fighting training courses.

2 Instructs and examines new recruits in fire fighting techniques.

3. Instructs and examines all personnel in hydraulics and the operation of fire pumps.

4. Conducts special courses of instruction for personnel of aerial ladder companies in the operation of aerial ladders and their use as water towers.

5. Conducts classes in fire fighting techniques for volunteer civil defense firemen, personnel of Federal and military fire departments, civil defense fire guards, and other groups by special request.

6. Formulates Civil Defense Disaster Plan for Fire Services and revises such plans as required.

7. Prepares and conducts program for recruitment of civil defense volunteer firemen.

8. Compiles and publishes training manuals for regular and emergency firemen.

9. Makes surveys, investigates special situations, and makes recommendations pertaining to the local water supply for fire fighting purposes.

F. *Administrative Division:*

1. Plans, directs, coordinates, and administers a comprehensive program for the Department's accounting, procurement, administrative services, personnel, and management improvement activities.

2. Prepares, for the Fire Chief, programs and plans of operation including budget requests and justifications, and periodic and annual reports.

3. Collaborates and maintains liaison with the staff offices of the Department of General Administration and with other divisions of the Fire Department in administrative programs.

4. Plans, develops, and installs standard Department-wide reporting systems which will furnish detailed data on employee performance, personnel requirements, Department operations, and activity costs.

5. Operates main control center for Fire Department and Department of Civil Defense communication systems; keeps appropriate fire alarm records.

6. Operates central dispatching facilities for the Emergency Ambulance Service of the District of Columbia; keeps appropriate dispatch records.

7. Prepares specifications for the purchase of radio equipment, fire alarm boxes, batteries, registers, and fire alarm equipment.

PART V

Transfer to new department.—A. All functions under the existing Fire Department, including the duties, powers, and authorities of all officers and employees assigned thereto, are transferred to the new Fire Department.

B. All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the functions transferred in a of this Part are transferred to the new Fire Department.

PART VI

Abolition of existing Department.—The existing Fire Department is abolished.

PART VII

Repeal of previous orders.—All Commissioners' Orders or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed.

PART VIII

Effective date.—A. The provisions of this Order, with exception of B in this Part, shall become effective on and after July 31, 1953.

B. In order to fulfill the legal requirements of Reorganization Plan No. 5 of 1952 and. at the same time, provide for the continuous performance of functions presently delegated to the Fire Chief until July 31, 1953, when all other provisions of this Order automatically take effect. the existing Fire Department is hereby abolished, effective June 18, 1953, and immediately re-created as previously constituted, including all the functions, duties. powers, and authorities vested therein.

REORGANIZATION ORDER NO. 39.—FIRE TRIAL BOARDS

Reorg. Ord. No. 39, L. S. 3090–B, June 18, 1958, as amended Jan. 4, 1966, ordered that:

PART I

Fire Trial Boards.—A. There are established in the Government of the District of Columbia the following Fire Trial Boards:

(1) *Regular Fire Trial Board* consisting of three members of the Fire Department with the rank of Captain or higher.

(2) *Special Fire Trial Board* consisting of two members of the Fire Department with the rank of Captain or higher, one of whom shall be designated as Chairman; and one member of the bar of the United States District Court for the District of Columbia

B. All authorities and powers exercised by members of the aforementioned Boards shall be in accordance with applicable laws, rules, and regulations.

PART II

Purpose.—The Fire Trial Boards are established for the purpose of insuring fair and impartial trials and reviews in cases involving infractions of discipline or improper procedure by members of the Fire Department, arising from reports made by officials of the Department, or sworn complaints of persons other than members of the Department, which may be referred to such Boards by the Commissioners or the Fire Chief.

PART III

Selection of members.—Members of the Fire Trial Boards shall be selected as follows:

(a) The Fire Chief is authorized to select Fire Department members of all such Boards.

In selecting members for the regular Fire Trial Board, the Fire Chief shall follow in rotation:

(1) An alphabetical list of all Battalion Chiefs who have had previous experience as Trial Board members;

(2) An alphabetical list of all Captains, and Battalion Chiefs without previous experience as Trial Board members, without regard to rank.

Except as provided hereinafter, the Fire Chief shall select as Chairman of such Board the next eligible from the list as set forth in (1) above and shall select to serve as members of such Board the next two eligibles from the list as set forth in (2) above.

Notwithstanding provisions of the preceding paragraph, the Fire Chief may designate as Trial Board Chairmen and members Battalion Chiefs and Captains selected without regard to their places on the alphabetical lists when, in his judgment, good or sufficient reasons appear therefor, such as, but not limited to, situations where the next eligible is: Commanding Officer of the respondent's company or departmental division; on leave; a witness in a case to be heard before such Board; or on an urgent or important assignment which prevents or interferes with his service on such Board.

The Assistant Fire Chief and Deputy Fire Chiefs shall not serve as Chairman or member(s) of the regular Trial Board except in cases where the respondent is of the rank of Captain or higher.

(b) The attorney member of the Special Fire Trial Board shall be selected from two panels of lawyers designated by the Presidents of the Bar Association of the District of Columbia and the Washington Bar Association of the District of Columbia, in accordance with the procedures set forth in Article VII of the "Rules and Regulations Governing the Fire Department of the District of Columbia," except that no attorney shall be appointed to this Board as the attorney member who is an employee of the District of Columbia.

PART IV

Designation of Chairman and Alternate Chairman.—A. The Chairman and Alternate Chairman of the Regular Fire Trial Board shall be designated by the Fire Chief from among the members of such Board.

B. The Chairman and Alternate Chairman of the Special Fire Trial Board shall be designated by the Board of Commissioners from among the members of such Board.

PART V

Functions.—The functions of the Fire Trial Boards shall be as follows:

A. *The Regular Fire Trial Board* shall be responsible for trying all cases involving infractions of discipline arising from reports made by officials of the Fire Department which may be referred to it by the Commissioners or the Fire Chief.

B. *The Special Fire Trial Board* shall be responsible for trying all cases involving infractions of discipline arising from sworn complaints of persons other than members of the Fire Department which may be referred to it by the Commissioners or the Fire Chief.

PART VI

Rules or procedure.—The Fire Trial Boards established herein shall be conducted in accordance with the provisions and requirements contained in Article VII of the

"Rules and Regulations Governing the Fire Department of the District of Columbia," including procedures followed, recommendations made, and actions taken by said Boards.

PART VII

Subpoena powers.—The Fire Trial Boards are authorized and empowered to summon any person before it to give testimony, under oath or affirmation, and/or to produce all books, records, papers, or documents before such Boards. Such subpoenas shall be issued in accordance with existing laws, rules, and regulations.

PART VIII

Abolition of existing Boards.—A. All property and records of the existing Fire Trial Boards are transferred to the administrative custody of the Fire Department.

b. The existing Fire Trial Boards, including the offices of the Chairman thereof, are abolished.

PART IX

Conflicting orders.—All Commissioners' Orders, or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed.

PART X

Effective date.—This Order shall become effective on and after June 18, 1953.

REORGANIZATION ORDER NO. 40.—EXECUTIVE OFFICE OF THE BOARD OF COMMISSIONERS

Reorg. Ord. No. 40, L. S. 4157–B, June 23, 1953, ordered that:

PART I

Executive Office of the Board of Commissioners.—There is established, under the direction and control of the Board of Commissioners, an Executive Office of the Board of Commissioners. The Board of Commissioners shall have full authority over such Office and all personnel assigned thereto.

PART II

Purpose.—The Executive Office of the Board of Commissioners is established for the purpose of providing such special and clerical assistance to the Commissioners as may be required in their administration of the Government of the District of Columbia.

PART III

Organization.—There shall be established in the Executive Office of the Board of Commissioners so many positions with such duties and titles as the Board of Commissioners shall from time to time determine.

PART IV

Transfers.—A. There are hereby transferred to the new Executive Office of the Board of Commissioners all functions and positions of the existing Executive Office of the Board of Commissioners, including all duties, powers, and authorities of all officers and employees assigned thereto.

B. All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds, available or to be made available, relating to the functions and positions transferred in A of this part are transferred to the new Executive Office of the Board of Commissioners.

PART V

Abolition of existing Office.—The existing Executive Office of the Board of Commissioners is abolished.

PART VI

Effective date.—This Order shall become effective on and after June 23, 1953.

REORGANIZATION ORDER NO. 41.—OFFICE OF THE SECRETARY

Reorganization Ord. No. 41, L.S. 4158–B, June 23, 1953, as amended Feb. 4, 1955, Jan. 31, 1956, May 3, 1956, June 23, 1964, and July 8, 1965, ordered that:

PART I

Office of the Secretary.—There is established as part of the Executive Office of the Board of Commissioners. under the direction and control of the Board of Commissioners, an Office of the Secretary to the Board of Commissioners, headed by the Secretary to the Board of Commissioners. The Secretary shall have full authority over such office and all functions and personnel assigned thereto, including the power to redelegate to other officials and employees of the Office of the Secretary, such of the powers herein delegated, as, in his judgment, are warranted in the interest of efficiency and good administration. In the absence or inability of the Secretary personally to perform his prescribed duties, the Assistant Secretary is authorized to perform such duties in the capacity of "Acting Secretary". This authority shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

Purpose.—The Office of the Secretary is established to perform ministerial duties for the Board of Commissioners; to maintain the official records of Board actions; to be responsible for the publication of all regulations affecting the general public, and for the maintenance of such regulations in readily accessible form for public use; and to relieve the Commissioners of the burden of taking, in the name of the District Government, action in such matters as the Board of Commissioners shall from time to time specifically delegate to the Secretary. The Secretary also renders all necessary administrative and secretarial services to the Citizens' Advisory Council.

PART III

Organization.—There shall be established in the Office of the Secretary so many organizational components and positions with such duties and titles as the Secretary, with the approval of the Board of Commissioners, shall from time to time determine.

PART IV

Functions.—The functions to be performed by the Office of the Secretary include, but are not limited to, the following:

1. Prepares agenda for, and attends in person or by deputy all regular and special meetings of the Board of Commissioners and makes the official records of such meetings.

2. Prepares and, after approval by the Commissioners, issues Commissioners' Orders, proclamations, resolutions, directives, administrative issuances to heads of departments, and statements to the public and press.

3. Maintains the official records of Board actions in the form of books of minutes, orders, letters sent, and approved legal opinions.

4. Administers oaths of office to key District officials and attests to the authenticity of official records.

5. Serves as sole custodian of the Seal of the District of Columbia and is responsible for its proper use.

6. Arranges for the publication of official notices to newspapers, and maintains the records essential to proof-of-publication when required in judicial proceedings.

7. Is responsible for the publication, storage, sale and distribution of all codes, maps, regulations, and amendments thereto, including accountability for the D.C. Publications Fund, affecting the general public and for the maintenance of such codes, maps, regulations, and amendments thereto, in a form readily accessible to the public.

8. On the basis of authority hereby delegated, issues, renews, and revokes Notary Public Commissions, and certifies notarial qualifications on documents to be introduced in evidence in courts of foreign jurisdictions.

9. Maintains a record of bills introduced in Congress affecting the District of Columbia, and, at the end of each session, prepares a compilation, with suitable index, of all such laws passed by Congress.

10. Maintains mailing lists of citizens and other groups interested in the civic affairs of the District.

11. Handles for the Commissioners a wide variety of complaints and inquiries made by the public by letter, telephone, or personal visits in such manner that will best conserve the time of the Commissioners.

12. Renders administrative and secretarial services to the Citizens' Advisory Council.

13. Makes arrangements for official ceremonies for visiting dignitaries, notables, and officials of domestic and foreign governments, and private organizations.

14. Renders informational and other services to the general public.

15. Maintains a follow-up system to insure compliance with Commissioners' decisions and directives by heads of all departments and offices of the District Government.

16. Acts for the Board of Commissioners in carrying out the provisions of Section 4 (c) (2) of the District of Columbia Unemployment Compensation Act as amended by Public Law 721, 83d Congress, approved Aug. 31, 1954.

17. Maintains general files on all categories of records pertinent to the actions and considerations of the Board of Commissioners.

PART V

Transfers.—A. There are hereby transferred to the new Office of the Secretary to the Board of Commissioners all functions and positions, including the duties, powers, and authorities of all officers and employees assigned thereto, of the existing Office of the Secretary to the Board of Commissioners.

B. All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds, available or to be made available relating to the functions and positions transferred in A of this part, are hereby transferred to the new Office of the Secretary to the Board of Commissioners.

PART VI

Abolition of existing Office.—The existing Office of the Secretary to the Board of Commissioners, including the office of the Secretary thereof, is hereby abolished.

PART VII

Effective date.—This Order shall be effective on and after June 23, 1953.

REORGANIZATION ORDER NO. 42.—DEPARTMENT OF BUILDINGS AND GROUNDS

Reorganization Ord. No. 42, L. S. 4159–B, June 23, 1953, as amended Aug. 11, 1954, Nov. 23, 1954, Jan. 31, 1956, Apr. 24, 1956, Feb. 7, 1961, Oct. 17, 1961, Jan. 3, 1963, and June 3, 1965, ordered that:

PART I

A. There is hereby established the Department of Buildings and Grounds under the direction and control of the Engineer Commissioner.

B. The Department of Buildings and Grounds shall be headed by a Director, who shall have full authority over such Department, including:

1. The power to redelegate to other officials and employees of the Department such powers herein delegated, as in his judgment, may be warranted in the interest of efficiency and good administration, except that his authority as contracting officer shall be exercised in accordance with the provisions and limitations of Reorganization Order No. 29 of April 14, 1953.

2. Expenditure of appropriated and other funds, regardless of source, which are provided for carrying out the functions of the Department of Buildings and Grounds and its constituent units.

3. Supervision and control over equipment and property, both personal and real.

C. These authorities shall be exercised in accordance with applicable laws, rules and regulations.

PART II

Purpose.—A. The Department of Buildings and Grounds is established to provide for the construction, repair and improvement of the physical plant of the District of Columbia and the operation and maintenance of multiple-use buildings, including grounds, and such other buildings and grounds as are now operated and maintained by the present Department of Construction and the Office of the Superintendent of District Buildings. (The term "multiple-use" buildings, as used in this Order, refers to those buildings which are occupied by more than one District department or agency.)

B. Specifically, the Department of Buildings and Grounds shall supervise building construction, perform repairs and improvements work in the District of Columbia buildings, and operate and maintain multiple-use and other buildings and grounds as outlined herein. The Department's functions will be as follows:

1. Plans and designs, in collaboration with using departments, structures and mechanical equipment for schools, hospitals, health and welfare centers, police, fire, and other municipal activities, other than public highways, bridges, wharves, tunnels, culverts, retaining walls along public highways, and sewer and water systems.

2. Supervises, and inspects new construction, major alterations, and other contract work of District of Columbia buildings.

3. Plans and develops programs and policies for the repair, improvement, operation, and maintenance of District buildings.

4. Makes repairs to and installs improvements in District buildings.

5. Operates and maintains multiple-use buildings and grounds, and such other buildings and grounds as are now operated and maintained by the present Department of Construction and the Office of the Superintendent of District Buildings.

6. Operates and maintains the District of Columbia Morgue buildings and grounds, provided that such operation and maintenance shall be performed on a reimbursable basis for the remainder of fiscal year 1956 and for the entire fiscal year 1957; and provided further that the operation and maintenance thereafter of said buildings and grounds shall be performed by the Department of Buildings and Grounds.

PART III

Organization.—There are hereby established in the Department of Buildings and Grounds the following organizational components:

1. Office of the Director.
2. Office of Program Planning.
3. Office of Design and Engineering.
4. Inspection Division.*
5. Repairs and Improvements Division.
6. Buildings Management Division.
7. Office of Business Administration.

PART IV

Functions.—A. *Office of the Director,* Department of Buildings and Grounds:

1. Plans and develops programs and policies for construction, repairs, and improvements, and operation and maintenance of the District of Columbia physical plant.

2. Administers, directs, coordinates, controls, and is responsible for all new construction for the District of Columbia other than that relating to public highways, bridges, wharves, tunnels, culverts, retaining walls along public highways, and sewer and water systems.

3. Serves as consultant and adviser to the Board of Commissioners and to the heads of District departments and offices on construction, repair, improvement, operation, and maintenance of buildings.

4. Develops, presents, and justifies the Department's budget estimates.

5. Upon written notification from the Director of Licenses and Inspections or the Director of Public Health that an owner of real property in the District of Columbia has neglected or refused to abate any nuisance or to correct any condition which exists on or has arisen from such property in violation of law or of any regulation made by authority of law, causes said nuisance to be abated or said condition to be corrected in whatever manner considered to be in the best interest of the District Government.

6. Notifies, in writing, the Director of Licenses and Inspections or the Director of Public Health, as appropriate of each abatement of nuisance or correction of illegal condition case completed, furnishing a statement of the exact cost of the abatement or the correction and a request for reimbursement.

7. The authority vested herein to take action to abate a nuisance or to correct an illegal condition shall be limited to such cases as directly pertain to the functions assigned to the Department of Buildings and Grounds.

B. *Office of Program Planning:*

1. Collaborates with using departments in order to evaluate requirements for new construction, repairs, and improvements work, including alterations and additions.

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*Changed to Construction Management Division, by C.O. 54–2474, Nov. 23, 1954.

2. Plans, develops, and schedules programs for new construction, repairs, and improvements.

3. Plans, develops, and issues standards and guides for the operation and maintenance of District buildings, including the development of a program for the conservation of fuel.

4. Reviews contract bids and recommends to the Director awards to be made.

5. Collaborates with the head of the Office of Business Administration and other officials in developing and installing policies and procedures, and in preparing forms and reports which will serve to assure adequate reporting of performance and costs for purposes of planning, scheduling, evaluating productivity and progress, budgeting, and accounting.

C. *Office of Design and Engineering:*

1. Provides design, engineering, specification, and landscaping services in connection with new construction, repair, improvement, operation, and maintenance of District buildings.

2. Reviews contractors' shop drawings for conformance with proposed plans for new construction or major alterations.

3. Performs field surveys in connection with site planning, office studies, and design of facilities.

4. Establishes and maintains a current file of maps, drawings, and specifications which show new construction, installations, repairs, and improvements data.

5. Cooperates with the Inspection Division* by providing, upon request, supervisory and inspection assistance for new construction, major alterations, and other work performed on District buildings by contract.

D. *Construction Management Division:*

1. Supervises and inspects new construction or major alterations; interprets plans and specifications to assure adherence to contract requirements, specifications, quality of workmanship, and related matters.

2. Approves and certifies contractors' performance reports for payment purposes.

3. Prepares recommendations to the Director regarding need for contract changes; and, as approved by Director, advises contractor of authorized modifications.

E. *Repairs and Improvements Division:*

1. Repairs and performs alterations and improvements to District buildings and structures in accordance with work schedules developed by the Office of Program Planning; utilizes building trades, such as masonry, electrical, plumbing, heating, carpentry, painting, sheet metal, roofing, glazing, and common labor.

2. Operates and maintains necessary shop facilities required for such repair and improvement activities.

3. Assists the Office of Program Planning in evaluating requirements for the District's physical plant.

F. *Buildings Management Division:*

1. Operates and maintains the following District Government buildings and facilities, including the maintenance of adjacent grounds under the jurisdiction of the District of Columbia Government, and the providing of necessary protective, elevator, custodial, and other related services:

Name of building	*Multiple-use*	*Special-use*
1. Barret School	----------	X
2. Comfort Station No. 2	----------	X
3. Comfort Station No. 3	----------	X
4. Corcoran School	----------	X
5. D.C. Morgue	----------	X
6. District Building	X	----------
7. East Administration Building	X	----------
8. Fire Alarm Headquarters	----------	X
9. Force School Building	X	----------
10. Ford Building	X	----------
11. Juvenile Court	----------	X
12. May Building	X	----------
13. Municipal Court [now Court of General Sessions] (Civil Division)	----------	X
14. Municipal Court [now Court of General Sessions] (Criminal Division)	----------	X
15. National Guard Armory [1]	X	----------
16. New Cent. Library (499 Pennsylvania Avenue)	X	----------
17. Recorder of Deeds [2]	----------	X
18. Southwest Health Center	----------	X
19. Warehouse (22 Adams Place, NE.)	[3] X	----------
20. 450 Main Avenue, SW.	----------	X

[1] Limited to the performance of maintenance and repair activities pursuant to the provisions of the act approved June 4, 1948, 62 Stat. 339; section 2–1703, D.C. Code, 1951 [now 1967 ed.].

[2] Limited to the performance of operation and maintenance activities.

[3] Operates and maintains the Warehouse, Shops, and Records Center facilities at 22 Adams Place, NE., on a reimburseable basis for such part of said facilities for which funds are not allotted to the Department of Buildings and grounds.

2. Performs minor repairs to such buildings and grounds.

G. *Office of Business Administration:*

1. Plans, directs, coordinates, and is responsible for the operation of a comprehensive program for the Department's fiscal, procurement, administrative services, personnel, management improvement, and reporting activities.

2. Prepares for the Director, in collaboration with officials of the Department, budget requests and justifications, and periodic and annual reports.

3. Collaborates and maintains liaison with the staff offices of the Department of General Administration and with the officials of the Department of Buildings and Grounds in administering programs of management improvement, including personnel management, property management, and fiscal management.

4. Prepares periodic progress reports to the Director on operational costs and performance.

5. Plans, develops, and installs standard Department-wide reporting systems which will furnish detailed data on employee performance personnel requirements, Department operations and activity costs.

6. Maintains and controls the Department of Buildings and Grounds storeroom.

PART V

Transfers.—A. There are hereby transferred to the Department of Buildings and Grounds all functions and positions, with the exception of those positions specified in Part VII herein, of the following named organizations and their subordinate components:

Department of Construction.
Office of the Municipal Architect.
Office of the Superintendent of District Buildings.
Division of Repairs and Improvements. (District of Columbia Repair Shop.)
Construction Division.

B. All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available, relating to the functions and positions transferred in A of this Part, are hereby transferred to the Department of Buildings and Grounds.

PART VI

Abolition of existing agencies.—In order to fulfill the legal requirements of Reorganization Plan No. 5 and, at the same time, to provide for the continuous performance of functions presently delegated until August 15, 1953, when all other provisions of this Order automatically take effect, the existing Department of Construction, Office of the Municipal Architect, Office of the Superintendent of District Buildings, Construction Division, and Division of Repairs and Improvements (District of Columbia Repair Shop), including the offices of the heads thereof, are hereby abolished, effective June 23.

1953, and immediately re-created as previously constituted, including all the functions, duties, powers, and authorities vested therein. Coincident with the re-creation of said Department, Offices, and Divisions, the positions of the heads of such Department, Offices, and Divisions are also re-established.

PART VII

Abolition of existing positions.—The following positions are abolished:

1. Sr. Mechanic, Carpentry Foreman, Office of the Superintendent of District Buildings.
2. Trade Foreman, Painting, Office of the Superintendent of District Buildings.
3. Supervisor of Plumbing, Plumbing Foreman, Office of the Superintendent of District Buildings, CPC–8.
4. Supervising Electrician, Electrical Foreman, Office of the Superintendent of District Buildings, CPC–9.
5. Time, Leave and Payroll Clerk, 11–14–7, GS–4, Department of Construction.
6. Assistant Purchasing Clerk, 11–14–6, GS–4, Department of Construction.
7. Skilled Laborer, $10.32 per day, Department of Construction.

PART VIII

Repeal of previous orders.—All Commissioners' Orders or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed.

PART IX

Effective date.—The provisions of this Order, with the exception of Part VI herein, shall become effective on and after August 15, 1953.

REORGANIZATION ORDER NO. 43.—DEPARTMENT OF INSURANCE

Reorganization Ord. No. 43, G. F. No. 36–000, June 23, 1953, as amended Aug. 28, 1962, and Mar. 5, 1965, ordered that:

PART I

Department of Insurance.—There is established, under the direction and control of a Commissioner, a Department of Insurance headed by a Superintendent. The Superintendent shall have full authority over such Department and all functions and personnel assigned thereto, including the power to redelegate to other officials and employees of the Department of Insurance such of the powers herein delegated as, in his judgment, may be warranted in the interests of efficiency and good administration. This authority shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

Organization.—There shall be established in the Department of Insurance so many organizational components and positions with such duties and responsibilities as its Superintendent, with the approval of the Commissioner to whom assigned, shall from time to time determine.

PART III

Appeals.—All appeals from actions of the Department of Insurance now authorized by law to be made to the Board of Commissioners shall continue to be made to the Board of Commissioners.

PART IV

Transfers to new Department.—A. There are transferred to the Department of Insurance all functions and positions, including the duties, powers, and authorities of all officers and employees assigned thereto, of the existing Department of Insurance.

B. All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the functions and positions transferred are transferred to the Department of Insurance.

PART V

Abolition of existing Department.—The existing Department of Insurance, including the office of the head thereof, is abolished.

PART VI

Repeal of previous orders.—All Commissioners' Orders or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, repealed.

PART VII

Effective date.—This Order shall become effective on and after June 23, 1953.

PART VIII

There is delegated to the Superintendent of Insurance the function, now vested in the Board of Commissioners by the Act of May 17, 1932 (47 Stat. 158, ch. 189; § 35–204, D.C. Code, 1961 ed. [now 1967 ed.]), of granting or denying to insurance companies permission to remove from the District of Columbia the principal office, books, records, and files of such companies.

2. The function delegated by this Part may not be redelegated to other officials or employees of the Department of Insurance, and is subject to withdrawal or modification at any time.

REORGANIZATION ORDER NO. 44.—OFFICE OF THE ADMINISTRATOR OF RENT CONTROL

Reorg. Ord. No. 44, L. S. 4161–B, June 23, 1953, ordered that:

PART I

Office of the Administrator of Rent Control.—There is established under the direction and control of a Commissioner, an Office of the Administrator of Rent Control headed by an Administrator. The Administrator shall have full authority over such Office and all personnel assigned thereto including the power to re-delegate to other officials and employees of the Office of the Administrator of Rent Control such of the powers herein delegated as, in his judgment, may be warranted in the interest of efficiency and good administration. This authority, including all powers delegated thereunder, shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

Transfers to new Office.—A. There are transferred to the Office of the Administrator of Rent Control all functions and positions, including the duties, powers, and authorities of all officers and employees assigned thereto, of the existing Office of the Administrator of Rent Control.

B. All personnel, property, records, and unexpended balances of appropriation, allocations, and other funds available or to be made available relating to the functions and positions transferred in A of this Part, are transferred to the Office of the Administrator of Rent Control.

PART III

Abolition of existing Office.—The existing Office of the Administrator of Rent Control, including the office of the head thereof, is abolished.

PART IV

Effective date.—This Order shall become effective on and after June 23, 1953.

REORGANIZATION ORDER NO. 45.—CITIZENS' CIVIL DEFENSE ADVISORY COUNCIL

Reorg. Ord. No. 45, L. S. 4235–B, June 26, 1953, as amended Oct. 22, 1953, and May 31, 1955, ordered that:

PART I

Citizens' Civil Defense Advisory Council.—There is hereby established, under the Board of Commissioners, a Citizens' Civil Defense Advisory Council which shall be composed of so many members as the Commissioners may, from time to time, appoint. Such members, during the period of their appointment on the said Council, shall hold no full-time office for which compensation is paid from District of Columbia funds, and shall serve without compensation. Each term of appointment to the Citizens' Civil Defense Advisory Council shall be for a period of one year, provided that the terms of appointment of approximately one-half of the members appointed shall expire on April 1 and approximately one-half shall expire on October 1 each year, regardless of the dates of appointment. Members may be reappointed at the discretion of the Commissioners.

PART II

Purpose.—The Citizens' Civil Defense Advisory Council is established for purposes of advising and consulting with

the Board of Commissioners and the Director of Civil Defense on matters of basic civil defense policies, enlisting the active assistance of District of Columbia citizens in the development and implementation of an effective Civil Defense organization, and establishing public understanding and encouraging maximum community participation in civil defense and disaster relief programs.

PART III

Organization.—The Council shall determine its own organization, perfect its own rules of procedure, and designate its own officers, except that secretarial services shall be furnished by the Director of Civil Defense.

PART IV

Functions.—The functions of the Citizens' Civil Defense Advisory Council are to:

1. Participate in civil defense and disaster relief planning by making specific recommendations and suggestions to the Board of Commissioners and to the Director of Civil Defense regarding:

a. Civil defense legislation and other legal matters.

b. Development, modification, and revision of basic civil defense and disaster relief plans.

c. Organization and staffing of the Civil Defense Volunteer program.

d. Inter-governmental relationships, including mutual aid arrangements between the District of Columbia, on the one hand, and Federal agencies, adjoining States, and the Military District of Washington, on the other.

e. Assignment of civil defense and major disaster duties to District of Columbia agencies and employees.

f. Procurement, stockpiling, and storage of emergency supplies, materials, and equipment.

g. Use of privately-owned and District Government property, equipment, and facilities in the planning and in the operational phases of civil defense and disaster relief programs.

h. Financial problems arising in connection with existing or proposed civil defense and disaster relief plans and programs.

i. Provisions of instructor personnel to augment and to extend the training provided by the District Government's civil defense organization.

j. Mobilization and training of volunteer workers, including provision for facilities such as schools and classrooms.

k. Shelter program, including private and public facilities.

l. Establishment and maintenance of essential control communication and alert systems and public air raid warning systems.

m. Other matters pertaining to civil defense and disaster relief referred to the Council by the Board of Commissioners or the Director of Civil Defense.

2. Provide continuous liaison with citizen and civic associations, churches, schools, professional, business, veteran, and service organizations.

3. Develop cooperation between the District of Columbia Civil Defense organization and the aforementioned groups, through such means as dissemination of information and recruitment of volunteer workers, in order to establish public understanding and acceptance of the importance of civil defense and to stimulate and to encourage maximum community participation in the civil defense and disaster relief programs.

PART V

Cooperation of District officials.—Officials and employees of the District of Columbia Government shall assist and cooperate with the Citizens' Civil Defense Advisory Council whenever requested to do so by the Council Chairman.

PART VI

Abolition of existing organization.—Coincident with the establishment of the Citizens' Civil Defense Advisory Council, the existing Civil Defense Advisory Council is abolished. All property and records of the existing Council are transferred to the administrative custody of the Director of Civil Defense.

PART VII

Repeal of previous orders.—All Commissioners' Orders or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed.

PART VIII

Effective date.—This Order shall become effective on and after June 26, 1953.

REORGANIZATION ORDER NO. 46.—METROPOLITAN POLICE DEPARTMENT

Reorganization Ord. No. 46, L.S. 4236–B, June 26, 1953, as amended May 17, 1955, Oct. 20, 1955, Jan. 31, 1956, Oct. 17, 1961, Feb. 6, 1962, and Apr. 6, 1962, was replaced by Organization Order No. 153, as set out in this appendix.

REORGANIZATION ORDER NO. 47.—BOARD OF POLICE AND FIRE SURGEONS

Reorganization Ord. No. 47, L.S. 4237–B, June 26, 1953, as amended Oct. 16, 1958, and June 21, 1962, ordered that:

PART I

Board of Police and Fire Surgeons.—A. The existing Board of Police and Fire Surgeons including the Office of the Chairman thereof, is hereby reconstituted, with the same name and with the same functions now performed, including the powers, duties, and authorities of all members, officers, and employees assigned thereto: *Provided*, That in all cases involving retirement or involuntary separation from service pursuant to the Policemen and Firemen's Retirement and Disability Act (P.L. 85–157; §§ 4–526 through 4–529, D.C. Code, 1961 ed. [now 1967 ed.] (subsection (f), Retirement for Disability Not Incurred in Line of Duty; subsection (g), Retirement for Disability Incurred While Performing Duty; subsection (h), Optional Retirement; and subsection (i), Involuntary Separation)), the duty of the Board of Police and Fire Surgeons shall be limited to that of submitting in writing to the Police and Firemen's Retirement and Relief Board its opinion concerning the physical or mental condition, or both, of the member for whom involuntary separation or retirement is sought, but any member of the Board of Police and Fire Surgeons, and any other person, whose report of the facts or examination of the member formed any part of the basis of such opinion of the Board of Police and Fire Surgeons shall, when so requested by any member of the Police and Firemen's Retirement and Relief Board, testify thereon before the Retirement and Relief Board with respect thereto and produce before such Board all the records and evidence before, or in the files of, the Board of Police and Fire Surgeons or any such other person concerning the member whose retirement or separation is sought, and such submission and all such records and evidence of the Board of Police and Fire Surgeons and of any such other person shall be considered by the Police and Firemen's Retirement and Relief Board: *Provided further,* That under the authority vested in the Commissioners by Reorganization Plan No. 5 of 1952, as confirmed by the second sentence of subsection "(q)" of the Policemen and Firemen's Retirement and Disability Act, the authority lodged in the Board of Police and Fire Surgeons by subsection "(i)" of said Act and by virtue of Reorganization Order No. 47 prior to this amendment, to express a judgment as to the disability of a member from performing further duty in his department, is hereby withdrawn from said Board of Police and Fire Surgeons, and such authority is hereby delegated exclusively to the Police and Firemen's Retirement and Relief Board, established pursuant to Reorganization Order No. 31, as amended.

B. The reconstituted Board shall be organizationally a part of the Fire Department in order that the Fire Department shall continue to provide necessary administrative and budgetary services.

C. Whenever any member shall become temporarily disabled by injury received or disease contracted in the performance of duty, to such an extent as to require medical or surgical services, other than such as can be rendered by the Commissioners, or to require hospital treatment, the expense of such medical or surgical services, or hospital treatment, shall be paid by the District of Columbia; but no such expense shall be paid except upon certification of the Board of Police and Fire Surgeons setting forth the necessity for such services or treatment and the nature of the injury or disease which

rendered the same necessary. As used in this paragraph, the word "member" has the same meaning as such term is defined in section 4–521 of the D.C. Code, Pub. Law 85–157, approved Aug. 21, 1957.

PART II

Transfers to new Board.—There are transferred to the Board of Police and Fire Surgeons all positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the functions referred to in Part I A herein.

PART III

Abolition of the existing Board.—The existing Board of Police and Fire Surgeons, including the office of the chairman thereof, is abolished.

PART IV

Effective date.—This Order shall become effective on and after June 26, 1953.

REORGANIZATION ORDER NO. 48.—POLICE TRIAL AND REVIEW BOARDS

Reorganization Ord. No. 48, L.S. 4238–B, June 26, 1953, as amended July 14, 1960, June 11, 1965, Aug. 17, 1965, and Feb. 4, 1966, ordered that:

PART I

Police Trial and Review Boards.—A. There are established in the Government of the District of Columbia the following Police Trial and Review Boards:

(1) *Regular Police Trial Board* consisting of three members of the Police Department with the rank of Captain or higher.

(2) *Special Police Trial Board* consisting of two members of the Police Department with the rank of Captain or higher, one of whom shall be designated as Chairman; and one member of the bar of the United States District Court for the District of Columbia.

(3) *Complaint Review Board.*—Consisting of five adult residents of the District of Columbia who are citizens of the United States, two of whom are members of the bar of the United States District Court for the District of Columbia. Three members of the Board shall constitute a quorum: *Provided,* That at least one member constituting the quorum shall be a member of the bar.

B. All authorities and powers exercised by members of the aforementioned boards shall be in accordance with applicable laws, rules, and regulations.

PART II

Purpose.—The Police Trial and Review Boards and the Complaint Review Board are established for the purpose of insuring fair and impartial trials and reviews in cases involving infractions of discipline or improper procedure by members of the Police Department, arising from reports made by officials of the Department, or sworn complaints of persons other than members of the Department which may be referred to such Boards by the Commissioners or the Chief of Police.

PART III

Selection of members.—Members of the Police Trial and Review Boards shall be selected as follows:

(a) The Chief of Police is authorized to select Police Department members of all such boards. In selecting members of the regular Police Trial Board, the Chief of Police shall follow in rotation:

(1) An alphabetical list of all Deputy Chiefs of Police and Inspectors who have had previous experience as Trial Board members, without regard to rank.

(2) An alphabetical list of all Deputy Chiefs of Police, Inspectors and Captains without previous experience as Trial Board members, without regard to rank.

Except as provided hereinafter, the Chief of Police shall select as chairman of such Board the next eligible from the list as set forth in (1) above and shall select to serve as members of such Board the next two eligibles from the list as set forth in (2) above.

Notwithstanding provisions of the preceding paragraph, the Chief of Police may designate as Trial Board chairmen and members Deputy Chiefs of Police, Inspectors and Captains selected without regard to their places on the alphabetical lists when, in his judgment, good and sufficient reasons appear therefor, such as, but not limited to, situations where the next eligible is: an official attached to respondent's departmental unit; on leave; a witness to be heard before such Board; or on an urgent or important assignment which prevents or interferes with his service on such Board.

(b) The attorney member of the Special Police Trial Board shall be selected from two panels of lawyers designated by the president of the Bar Association of the District of Columbia and the Washington Bar Association of the District of Columbia, in accordance with the procedures set forth in Chapter XXXV of the Manual of the Metropolitan Police Department, except that no attorney shall be appointed to this Board who is an employee of the District of Columbia.

(c) Members of the Complaint Review Board shall be appointed by the Board of Commissioners: *Provided,* That no member so appointed shall be an employee of the District of Columbia. Each appointment shall be for a term of three years, except that, of the initial appointments of members following the effective date of this order, one member shall be appointed for a term of one year, such term to expire August 8, 1966; two members shall be appointed for a term of two years, such term to expire August 8, 1967; and two members shall be appointed for a term of three years, such term to expire August 8, 1968. Each vacancy shall be filled for the unexpired portion of the term. After the expiration of a term, a member shall continue to serve until his successor is appointed and has qualified. No person who has served as a member six years or more consecutively shall be reappointed until after the expiration of one year from the end of such service.

PART IV

Designation of Chairman and Alternate Chairman.—A. The Chairman and Alternate Chairman of the Regular Police Trial Board shall be designated by the Chief of Police from among the members of such Board.

B. The Chairman and Alternate Chairman of the Special Police Trial Board and the Complaint Review Board shall be designated by the Board of Commissioners from among the members of such Boards.

PART V

Functions.—The functions of the Police Trial and Review Boards shall be as follows:

A. *The Regular Police Trial Board* shall be responsible for trying all cases involving infractions of discipline arising from reports made by officials of the Police Department which may be referred to it by the Commissioners or the Chief of Police.

B. *The Special Police Trial Board* shall be responsible for trying all cases involving infractions of discipline arising from sworn complaints of persons other than members of the Police Department which may be referred to it by the Commissioners or the Chief of Police.

C. The Complaint Review Board shall be responsible for reviewing the sworn complaints against officers and members of the Metropolitan Police Department made by persons other than officers or members of the Police Department. Such complaints shall be processed in accordance with the following procedures:

(1) A formal complaint against an officer or member of the Metropolitan Police Department for infraction of discipline or improper procedure may be filed, in writing and under oath, with the Secretary to the Board of Commissioners by any aggrieved person. A formal complaint, in writing and under oath, may also be filed by a person who has observed the infraction or improper procedure. Informal complaints may be made to any representative of the Police Department.

(2) All complaints received by the Secretary to the Board of Commissioners shall be referred to the Chief of Police for investigation.

(3) At the beginning of the investigation of each complaint, a copy of the complaint shall be served by the Chief upon the officer against whom charges are made, with the direction that the officer make written answer thereto under oath. A copy of the officer's answer shall be served upon the complainant. Service of complaints and answers shall be deemed to have been

made if the same are delivered to the person to be served or sent by Certified Mail, "Return Receipt Requested".

(4) If, as the result of the investigation, the Chief of Police determines that charges should be brought, the Chief shall proceed with such action pursuant to the provisions of Chapter XXXV of the Manual of the Metropolitan Police Department.

(5) If disciplinary action is not initiated by the Chief of Police, the complaint, the answer and the report of the investigation, which may include sworn statements of witnesses in support of the complaint or in support of the answer, shall be placed before the Complaint Review Board. The Board by a majority vote may recommend to the Commissioners that the complaint be dismissed, or that the Chief take minor disciplinary action, or the Board may hold a hearing on the complaint.

(6) If the Board determines to hold a hearing on the complaint, copies of the police investigation report and other relevant documents shall be furnished to the complainant and to the officer complained against at least five days prior to the hearing. The complainant and respondent officer may be represented at the hearing by their respective counsel. Proceedings of the Complaint Review Board shall be closed to the public.

(7) Following a hearing before the Complaint Review Board, the Board, by majority vote of the members present at the hearing, may recommend (1) dismissal of the complaint, (2) disciplinary action by the Chief of Police, or (3) that charges be preferred before a Police Trial Board pursuant to the provisions of Chapter XXXV of the Manual of the Metropolitan Police Department. A report of the Complaint Review Board's recommendation in each case shall be sent to the Chief of Police and to the Board of Commissioners.

(8) The Chief shall report to the Commissioners on his disposition of the Board's recommendations and on the results of any trial by the Police Trial Board that may be held in connection with any complaint filed under this procedure.

(9) Although the Complaint Review Board may recommend dismissal of any complaint submitted to it, a complaint may be dismissed only by action of the Board of Commissioners.

(10) The Complaint Review Board shall report annually to the Commissioners on its activities. The Board of Commissioners shall cause to be prepared and published an annual report detailing the character, status, and disposition of all complaints filed with the Secretary to the Board of Commissioners. Unless specifically required by the Commissioners, such report shall not contain identification of complainants or officers or members of the Metropolitan Police Department against whom complaints have been filed.

(11) Before any officer or member of the Metropolitan Police Department institutes a charge of making a false or fictitious report in violation of Article 19, section 5, of the Police Regulations of the District of Columbia, which is alleged to result from a formal or informal complaint against an officer or member of the Metropolitan Police force, the Chief of Police shall submit a recommendation in the matter to the Commissioners who, if they are satisfied that the complaint was filed with intent to falsify, will forward the same to the Corporation Counsel for appropriate action. Nothing in this Reorganization Order, as amended, shall be construed in any way as affecting the prosecution of criminal offenses as provided by statute or regulation.

PART VI

Rules of procedure.—The Police Trial and Review Boards established herein shall be conducted in accordance with the provisions and requirements contained in Chapter XXXV of the Manual of the Metropolitan Police Department, including procedures followed, recommendations made, and actions taken by said Boards.

PART VII

Subpoena powers.—The Police Trial and Review Boards are authorized and empowered to summon any person before it to give testimony, under oath or affirmation, and/or to produce all books, records, papers, or documents before said Boards. Such subpoenas shall be issued in accordance with existing laws, rules, and regulations.

PART VIII

Abolition of existing Boards.—A. All property and records of the existing Police Trial and Review Boards are transferred to the administrative custody of the Police Department.

B. The existing Police Trial and Review Boards, including the offices of the Chairmen thereof, are abolished.

PART IX

Conflicting orders.—All Commissioners' Orders, or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed.

PART X

Effective date.—This Order shall become effective on and after June 26, 1953.

REORGANIZATION ORDER NO. 49.—OFFICE OF CIVIL DEFENSE

Reorganization Ord. No. 49, G. F. No. 4–010, June 26, 1953, as amended Nov. 10, 1953, Aug. 26, 1958, and Aug. 7, 1962, ordered that:

PART I

Office of Civil Defense.—There is hereby established under the supervision and control of a Commissioner, an Office of Civil Defense, headed by a Director, who shall also be known as the Coordinator for Natural Disaster Relief. The Director shall have full authority over such Office and all personnel assigned thereto, including the power to redelegate to other officials and employees of the Office such of the powers herein delegated, as in his judgment may be warranted in the interest of efficiency and good administration. This authority, including all powers delegated thereunder, shall extend to the appointment and replacement of personnel within volunteer Civil Defense Services and shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

Definitions.—A. "Enemy attack" means any attack or series of attacks by an enemy of the United States causing, or which may cause, substantial damage or injury to civilian property or persons in the District of Columbia in any manner by sabotage or by the use of bombs, shellfire, or atomic, radiological, chemical, bacteriological, or biological means or other weapons or processes.

B. "Major disaster" means any flood, drought, fire, hurricane, earthquake, storm, or any catastrophe other than enemy attack in any part of the District of Columbia which, in the determination of the Board of Commissioners, or, in the absence or unavailability of the Board of Commissioners, the ranking member thereof who is available, or, in the absence or unavailability of all the Commissioners, the Director of Civil Defense, is or threatens to be of sufficient severity and magnitude to warrant disaster assistance by the Civil Defense organization of the District of Columbia.

C. The term "disaster" when used alone herein shall be understood to include both the terms "enemy attack" and "major disaster."

PART III

Purpose and scope.—A. The Office of Civil Defense is established for the purpose of providing an effective planning and operational organization to minimize the effects upon the citizens of the District of Columbia of an enemy attack or major disaster and to deal with emergency conditions which may be created by such attack or disaster.

B. The total resources and personnel of the District of Columbia Government shall be made available in the event of disaster in order to minimize loss of life, protect property, relieve suffering, and continue the essential functions of that Government. All departments, offices, and agencies, including all officials and employees assigned thereto, whether or not they previously have been assigned to specific civil defense duty, shall assist in this mission under the direction of the Director of Civil Defense and officials designated in Part VI herein.

C. Upon an alert of impending enemy attack, upon attack without warning, or when directed in the event of major disaster, all Civil Defense Services shall be alerted and the Civil Defense Disaster Plan shall be placed in operation.

D. The ranking member of the Board of Commissioners who is available and able to do so shall assume command of disaster operations and shall retain command as long as he is available and able. Such member is delegated full authority to act in behalf of the Board of Commissioners, subject to all applicable laws, rules and regulations.

E. The Director of Civil Defense Supply Service is authorized to exercise the powers vested in the Board of Commissioners by subsection 9 (c) of the Act of December 26, 1941 (D.C. Code, § 6–1009 (c), 1951 ed. [now 1967 ed.]).

F. The Director of Civil Defense is hereby designated Emergency Planning Director for D.C.

PART IV

Organization.—There are hereby established in the Office of Civil Defense the following organizational components:

1. Office of the Director
2. Administrative Division
3. Attack Warning Division
4. Operating Services hereinafter listed and such other Services as the Commissioners may direct.

PART V

Functions.—A. *Office of the Director.*

1. Develops and proposes plans and major policies regarding civil defense and major disaster protective and relief measures to the Board of Commissioners.

2. Coordinates civil defense and disaster plans and programs within the District of Columbia and integrates these plans with Federal Government, State, and local jurisdictions.

3. Advises heads of District of Columbia Departments of civil defense requirements for their respective agencies and assists in the preparation of detailed operating procedures for their respective services or agencies.

4. Exercises administrative and operational control over the Warden Service and other volunteer civil defense Services not functioning within other District of Columbia agencies.

5. Maintains liaison and represents the Commissioner in charge of the Office of Civil Defense with Federal and State civil defense agencies and the Military District of Washington; deals directly with private enterprise, business groups, firms, and individuals on matters pertaining to civil defense or disaster problems.

6. Develops, presents, and justifies the Office of Civil Defense budget.

7. Recommends civil defense legislation to the Board of Commissioners.

8. Institutes training programs for civil defense volunteers, public education, and information programs; distributes educational and other civil defense materials; and coordinates training programs in the Operating Services.

9. Conducts such Civil Defense exercises as may be necessary to prepare for an emergency, with the approval of the Board of Commissioners.

10. Maintains the Command Center and Alternate Command Center as the base for disaster relief operations.

11. Serves as Executive Director for disaster operations under the ranking member of the Board of Commissioners who is available and able to assume command during a disaster. When no member of the Board of Commissioners is available or able to assume command of disaster operations, as provided in Part III–D herein, assumes full command of such operations, subject to all applicable laws, rules, and regulations.

12. Serves as Coordinator for Natural Disaster Relief for the District of Columbia during major natural disaster, and maintains liaison for the Board of Commissioners with the Federal Civil Defense Administration.

B. *Administrative Division.*

1. Plans, directs, coordinates, and administers the Office of Civil Defense accounting, procurement, administrative and personnel services and management improvement activities.

2. Prepares administrative programs and plans, including budget requests and justifications and periodic and other required reports.

3. Collaborates and maintains liaison with the staff offices of the Department of General Administration and with the operating Civil Defense Services on all administrative matters.

4. Provides secretarial and other administrative assistance to the Citizens' Civil Defense Advisory Council.

C. *Attack Warning Division.*

1. Maintains and operates the air raid warning and other civil defense communications systems.

2. Assists the Deputy Director for Communications Services in developing operational plans for civil defense communications and in conducting communications training.

3. Assists the Deputy Director for Communications Services in coordinating public and private communication facilities within the District of Columbia and with nearby civil defense authorities.

PART VI

Operating services.—A. The following District of Columbia agencies, by reason of their normal function or their specialized qualifications, will form the nucleus for the organization, training, administration, and supervision of the Civil Defense Services listed below and designated as heads of these Civil Defense Services:

D. C. Department or agency	*Civil Defense Service and title of head*
Department of Public Health.	Deputy Director, Medical and Health Services.
Department of Sanitary Engineering.	Deputy Director, Engineering Services.
Department of Highways_	Coordinator, Rescue and Repair Services.
a. Electrical Division__	Deputy Director for Communications.
D. C. Fire Department__	Deputy Director, Fire Services.
Metropolitan Police Department.	Deputy Director, Police Services.
Department of Public Welfare.	Deputy Director, Emergency Welfare Services.
Department of Buildings and Grounds.	Coordinator, Building Warden Services, D. C. Buildings.

B. The heads of the District agencies enumerated above, and such other District agencies as the Commissioners may from time to time designate, shall be responsible, in their civil defense capacity, to the Board of Commissioners for:

1. Developing and executing all civil defense policies and plans approved by the Board of Commissioners which relate to their Services. In implementing and executing these approved policies, they are authorized and directed to utilize the personnel, resources, and facilities of their agencies, and to redelegate within their agencies such powers as, in their judgment, are necessary to accomplish this mission.

2. Coordinating detailed operating plans for their Service with the Office of Civil Defense.

3. Storing, safeguarding, maintaining, distributing and utilizing civil defense supplies and equipment intended for disaster use by their Service.

4. Augmenting the personnel and facilities of their organization for effective disaster operation by recruitment and training of volunteers and utilization of all public and private facilities which may be available.

5. Establishing such command and communication channels within their Services as will ensure effective control of disaster relief operations.

6. Taking immediate steps, upon warning of impending attack, attack without warning, or when directed in the event of major disaster, to mobilize their Services and reporting immediately to the Civil Defense Command Center to assume command of disaster relief operations for their Service. (The Police and Fire Chiefs each may designate a member of his department with delegated authority to act in his behalf, to report to the Command Center.)

C. All volunteer services now established within the District Civil Defense Program are hereby re-established under the Director of the Office of Civil Defense.

PART VII

Transfers to new Office.—A. All functions and positions under the existing Office of Civil Defense including the duties, powers, and authorities of all officers and employees assigned thereto, are transferred to the Office of Civil Defense.

b. All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the functions and positions transferred are hereby transferred to the Office of Civil Defense.

PART VIII

Abolition of existing Office.—The existing Office of Civil Defense, including the office of the head thereof, is abolished.

PART IX

Repeal of previous orders.—All Commissioners' Orders or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed.

PART X

Effective date.—This Order becomes effective November 10, 1953.

REORGANIZATION ORDER NO. 50.—OFFICE OF THE CORPORATION COUNSEL

Reorg. Ord. No. 50, June 26, 1953, as amended June 6, 1955, Feb. 10, 1956, Aug. 30, 1956, Oct. 18, 1956, Feb. 4, 1958, Mar. 13, 1958, and June 7, 1960, ordered that:

PART I

Office of the Corporation Counsel.—The Office of the Corporation Counsel, established by Reorganization Order No. 50, dated June 26, 1953, as amended, including all functions, positions, and personnel, and all duties, powers, and authorities of all officers and employees assigned thereto, shall continue under the direction and control of the Board of Commissioners. The Corporation Counsel shall continue to have full authority over such office and all functions and personnel assigned thereto, including the power to redelegate to other officials and employees of the office such of the powers heretofore or hereafter delegated as, in his judgment, are warranted in the interest of efficiency and good administration. All authority vested in the Corporation Counsel shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

Organization.—The Office of the Corporation Counsel shall be comprised of the following organizational components, responsible for the performance of the functions outlined:

A. *Office of the Corporation Counsel and Principal Assistant Corporation Counsel:*

(a) *Corporation Counsel and Principal Assistant Corporation Counsel.*—Is attorney for and chief law officer of the District of Columbia Government and has charge of all of its law business. Through his professional staff conducts prosecution of all cases, including criminal, instituted by it and defense of all suits against the District of Columbia, its officers, employees, and agents arising out of performance of official duties.

Furnishes legal advice to the Commissioners and the several departments and agencies of the District of Columbia and upon request of said Commissioners renders written opinions to them. Such opinions, in the absence of specific action by the Board of Commissioners to the contrary, or until overruled by controlling court decision, shall be the guiding statement of law, to be followed by all District officers and employees in the performance of their official duties.

Is statutory General Counsel of the Public Utilities Commission [Public Service Commission].

Supervises the staff of the Office of the Corporation Counsel and the administrative services necessary for the internal operations of the Office.

Is a member and Chairman of the Contract Appeals Board and performs this function through an Assistant Corporation Counsel designated by him.

Is designated by the D.C. Armory Board as its general counsel and, with the approval of the Board of Commissioners, serves in that capacity without additional compensation.

(b) *Administrative Assistant.*—Performs various administrative and clerical services necessary to the operations and activities of the Office of the Corporation Counsel, including personnel administration, development and implementation of improved management techniques and methods, maintenance of central records and files, preparation of the annual budget estimates, custodian of the library facilities, procurement of law books, periodicals, and supply and equipment items, the maintenance of accounts, and the preparation of regular and special reports.

Performs such additional duties as are prescribed, from time to time, by the Corporation Counsel or the Principal Assistant Corporation Counsel.

B. *Special Assistant Corporation Counsel for Public Utilities.*—Under the direction of the Corporation Counsel acts as General Counsel for the Public Utilities Commission [Public Service Commission].

Represents and appears for the Public Utilities Commission [Public Service Commission] in all legal, administrative, and procedural matters affecting the operation and regulation of public utilities in the District of Columbia.

Advises the members of the Public Utilities Commission [Public Service Commission] on legal, technical, and procedural matters relating to their duties and powers.

Reviews and prepares reports upon proposed legislation affecting public utilities operating in the District of Columbia.

Advises the Board of Commissioners and department and office heads on matters relating to public utilities.

C. *Legislation and Opinions Division.*—Drafts legislation and prepares letters, comments, and reports, relating to legislation, both pending and proposed, on all subjects affecting or concerning the District of Columbia, excepting matters of taxation and appropriations.

Reviews proposed amendments to municipal ordinances and regulations.

Prepares formal legal opinions for District departments and agencies.

Maintains liaison with members and committees of the Congress.

Performs research on legal matters relating to various aspects of the District of Columbia Government.

Performs such additional duties as are prescribed, from time to time, by the Corporation Counsel or the Principal Assistant Corporation Counsel.

d. *Civil Proceedings Division.*—Handles all civil actions in which the District of Columbia, its officers, employees, agencies, boards, or commissions are involved, except those hereby assigned to other divisions of the Office.

Handles the investigation of personal injury and property damage claims by and against the District; prepares formal opinions for signature of the Corporation Counsel and submission to the Commissioners on the settlement or denial thereof and prepares for trial and tries court actions resulting from denial thereof.

Institutes suits to establish rights of, and collects monies due, the District of Columbia Government, including so-called "Phipps Act" cases.

Prepares and tries cases involving the acquisition of land for streets, alleys, parks, sites for schools, police and fire stations, libraries, and other municipal uses.

Assists in preparing drafts of and comments and reports on legislation, both pending and proposed, and prepares opinions on matters likely to result in damage suits.

Performs such additional duties as are prescribed, from time to time, by the Corporation Counsel or the Principal Assistant Corporation Counsel.

E. *Taxation Division.*—Prepares and tries all tax cases, including appeals, for the District of Columbia, in the Tax Court and in the Courts of the District of Columbia.

Performs special legal duties related to tax legislation and tax questions.

Advises the Board of Commissioners and department and office heads on all tax questions and matters.

Performs such additional duties as are prescribed, from time to time, by the Corporation Counsel or Principal Assistant Corporation Counsel.

F. *Law Enforcement Division.*—Prosecutes in the Municipal Court, Criminal Division, all violations of municipal regulations, and other violations of Acts of Congress under which the Corporation Counsel is named as prosecutor.

Performs such additional duties as are prescribed, from time to time, by the Corporation Counsel or the Principal Assistant Corporation Counsel.

G. *Special Assignments Division.*—Performs all legal work, except litigation in the courts, in connection with the District of Columbia Government personnel matters and in connection with contractual relationships of the District Government with the Federal and State Governments and agencies thereof, as well as with private persons and organizations.

Furnishes legal advice to the Director of the Department of Occupations and Professions and members of the various Boards, Commissions and Committees in said Department on matters relating to their duties, powers, and activities, including the trial of matters arising before said Boards, Commissions and Committees.

Tries cases arising before Police and Fire Trial Boards.

Collaborates with the Civil Proceedings Division in court litigation arising out of any of the foregoing.

Prepares formal written opinions on the foregoing matters.

Assists in preparing legislation, and comments and reports on legislation both pending and proposed, in relation to any of the foregoing matters.

Performs such additional duties, in the nature of special assignments, and otherwise, as are prescribed, from time to time, by the Corporation Counsel or the Principal Assistant Corporation Counsel.

H. *Appellate Division.*—Prepares, briefs and argues cases which are appealed to the Municipal Court of Appeals, the United States Court of Appeals, and the Supreme Court of the United States, resulting from cases tried on the trial court or administrative agency level by staff members of the Civil Proceedings, Law Enforcement and Special Assignments Divisions, as well as administrative agency actions reviewed by the United States District Court.

I. *Domestic Relations and Collections Division.*—Prepares, briefs, and argues cases arising under the "Act to improve and extend, through reciprocal legislation, the enforcement of duties of support in the District of Columbia," approved July 10, 1957.

Prepares and tries cases, and performs related legal duties, in connection with the following: wards of the Department of Public Welfare; recoupment of monies paid out by that Department by way of public assistance; matters of mental health; the District Training School; and the collection of maintenance costs for insane and feeble-minded persons committed at District expense to District institutions. Investigates and takes necessary action to collect accounts of mental health patients and District General Hospital patients.

Performs legal work involved in representing the interests of the District of Columbia in probate and escheat cases.

Approves for filing, prepares for trial, and tries all cases within the jurisdiction of the Juvenile Court; assists the Court in the preparation and presentation of evidence in all hearings before the Juvenile Court to determine delinquency, dependency, or neglect of minors.

Advises and assists police officers, other employees of the District of Columbia Government, and others on matters involving juveniles and questions of domestic relations.

Advises staff members of the Juvenile Court on all legal matters arising out of their official duties.

Assists in preparing legislation pertaining to Juvenile Court matters.

PART III

Delegation of authority to settle claims and to consent to fees and commissions.—A. Authority is hereby delegated to the Corporation Counsel to compromise and settle claims and suits which are:

1. Instituted against the District of Columbia up to and including $1,000.

2. Instituted on behalf of the District of Columbia by reducing the amount of such claim or suit by an amount not exceeding $1,000.

B. Authority is hereby further delegated to the Corporation Counsel, in any case before the Courts in which the District of Columbia has any interest, direct or indirect, to consent or object to Court orders authorizing expenditures or disbursement by any fiduciary, and to consent or object to fees and commissions. Notwithstanding the above, the Corporation Counsel may, in any instance deemed advisable, seek specific authorization of the Commissioners prior to consenting or objecting to any such fee, commission, expenditure or disbursement.

C. That the Corporation Counsel and such of his assistants as he may designate in writing are hereby authorized to execute in the name of the District of Columbia any release in connection with the settlement of any claim of the District of Columbia in the following cases:

1. Where the full amount of the claim as it appears on the books of the Accounting Office has been paid; or

2. Where the full amount set forth in the original demand for payment has been paid; or

3. Where the full amount of any settlement or compromise as approved by the Commissioners has been paid; or

4. Where damaged property of the District of Columbia has been satisfactorily repaired at the expense of the party responsible for such damage.

CHANGE OF NAME

"Public Utilities Commission", wherever it appears in this order, was changed to "Public Service Commission of the District of Columbia" by Act Aug. 30, 1964, 78 Stat. 634, Pub. L. 88–503, § 21. See § 2–2418.

[The name of the Municipal Court, wherever it appears in this order, was changed to "District of Columbia Court of General Sessions" by Act July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.]

[The name of the Municipal Court of Appeals was changed to "District of Columbia Court of Appeals" by Act July 8, 1963, 77 Stat. 78, Pub. L. 88–60, § 6.]

REORGANIZATION ORDER NO. 51.—OFFICE OF THE CORONER

Reorganization Ord. No. 51, L.S. 4241–B, June 29, 1953, as amended July 17, 1953, and Mar. 5, 1965, ordered that:

PART I

Office of the Coroner.—There is established, under the direction and control of a Commissioner, an Office of the Coroner, headed by a Coroner. The Coroner shall have full authority over such Office and all personnel assigned thereto, including the power to redelegate to other officials and employees of the Office of the Coroner such powers herein delegated as, in his judgment, are warranted in the interest of efficiency and good administration, and which are not required by law to be performed by the Coroner.

All authority vested in the Coroner shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

Functions.—The Office of the Coroner shall perform such functions as are now or as may be assigned by provisions of the District of Columbia Code.

PART III

Transfers.—A. There are hereby transferred to the new Office of the Coroner all functions and positions, including all duties, powers, and authorities of all officers and employees of the existing Office of the Coroner, with exceptions as noted in B of this Part.

B. All laboratory functions performed by the existing Office of the Coroner are transferred to the Department of Public Health, including the powers, duties, and authorities of employees engaged therein.

C. All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds, available or to be made available, relating to the functions and positions transferred in A of this Part, are hereby transferred to the new Office of the Coroner.

D. All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds, available or to be made available, relating to the functions and positions transferred in B of this Part, are hereby transferred to the Department of Public Health.

E. The histopathology laboratory functions performed by the Department of Public Health are transferred to the Coroner, including the powers, duties and authorities of employees engaged therein. All personnel, property, histopathology laboratory equipment, supplies, records, and unexpended balances of appropriations, allocations, and other funds, available or to be made available, relating to this function, are hereby transferred to the Office of the Coroner. Subparts A, B, C and D herein are amended accordingly.

PART IV

Abolition of existing office.—A. In order to fulfill the legal requirements of Reorganization Plan No. 5 and, at the same time, to provide for the continuous performance of functions presently delegated to the Coroner until August 15, 1953, when all other provisions of this Order automatically take effect, the existing Office of the Coroner, including the office of the head thereof, is hereby abolished effective June 29, 1953, and immediately re-created as previously constituted, including all functions, duties, powers, and authorities vested therein. Coincident with the re-creation of said office, the position of Coroner, as head thereof, is also re-established and the present Coroner re-appointed thereto.

B. The re-created Office of the Coroner, including the office of the head thereof, shall be abolished automatically on August 15, 1953.

PART V

Effective date.—The provisions of this Order, with the exception of Part IV A herein, shall become effective on and after August 15, 1953.

REORGANIZATION ORDER NO. 52.—DISTRICT OF COLUMBIA POUND

Reorganization Ord. No. 52, June 30, 1953, as amended Apr. 3, 1958, combined with reorganization order 57, amended and redesignated as Organization Order No. 141, dated Feb. 11, 1964, and effective Feb. 11, 1964.

REORGANIZATION ORDER NO. 53.—DEPARTMENT OF HIGHWAYS AND TRAFFIC

Reorg. Ord No. 53, June 30, 1953, which established a Department of Highways and Traffic, was redesignated Organization Ord. No. 122.

REORGANIZATION ORDER NO. 54.—DEPARTMENT OF VEHICLES AND TRAFFIC

Reorg. Ord. No. 54, June 30, 1953, which established a Department of Vehicles and Traffic, was repealed May 17, 1955, by Organization Orders No. 105, 106, 107, and 108.

REORGANIZATION ORDER NO. 55.—DEPARTMENT OF LICENSES AND INSPECTIONS

Reorganization Ord. No. 55, L.S. 4263–B, June 30, 1953, as amended Aug. 13, 1953, Dec. 17, 1953, June 30, 1954, Oct. 26, 1954, Aug. 11, 1955, Jan. 31, 1956, July 10, 1956, Oct. 2, 1956, Oct. 16, 1956, June 13, 1957, Nov. 27, 1957, July 22, 1958, June 1, 1960, Feb. 21, 1961, Nov. 7, 1961, Dec. 4, 1962, May 12, 1964, and June 17, 1965, ordered that:

PART I

Department of Licenses and Inspections.—There is established under the direction and control of a Commissioner, a Department of Licenses and Inspections headed by a Director. The Director shall have full authority over such Department and all functions and personnel assigned thereto, including the power to redelegate to other officials and employees of the Department such of the powers herein delegated as, in his judgment, are warranted in the interests of efficiency and good administration. However, the power to grant variances from the requirements of the housing code shall be limited to the Director and Deputy Director or, in their absence, the Acting Director of the Department. All authority vested in the Director shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

Purpose.—The Department of Licenses and Inspections is established for the purpose of: administering the laws enacted by Congress and the regulations for the control of construction, zoning and occupancy use, erection, maintenance and repair, inspection and removal of all buildings and their appurtenances, and electrical and mechanical equipment within the District of Columbia, excepting public buildings or premises under the control of the Federal Government; administering the D. C. Standard Weights and Measures Law; supervising and controlling the municipal markets and collecting annual revenue for rents and space and for wharfage at the Municipal Fish Wharf; administering the License Act of 1932, as amended, and regulations promulgated thereunder requiring licenses of certain businesses and callings in the District of Columbia; administering the acts requiring licenses for Cooperative Associations, Credit Unions, Pawnbrokers, and Loan Brokers; administering such portions of the Acts as require licenses for: Cigarette Vending Machine Operators and Retail and Wholesale Cigarette dealers; administering the portions of the Act of July 5, 1945 which require the payment of a dog tax and the issuance of a dog tag; administering the provisions relating to the licensing of peddlers and the granting of permits for the use of public space contained in the act of August 6, 1956, known as the "Presidential Inaugural Ceremonies Act;" administering and interpreting all laws and regulations governing housing in the District of Columbia; and proposing to the Board of Commissioners appropriate provisions for codes and regulations relating to such housing; provided, however, that the Department of Public Health shall fully collaborate in the development and presentation to the Board of Commissioners of such proposed provisions to the extent that they affect the public health of the community and its individual members.

PART III

Organization and functions.—There are established in the Department of Licenses and Inspections the following organizational components, responsible for the performance of the functions outlined below consistent with the purpose specified above:

A. *Office of the Director.*

1. Develops and proposes to the Board of Commissioners major policies and procedures, regulations and revisions thereto, on licensing, permit and certificate issuance, inspection, and related regulatory activities within the purview of the Department's functions, including the issuance of collateral notices in the enforcement of orders for compliance with applicable codes, regulations and statutes administered by the Department.

2. Administers and interprets all housing regulations of the District of Columbia. The Director shall in writing effect a specific delineation of responsibilities between himself and the Deputy Director, particularly in connection with development, interpretation, and enforcement of standards and regulations relating to housing.

3. Plans the programs and prescribes the policies of the Department, and plans, directs, coordinates, and supervises its activities.

4. Advises and assists the Commissioner to whom the Department is assigned on all matters falling within the purview of the Department.

5. Develops, presents, and justifies departmental budget estimates.

6. Prescribes the forms to be used for licenses, permits and certificates issued by the Department and approves the adoption and installation of such systems and equipment as are required for the Department.

7. Conducts engineering studies and research for the purpose of establishing technical standards in the public interest, covering licensing, inspections, and other regulatory activities of this Department.

8. Upon referral by the License and Permit Division, reviews other Departments' recommendations (except for those of the Department of Public Health) relating to the issuance or renewal of licenses, permits, and certificates issued by the Department of Licenses and Inspections, and where such recommendations, in the light of

the facts alleged by the recommending Department, appear to be inconsistent with the language and intent of the applicable laws and regulations, modifies or reverses them.

9. In cases where a recommending department head determines that violations of regulations are causing conditions that are imminently dangerous to health, safety or welfare, he summarily suspends the license, permit, or certificate, which suspension continues and precludes any renewal until the condition is corrected. In all other cases, after due notice which specifies violations and reasons for proposed action, and after expiration of 7 days from date of service, to allow for appeal to the Board of Appeals and Review, and if no appeal is noted, suspends or revokes licenses, permits or certificates.

10. Administers the housing code of the District of Columbia, and is authorized to grant such variances from the terms of the Housing Code as may be permitted by the provisions thereof. In his discretion, may refer cases under consideration for the granting of a variance, without final decision, to Board of Appeals and Review for latter's action. Periodically, but not less often than once each month, prepares and submits to the Board of Commissioners, with an information copy to the Board of Appeals and Review, a summary listing of all variances granted by the Department's officials under the Housing Code during the period and the reasons therefor.

11. Notifies owners of any real property in the District of Columbia to abate any nuisance or to correct any condition which exists on or has arisen from such property in violation of law or of any regulation made by authority of law, the abatement or correction of such nuisance or condition said owners are by law or by said regulation chargeable. If the owner of said property cannot be found within the District of Columbia, notifies the Secretary of the Board of Commissioners who shall cause a notice to be published to such owner in the manner required by law or regulation. After the service of notice, if the owner of said property shall fail or refuse to abate such nuisance or to correct such condition, or shall fail to show cause sufficient in the judgment of the Director of Licenses and Inspections why he should not be required to abate or to correct such nuisance or condition, said Director shall notify either the Director of Buildings and Grounds or the Director of Sanitary Engineering, as the character of the nuisance or condition requires, who shall cause the nuisance to be abated or the condition to be corrected subject to assessment as provided by law.

12. Notifies the Director of Public Health and the Assessor, in writing, of each abatement of nuisance or correction of illegal condition case initiated.

13. Upon notification from the Director of Buildings and Grounds or the Director of Sanitary Engineering, as appropriate, that a nuisance has been abated or an illegal condition has been corrected, arranges for reimbursement to the Department concerned for the cost of such abatement or correction and furnishes the Assessor a statement of the exact cost, including the cost of publishing notices, if any, of each case completed.

14. Upon notification from the Chief of Police that an owner of real property in the District of Columbia has neglected or refused to abate any nuisance or to correct any condition which exists on or has arisen from such property in violation of law or of any regulation made by authority of law, initiates such action as is necessary, in accordance with the provisions contained in Parts III A 11, 12 and 13 herein, to cause such nuisance or illegal condition to be abated or to be corrected.

15. The authority vested herein to initiate action in connection with the abatement of a nuisance or the correction of an illegal condition shall be limited to such cases as directly pertain to the functions assigned to the Department of Licenses and Inspections.

16. After receipt of a recommendation from the License and Permit Division, upon due notice, and after expiration of a reasonable period for a request for a hearing, and if no hearing has been requested within such period of time, or based upon a review of the record of such hearing if one has been held, denies, revokes or suspends Pawnbrokers' Licenses and prepares and serves on the applicant or licensee written decisions and findings with respect thereto.

B. *Office of Administration.*

1. In collaboration with operating divisions, performs non-technical studies necessary to determine, for the Director, problem areas in pertinent existing codes and regulations. With assistance of operating divisions and research engineer in office of Director, coordinates with other Departments, as appropriate, Department planning and programming for preparing and revising applicable codes and regulations, and makes recommendations thereon to the Director. After approval by the Zoning Commission, is responsible for the printing, distribution and sale of Zoning Regulations. Prepares for the Director regulations and appropriate revisions thereto, incorporating in them pertinent approved technical revisions of research engineer, operating Divisions and other Departments, as appropriate, covering licensing, permit and certificate issuance, inspection, and related regulatory activities. Provides administrative service for research engineer in office of the Director.

2. Prepares procedural manuals for the Department to govern licensing, permit issuance, and inspection, and plans and conducts the training of the Department's personnel.

3. Plans, directs, coordinates, and administers a comprehensive program for the Department's accounting, procurement, administrative services, personnel, and management improvement activities.

4. Prepares, for the Director, programs and plans of operation, including budget requests and justifications, and periodic and annual reports.

5. Collaborates and maintains liaison with the staff offices of the Department of General Administration and with the offices of the Department of Licenses and Inspections on administrative programs.

6. Plans, develops, and installs standard department-wide reporting systems which will furnish detailed data on employee performance, personnel requirements, Department operations, and activity costs.

7. Subject to approval of Department Director, develops and installs systems, procedures, forms, records, and other related matters for the Department.

C. *Housing Division.*

1. In collaboration with the Department of Public Health, develops and submits to office of the Director of the Department, through the Office of Administration, for review and presentation to the Board of Commissioners, proposed standards and regulations, and revisions to and interpretations of standards and regulations, relating to the housing code of the District of Columbia.

2. Administers and executes the District Government's program for improving housing under the housing regulations, and conducts all initial inspections of housing under the housing regulations of the District of Columbia, with the exception of those performed by the Fire Department.

3. When the premises inspected are in compliance with the housing regulations, so notifies the License and Permit Division which will in turn so inform the owner of the premises. When deficiencies are noted, prepares notice citing specific shortcomings and remedial work required; routes such notice to Inspection Division, which may, in its discretion, further inspect the premises insofar as mechanical, electrical, and structural deficiencies are involved and further specify deficiencies and remedial work to be performed, prior to transmittal of the deficiency notice to License and Permit Division. In cases of extreme insanitation, refers facts immediately to Board for Condemnation of Insanitary Buildings for appropriate action by such Board.

4. Responsible for noting structural defects and referring them to the Inspection Division, and for seeing that houses are free of insects, pests, rodents, and vermin. When, in the course of inspections under the housing regulations or in response to complaints, evidence of infestation by insects, pests, rodents, or vermin is encountered, requests the Department of Public Health to undertake or supervise proper fumigation or extermination.

5. Supervises ways and methods to assure adherence to proper standards of hygiene for human habitation and related matters in residential premises; heating, lighting, ventilation, aerial pollution, noises and public health nuisances related to housing and dwelling premises;

crowding and sanitation of living quarters; and health hazards associated with living units.

6. Receives and responds to all complaints regarding housing and takes necessary action.

D. *Inspection Division.*

1. Examines and approves plans for new construction, structural alteration, or repair, and conducts inspections to assure that the actual construction, alteration, or repair is in conformance with the applicable legal and regulatory requirements.

2. Reviews deficiency notices transmitted by Housing Division, conducts further inspections as may be necessary in connection with mechanical, electrical and structural deficiencies and, as may be necessary, adds to citations of specific deficiencies and remedial work required.

3. Where permits are requested to perform work necessary to remedy failures to comply with the housing regulations, examines plans to ascertain whether they are sufficient to remedy such deficiencies. Upon completion of work required to remedy deficiencies under the housing regulations, inspects to ascertain whether deficiencies have indeed been remedied.

4. Conducts inspections to assure that all buildings, structures, their equipment and appurtenances, and all excavations, are in compliance with applicable regulations; takes action to secure correction of deficiencies, either through repair or alteration, through the condemnation of unsafe structures (subject to the limitations imposed in subparagraphs 5, 6, and 7 which follow), elimination of the unsafe conditions.

5. Where, after examination, it is determined that the public safety requires immediate action to correct an unsafe structure or excavation, directs the performance of work to correct the unsafe structure or excavation either through: shoring up, taking down, or otherwise securing the structure or excavation, including the providing of any fence or boarding necessary to protect passers-by.

6. Where, after examination, it is determined that an unsafe structure or excavation exists, and is in need of correction, but the public safety does not require immediate action, takes the necessary action to notify the owner, agent, or other person having an interest in said structure or excavation to cause the same to be made safe and secure.

7. If the owner, agent, or other party interested in said unsafe structure or excavation shall refuse or neglect to comply with the requirements of said notice, the case will be reviewed by the Department Director, and if he approves the action of the Inspection Division the case will be referred to the Unsafe Structures and Excavations Board, which shall make a careful survey of the premises, and make a report of such survey as required by law. If the report of the Unsafe Structures and Excavations Board shall declare the structure or excavation to be unsafe, the Division performs the operating functions essential to correcting the unsafe condition.

8. Conducts inspections concerning the installation and operating condition of elevators, and of plumbing, electrical, smoke and boiler, and refrigeration equipment; takes action to secure correction of any deficiencies disclosed.

9. Conducts inspections necessary to provide adequate safeguards to the public safety and health; evaluates the effectiveness of the existing regulations pertaining to minimizing the contaminants polluting the air and proposes changes in regulations deemed necessary to achieve the overall air pollution control objectives.

10. Receives, reviews, and recommends approval or denial of requests for licenses or permits referred to the Division for action.

11. Enforces the standard weights and measures law for the District of Columbia, and regulations promulgated thereunder.

12. Supervises and operates the Municipal Markets, including responsibility for plant protection, exercise of the police power described in Title 10, § 10–126, D.C. Code (1951 ed. [now 1967 ed.]) custodial services, repair, collections, and miscellaneous administration.

13. Advises and assists the Department Director on matters pertaining to the inspection activities of the Division.

E. *License and Permit Division.*

1. Processes and issues licenses, permits, and certificates for: the operation of businesses; building and certain other types of construction and alteration or repair, building use; and other miscellaneous matters requiring a license, permit, or certificate.

2. Provides advice and assistance to the public as to the requirements for license, permit, and certificate issuance, the preparation of applications, and the explanation of regulations governing such matters.

3. Serves as the central point from which the public requests licenses, permits, and certificates; receives, reviews, sorts, routes, and controls all such applications during their processing.

4. Normally notifies applicants of approval or disapproval of their applications for licenses, permits, and certificates issued by the Department. Upon receipt of recommendations of approval from the Housing Division, the Inspection Division, Zoning Division, the Fire Department, the Department of Public Health, and other departments, as appropriate, issues licenses, permits, certificates, or other notices of compliance with applicable regulations. Upon receipt of recommendations of disapproval from the Divisions of the Department of Licenses and Inspections and other departments, examines data received and requests supplemental data if necessary for complete clarity. Prepares consolidated list of deficiencies and remedial actions required, and furnishes copy to applicant with advice that applicant, if he desires to discuss the matter or secure further information, may meet for such purpose with D. C. Government officials concerned; if applicant desires such meeting, refers him to the officials involved or arranges meeting with such officials, as appropriate. Upon receipt of notice from agencies involved in such meetings as to whether they desire to revise their findings or recommendations as a result of the meeting, advises applicant of such determinations and, in non-approval cases, notifies applicant in writing that if deficiencies are not remedied as required, license, permit, certificate, or other form of approval will be denied; except that where recommendations made by any of the recommending agencies (except the Department of Public Health in connection with inspections for which that Department is responsible), in the light of the facts alleged by the recommending agency, may appear to be inconsistent with the language and intent of the applicable laws and regulations, refers such recommendations together with all pertinent details to the Office of the Director for review and determination. In inspectional matters for which the Department of Public Health is responsible, as outlined in Reorganization Order No. 57, as amended, the action taken shall be the same as that recommended by the Department of Public Health. All determinations relative to these matters may be appealed to the Board of Appeals and Review, and a statement to this effect shall be incorporated in all notices of unfavorable action sent to members of the public.

In cases in which renewal or transfer of licenses requires exercise of discretion and in which licenses were in effect for the year immediately preceding, may issue or transfer such licenses forthwith.

In case of renewal actions which are purely ministerial in nature, renews the permit or certificate without referral to other units of the Department or outside the Department.

When warranted, recommends to the Director the denial, revocation, or suspension of a Pawnbroker's license.

5. Recommends to the Board of Appeals and Review suspension or revocation, for good and sufficient cause, of licenses, permits, and certificates previously issued subject to such review as may be indicated by the Department Director.

6. In those instances in which an appeal is made to the Board of Appeals and Review, except where only a determination by the Department of Public Health is in question, the case will be reviewed by the Department Director or his designee before being submitted to the Board of Appeals and Review. Cases forwarded to the Board of Appeals and Review shall be fully documented so that the Board may be apprised of what has transpired prior to the appeals action, as well as the basis for the

denial or proposed suspension or revocation of the license, permit, or certificate. Based upon the decision of the Board of Appeals and Review, performs the operating functions essential to denying, revoking, suspending, or restoring the license, permit, or certificate, as the case may be.

7. Inspects and controls the operations of loan companies, pawnbrokers, motor vehicle dealer sales contracts, and such other appropriate areas of business regulation as the Commissioners may prescribe.

8. Maintains centrally all files and records of the Division.

9. Collaborates with the Office of the Collector of Taxes in developing and administering procedures relating to facilities for the collection of fees.

10. Investigates and takes necessary action to obtain compliance with the license, permit, and certificate laws and regulations enforced by this Department; furnishes expert services to other offices of the Department in noncompliance cases brought to Court; collaborates with the Office of the Corporation Counsel in representing the interests of the Department in legal matters; and provides expert testimony in court as required.

11. Acts as attorney-in-fact for licensed pawnbrokers for the purpose of receiving judicial and other processes and legal notices.

12. In the inspection and control of the operations of licensed pawnbrokers, the Chief of the License and Permit Division is authorized to require by subpena the production of books, papers, and records and the attendance, and examination under oath of all persons whomsoever whose testimony he may require relative to the loans of business of any such licensee, and he shall possess the power vested in the Commissioners by the Act of July 1, 1902 (D.C. Code, 1951 ed. [now 1967 ed.], § 1–237) to administer oaths, and he and his designated representatives are authorized to have free access to the accounts, papers, records, files, safes, vaults, offices, and places of business used in connection with any business conducted under a pawnbroker's license.

13. Certifies on the District of Columbia motor vehicle operator's permit issued to an applicant for a parking lot attendant's license, in the space on such permit set aside for "restrictions", the number of the license issued such applicant and its expiration date.

F. *Zoning Division.*—The Zoning Division shall be headed by a Zoning Administrator who shall be responsible for administratively interpreting and enforcing the Zoning regulations. All authorities and powers delegated to the Zoning Administrator are delegated through the Director of Licenses and Inspections; however, appeals from zoning decisions by the Zoning Administrator which are properly appealable under the Act of June 20, 1938 to the Board of Zoning Adjustment shall be made direct to said Board of Zoning Adjustment.

The Zoning Division shall be responsible for the performance of the following specific functions:

1. Administers and enforces the Zoning Regulations of the District of Columbia.

2. Administratively interprets the Zoning Regulations and makes administrative decisions thereon. Reviews and approves subdivision proposals for compliance with the Zoning Regulations.

3. Reviews applications for building permits and for certificates of occupancy, and supervises inspections of premises, buildings and other structures in connection therewith to determine if existing or proposed structures and uses comply with the provisions of the Zoning Regulations. Approves or rejects all such applications on the basis of the Zoning Regulations.

4. Develops and furnishes the Office of the Zoning Commission, the National Capital Planning Commission, and other agencies, research and planning data accruing within the Department of Licenses and Inspections for zoning, land use, and other operational needs.

5. Upon the basis of experience in the administration and enforcement of the Zoning Regulations or upon observance of defects in them, may propose changes in the regulations and maps.

6. Prepares and maintains a register of all nonconforming uses. Inspects periodically nonconforming uses and conducts a control operation to bring about elimination of such uses under existing laws and regulations.

7. Inspects intermittently all properties in the District of Columbia to determine compliance with the Zoning Regulations and compliance with conditions imposed by the Board of Zoning Adjustment.

8. Conducts periodic instrument surveys of commercial and industrial properties to determine compliance with the standards of external effects set forth in the Zoning Regulations.

9. Establishes and maintains a zoning information office for use by the public on all matters relating to the Zoning Regulations and Maps and their administration and enforcement.

10. Upon request by the Zoning Commission or the Board of Zoning Adjustment, appears before the requesting body to present to such body facts and administrative interpretation and, on specific request, may make recommendations to assist those bodies in reaching decisions.

11. Maintains permanent and current records relative to the administration, interpretation, and enforcement of the Zoning Regulations.

12. In the enforcement of the Zoning Regulations presents facts and recommendations to the Corporation Counsel for possible prosecution in the courts, provides expert testimony as required and collaborates with the Corporation Counsel in all legal matters where the Corporation Counsel is either enforcing the zoning laws or regulations, or defending a lawsuit arising under the zoning laws or regulations, and maintains a complete record of such actions and their final disposition.

PART IV

Transfers.—A. There are hereby transferred to the Department of Licenses and Inspections all functions and positions of the following named organizations and their subordinate agencies, including all duties, powers, and authorities in connection therewith of all officers and employees assigned thereto:

Department of Inspections:
- Engineering Section.
- Building Inspection Section.
- Electrical Inspection Section.
- Elevator Inspection Section.
- Fire Safety Inspection Section.
- Plumbing Inspection Section.
- Smoke and Boiler Inspection Section.
- Administrative Section.

Department of Weights, Measures, and Markets.
License Bureau.
Central Permit Bureau.
License Committee.

B. *Positions.*—The following positions are hereby transferred from the Department of Public Health to the Department of Licenses and Inspections:

21-15- 2	Assistant Director	GS-12
71	Public Health Engineer	GS-11
4	Assistant Chief Sanitary Inspector	GS-8
8	Sanitary Inspection Supervisor	GS-7
11	Sanitary Inspection Supervisor	GS-7
12	Sanitary Inspection Supervisor	GS-7
13	Sanitary Inspector and Instructor	GS-6
16	Sanitary Inspector and Instructor	GS-6
17	Sanitary Inspector and Instructor	GS-6
18	Sanitary Inspector and Instructor	GS-6
69	Condemnation Aide	GS-6
70	Condemnation Aide	GS-6
23	Sanitary Inspector	GS-5
28	Sanitary Inspector	GS-5
30	Sanitary Inspector	GS-5
34	Sanitary Inspector	GS-5
35	Sanitary Inspector	GS-5
36	Sanitary Inspector	GS-5
37	Sanitary Inspector	GS-5
38	Sanitary Inspector	GS-5
41	Sanitary Inspector	GS-5
43	Sanitary Inspector	GS-5
45	Sanitary Inspector	GS-5
66	Sanitary Inspector	GS-5
67	Sanitary Inspector	GS-5
72	Secretary	GS-5
5	Secretary	GS-4
7	Clerk-typist	GS-3

C. Except for committee members, serving as such in addition to their regular duties, who are not full-time employees of any of the organizations transferred herein, all personnel, property, records, and unexpended balances of appropriations, allocations, and other funds, available or to be made available, relating to the functions and positions transferred in Sections A and B of Part IV above, are hereby transferred to the Department of Licenses and Inspections.

PART V

Transfer From New Department.—The Director of the Department of Licenses and Inspections, working in close cooperation with officials of the Departments concerned, shall:

A. Develop a program and procedures to abolish as separate entities the Fire Safety and Egress Section, eliminating those functions which duplicate activities of other segments of the Department and other Departments.

1. Such a proposed program shall take cognizance of the fact that the Department of Licenses and Inspections continues as the enforcement and interpreting authority in all matters pertaining to the construction, alteration, repair, installations, zoning and occupancy use and appurtenances of buildings and structures, as set forth in D. C. Building, Plumbing, Electrical Codes, Elevator, Sign, Zoning, Refrigeration and Air Conditioning, Gas Fitting, Boiler Inspection, rules and regulations governing installation of fuel burning equipment, and the D. C. housing regulations, while the Fire Prevention Division has the primary responsibility for conducting egress and fire prevention inspections.

2. The program shall provide for the transfer, reassignment, or separations of personnel previously assigned to the Fire Safety and Egress Section, and for the disposition of all positions and funds available to the Fire Safety and Egress Section.

PART VI

Adjusting Fees for Licenses, Permits, Certificates, and Transcripts.—A. The Director of the Department of Licenses and Inspections is hereby assigned the responsibility for recommending to the Board of Commissioners the fees to be charged for all licenses, permits, certificates, and transcripts of records issued by that Department, which the Commissioners are authorized to establish, and for recommending to the Zoning Commission the fees for occupancy permits.

B. The Director of the Department of Licenses and Inspections is also assigned the responsibility for recommending to the Board of Commissioners proposed legislation concerning the fees to be charged for licenses, permits, certificates, and transcripts of records, where legislation is required to accomplish changes in the fees charged.

C. A study shall be undertaken as soon as practicable to determine what such charges shall be and specific recommendations shall be submitted to the Board of Commissioners as soon as the study has been concluded.

D. In arriving at the proposed fee schedules, the charge shall be based upon the costs as outlined in the District of Columbia Code, i. e., in the case of business licenses, the costs "* * * will be commensurate with the cost to the District of Columbia of such inspection, supervision, or regulation * * *" and in the case of permits, certificates, and transcripts of record "* * * said fees to cover the cost and expense of the issuance of said permits and certificates and of the inspection of the work done under said permits. * * *"

E. The directors of all other District Government departments who are concerned with the costs of such processing shall provide the Director of the Department of Licenses and Inspections with pertinent cost data for use in arriving at the total costs to be charged for licenses and permits.

F. The Director, Department of Licenses and Inspections, is assigned the responsibility of biennially making cost studies and revising the costs for all licenses, permits, certificates, and transcripts of records issued by that Department; *Provided,* That such studies shall be completed in time to permit the Board of Commissioners to make revisions in the schedules, such revisions to be effective in the last half of calendar year 1958 and every two years thereafter; and, *Provided further,* That the Director, Department of Licenses and Inspections, may make such cost studies and revise the costs for any one or more of such licenses, permits, certificates, and transcripts of record more frequently at his discretion, when circumstances warrant. The Director, Department of Licenses and Inspections, is further assigned the responsibility for recommending to the Board of Commissioners any necessary changes in the fees for such licenses, permits, certificates, or transcripts of record; such recommendations are to be submitted to the Board of Commissioners in sufficient time to allow adequate notification to the public prior to the effective date of changes in the fees to be charged.

PART VII

Establishing a Work Measurement and Cost Accounting System.—A. In order to simplify and facilitate the adjustment of fees in the future, the Director of the Department of Licenses and Inspections is hereby assigned the responsibility for developing and installing a work measurement and cost accounting system for the Department which will provide the following:

1. Data as to workload, productivity, costs, and revenues:

2. Cost data to be used to recommend the adjustment of fees for licenses and permits;

3. Data to prepare and justify budget estimates.

4. Data to be used as a basis for preparing the quarterly reports to the Board of Commissioners to inform them as to performance, work status, and operation of the Department.

5. Data from which the Department's personnel needs can be scientifically determined.

B. In developing the system to be installed, the Director of the Department of Licenses and Inspections shall call upon the Budget Office, the Accounting Office, and the Management Office for technical advice and assistance, and the system shall be reviewed by the Director of General Administration before adoption.

C. The study shall also encompass the data which must be maintained by other departments—Department of Public Health, Police Department, Fire Department, Department of Highways, Department of Sanitary Engineering, and any others—for the adjustment of fees for licenses, permits, certificates, and transcripts of records. The Director of the Department of Licenses and Inspections shall contact all such departments and they shall participate in the development of the records which are to be maintained by them. Such records must of necessity, be designed to fit in with the over-all system which is developed.

PART VIII

Unsafe Structures and Excavations.—In accordance with the provisions of § 5–502, D.C. Code, 1951 edition [now 1967 ed.], when the public safety does not, in the judgment of the Director of Licenses and Inspections, demand immediate action to make a structure or excavation safe and secure or to remove such structure or excavation, if the owner, agent, or other party interested in said unsafe structure or excavation, having been notified, shall refuse or neglect to comply with the requirements of said notice within the time specified, then a careful survey of the premises shall be made by three disinterested persons, one to be appointed by the Chairman of the Board of Appeals and Review acting as agent for the Commissioners of the District of Columbia, one by the owner or other person interested, and the third to be chosen by these two, and the report of said survey shall be reduced to writing, and a copy served upon the owner or other interested party.

Disinterested persons serving as members of Unsafe Structures and Excavations Boards of Survey, other than employees of the District of Columbia Government and members appointed by owners or other interested parties, shall each be paid from District of Columbia funds a fee of $50 a day.

PART IX

Recommendations for Improvement.—It is recognized that the licensing and inspection operations of the District of Columbia Government are currently in a state of rapid transition to meet the ever increasing needs of the local community, particularly with respect to habitable premises. Therefore, the Director of the Department of Licenses and Inspections shall prepare and submit to the Board of Commissioners, on or before December 31, 1954, a plan for training and reassignment of personnel, and any recommendations which he may care to make with respect to internal organization of the Department to achieve the objectives of more effective and economical operations, improved utilization of personnel, elimination of overlapping and duplicative inspections,

and simplification of procedures. These recommendations shall be coordinated with the Department of General Administration prior to their submittal to the Board of Commissioners. Particular attention should be given to the desirability of reducing the number of inspectors now required to visit and inspect premises.

PART X

Repeal of Previous Orders.—All Commissioners' Orders or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed.

PART XI

Effective Date.—The foregoing provisions of this Order, as amended, shall become effective on June 30, 1954.

PART XII

Gas Code and Appliance Technical Committee.—There is hereby established a Gas Code and Appliance Technical Committee, composed of such members as the Board of Commissioners desires to appoint, which shall serve in an advisory capacity to the Director of Licenses and Inspections for the purpose of making recommendations to said Director as to such changes, additions and rearrangements of the Gas Fitting Regulations as said Committee deems necessary in the public interest to bring said regulations into conformity with approved modern practice and for advising said Director in technical matters pertaining to gas fitting.

REORGANIZATION ORDER NO. 55.—DEPARTMENT OF LICENSES AND INSPECTIONS [IMPLEMENTING ORDER]

[Text Omitted]

This order dated January 5, 1954, appointed members to the Unsafe Structures and Excavations Board in accordance with Part III F of Reorganization Order No. 55, as amended Dec. 17, 1953.

REORGANIZATION ORDER NO. 56.—BOARD FOR THE CONDEMNATION OF INSANITARY BUILDINGS

Reorg. Ord. No. 56, L. S. 4264–B, June 30, 1953, as amended June 30, 1954, established a Board for the Condemnation of Insanitary Buildings. Organization Order No. 102, set out after § 5–617, provides that the existing Board for the Condemnation of Insanitary Buildings established under Reorg. Ord. No. 56, dated June 30, 1953, as amended, is abolished.

REORGANIZATION ORDER NO. 57.—DEPARTMENT OF PUBLIC HEALTH

Reorganization Ord. No. 57, L. S. 4262–B, June 30, 1953, as amended June 30, 1954, Nov. 30, 1954, Jan. 31, 1956, Aug. 23, 1956, Dec. 13, 1956, Nov. 12, 1957, Dec. 23, 1958, Nov. 10, 1960, and Feb. 21, 1961, combined with Reorganization Order 52, amended and redesignated as Organization Order No. 141, dated and effective Feb. 11, 1964.

REORGANIZATION ORDER NO. 58.—DEPARTMENT OF PUBLIC WELFARE

Reorganization Ord. No. 58, L.S. 4265–B, June 30, 1953, as amended July 31, 1953, Aug. 19, 1954, June 7, 1956, Sept. 25, 1956, June 6, 1957, Nov. 12, 1957, Aug. 9, 1960, Oct. 20, 1960, and Feb. 21, 1961, redesignated as Organization Order No. 140 and amended as therein set out, Feb. 11, 1964, effective Feb. 11, 1964.

REORGANIZATION ORDER NO. 59.—BOARDS AND COMMISSIONS

Reorganization Ord. No. 59, L.S. 4266–B, June 30, 1953, as amended July 17, 1953, Sept. 15, 1953, Dec. 10, 1953, June 17, 1954, June 27, 1957, June 24, 1958, July 29, 1958, Aug. 25, 1959, Jan. 26, 1960, Aug. 9, 1960, Mar. 21, 1961, May 25, 1961, Sept. 12, 1961, Feb. 20, 1962, Feb. 12, 1963, Mar. 13, 1963, Apr. 16, 1963, Aug. 5, 1963, Sept. 19, 1963, Oct. 10, 1963, Oct. 17, 1963, Jan. 21, 1964, Nov. 5, 1964, Feb. 21, 1966, Mar. 8, 1966, May 24, 1966, and June 14, 1966, ordered that:

PART I

Department of Occupations and Professions.—

There is established under the direction and control of the Board of Commissioners a Department of Occupations and Professions. The Department shall consist of the following-named boards and commissions, an Office of the Director, and an Office of Administration:

Board of Accountancy.
Board of Barber Examiners for the District of Columbia.
Board of Dental Examiners.
Board of Examiners and Registrars of Architects.
Steam and Other Operating Engineers' Board.
Board of Examiners of Veterinary Medicine.
Board of Funeral Directors and Embalmers.
Board of Optometry.
Board of Pharmacy.
Board of Podiatry Examiners.
Commission on Licensure To Practice the Healing Art in the District of Columbia.
District of Columbia Board of Cosmetology.
District of Columbia Board of Registration of Professional Engineers.
District Boxing Commission.
Electrical Board.
Nurses' Examining Board.
Physical Therapists Examining Board.
Plumbing Board.
Real Estate Commission.

PART II

Purpose.—The Department of Occupations and Professions is established for the purpose of performing those functions of the District Government concerned with licensing, registering, and regulating certain professions and occupations, in order to protect the public from incompetent and unfair practices and to protect qualified men from the competition of unqualified and unethical persons.

PART III

Powers and authorities.—A. Each of the aforementioned boards and commissions is vested with the full professional and technical powers and authorities which it has heretofore possessed in the licensing and regulating of the respective professions and occupations, including the power and authority, to the extent heretofore possessed, to grant, suspend, and revoke licenses and registrations, and shall continue to possess such powers and authorities. Further, the Steam and Other Operating Engineers' Board, the Electrical Board, the Motion Picture Operators' Board, the Plumbing Board, and the Board of Funeral Directors and Embalmers are hereby authorized to exercise the professional and technical powers heretofore vested in the Board of Commissioners relating to the licensing of the respective occupations, including the power and authority to grant, suspend, and revoke licenses and registrations, in accordance with applicable laws, rules, and regulations, including the limitations thereof, provided further that the Board of Funeral Directors and Embalmers may, in its discretion, request that the Department of Public Health conduct an investigation and report its findings to the Board before the giving of notice to a licensee of a hearing on any complaint or charges which might result in suspension or revocation of the license; and provided further that in any case where Public Health considerations are present, the Board of Funeral Directors and Embalmers shall advise the Director of Public Health of the nature of the complaint.

B. The Department of Occupations and Professions shall be supervised by a Director who is vested with full administrative authority over such Department and personnel assigned thereto.

C. The authority of the Director of the Department shall be limited to the functional areas of administration, fiscal, and housekeeping.

D. The funds and fees derived from receipts for licensing, registering, and regulating the professions and occupations shall be used to administer the respective functions for which collected.

E. Each board and commission shall recommend to the Board of Commissioners rules and regulations relating to the technical and professional requirements governing the licensing and regulating of the particular profession or occupation.

F. The Department Director shall recommend to the Board of Commissioners rules and regulations relating to the administrative, fiscal and supply, space and other housekeeping functions of the Department.

G. The following specific actions shall be undertaken jointly by the Director, Department of Occupations and Professions, and the heads and/or members, respectively, of the boards and commissions:

(1) Meet at least semi-annually, at one or another of the regularly scheduled meetings of the boards and commissions, to discuss common problems and the objectives and programs of the Department and how effectively these are being met; to discuss in detail their budgetary and staff needs; and to inform them as to the distribution of costs and allocation of funds and related financial and accounting data pertaining to the operation of the Department. In all cases where a board, commission, or committee is in disagreement on a budgetary, staff or allotment matter with the Director, the Director shall arrange for the Head of the board, commission or committee to appear before the Budget Office and the Board of Commissioners to discuss such disagreement.

(2) Collaborate regarding travel requirements and attendant budget requests and fund allocations.

(3) Collaborate in periodically reviewing and revising the fee structure.

(4) Collaborate in coordinating the assignment and use, and developing and maintaining the effectiveness of the investigative staff for the purpose of insuring that the individual needs and requirements of the boards, commissions, and committee in connection with investigations are adequately and satisfactorily being met.

(5) Collaborate in coordinating the assignment and use, and developing and maintaining the effectiveness of the administrative and clerical staff for the purpose of insuring that the individual needs and requirements of the boards and commissions in connection with administrative matters are adequately and satisfactorily being met.

PART IV

Functions.—Functional responsibilities are assigned as follows, subject to the limitation imposed in Parts I and III, hereof. The general intent in the assigning of these functions is that the Office of the Director and the Office of Administration will perform all administrative, fiscal, and housekeeping activities for all Boards and Commissions, and that technical and professional functions and responsibilities shall be exercised by the respective Boards and Commissions.

A. *Boards and Commissions.*

1. Develops and proposes to the Commissioners programs, policies, standards, regulations, and procedures governing the professional and technical aspects of licensing and regulating the respective professions and occupations.

2. Develops, administers, and grades examinations, utilizing the Office of Administration for all clerical duties not performed by the members of the Boards and Commissions. [In addition, when so desired by the Boards and Commissions, the Office of Administration, to the extent of its capabilities, will assist them in developing and grading examinations.]

3. Determines eligibility of candidates for entrance to a profession or occupation, and approves and signs all certificates as to professional or occupational qualifications of successful candidates.

4. Conducts hearings relating to eligibility, reciprocity, suspension, revocation, or denial of license or registration, and renders decisions based upon the findings.

5. Advises and assists the Commissioners on profesional and technical matter of the respective boards and commissons.

6. Collaborates with the Department Director in relating the administrative, fiscal, and housekeeping activities to the professional and technical activities, to assure efficiency of over-all operations.

B. *Office of the Director.*

1. Develops and proposes to the Commissioners programs, policies, regulations, and procedures governing the administrative, fiscal, and housekeeping functions of the Department.

2. Plans, directs, coordinates, and supervises the administrative activities of the Department, and shall have direct supervision over all employees of the Department, including any employee assigned to any board or commission; and

3. Advises and assists the Commissioners on administrative, fiscal, and housekeeping matters of the Department.

4. Collaborates with the boards and commissions in relating the administrative, fiscal, and housekeeping activities to the professional and technical activities, to assure efficiency of over-all operations.

5. Maintains a register of all persons registered as physical therapists, and a register of approved schools of physical therapy, pursuant to the Physical Therapists Practice Act, Public Law 87–280, 75 Stat. 578 [D.C. Code § 2–451 et seq.].

C. *Office of Administration.*

1. Processes all applications, correspondence, and other material referred to the Office for administrative processing.

2. Performs the clerical, fiscal, and business functions of the Department.

3. As requested by the boards, and subject to their direction and approval, conducts investigations and inspections relating to the professions and occupations, and submits reports of such investigations and inspections to the appropriate boards and commissions for their consideration and final action.

4. Performs all clerical duties concerned with developing, administering, and grading examinations except those performed by Board members, and, as requested by the Boards, assists them in developing and grading examinations to the extent of its capacities.

5. Assists the Department Director on administrative, fiscal, and housekeeping matters pertaining to the operations of the Department.

PART V

Appointments to and membership on boards and commissions.—A. After Jan. 26, 1960, every appointment of a member or alternate member of a board or commission shall be for a term of three (3) years, and every vacancy shall be filled only for the unexpired portion of the term, but after the expiration of his term each such member and alternate member shall continue to serve until his successor is appointed and has qualified. Every person who, on Jan. 26, 1960, is a member or alternate member of a board or commission shall continue to serve for the balance of the term to which he has been appointed (any vacancy in said balance of said term to be filled by appointment for the unexpired portion thereof) and upon the expiration of said term the three (3) year term herein provided shall immediately commence, but such member or alternate member shall continue to serve until his successor is appointed and has qualified. Except that commencing May 1, 1961, the terms of appointment of members of the District Boxing Commission shall be staggered so that one member shall serve for one year, the member from the Metropolitan Police Department shall serve for two years, and one member shall serve for three years, and thereafter every appointment shall be in accordance with subparts A, B, C, and D herein.

B. No person who has served six (6) years or more consecutively as a member of a board or commission shall be reappointed either as a member or as an alternate member until after the expiration of one (1) year from the end of such service. No person who has served six (6) years or more consecutively as an alternate member of a board or commission shall be reappointed as an alternate member until after the expiration of one (1) year from the end of such service, provided that appointment and service as an alternate member shall not disqualify a person from appointment as a member at any time. The provisions of this paragraph shall not apply to persons selected for membership from among officers and employees of the District of Columbia.

C. Qualification requirements shall be determined and officers shall be chosen in accordance with the statutes and regulations applicable to the boards, commissions, and committee having the same or similar names prior to their abolition by the Board of Commissioners on June 30, 1953, except that any person shall be eligible for appointment upon the Board of Podiatry Examiners who is a citizen of the United States and who has been

for five years next preceding his appointment in the active and reputable practice of podiatry in the District of Columbia, and except that any person shall be eligible for appointment upon the Board of Dental Examiners who is a citizen of the United States and who has been for five years next preceding his appointment, both a resident of the Washington Metropolitan Area, as defined in the National Capital Planning Act of 1952, as amended, and in the active and reputable practice of dentistry in the District of Columbia, and except that the Commissioners may, in their discretion, appoint the members to the Board of Barber Examiners as they determine is in the best interest of the District Government, either upon the recommendations of interested groups or individuals, or without such recommendations, and with the further exception that in making appointments of members of the Board of Podiatry Examiners the Commissioners shall not be restricted to nominations submitted to them or to the membership of any particular group or organization but shall appoint to said Board such persons as they determine will be in the best interests of the District of Columbia, and except that the Commissioners may, in their discretion, appoint the members to the Real Estate Commission as they determine is in the best interests of the District of Columbia. The Steam and Other Operating Engineers' Board shall be composed of three members, two of whom are practical engineers, neither of whom shall be in the employ of the United States or the District of Columbia, and the Boiler Inspector for the District of Columbia; and three alternates, two of whom shall be practical engineers, neither of whom shall be in the employ of the United States or the District of Columbia, and the Assistant Chief, Smoke and Boiler Section, Department of Licenses and Inspections. The Commission on Licensure To Practice the Healing Art in the District of Columbia shall be composed of the President of the Board of Commissioners of the District of Columbia, the United States Commissioner of Education, the Corporation Counsel of the District of Columbia, the Superintendent of Public Schools of the District of Columbia, and the Director of Public Health of the District of Columbia, each ex officio.

The District of Columbia Board of Cosmetology shall be composed of six members appointed by the Board of Commissioners. Each member of the Board shall be at least twenty-five years of age, shall have had at least five years' practical experience in the practice of cosmetology, shall be a citizen of the United States and a resident of the District of Columbia and shall be in the active and reputable practice of cosmetology in the District of Columbia.

The statutory office of executive secretary of the Nurses' Examining Board is hereby abolished and the statutory duties of said office are hereby delegated to the Director.

D. Honoraria to be paid to members of the boards and commissions, shall be determined from time to time by the Commissioners in accordance with the provisions of the Act of July 14, 1956 (70 Stat. 532; § 1–254, D.C. Code).

E. The Real Estate Commission of the District of Columbia shall be composed of four (4) members appointed by the Board of Commissioners. In addition thereto, the Finance Officer, D.C. (formerly the Assessor, D.C.) shall continue to serve, ex-officio, as Chairman of the Real Estate Commission, and the Chief of the Property Tax Division, Finance Office, shall serve, ex-officio, as his Alternate, but without added compensation for their services as such.

PART VI

Policies, rules, and regulations.—All policies, rules, and regulations under which the boards and commissions, have heretofore been operating which are not inconsistent with this Order shall remain in effect and shall be followed until specifically superseded by actions of the Board of Commissioners, or by actions of the professional or occupational Boards, or of the Department Director, pursuant to authorities granted herein.

PART VII

Transfers to new Department.—A. There are hereby transferred to the Department of Occupations and Professions all functions and positions of the following-named organizations and their subordinate agencies, including the duties, powers, and authorities of all officers and employees assigned thereto:

Board of Accountancy.
Board of Barber Examiners for the District of Columbia.
Board of Dental Examiners.
Board of Examiners and Registrars of Architects.
Board of Funeral Directors and Embalmers.
Board of Examiners of Steam and Other Operating Engineers.
Board of Examiners of Veterinary Medicine.
Board of Optometry.
Board of Pharmacy.
Board of Podiatry Examiners.
Commission on Licensure To Practice the Healing Art in the District of Columbia.
District of Columbia Board of Cosmetology.
District of Columbia Board of Registration of Professional Engineers.
District Boxing Commission.
Electrical Examining Board.
Nurses' Examining Board.
Plumbing Board.
Real Estate Commission.

B. All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds, available or to be made available, relating to the functions and positions transferred in A of this Part are hereby transferred to the Department of Occupations and Professions.

C. The organizations and their subordinate agencies listed in A of this Part and the duties, powers, and authorities of all officers and employees assigned thereto, shall continue to function as heretofore constituted, but as constitutent agencies of the Department under the administrative supervision of the Director, until such time as the Department Director, working in close collaboration with the respective boards, commissions, and committee, shall, subject to the limitations imposed in Parts I and III hereof, effectuate the actual transfer of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds, available or to be made available, to each respective board, commission, or committee; *provided, however,* that such transfer be effective for at least one of these boards, commissions, or committee on October 15, 1953 and that the transfer of the others be accomplished on a scheduled basis between that date and February 15, 1954.

D. The following named boards and committee shall be provided with administrative, fiscal, and housekeeping services by the Departments indicated until such time as these services are assumed by the Department of Occupations and Professions:

Board of Examiners of Steam and other Operating Engineers. Electrical Examining Board Plumbing Board	Department of Licenses and Inspections.
Undertakers' Examining Committee	Department of Public Health.

E. The Department Director is assigned primary responsibility, in collaboration with the various professional and occupational boards, for effectuating the consolidation indicated in C, above, in an orderly manner so as to minimize disruptions to present operations.

F. The functions relative to the registration of dentists vested in the Health Officer by Section 2–309, D.C. Code, 1961 ed. [now 1966 ed.], are hereby transferred to the Director of the Department of Occupations and Professions, effective immediately.

PART VIII

Abolition of Agencies.—The organizations and their subordinate agencies listed in Part VII A of this Order, including the offices of the heads thereof, are hereby abolished.

PART IX

Repeal of previous orders.—All Commissioners' Orders or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed.

PART X

Amendment to Reorganization Order No. 59.—Reorganization Order No. 59, as amended, is hereby further

amended, effective immediately,* in that the date, September 15, 1953, as it appears in Part I of that Order, shall read instead October 15, 1953.

PART XI

Effective date.—The provisions of this Order, with the exception of Part X above which becomes effective immediately, shall become effective on and after October 15, 1953.

PART XII

Practical Nurses' Examining Board

A. *Establishment.*—Pursuant to authority contained in Section 7 of Public Law 86–708 [D.C. Code § 2–426], effective July 29, 1961, there is hereby established, within the Department of Occupations and Professions, a Practical Nurses' Examining Board.

B. *Delegation of functions.*—The Practical Nurses' Examining Board is hereby delegated the technical and professional functions vested in the Commissioners by sections 8, 9, 10, 11, 12, and 14 of Public Law 86–708 [D.C. Code § 2–427 through 2–431, and 2–433], including the function of making final determinations in connection with the denial, suspension or revocation of licenses and the administrative functions authorized to be performed by such sections are hereby delegated to the Director: *Provided,* That the functions of adopting and prescribing rules and regulations pursuant to the authority contained in section 8 shall remain vested in the Commissioners.

C. *Composition and qualifications.*—The Practical Nurses' Examining Board shall be composed of seven members appointed by the Board of Commissioners. Four such members shall be graduate nurses duly registered in the District of Columbia under provisions of the Act of February 9, 1907, as amended (D.C. Code, 1951 ed. [now 1967 ed.], §§ 2–401 through 2–411), and who shall have had, since graduation, at least five years of experience in the nursing service. Three such members shall be practical nurses. From and after October 26, 1961, all such practical nurse members shall be duly licensed under the provisions of Public Law 86–708 [D.C. Code § 2–421 et seq.]. At least two practical nurse members of such Board shall be present at each meeting of the Board.

D. *Terms.*—The initial appointments to the Practical Nurses' Examining Board shall be for the following terms: one graduate nurse and one practical nurse member for one year; one graduate nurse member and one practical nurse member for two years; and two graduate nurse members and one practical nurse member for three years. Thereafter, except in those instances when appointment is made to fill an unexpired term, each member of the Practical Nurses' Examining Board shall be appointed for a term of three years or until her successor has been appointed and qualified. In the event that any vacancy should occur in the membership of the Practical Nurses' Examining Board in any manner other than by the expiration of time, the Board of Commissioners shall fill such vacancy in the usual manner, for the duration of the unexpired term.

E. *Applicability.*—Except where inconsistent with this Part, all other Parts of this Order shall apply to the Practical Nurses' Examining Board.

PART XIII

Physical Therapists Examining Board

A. *Establishment.*—Pursuant to authority contained in Section 6 of Public Law 87–280 [D.C. Code § 2–455], there is hereby established, within the Department of Occupations and Professions, a Physical Therapists Examining Board.

B. *Delegation of functions.*—The Physical Therapists Examining Board is hereby delegated all of the technical and professional functions vested in the Board of Commissioners by Public Law 87–280 [D.C. Code § 2–451 et seq.], including the function of making final determinations in connection with the denial, suspension, or revocation of registrations, and the administrative functions authorized to be performed by the Board of Commissioners in Public Law 87–280 are hereby delegated to the Director of the Department of Occupations and Professions: *Provided,* That the functions of adopting and prescribing rules and regulations pursuant to the authority contained in Section 7 of Public Law 87–280 [D.C. Code § 2–456], and the functions of establishing or changing the annual expiration date of registrations and the fixing, increasing, and decreasing of fees as provided in Sections 12 and 19 respectively of Public Law 87–280 [D.C. Code §§ 2–461 and 2–468], shall remain vested in the Commissioners.

C. *Composition and qualifications.*—The Physical Therapists Examining Board shall be composed of five members appointed by the Board of Commissioners. They shall be physical therapists, with at least five years experience in physical therapy in the District of Columbia. From and after February 20, 1963, all such members shall be duly registered under the provisions of Public Law 87–280 [D.C. Code § 2–451 et seq.].

D. *Terms of appointment.*—Members shall hold office for 3 years, except that of the initial appointments of members following the effective date of this Order, one shall serve for one year, such term to expire February 19, 1964; one for two years, such term to expire February 19, 1965; and one for three years, such term to expire February 19, 1966. Of the two new appointments of members to the Board effective February 1966, one member shall serve for three years, such term to expire February 19, 1969; and one member shall serve for two years, such term to expire February 19, 1968. Following establishment of this Board, all provisions of Part V of this Order shall apply.

E. *Applicability.*—Except where inconsistent with this Part, all other Parts of this Order shall apply to the Physical Therapists Examining Board.

REORGANIZATION ORDER NO. 60.—PUBLIC HEALTH ADVISORY COUNCIL

Organization Order No. 142, rescinded Reorganization Order 60, L.S. 4712–B–3, July 28, 1953, as amended July 14, 1960, and Organization Orders 123 and 129 and replaced them with Organization Order 142 as set out in this appendix.

REORGANIZATION ORDER NO. 61.—PUBLIC WELFARE ADVISORY COUNCIL

Reorg. Ord. No. 61, L. S. 4712–B–4, July 28, 1953, as amended Sept. 29, 1955; Mar. 1, 1960, and July 14, 1960, ordered that:

There is hereby created in the Government of the District of Columbia a permanent committee of citizens, representing the community at large, to be known as the Public Welfare Advisory Council.

PART I

Purpose.—To increase citizen participation in the municipal government's public welfare program and to act in an advisory capacity to the Commissioners and the Director of Public Welfare on public welfare matters affecting the general public.

PART II

Function.—It is the intent of the Board of Commissioners that the Public Welfare Advisory Council shall in general advise and assist them and the Director in the following respects:

1. Study and make appropriate recommendations with respect to proposals for new policies and statutes, or changes in existing policies and statutes, affecting the public welfare program.

2. Advise on community welfare needs and desires and the formulation and execution of programs necessary to satisfy those needs and desires.

3. Advise and assist in coordinating the programs and activities of the Department of Public Welfare with those of community groups and organizations.

4. Interpret the activities of the Department of Public Welfare to the public.

5. Aid in stimulating public interest, understanding, and participation of the community in solving public welfare problems.

6. Study community public welfare needs and resources and assist in developing budgetary needs of the Department of Public Welfare.

7. Evaluate, upon request by the Board of Commissioners, the qualifications of candidates for the position of Director of Public Welfare and make appropriate recommendations.

*Sept. 15, 1953.

8. Study and evaluate the operations and activities of the Department of Public Welfare and make appropriate recommendations with respect to changes which may appear to be desirable.

PART III

Composition.—To consist of fifteen members (residents of the District of Columbia for a period of at least 3 years immediately prior to appointment) appointed by the Board of Commissioners on the basis of personal qualifications. Persons appointed to membership on the Council shall be selected insofar as possible in such a way as to provide in the aggregate a maximum degree of perspective on, and insight into, the public welfare needs and desires of the community. The Commissioners may from time to time invite civic groups of the community or the public at large to nominate persons for membership on the Council. There shall be no ex-officio members, and no members representing any special interest. Members shall hold no full or part-time office for which compensation is paid from funds of or grants to the District of Columbia.

PART IV

Term of Office.—To be fixed at three years. Should a vacancy occur through the death, incapacity, removal, or resignation of a member, a successor shall be appointed to complete the unexpired term of the member. After the expiration of his term each member shall continue to serve until his successor is appointed and has qualified. No person who has served six years or more consecutively as a member shall be reappointed as a member until after the expiration of one year from the end of such service.

PART V

Oath of office.—Members shall take an oath of office as follows:

"I, _____, having been duly appointed by the Board of Commissioners as a member of the Public Welfare Advisory Council, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Council to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties; so help me God."

PART VI

Compensation.—Members shall serve without compensation, but appropriate expenses will be reimbursed as indicated below.

PART VII

Organization.—The Public Welfare Advisory Council shall determine its own organization and perfect its own rules of procedure. The Council shall elect its own officers annually from among its own members. It shall convene at least nine times each year at regularly scheduled meetings. It shall hold additional meetings at the call of the Board of Commissioners, the presiding officer of the Council, or a majority of the Council membership.

PART VIII

Administration.—The Director of Public Welfare shall assist the Council in matters of administration of the Council and shall provide it with the necessary stenographic, clerical, and housekeeping services. Expenses incurred by the Council as a whole, or by individual members, when authorized by the Commissioners or their designated agent, will be met from funds provided for the administration of District affairs.

PART IX

Reports.—Reports and recommendations of the Council shall be furnished to the Board of Commissioners and to the Director of Public Welfare and may be released at such time and under such circumstances as the Board of Commissioners or the Council may determine.

PART X

Effective date.—The provisions of this Order shall become effective on and after August 15, 1953.

ORGANIZATION ORDER NO. 101.—OFFICE OF THE RECORDER OF DEEDS

Organization Ord. No. 101, 63–197, Jan. 24, 1963, as corrected and amended Mar. 13, 1963 (63–703), repealed Organization Ord. No. 130, dated Apr. 26, 1962, relative to the Office of the Recorder of Deeds, and ordered that Organization Ord. No. 101, 54–1980, dated Sept. 16, 1954, as amended (Oct. 14, 1954, Nov. 30, 1954, June 10, 1955, Feb. 19, 1960, and May 29, 1962) be superseded in its entirety and replaced as follows:

PART I

Delegations of authority

A. *Recording of deeds.*—Section 548 of the Act of Congress approved March 3, 1901, as amended (§ 45–701, D.C. Code 1961 edition [now 1967 ed.], provides among other things that there shall be a "Recorder of Deeds of the District appointed by the Commissioners of the District of Columbia, who shall record all deeds, contracts, and other instruments in writing affecting the title or ownership of any real estate or personal property in the District which shall have been duly acknowledged and certified, and who shall perform all requisite services connected therewith, and shall have charge and custody of all the records, papers, and property appertaining to his office . . . All of the duties and functions of the Recorder of Deeds and of officers and employees in his office shall be performed subject to the supervision and control of the Commissioners of the District."

B. *D.C. Business Corporation Act.*—The Recorder of Deeds is hereby continued as the agent of the Commissioners to perform all functions vested in the Commissioners by the District of Columbia Business Corporation Act, as amended (Title 29, Ch. 9, D.C. Code 1961 edition [now 1967 ed.]), except the functions of promulgating regulations and increasing or decreasing fees, which shall remain vested in the Commissioners.

The Recorder of Deeds is hereby authorized to redelegate to the Superintendent of Corporations, from time to time, any and all of the functions delegated to the Recorder of Deeds by this Part.

C. *D.C. Real Estate Deed Recordation Tax Act.*—The Recorder of Deeds is hereby continued as the agent of the Commissioners of the District for the purpose of administering, to the extent herein provided, the provisions of the District of Columbia Real Estate Deed Recordation Tax Act (Title III, Act of Congress approved Mar. 3, 1962; Pub. L. 87–408; 76 Stat. 11 [D.C. Code Sec. 45–721 et seq.]), namely:

(a) Receives and examines all returns required to be filed with any deed submitted for recordation. Forwards all returns to Finance Office upon completion of examination and processing.

(b) Maintains for purposes of Office of Recorder of Deeds such staff, records, and accounts as may be required or necessary in connection with the recordation of deeds and the receiving and accounting for taxes applicable to such deeds.

(c) Receives all taxes applicable to deeds presented and accepted for recordation, except such taxes as are assessed as a deficiency and collected by the Finance Office, and records the amount thereof on the deed.

(d) Except where the Finance Officer has waived as to a party to a deed the requirement for the filing of a return by such party, or has extended the time for filing of a return by a party, rejects for recordation any deed for which a return is required to be filed if such deed is not accompanied by a return in proper form, executed by all the parties to the deed.

(e) Except where the Finance Officer has extended the time for payment of the tax applicable to a deed submitted for recordation, or has accepted security for the payment of the tax, rejects for recordation any deed for which a tax is required to be paid, if the full amount of the applicable tax is not tendered with the deed.

(f) Checks returns for arithmetical accuracy in the computation of the amount of tax due. Where an arithmetical computation, as made on a return, is erroneous, may, in his discretion, recompute the tax and, upon payment of the tax as recomputed, accept for recordation the deed to which the return applies, noting on the return the action taken.

(g) Accounts for and transmits to the Finance Officer in accordance with established procedures, all taxes collected upon recordation of deeds.

(h) Except as otherwise modified pursuant to this order, performs such duties and functions and carries out such procedures relating to the recordation of deeds as are now or may hereafter be prescribed for the conduct of the Office of the Recorder of Deeds, D.C.

(i) Except as to deeds which are exempt from tax and which may be recorded without the filing of a return, refers to the Finance Officer for review when requested by him in writing, any deed for which a return is required to be filed and for which exemption from tax is claimed, and records such deed only upon notification by the Finance Officer that the deed is exempt from tax, or, if such deed is determined to be taxable, records deed only upon payment of applicable tax.

(j) Administers oaths and affirmations to parties to deeds when required in connection with a return or other document presented to him for purposes of recordation of a deed.

D. *D.C. Non-Profit Corporation Act.*—Effective February 3, 1963, the Recorder of Deeds is hereby designated the agent of the Commissioners of the District of Columbia to perform every function vested in said Commissioners by the District of Columbia Non-Profit Corporation Act, approved August 6, 1962 (Pub. L. 87–569; 76 Stat. 265 [D.C. Code Sec. 29–1001 et seq.]).

The Recorder of Deeds is hereby authorized to redelegate to the Superintendent of Corporations, from time to time, any and all of the functions which are delegated to the Recorder of Deeds by this part.

E. *Uniform Limited Partnership Act.*—The District of Columbia Uniform Limited Partnership Act approved September 28, 1962 (Pub. L. 87–716; 76 Stat. 655 [D.C. Code Sec. 41–401 et seq.]) provides that the Office of the Recorder of Deeds shall serve as an office of record for the recording, filing, indexing, and handling of limited partnerships.

F. *Metropolitan Police Relief Association Act.*—The Recorder of Deeds is hereby designated the agent of the Commissioners to perform the functions vested in the Commissioners by section 13 of the Act approved July 5, 1962 (Pub. L. 87–523; 76 Stat. 135), incorporating the Metropolitan Police Relief Association of the District of Columbia.

PART II

Redelegation of authority.—With respect to the functions delegated to him by the Commissioners, as set forth in subparts B, C, D, and F, of Part I, the Recorder of Deeds shall have full authority over all such functions, including the power to redelegate such of the powers delegated to him by the Commissioners as in his judgment may be warranted in the interest of efficiency and good administration. This authority shall be exercised in accordance with applicable laws, rules and regulations and shall be subject to the administrative direction and control of the Commissioner to whom the Office of the Recorder of Deeds is assigned.

PART III

Organization.—There shall be established in the Office of the Recorder of Deeds as many organizational components and positions with such duties and responsibilities as the Recorder shall from time to time determine; *Provided,* That all actions establishing, altering, changing, or modifying such organizational components shall be submitted at least ten days prior to the effective date of such actions, to the Director, Department of General Administration, for appropriate action pursuant to applicable Commissioners' Orders.

PART IV

Functions.—The functions of the Office of the Recorder of Deeds shall include, but not be limited to, the following in accordance with the delegations contained in Part I herein:

A. Serves as an office of record for the recording, filing and handling of all public records in the form of deeds, deeds of trust, motor vehicle liens, chattel mortgages, contracts and other instruments in writing affecting a right, title or interest in real and personal property in the District of Columbia.

B. Maintains an index to real property in the District of Columbia through which the recorded history of ownership of such property is made available to the public.

C. Serves as an office of record for the recording, filing, indexing and handling of limited partnerships in accordance with Pub. L. 87–716 [D.C. Code Sec. 41–401 et seq.]

D. Performs all functions specified in subparts B and D of Part I, of this Order pertaining to the Business Corporation Act and the Non-Profit Corporation Act.

E. Performs all functions specified in subpart C of Part I of this Order pertaining to the Real Estate Deed Recordation Tax Act.

F. Files, without charge, services discharge papers for veterans of the armed forces.

G. Recommends to the Commissioners and drafts new laws and regulations and amendments to existing laws and regulations and recommends increases and decreases in fees pertaining to the functions of the Office.

H. Provides photostatic certified copies of legal documents of record for use in various Courts of law in the District of Columbia, and the several States, and foreign countries.

I. Collects all fees, license taxes, penalties, and other charges, as prescribed in or under the authority of the heretofore cited legislation, and deposits same with the D.C. Treasurer.

ORGANIZATION ORDER NOS. 102 AND 103

Organization Ord. No. 102, 54–2034, Sept. 27, 1954, established a Board for the Condemnation of Insanitary Buildings, and is set out as a note under section 5–617.

Organization Ord. No. 103, 54–2035, Sept. 27, 1954, establishes a Condemnation Review Board, and is set out as a note under section 5–617.

ORGANIZATION ORDER NO. 104.—DEPARTMENT OF VOCATIONAL REHABILITATION

Organization Ord. No. 104, 54–2310, Oct. 28, 1954, as amended Nov. 19, 1957, and Mar. 30, 1965, ordered that:

PART I

Department of Vocational Rehabilitation.—There is established under the direction and control of a Commissioner, a Department of Vocational Rehabilitation headed by a Director. The Director shall have full authority over such Department and all functions and personnel assigned thereto, including the power to redelegate to other officials and employees of the Department such powers delegated in Part IV of this Order, as, in his judgment, are warranted in the interest of efficiency and good administration. All authority vested in the Director shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

Purpose.—The Department of Vocational Rehabilitation is established for the purpose of planning, implementing, and carrying out in the most efficient and economical manner those functions and services which are necessary to rehabilitate physically handicapped individuals, including the blind, residing in the District of Columbia so that they may prepare for and engage in remunerative employment to the extent of their capabilities, pursuant to the provisions of P. L. 565, 83d Congress.

PART III

Organization.—There shall be established in the Department of Vocational Rehabilitation as many organizational components and positions with such duties and responsibilities as the Director, with the approval of the Commissioner to whom assigned, shall from time to time determine.

PART IV

Functions.—The Department shall be responsible for performance of the functions outlined below:

A. Develops, proposes, and executes programs the ultimate purpose of which is to rehabilitate physically handicapped residents of the District to the point where they can be remuneratively employed, and secures such employment for them.

B. Coordinates activities of the Department of Vocational Rehabilitation with those of other District of Columbia organization components responsible for related functions, such as the Department of Public Health, Veterans' Service Center, and Department of Public Welfare.

C. Develops, presents, and justifies budget estimates of the Department.

D. Advises and assists the Board of Commissioners on all matters relating to vocational rehabilitation of the physically handicapped.

E. Maintains fiscal, statistical, and other records as may be necessary to permit the effective operation of the Department.

F. Carries out such functions of the District of Columbia Government as such Government may undertake under the Randolph-Sheppard Vending Stand Act, 20 U.S.C. § 107, as amended.

G. Makes determination for any individuals, in accordance with Section 221 of the Social Security Act, as amended, as to whether or not he is under a disability, the day such disability began, and the day on which such disability closes. Paragraph G was added by Order No. 55–1537, dated August 18, 1955, and provided that:

"This Order shall be effective as of the date specified in agreement entered into between the Government of the District of Columbia and the Secretary of the Department of Health, Education, and Welfare, authorizing the Department of Vocational Rehabilitation to make such determinations of disability."

PART V

Appointment of contracting officers:

A. The Director of the Department of Vocational Rehabilitation is hereby appointed a Contracting Officer for the District of Columbia subject to all laws, rules, and regulations and such instructions as the Commissioners may from time to time give and with the limitation that the contracts he may enter into and administer are restricted to those providing for (1) services of a professional, technical and scientific nature provided by institutions or individuals to physically handicapped persons participating in the programs of the Department; or (2) such appliances or other specialized items as may be peculiar to the vocational rehabilitation program.

B. The Assistant Director of the Department is hereby appointed Alternate Contracting Officer and is authorized to exercise all the authority vested by paragraph A of this Part in the Contracting Officer for whom he is named alternate, subject to all limitations upon the powers of such Contracting Officer, during the disability or other absence from duty of such Contracting Officer and also from the date of separation of such Contracting Officer from the services of the District of Columbia and until the successor to such Contracting Officer is appointed.

C. Such contracts shall be subject to certification by the Accounting Officer that they are correct and proper for payment in the verified amount, determination as to legal sufficiency in such manner as meets the requirements of the Office of the Corporation Counsel and in the case of each contract in excess of $50,000, subject also to approval of the executed formal contract by the Board of Commissioners.

PART VI

Personnel, property, and records.—All personnel, property, and records determined by the Director of the Bureau of the Budget to relate to the services provided by the new Department established herein, and transferred to the District of Columbia Government, are assigned to such Department.

PART VII

Effective date.—This Order shall be effective on and after November 1, 1954.

PART VIII

Vocational evaluation center:

A. There is hereby established, under the direction and control of the Director, Department of Vocational Rehabilitation, a Vocational Evaluation Center for the purpose of providing vocational evaluation of severely disabled clients, patients and applicants, who are and have been District of Columbia residents for one year preceding admission, to assist said Department in planning and providing for the needs of such individuals so that they can be returned to a productive life in their homes and in the community. The authority to operate the Center shall continue through June 30, 1959, and shall be exercised in accordance with applicable laws, rules and regulations.

B. There shall be established in the Center such evaluation shops, facilities and services and such positions, as the Director of the Department shall deem necessary.

C. The Director of the Department of Vocational Rehabilitation is authorized to use District funds appropriated to the Department of Vocational Rehabilitation as may be available and necessary, and Federal matching funds for fiscal years 1958 to 1959, to provide for rental of space to house the Vocational Evaluation Center, including the re-location of the existing Medical-Vocational Rehabilitation Center to another site, and for the payment of related expenses such as personal services, supplies and equipment that are necessary for the operation of the Center. Said Director is further authorized, on behalf of clients, patients and applicants determined to be in need of evaluation as provided herein, to apply for necessary medical services from the Department of Public Health and necessary social work services from the Department of Public Welfare, and said Departments respectively are hereby authorized to furnish such necessary services.

D. Title to and responsibility for maintenance and repair of all property, equipment and supplies presently assigned to the Pilot Demonstration Medical-Vocational Evaluation Project shall remain with the Department of Vocational Rehabilitation.

Effective on or about April 1, 1958, the Pilot Demonstration Medical-Vocational Evaluation Project, established by Commissioners' Order No. 55–1240 dated June 30, 1955, shall be disestablished and said Order shall be thereby repealed in its entirety.

ORGANIZATION ORDER NO. 105.—DEPARTMENT OF MOTOR VEHICLES

Organization Ord. No. 105, 55–885, May 17, 1955, as amended June 10, 1958, Sept. 9, 1958, May 19, 1959, and Nov. 7, 1961, ordered that: [This organization order was repealed and replaced by Order No. 65–847, June 24, 1965, as follows:]

PART I

Department of Motor Vehicles.—The Department of Vehicles and Traffic established by Reorganization Order No. 54, dated June 30, 1953, as amended, continued by Organization Order No. 105, dated May 17, 1955, as amended, and redesignated as the Department of Motor Vehicles by Commissioners' Order No. 58–919, dated June 10, 1958, shall continue under the direction and control of the Engineer Commissioner.

PART II

Purpose.—The Department of Motor Vehicles is established to provide, under the direction and control of the Engineer Commissioner, an organization of personnel, resources and facilities designed to administer, for the Board of Commissioners, the motor vehicle laws and regulations, including related traffic safety education and public support programs of the District of Columbia.

PART III

Director, Department of Motor Vehicles.—A. The Director, Department of Motor Vehicles, as head of the Department and, where so designated in municipal regulations, as agent of the Commissioners of the District of Columbia, is responsible for the administration of the motor vehicle laws and regulations of the District of Columbia including, but not limited to, the District of Columbia Traffic Act, 1925, as amended, the Owners' Financial Responsibility Act of the District of Columbia, as amended, the Motor Vehicle Safety Responsibility Act of the District of Columbia, as amended, and related regulations, and for the administration of traffic safety education and public support programs related to such laws and regulations.

B. Except as hereinafter otherwise provided and subject to applicable laws, rules, regulations and Commissioners' Orders or directives issued pursuant to Commissioners' Orders, the Director shall have full authority over the Department and all functions, resources, officials and per-

sonnel assigned thereto, including the power to redelegate authority and assign functions to officials and personnel of the Department in such degree as in his judgment is necessary to establish and maintain efficiency and good administration.

C. The Director may establish under the major organizational components, hereinafter described, so many organizational components with specified functions as he may deem appropriate and thereafter may alter, change or modify such organizational components: *Provided,* That all actions establishing, altering, changing or modifying such organizational components shall be submitted at least ten days prior to the effective date of such actions, to the Director, Department of General Administration, for review as to conformance with sound principles of management and organization and applicable Commissioners' Orders and policies. Questions which cannot be resolved between the departments concerned shall be referred to the Board of Commissioners.

PART IV

Organization and functions.—The Department of Motor Vehicles shall be comprised of the following organizational components, in which responsible officials and personnel assigned thereto shall perform such of the functions described herein as may be delegated by the Director:

A. *Office of the Director:*

1. Develops and proposes major programs and policies to the Board of Commissioners relating to the titling, registration, inspection and operation of motor vehicles and trailers; the issuance, renewal, suspension and revocation of operator's permits and operating privileges; the administration of financial responsibility laws of the District of Columbia; and, the conduct of traffic safety education and public support activities. Proposes to the Board of Commissioners related new and amended legislation and regulations.

2. Plans, prescribes departmental policies for, directs, coordinates, controls, and is responsible for administration of all programs relating to the execution of District of Columbia motor vehicle laws and regulations; the conduct of traffic safety education and public support activities; and, the development and direction of an emergency transportation system. Advises and assists the Engineer Commissioner on all matters concerning the administration of such laws, regulations and programs. Approves or disapproves recommendations developed within the Department for legislation, regulations and major policies, and transmits same to the Board of Commissioners; and, develops, presents, and justifies Department budget estimates.

3. Represents the Engineer Commissioner in coordinating District of Columbia motor vehicle administrative and related activities with those of other communities in the Washington Metropolitan Area and with agencies of the Federal Government.

4. Represents the Commissioners of the District of Columbia in negotiating reciprocal agreements and arrangements with other jurisdictions, pursuant to the District of Columbia Traffic Act, 1925, as amended; and enters into and administers such agreements and arrangements on behalf of the District of Columbia.

5. Approves, modifies, or disapproves recommendations, orders, and appeals relating to the suspension, revocation, or restoration of operator's permits and operating privileges and of professional driving instructor's licenses.

6. Administers non-resident employer process service provisions of the District of Columbia Unemployment Compensation Act, as amended.

7. Provides witnesses to testify in the courts on matters related to the functions and operations of the Department.

8. Directs the activities of the District's Civil Defense Emergency Transportation Service.

B. *Office of Business Administration:*

1. Plans, coordinates and administers comprehensive programs covering the Department's budget, accounting, personnel, procurement, property, and operational-audit activities and other general administrative services.

2. Prepares, for the Director, programs and plans of operations and resources management, including budget requests and justifications; advises and assists the Director and other officials in developing, establishing and administering departmental plans, programs and policies; advises and assists the Director in preparing recommendations and justifications for legislation, regulations, and policies related to Department functions.

3. Represents the Department to other agencies and individuals in administrative matters; collaborates with officials and employees of the Department and other District Government agencies in developing and implementing general management programs; conducts departmental management improvement activities, including studies, reports and recommendations; and, implements adoption of approved plans and recommendations.

4. Plans, develops, and installs administrative processes and controls such as work measurement and reporting systems, records management programs, and procedures for audit-review of operations and transactions.

5. Develops and prepares periodic and special financial, statistical, and other management reports related to the functions and operations of the Department and the Office.

6. Acts for the Director in planning, coordinating and conducting activities of the District of Columbia Civil Defense Emergency Transportation Service.

C. *Office of Traffic Safety Education:*

1. Plans, coordinates and administers District-wide traffic safety education and public support programs of the Department and the District and related education and information projects and activities.

2. Serves as a central clearinghouse of information on traffic safety for public and private organizations in the District; initiates or recommends proposals and plans for special conventions and conferences on traffic safety; edits and publishes official traffic safety publications of the District; and, prepares and edits movie trailers, radio scripts, pictures, news releases, and other material related to the traffic safety programs of the District for distribution via press, radio, television and other media.

3. Administers the Department's traffic safety field service, including planning, promoting and conducting education and training courses for large employment centers in the community. Conducts the Department's Traffic Safety School and its Driver Safety Clinic for special education and psychological training of drivers.

4. Acts for and represents Department and District to other agencies and individuals in matters relating to the Department's traffic safety functions; provides professional advice and guidance to the Traffic Coordinating Committee, which develops the comprehensive traffic safety program of the District; participates in planning, developing and administering activities of regional traffic and transportation organizations aimed at developing and coordinating traffic safety and control activities throughout Metropolitan Washington; and, participates in planning traffic safety promotion activities of the Citizens Traffic Board.

5. Coordinates the District's Annual Traffic Inventory, with the cooperation of other District departments concerned, and assists in establishing action programs designed to improve official District traffic safety activities and promote wider public support.

6. Advises and assists the Director in preparing recommendations and justifications and legislation, regulations, and policies related to traffic safety functions; and develops and prepares periodic and special statistical and other reports related to functions of the Department and the Office.

D. *Permit Control Division:*

1. Plans, coordinates and administers comprehensive procedures, processes and requirements covering the examination, issuance, renewal, and subsequent control of District of Columbia operator's permits and motor vehicle driving instructor's licenses.

2. Conducts examinations, and approves or disapproves all applicants for new operator's permits and motor vehicle driving instructor's licenses; issues new and renewal operator's permits and motor vehicle driving instructor's licenses; operates permit renewal field offices.

3. Administers the District's "Point System;" holds regular and special hearings and conferences concerning

alleged unsafe physical or mental conditions or driving attitudes or abilities of District-licensed operators, and holds hearings and conferences related to individual driver violations of law and regulations; recommends or orders suspension, revocation, or restoration of operator's permits and operating privileges and motor vehicle driving instructor's licenses.

4. Acts for and represents the Department to other agencies and individuals in matters related to the Division's functions, and advises and assists the Director in preparing recommendations and justifications for legislation, regulations and policies related to such functions.

5. Develops and prepares periodic and special statistical and other reports related to the Division's functions.

6. Provides administrative services to the Hackers License Appeals Board; provides administrative assistance to the Motor Vehicle Owners' and Operators' Appeals and Review Board.

E. *Safety Responsibility Division:*

1. Plans, coordinates and administers comprehensive procedures, processes and requirements necessary to execute the provisions of the Motor Vehicle Safety Responsibility Act and the Owners' Financial Responsibility Act.

2. Reviews reports and other evidence, and evaluates personal injury and property damage resulting from reported accidents involving vehicles; determines and takes subsequent administrative enforcement and punitive actions required under the provisions of the Motor Vehicle Safety Responsibility Act, including suspending and restoring operator's permits and operating privileges, and vehicle registrations. Determines amounts and records security deposits required and collected under the provisions of the Act and administers the disbursement and refund of such funds.

3. Issues summonses to persons who fail to comply with provisions of the Motor Vehicle Safety Responsibility Act and, upon continued failure to comply, initiates issuance of warrants for arrest of such persons.

4. In all cases involving failure to satisfy judgments, conviction or forfeiture of bail for specified offenses, or failure to maintain proof of financial responsibility for the future, as required by the provisions of the Motor Vehicles Safety Responsibility Act and the Owners' Financial Responsibility Act, as amended, reviews the evidence submitted and the records available in the Department and takes appropriate action, such as the suspension or the restoration of operator's permits and operating privileges, and vehicle registrations.

5. Acts for and represents the Department to other agencies and individuals in matters related to the Division's functions, and advises and assists the Director in preparing recommendations and justifications for legislation, regulations and policies related to such functions.

6. Develops and prepares periodic and special statistical and other reports related to the Division's functions.

F. *Vehicle Control Division:*

1. Plans, coordinates and administers comprehensive procedures, processes and requirements covering the titling and registration of motor vehicles and trailers, the issuance of vehicle identification tags, the exercise of regulator controls over motor vehicle dealers, and the inspection of motor vehicles and trailers for mechanical safety and the prevention of noise and air pollution.

2. Approves or disapproves applications, and issues District of Columbia Certificates of Title to motor vehicles and trailers; makes initial determinations of exemptions under the Excise Tax on such Certificates of Title; registers such vehicles and trailers, and issues District of Columbia registration certificates and owners' identification tags.

3. Approves or disapproves applications for registration of District of Columbia motor vehicle and trailer dealers; registers such dealers and administers related provisions of the traffic regulations governing such matters as issuance of dealer's identification tags, special-use certificates, and dealer's registration cards.

4. Approves or disapproves issuance of vehicle-registration reciprocity stickers to non-residents.

5. Operates vehicle inspection stations; makes periodic safety inspections of all vehicles registered in the District of Columbia, including government, "diplomatic," and those licensed by the Public Service Commission of the District of Columbia, and approves, rejects, or condemns such vehicles; examines and tests, and approves or disapproves, motor vehicles equipped with special operating equipment and safety devices for handicapped drivers.

6. Tests, or reviews test findings, and recommends approval or disapproval of vehicle lighting and safety devices proposed for sale in, or for use on vehicles registered by the District of Columbia.

7. Acts for and represents the Department to other agencies and individuals in matters related to the Division's functions, and advises and assists the Director in preparing recommendations and justifications for legislation, regulations and policies related to such functions.

8. Develops and prepares periodic and special statistical and other reports related to the Division's functions.

G. *Data Processing Division:*

1. Plans, coordinates and administers comprehensive procedures, processes and requirements necessary to provide centralized data processing and related support services to all units of the Department, including collaborating with officials of the Department and other agencies in determining intra-departmental and related interagency operations and activities for application of data processing methods.

2. Plans and establishes technical systems, procedures, controls, and schedules necessary to accomplish approved applications, including determining equipment, accessory and service requirements.

3. Maintains, and continuously updates, detailed records related to individual District-licensed vehicle operators, traffic regulation violators licensed by other jurisdictions, owners of District-registered vehicles, vehicle safety inspection transactions, safety responsibility cases, and general administrative activities, and provides central records-reference service covering records-based functions of the Department to all departmental units as well as to enforcement and other agencies and jurisdictions on a continuous 24-hour-a-day, 7-day-a-week basis.

4. Utilizes maintained records to service and support departmental operating divisions and offices by computer-based preparation and issuance of such material as: warning letters to traffic violators; operator's permit expiration and renewal notices; abstracts of individual driver records for use of other jurisdictions, the courts, enforcement and other agencies and individuals; Certificates of Title to vehicles; annual vehicle re-registration applications; detailed listings of all District-registered vehicle owners; (reports concerning mechanical safety of vehicles inspected; notifications of unreported accident data; periodic summaries of Financial Responsibility Fund status;) orders suspending, revoking, or restoring operator's permits, operating privileges, and vehicle registrations; and, general and detailed reports and statistics concerning the various records-based operations of the Department, for management information and use.

5. Acts for and represents the Department to other agencies and individuals in matters related to the Division's functions, and advises and assists the Director in preparing recommendations and justifications for legislation, regulations and policies related to such functions.

6. Develops and prepares periodic and special statistical and other reports related to the Division's functions.

PART V

Appeals:

A. Pursuant to the provisions of the Motor Vehicle Safety Responsibility Act of the District of Columbia, there is hereby established a Motor Vehicle Owners' and Operators' Appeals and Review Board which shall be composed of three regular members and an alternate member for each of said regular members, all employees of the District Government, to be appointed by the Board of Commissioners and subject to removal at the discretion of the Commissioners. No regular member or alternate member of such Board shall review any of his own orders or acts. The Commissioners shall designate one person to serve as Chairman from among the regular members; in the absence of said Chairman, that person's alternate shall serve as Chairman.

B. The Motor Vehicle Owners' and Operators' Appeals and Review Board shall hear, consider and decide upon all

protests and appeals from any order or act of the Director, Department of Motor Vehicles, or of any designated agent of said Director which is issued or which is taken by said Director or by said agent in administering the Motor Vehicle Safety Responsibility Act of the District of Columbia. In every case, said Board shall make findings of fact and a conclusion, or conclusions, based upon the testimony of witnesses or upon affidavits, or both, and upon personal inspection by the Board members if such inspection be made, and shall either set aside, modify, or affirm the action which is the basis of appeal or protest.

C. Administrative assistance to said Board shall be provided by the Permit Control Division, Department of Motor Vehicles.

D. Rules of procedure, including the development of methods of perfecting appeals to said Board and for insuring that appropriate records be kept, shall be formulated by said Board, in accordance with the provisions and requirements of the Motor Vehicle Safety Responsibility Act of the District of Columbia.

PART VI

Repeal of Previous Orders.—All Commissioners' Orders and parts of Commissioners' Orders in conflict with any of the provisions of this order are, to the extent of such conflict, hereby repealed, but nothing contained in this Order shall in anywise alter, amend or repeal any municipal regulation adopted or promulgated by the Commissioners.

PART VII

Effective date.—This Order to be effective on and after July 1, 1965.

ORGANIZATION ORDER NO. 106.—MOTOR VEHICLE PARKING AGENCY

Organization Ord. No. 106, 55–886, May 17, 1955, as amended July 14, 1960, ordered that:

The Motor Vehicle Parking Agency, established by Reorganization Order No. 54, dated June 30, 1953, including all functions, positions, and personnel, and all duties, powers, and authorities of all officers and employees assigned thereto, shall continue to be responsible to the Board of Commissioners through the Engineer Commissioner.

Said Agency shall continue to consist of twelve (12) members, namely, a representative of the Department of Commerce, to be designated by the Secretary thereof; a representative of the National Park Service, to be designated by the Secretary of the Interior; the Director of Vehicles and Traffic of the District of Columbia; and nine (9) other members to be designated by the Board of Commissioners of the District of Columbia.

The Motor Vehicle Parking Agency shall continue to be responsible for making recommendations to the Board of Commissioners, through the Engineer Commissioner, regarding ways and means of improving off-street parking facilities which will serve to insure, in the public interest, the free circulation of traffic in and through the streets of the District of Columbia. Further, said Agency shall continue to function in a general advisory capacity on motor vehicle off-street parking problems referred to it by the Board of Commissioners.

There are established in the Motor Vehicle Parking Agency the following organizational components:

A. *Office of the Executive Director:*

1. Initiates, develops and proposes major policies on off-street parking matters to the Motor Vehicle Parking Agency and to the Engineer Commissioner.

2. Plans and coordinates the development of programs, plans and projects to relieve the off-street parking situation.

3. Develops, presents, and justifies the agency budget estimates; administers business affairs of the agency.

4. Advises and assists the Engineer Commissioner on all District of Columbia matters relating to off-street parking, and represents the Engineer Commissioner and the Motor Vehicle Parking Agency in coordinating off-street parking problems, policies and programs with overall planning of other government, and nongovernment agencies.

5. Executes policies and programs approved by the Engineer Commissioner and the Board of Commissioners.

6. Collaborates with the Department of Vehicles and Traffic in the development of schematic layouts to facilitate movement of vehicles to and from off-street parking facilities.

7. As delegated, operates and maintains municipally owned parking facilities.

8. Supervises the Office of Research and Analysis.

B. *Office of Research and Analysis:*

1. Initiates, plans, and conducts research projects which serve to develop relationship of off-street parking facilities to business, property values, and urban and regional planning. Prepares analyses thereof and provides for publication.

2. Plans, develops, and conducts continuous surveys of supply, demand, and turnover of off-street parking facilities in the District of Columbia.

3. Develops and conducts studies of parking rates, and their relation to business and other property values.

4. Develops, maintains, and issues current information on the developments taking place in other communities relating to or affecting off-street parking, including periodic information regarding the parking situation in the District of Columbia.

After July 14, 1960, every appointment of a member to the Motor Vehicle Parking Agency shall be for a term of three (3) years, and every vacancy shall be filled only for the unexpired portion of the term, but after the expiration of his term each such member shall continue to serve until his successor is appointed and has qualified. Every person who, on the effective date of this Order, is a member shall continue to serve for the balance of the term to which he has been appointed (any vacancy in said balance of said term to be filled by appointment for the unexpired portion thereof) and upon the expiration of said term the three (3) year term herein provided shall immediately commence, but such member shall continue to serve until his successor is appointed and has qualified. No person who has served six (6) years or more consecutively as a member shall be reappointed as such member until after the expiration of one (1) year from the end of such service. The provisions of this paragraph shall not apply to persons selected for membership from the Department of Commerce, the National Park Service and from among officers and employees of the District of Columbia.

Administrative assistance to said Agency shall continue to be provided by the Department of Vehicles and Traffic, as determined by the Engineer Commissioner.

The provisions of this Order shall become effective on and after May 17, 1955.

ORGANIZATION ORDER NO. 107.—HACKERS' BOARD

1. That, effective as prescribed by paragraph 2 of this order, Organization Order No. 107, dated May 17, 1955, as amended Dec. 18, 1958, Apr. 5, 1960, Sept. 20, 1960, Sept. 18, 1962, Oct. 30, 1962, Nov. 6, 1962, and Mar. 17, 1966 (ords. nos. 66–322, 66–323), ordered:

PART I

The Board of Revocation and Review of Hackers' Identification Cards, established by Reorganization Order No. 54, dated June 30, 1953, as amended, shall continue to be responsible to the Board of Commissioners through the Engineer Commissioner, but shall hereafter be known as the Hackers' License Appeal Board, with the short title of Hackers' Board.

PART II

A. *Membership.*—The Hackers' Board shall consist of five (5) members, namely:

(1) An employee in the Permit Control Division, Department of Motor Vehicles, as designated from time to time by the Director, Department of Motor Vehicles, who shall be chairman;

(2) A member of the Citizens' Traffic Board (hereinafter, Traffic Board), assigned and compensated as hereinafter provided;

(3) Two attorneys designated and compensated as hereinafter provided, to be selected and assigned as required by paragraph (2) of subpart C of this Part.

(4) An Assistant Corporation Counsel, as designated from time to time by the Corporation Counsel.

B. *Quorum.*—Three members shall constitute a quorum, one of whom shall be the Assistant Corporation Counsel member and one of whom shall be one of the two attorney members from the bar associations.

C. *Designation, appointment, and assignment:*

(1)(a) The Executive Secretary of the Traffic Board shall keep the Chairman of the Hackers' Board currently advised of the names of the members of the Traffic Board who are willing to serve as members of the Hackers' Board, and the Chairman shall maintain a list of such members.

(b) The Chairman of the Hackers' Board shall assign such Traffic Board members in rotation to sit in specified cases or at specified times.

(2)(a) The President of the Bar Association of the District of Columbia and the President of the Washington Bar Association of the District of Columbia each having submitted to the President, Board of Commissioners, the names of not less than 16 members of his Association who are willing to serve as members of the Hackers' Board and whom he nominates for appointment to said Board, the President of the Board of Commissioners shall, annually, submit to the Board of Commissioners for its consideration said panels of not less than 16 names each. The Board of Commissioners shall consider such panels and shall make a selection either therefrom or otherwise of not more than 16 attorneys as members of the said Hackers' Board who shall serve until their successors are appointed and who shall be subject to removal by the Board of Commissioners. After the said appointees have taken the oath of office, the Secretary, Board of Commissioners, shall furnish to the Chairman of the Hackers' Board a list naming the attorney members appointed to said Board.

(b) The Chairman of the Hackers' Board shall assign such attorney members in rotation to sit in specified cases or at specified times.

D. *Oath and Compensation.*—The members of the Traffic Board and the attorney members appointed on nomination by the bar associations or otherwise shall be intermittent employees of the District of Columbia, shall take the oath of office prescribed for civil employees of the District of Columbia, and shall receive compensation when actually performing services as members of the Hackers' Board.

E. *Conflict of interest:*

No member shall represent in any capacity any appellant or respondent in any matter before the Board, nor shall any member be, either directly or through a partner, associate, or in any way whatsoever, an attorney, representative, officer, advisor or member of any taxicab association, company or similar organization, nor shall he, directly or indirectly, have any private interests relating in any way to vehicles for hire or the ownership, management or operation of vehicles for hire or the drivers thereof.

PART III

A. The functions and responsibilities of the Hackers' Board shall be to:

(1) Consider appeals from adverse decisions on applications for licenses submitted in accordance with the requirements of subparagraphs (e) and (j) of paragraph 31 of section 7 of the Act approved July 1, 1902, as amended (§ 47–2331 (e) and (j), D.C. Code, 1961 edition [now 1967 ed.]) and affirm such decisions, or approve such applications.

(2) Determine whether a complaint against an individual licensed in accordance with the requirements of subparagraphs (e) or (j) of paragraph 31 of section 7 of such Act approved July 1, 1902, as amended, justifies the suspension or revocation of such license under the authority contained in subparagraph (a) of paragraph 46 of section 7 of such Act (§ 47–2345(a), D.C. Code, 1961 edition [now 1967 ed.]), and, if such action be justified, suspend or revoke such license.

(3) Recommend to the Board of Commissioners changes in criteria or standards to be applied in the denial of applications submitted in accordance with the requirements of paragraphs (e) and (j) of section 47–2331 of the D.C. Code, and in the suspension or revocation of such licenses under the authority of section 47–2345(a) of the D.C. Code.

B. The activities of the Board shall be considered investigations or examinations of municipal matters within the meaning of the Act approved July 1, 1902 (32 Stat. 591; § 1–237, D.C. Code, 1961 edition), and the Board shall possess the powers vested in the Commissioners by that Act.

C. The procedures of the Board shall be in accordance with such rules as may be prescribed by the Corporation Counsel, and the said Corporation Counsel is hereby authorized to prescribe, and from time to time amend, rules governing the procedures of the Board, including the establishment of time limitations where not otherwise set forth, and the development of methods of perfecting appeals to the Board.

D. The decisions of the Board pursuant to subpart A shall be final, except that in any case in which the Board shall prescribe a waiting period of five years or longer before an appellant may again apply for a license, the appellant may appeal to the Board of Commissioners in accordance with the rules of practice and procedure prescribed for the Board.

PART IV

The Department of Motor Vehicles shall provide the necessary administrative services for the Hackers' Board.

2. That paragraph 1 of this Order shall become effective thirty days from the date on which the Commissioners forward to the Chairman of the Hackers' Board the list of attorneys selected and appointed by them in accordance with Part II.C.(2) of Organization Order No. 107, as amended by said paragraph 1 hereof, except that, for the purpose of designating, or of selecting and qualifying, the individuals who shall become members of such Hackers' Board, Part II of Organization Order No. 107, as so amended, shall become effective immediately. After the expiration of such thirty day period, all matters then pending before the Board of Revocation and Review of Hackers' Identification Cards or on appeal from its actions shall be within the jurisdiction of the Hackers' Board which shall take such action in any such matter as it deems advisable.

ORGANIZATION ORDER NO. 108.—CITIZENS' TRAFFIC BOARD

Organization Ord. No. 108, 55–888, May 17, 1955, as amended Feb. 18, 1959, Sept. 12, 1961, Dec. 12, 1961, and Mar. 27, 1962, ordered that:

PART I

Citizens' Traffic Board.—There is hereby established a permanent committee of citizens to be known as the Citizens' Traffic Board.

PART II

Purpose and functions.—The purpose of the Citizens' Traffic Board is to advise the Board of Commissioners generally and the Engineer Commissioner specifically in improving traffic safety and traffic conditions in the District of Columbia. In accomplishing this purpose, the Board shall:

1. Serve as advisers by recommending ways and means of improving traffic conditions and traffic safety.

2. Serve as a traffic safety public support organization, by exercising such leadership within the community as may be necessary or appropriate to develop public understanding and support of the Official Traffic Safety Program of the District of Columbia.

3. Support the Board of Commissioners in obtaining or improving legislative, administrative, planning, or enforcement measures which will result in the safer and more expeditious movement of traffic.

The Board is hereby authorized to accept voluntary subscriptions of business, civic, trade, professional, and other organizations and individuals to implement the above-listed functions.

PART III

Composition and membership:

1. The Citizens' Traffic Board shall consist of not to exceed 25 members appointed by the Board of Commissioners and subject to removal at the discretion of the Board of Commissioners, except that during the period April 1, 1962, to April 1, 1963, the Citizens' Traffic Board

shall consist of not to exceed 27 members: *Provided,* That if, during such period one or more members of such Board is or are separated therefrom by death, resignation or otherwise, such member or members may be replaced so that the membership of the Board shall not, during such period, exceed 26 if one member is so separated and shall not exceed 25 if two or more members are so separated. Members shall hold office for terms of three years, except that of the initial appointments one-third shall serve for one year, one-third for two years, and one-third for three years. Should a vacancy occur through the death, incapacity or resignation of a member, a successor may be appointed to complete the unexpired term and in the same manner as regular appointments. No person shall serve more than two consecutive terms but may be reappointed after a lapse of one year. Appointments scheduled to terminate or begin on Feb. 18, 1962, shall instead terminate or begin on Apr. 1, 1962. April 1 shall subsequently be the regular date of rotation of appointments each year.

2. The Board shall solicit the participation in its activities of those individuals, firms, associations, and other groups considered by the Board qualified and willing to assist in the Board's mission. Invitations to participate in the activities of the Board and the acceptances of such invitations will be made a matter of record by the Board.

PART IV

Organization:

1. The Board of Commissioners shall designate the Chairman and two Vice Chairmen of the Board.

2. The Board shall otherwise determine its own organization, including the establishment of committees.

3. The Board shall determine its own rules of procedure.

PART V

Repeal of Part V of Reorganization Order No. 54.—Part V of Reorganization Order No. 54, dated June 30, 1953, as amended, is repealed in its entirety.

2. All appointments to the Commissioners' Traffic Advisory Board established by Part V of Reorganization Order No. 54, as amended, and continued by Organization Order No. 108, dated May 17, 1955, as amended, are terminated as of the effective date of this amendatory order.

3. This amendatory order shall be effective on and after February 17, 1959.

ORGANIZATION ORDER NO. 109.—ESTABLISHING THE POSITION OF ASSISTANT ENGINEER COMMISSIONER FOR URBAN DEVELOPMENT AND ESTABLISHING AN OFFICE OF COMMUNITY RENEWAL PROGRAMMING AND AN OFFICE OF RENEWAL OPERATIONS

Organization Order No. 109, 66–1249–A, Aug. 25, 1966 ordered that:

Organization Order No. 109, 55–996, dated May 31, 1955, as amended [Feb. 13, 1962] is hereby rescinded and replaced in its entirety as follows:

PART I

Policy.—The Government of the District of Columbia, working in close liaison and cooperation with the National Capital Planning Commission, the National Capital Housing Authority, the Redevelopment Land Agency, the National Capital Transportation Agency, the President's Council on Pennsylvania Avenue, and other interested agencies, in accordance with the District of Columbia Redevelopment Act of 1945, as amended, and the Housing Act of 1954, dedicates itself, and such of its resources and facilities as are available for such purpose, to the prevention and the elimination of slums, blight and other unhealthful or unsafe living and environmental conditions in the District of Columbia.

PART II

Assistant Engineer Commissioner for Urban Development.—One of the Assistant Engineer Commissioners is designated Assistant Engineer Commissioner for Urban Development.

A. *Purpose.*—To provide the Board of Commissioners with a single official responsible to them for carrying out the District of Columbia Government's functions in the planning and conduct of the programs for urban development and for the elimination and prevention of slums and blight, and for carrying out the Six-Year Public Works program.

B. *Functions.*—The Assistant Engineer Commissioner for Urban Development, working in close coordination with the National Capital Planning Commission, the National Capital Housing Authority, the Redevelopment Land Agency, the National Capital Transportation Agency, the President's Council on Pennsylvania Avenue, and other public and non-profit agencies and groups, shall take the initiative for the Board of Commissioners in:

1. Preparation of plans and schedules for the execution of the overall programs for urban development and for the elimination and prevention of slums and blight, and submittal of such plans and schedules together with necessary supporting data to the Board of Commissioners for their review and approval.

2. Integration of all operations of all departments and agencies of the District of Columbia Government, including those pertaining to the public works program and the maintenance of working liaison with public agencies, as they relate to the urban renewal and slum prevention program.

3. Presentation and interpretation of views and objectives of the Board of Commissioners to other public agencies having roles in the program, and to civic, neighborhood, and business organizations, and the maintenance of continuous, harmonious relationships with such organizations in policy and operational aspects of the program, with the objective of securing coordinated community action as required.

4. Continuing review and evaluation of: (1) the urban renewal and slum prevention program and its planning, (2) the procedures and techniques employed in its execution, (3) the sufficiency of codes and regulations, and (4) the adequacy of organizational relationships; and the development and presentation to the Board of Commissioners of recommendations for such action as may be required to correct deficiencies in the program, speed up its operations, or otherwise to improve its effectiveness.

5. Preparation and implementation of a Community Renewal Program which will encompass the long-range needs in the District of Columbia for urban renewal and slum prevention.

PART III

Office of Community Renewal Programming.—There is established under the direction and control of the Assistant Engineer Commission for Urban Development, an Office of Community Renewal Programming.

A. *Purpose and Functions.*—The Office of Community Renewal Programming is established for the pùrpose of advising and assisting, and shall perform functions necessary to advise and assist, the Assistant Engineer Commissioner for Urban Development in:

1. Completion, revision and updating of the Community Renewal Program.

2. Preparation of the Six-Year Capital Improvements Program, in collaboration with the Department of General Administration.

3. Preparation of a Six-Year Housing Program as a segment of the Community Renewal Program.

4. Preparation of a detailed program for the Urban Progress Centers.

5. Communication with civic, neighborhood and business organizations to obtain reaction and assistance in the preparation of plans and programs for the community.

6. Coordination with the Comprehensive Plan.

7. Review of all renewal, public housing and other social and economic projects and programs for conformance to the Community Renewal Program.

8. Preparation of special detailed studies relating to the Community Renewal Program and its implementation.

9. Provision of staff assistance to the Commissioners' Planning and Urban Renewal Advisory Council.

10. Maintenance of liaison with the Assistant Engineer Commissioner for Planning and the Assistant Engineer Commissioner for Operations.

The senior member of the Office of Community Renewal Programming shall assist the Assistant Engineer Commissioner for Urban Development, as assigned, in carrying out the latter's overall administrative responsibilities and shall serve as Executive Secretary to the Commissioners' Planning and Urban Renewal Advisory Council.

PART IV

Office of Renewal Operations.—There is established under the direction and control of the Assistant Engineer Commissioner for Urban Development an Office of Renewal Operations.

A. *Purpose and Functions.*—The Office of Renewal Operations is established for the purpose of advising and assisting, and shall perform functions necessary to advise and assist, the Assistant Engineer Commissioner for Urban Development in:

1. Preparation of the Annual Workable Program.
2. Coordination of relocation activities on an interagency basis.
3. Coordination of interdepartmental activities for renewal, public housing and development operation.
4. Expedition and coordination of all renewal operations consistent with established time schedules for each project or program.
5. Evaluation of improvements to the procedures for the coordination of renewal operations.
6. Cooperation with civic, neighborhood and business organizations to elicit participation and assistance in the execution of renewal projects and programs in the community.
7. Promotion of non-profit housing and provision of assistance to prospective sponsors or developers of non-profit housing projects.
8. Provision of staff assistance to the Urban Renewal Operations Committee.
9. Maintenance of Liaison with the Assistant Engineer Commission for Operations and with the Assistant Engineer Commissioner for Planning.

The senior member of the Office of Renewal Operations shall assist the Assistant Engineer Commissioner for Urban Development, as assigned, in carrying out the latter's overall administrative responsibilities and shall serve as Executive Secretary to the Urban Renewal Operations Committee.

PART V

Personnel and funds.—Personnel and funds shall be provided for the Office of Community Renewal Programing and the Office of Renewal Operations within the limits of available appropriations which may properly be used for such purpose.

PART VI

Effective date.—This Order shall be effective on and after August 25, 1966.

ORGANIZATION ORDER NO. 110.—COMMISSIONERS' URBAN RENEWAL COUNCIL

Organization Ord. No. 110, 55–997, May 31, 1955, as amended Sept. 4, 1958; Mar. 22, 1960, and July 14, 1960, rescinded by Organization Order No. 139, dated Feb. 11, 1964, effective Jan. 16, 1964.

ORGANIZATION ORDER NO. 111.—URBAN RENEWAL OPERATIONS COMMITTEE

Organization Ord. No. 111, 55–998, May 31, 1955, as amended Oct. 20, 1960, Aug. 25, 1966, ordered that:

PART I

A. *Establishment.*—There is hereby established in the Government of the District of Columbia an Urban Renewal Operations Committee.

B. *Functions.*—The Urban Renewal Operations Committee shall serve as the Commissioners' principal medium to develop, for their consideration, uniform and consistent official policies in matters affecting the urban renewal program, and to coordinate and integrate the operations and activities of the departments and agencies concerned in the planning and execution of urban renewal projects.

C. *Composition and membership:*

1. The Urban Renewal Operations Committee shall consist of the Assistant Engineer Commissioner for Urban Development, who shall serve as Chairman, and members appointed by the Board of Commissioners, one from each of the following organizations:

National Capital Planning Commission.
National Capital Housing Authority.
Redevelopment Land Agency.
Board of Education.
Board of Recreation.
Department of General Administration.
Department of Highways and Traffic.
Department of Licenses and Inspections.
Department of Public Health.
Department of Public Welfare.
Department of Sanitary Engineering.
Fire Department.
Zoning Office.
Metropolitan Police Department.
Office of the Corporation Counsel.
Office of Community Renewal Programing.

2. Members of the Urban Renewal Operations Committee shall be appointed by the Board of Commissioners and shall serve at the pleasure of the Board of Commissioners. The senior employee of the Office of Renewal Operations shall serve as Executive Secretary of the Committee.

D. *Organization.*—The Urban Renewal Operations Committee shall determine its own rules of procedure and may, if it so desires, establish and fill such additional officer positions, from its membership, as it may consider appropriate.

PART II

District of Columbia Slum Prevention and Rehabilitation Committee.—The Slum Prevention and Rehabilitation Committee established in C. O. No. G. F. 5–700, L. S. 5691–B–4, dated October 1, 1953, as amended, is hereby abolished.

PART III

Rescission.—C. O. No. G. F. 5–700, L. S. 5691–B–4, dated October 1, 1953, as amended, is hereby rescinded.

PART IV

Effective date.—This Order shall be effective on and after May 31, 1955.

ORGANIZATION ORDER NO. 112.—BOARD OF APPEALS AND REVIEW

Organization Ord. 112, 55–1500, dated Aug. 11, 1955, as amended July 12, 1960, Aug. 9, 1960, Dec. 15, 1960, Apr. 25, 1961, Mar. 15, 1962, and Dec. 4, 1962, ordered that:

PART I.—BOARD OF APPEALS AND REVIEW

A. *Establishment.*—The Board of Appeals and Review, established in Part VIII of Reorganization Order No. 55, as amended, is hereby reconstituted as described below.

B. *Purpose, composition, qualifications of members and terms of office:*

1. The Board of Appeals and Review is an administrative agency in the Government of the District of Columbia providing a final administrative remedy in those cases assigned to it.

2. The Board of Appeals and Review shall consist of twenty-two members. The Chairman and Vice Chairman of the Board shall be designated by the Commissioners, provided, however, that the Vice Chairman shall exercise the authorities of the Chairman only in the absence of said Chairman.

3. Of the twenty-two members of the Board,

(a) seven shall be full-time employees of the District of Columbia of grade GS–13 or higher, but no such member shall be an employee of the District of Columbia in either the Office of the Corporation Counsel or in the Department of Licenses and Inspections. These employees shall receive no additional compensation for work performed by virture of their appointment or service as members of the Board.

(b) fourteen shall be intermittent employees of the District of Columbia, each of whom resides in said District or owns in his own name real property therein, seven of whom shall be members of the Bar of the District of Columbia who have had at least five years experience in the active practice of law in the District of Columbia, and eight of whom shall be persons who possess, to the extent that the Commissioners may deem it necessary or desirable, insight and perspectives in the fields of architecture, construction, finance, public health, and social service, and with respect to whom the Commissioners shall take into account their qualifications, experience and community interests. These employees shall receive

compensation when actually performing service as members of the Board.

4. The term of office of each member of the Board shall be three years, except that commencing May 1, 1960, the terms of two full-time and four intermittent members shall be for one (1) year from May 1, 1960, the terms of two full-time and four intermittent members shall be for two (2) years from May 1, 1960, and the terms of three full-time and seven intermittent members shall be for three years from May 1, 1960. Every vacancy shall be filled only for the unexpired portion of the term. After the expiration of his term each member shall continue to serve until his successor has been appointed and qualified. Members shall be appointed, and may be removed, by the Commissioners of the District of Columbia. On April 30, 1960, the terms of office and continued service of all members theretofore appointed to the Board shall terminate. No person who has served continuously for six years or more as a member of the Board as heretofore constituted or as constituted by this order shall be reappointed as a member until the expiration of one year from the end of such service.

5. Every member of the Board of Appeals and Review shall take an oath of office as follows:

"I, --------, having been duly appointed by the Board of Commissioners as a member of the Board of Appeals and Review, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of the said Board to the best of my ability without fear or favor; that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will well and faithfully discharge said duties, so help me God."

C. *Functions.*—The Board of Appeals and Review shall consider on appeal decisions in the following types of cases, where error in such decisions is alleged by the appellants, and make a final determination sustaining, reversing, or modifying the action from which the appeal is taken:

1. Appeals from decisions made by the Director or Deputy Director of Licenses and Inspections under the Housing Code.

2. Appeals submitted by applicants for licenses, permits, and certificates, from actions taken by responsible officials of the Department of Licenses and Inspections with respect to denial of a license, permit, or certificate; by persons with respect to suspension or revocation of such licenses, permits, or certificates currently in effect; and by persons directed to act or to refrain from acting, in accordance with inspectional or regulatory requirements (excluding dangerous and unsafe structures and excavations): Provided, That in any case in which a license may issue only with the approval of the Chief of Police, the Board of Appeals and Review shall have authority to set aside the decision of the Department of Licenses and Inspections whenever such decision is based upon an adverse recommendation of the Chief of Police, which recommendation the Board of Appeals and Review finds is arbitrary, capricious, or not supported by substantial evidence.

3. Appeals from actions taken by the Fire Chief, the Director of Public Health, the Chief of Police, or the Director of Licenses and Inspections, or any designated agent of each such official, under the provisions of the general regulations governing the removal of fences and sheds as promulgated by the Board of Commissioners on January 7, 1954.

4. Such other matters as the Board of Commissioners may assign to the Board of Appeals and Review for appeals consideration.

The Board of Appeals and Review, in its consideration of appeals from decisions made by the Director or Deputy Director of Licenses and Inspections under the Housing Code and under Articles 8 through 8–I of Chapter 6 of the Building Code may in its discretion grant variances as authorized by such Housing Code and such Articles 8 through 8–I of Chapter 6 of the Building Code and shall, in addition, consider and make final decisions on cases under consideration for the granting of a variance as authorized under the Housing Code and under Articles 8 through 8–I of Chapter 6 of the Building Code that may be referred without final determination by the Director or Deputy Director of Licenses and Inspections.

The Board of Appeals and Review shall hear oral argument when requested by any one or more of the parties to an appeal.

The activities of the Board of Appeals and Review shall be considered investigations or examinations of municipal matters within the meaning of the Act of July 1, 1902 (D.C. Code, 1951 ed. [now 1967 ed.], § 1–237) and the Board's Hearing Committee(s) and each member thereof shall possess the powers vested in the Commissioners by that Act.

The Corporation Counsel, D.C., shall prescribe, and from time to time may amend, rules governing the procedures of the Board and of its Hearing Committees, including the establishment of time limitations where not otherwise set forth, and the development of methods of perfecting appeals to the Board.

Where the Board has not decided an appeal from the denial of a license application by the end of the license year for which the application was made and the appellant has made timely application for a license for the new license year, the pending appeal shall not become moot at the end of the license year for which the earlier application was made, but shall be deemed also to be an appeal from the denial of an application for a license for the new license year. If an oral hearing has already been had on the appeal, no further oral hearing shall be required, but a further oral hearing shall be provided at the request of any of the interested parties who may have additional evidence to offer.

Upon application by any person aggrieved by any action, decision, or ruling made by the Director of Licenses and Inspections in the administration of the act providing for the regulation and licensing of pawnbrokers, the Board of Appeals and Review shall review and make a final determination affirming, setting aside, or modifying such action, decision, or ruling. In cases of denial, revocation, or suspension, such review shall be based upon the record and without a hearing by the Board.

D. *Organization.*

1. There are hereby established such secretarial, stenographic and clerical positions as may be appropriate for the performance of duties incident to the Board's operations.

2. (a) (1) There shall be such number of Hearing Committees as may be established, from time to time, by the Chairman. Each Hearing Committee shall consist of three members of the Board, designated from time to time by the Chairman, one of whom shall be a member of the bar of the District of Columbia who has had at least five years experience in the active practice of law in the District of Columbia and shall be presiding member, and one of whom shall be a full-time employee member of the Board. A quorum of a Hearing Committee shall be all three members thereof, but decisions may be by majority vote. The Chairman is authorized (1) to designate himself as a nonlegal intermittent employee member of a Hearing Committee; (2) to act as an alternate for any nonlegal intermittent employee of a Hearing Committee when for any reason such nonlegal intermittent employee member is absent or is otherwise not available to serve as a member of such committee; or (3) to serve ex officio as a fourth, non-voting member of a Hearing Committee.

(2) The Chairman is authorized, in appeals involving the termination by operation of law of licenses issued under the authority of the regulations adopted and promulgated by Commissioners' Order of May 28, 1943 (E.D. 210583–54), and November 24, 1943 (E.D. 236470–27), known as the "Temporary Regulations", to require preliminary conferences between appellants and attorney members of the Board for the purpose of determining whether the appeals filed by such appellants state cases on which relief can be granted. To this end, the Chairman is authorized from time to time to designate attorney members of the Board who are not full-time employees of the District of Columbia to conduct conferences having for their purpose the determination of whether appellants have grounds upon which relief can be granted for contesting the acts or decisions from which they are appealing. Each attorney member so designated by the Chairman shall have authority to confer with an appellant concerning the validity of his appeal; to require the

attendance of such officers or employees, or the production of such records, of the District of Columbia as may be necessary, in the discretion of the attorney member, to permit him to evaluate such appeal; to permit the appellant to amend his appeal; and to act on behalf of the Board to dismiss any appeal which, after opportunity for amendment has been given the appellant, fails in the opinion of the attorney member to state a case. Such dismissal by the attorney member shall be the final action of the Board. It shall, however, as any other final action of the Board, be subject to reconsideration by the Board, upon timely application by the appellant, in accordance with the Board's Rules of Practice and Procedure. Any attorney member of the Board who conducts a conference under the authority of this paragraph shall not, after disposing of the matter, be eligible to serve in connection with any reconsideration of the matter by the Board.

(b)(1) The Chairman shall maintain a general calendar of all cases to be considered by the Board, and he shall assign each such case, including cases pending before the Board on April 30, 1960, to a Hearing Committee for action. The Chairman shall also maintain, for each Hearing Committee, a special calendar of the cases assigned to it. The Chairman may, at any time before the commencement of a hearing, reassign any case from one Hearing Committee to another Hearing Committee.

(2) The Chairman may, in lieu of assigning to a Hearing Committee an appeal involving the termination by operation of law of a license issued under the authority of the Temporary Regulations, refer to an attorney member of the Board designated under the authority of subparagraph (2) of the preceding paragraph (a) any such appeal which, in the opinion of the Chairman, requires or merits a conference as authorized by such subparagraph (a)(2). After such conference, the Chairman shall take such action on behalf of the Board as is necessary in the light of the action or recommendation of the attorney member conducting such conference. If such action results in the dismissal of an appeal, such dismissal shall be subject to reconsideration by the Board, upon timely application therefor by the appellant, filed in accordance with the Board's Rules of Practice and Procedure.

(c) Except as herein otherwise provided, all powers, functions and authorities of the Board of Appeals and Review and all powers, functions and authorities heretofore vested in the Hearing Officer of the Board shall be exercised by Hearing Committees of the Board whose actions and decisions shall be deemed the actions and decisions of the Board, but the Chairman may, pursuant to the rules prescribed by the Corporation Counsel, act for the Board in matters arising prior to hearing.

(d) Subject to the provisions of the second paragraph of Part II A(a) of Reorganization Order No. 50, as amended, each Hearing Committee shall exercise the following functions:

(i) Conduct all hearings in cases assigned to it.

(ii) In each case be responsible for the preparation and maintenance of an adequate record of its proceedings and, in the absence of a stenographic transcript, prepare a summary of the evidence and, after the parties have been afforded an opportunity to examine the same and to propose amendments thereto and corrections thereof which shall be acted upon by the Committee, officially approve the same.

(iii) In each case make findings of fact, conclusions of law, and a decision sustaining, reversing, or modifying the action from which the appeal is taken.

(iv) File its findings of fact, conclusions of law and decision in each case with the Chairman, who shall transmit a copy thereof to each of the parties.

(v) When requested by the applicant or licensee, conduct a hearing on any proposed denial, revocation, or suspension of a pawnbroker's license and prepare thereon findings of fact, conclusions of law, and recommendations for disposition by the Director of Licenses and Inspections. Not less than five days (exclusive of Saturdays, Sundays, and legal holidays) before forwarding to the Director such findings, conclusions, and recommendations, together with all documents and exhibits introduced in evidence, furnish to the applicant or licensee, or his attorney of record, a copy of such findings, conclusions, and recommendations, together with a letter advising that the applicant or licensee may, within such five (5) day period, or any extension thereof which may be granted by the Director, file with the Director any exceptions or objections he may have to such findings, conclusions, or recommendations.

(e) Each Hearing Committee, through its presiding member, may, without submission to the Commissioners, request directly of the Corporation Counsel, D.C., his opinion upon any question of law involved in any case pending before such Committee.

(f) Each Hearing Committee, through its presiding member, is authorized to request directly of the Corporation Counsel, D.C., his assistance in putting into proper form such Committee's findings of fact, conclusions of law, and decision, in any case pending before such Committee.

3. Upon the request of the officer of the District of Columbia from whose decision or action or proposal to act an appeal has been taken to the Board, the Corporation Counsel, D.C., may assign one of his Assistants to represent the District before the Board.

PART II. RESCISSION

1. Rescind Commissioners' Order No. 54–530, dated March 9, 1954, in its entirety.

ORGANIZATION ORDER NO. 113.—PROFESSIONAL VOCATIONAL REHABILITATION ADVISORY COUNCIL

Organization Ord. No. 113, 55–1731, Sept. 8, 1955, as amended Oct. 25, 1955 [rescinded by Order No. 62–1959, Oct. 11, 1962].

ORGANIZATION ORDER NO. 114.—GENERAL VOCATIONAL REHABILITATION ADVISORY COUNCIL

Organization Ord. No. 114, 55–1732, Sept. 8, 1955 [rescinded by Order No. 62–1960, Oct. 11, 1962].

ORGANIZATION ORDER NO. 115.—REFRIGERATION AND AIR CONDITIONING BOARD

Organization Ord. No. 115, 55–2028, Oct. 18, 1955, as amended July 14, 1960, ordered that:

PART I

A. *Establishment.*—There is hereby established within the Department of Occupations and Professions a Refrigeration and Air Conditioning Board.

B. *Composition and membership.*

1. The Refrigeration and Air Conditioning Board shall consist of three members and three alternate members.

2. Two of such members and two of such alternate members shall be persons who have been actively engaged in the District of Columbia for at least five years next preceding their appointment in the business of refrigeration and air conditioning and who have received a license in accordance with Commissioners' Order No. 55–2029, dated October 18, 1955. Of these,

a. One member and one alternate member shall be a licensed Refrigeration and Air Conditioning Contractor and such alternate member shall substitute for such member in his absence; and

b. One member and one alternate member shall be a licensed Master Refrigeration and Air Conditioning Mechanic or Master Refrigeration and Air Conditioning Mechanic, Limited, and such alternate member shall substitute for such member in his absence.

Except that: such members and alternate members appointed to the Board initially established under the provisions of this Organization Order need only be qualified to receive, rather than have already received, a license as specified hereinabove. The members and alternate members referred to in this paragraph shall be known as the public members and alternate members of the Board.

3. The third member and the third alternate member shall be regular full-time employees of the District of Columbia Government who by experience and training in the field of refrigeration and air conditioning are deemed by the Director of Licenses and Inspections and the Board of Commissioners to be fully competent to serve as the District Government members of the Board. These

shall be known as the District Government member and alternate member of the Board, and such alternate member shall substitute for such member in his absence.

C. *Appointments and tenure.*

1. Members and alternate members shall be appointed by the Board of Commissioners.

2. Of the initial appointments to said Board, one member and one alternate member shall be appointed to serve until September 30, 1956; one member and one alternate member shall be appointed to serve until September 30, 1957; and one member and one alternate member shall be appointed to serve until September 30, 1958.

3. Each term of membership after the initial terms established above shall be for a period of three years: *Provided,* That in the event the appointment of a member or alternate member is made at a time subsequent to the day following the date on which the next preceding term ends, the term of such member or alternate member shall expire three years subsequent to the date of termination of the preceding term; *Provided further,* That each member and alternate member shall serve until his successor has been appointed and has qualified; and, provided still further, that any member or alternate member appointed to fill an unexpired term shall be appointed only for the unexpired portion of such term.

No person who has served six years or more consecutively as a member shall be reappointed as such member until after the expiration of one year from the end of such service, but this limitation shall not apply to persons selected for membership from among officers and employees of the District of Columbia.

4. Members and alternate members of the Refrigeration and Air Conditioning Board shall take an oath of office as follows:

"I, ----------, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely without any mental reservation or purpose of evasion; that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God."

D. *Removal of members.*—Members and alternate members shall be subject to removal by the Board of Commissioners at its discretion.

E. *Compensation for Board members.*—Public members and alternate members of the Board shall serve without compensation.

F. *Individuality of interest.*—Not more than one public member or alternate member of the Refrigeration and Air Conditioning Board shall have a financial interest in or be employed by the same person, firm, or corporation engaged in the business of refrigeration and air conditioning.

PART II

Purpose.—The Refrigeration and Air Conditioning Board is established for the purpose of performing those functions of the District of Columbia Government concerned with the technical and professional aspects of licensing and registering persons, firms, and corporations engaged within the District of Columbia in the business of refrigeration and air conditioning, or in installing, maintaining, repairing, and replacing refrigeration and air conditioning apparatus, equipment, appliances, systems, or parts thereof, in accordance with the provisions of the Refrigeration and Air Conditioning Licensing Regulations promulgated by Commissioners' Order No. 55–2029, dated October 18, 1955, in order to protect the public from incompetent and unfair practices and to protect qualified men from the competition of unqualified and unethical persons.

PART III

Assignment of functions.—A. The Refrigeration and Air Conditioning Board shall perform the following functions in accordance with the provisions of the Refrigeration and Air Conditioning Licensing Regulations of the District of Columbia:

1. Develops and proposes to the Commissioners programs, policies, standards, regulations, and procedures governing the professional and technical aspects of licensing and registering persons, firms, and corporations engaged within the District of Columbia in the business of refrigeration and air conditioning, or in installing, maintaining, repairing, and replacing refrigeration and air conditioning apparatus, equipment, appliances, systems, or parts thereof.

2. Determines eligibility of applicants for licensing as Refrigeration and Air Conditioning Contractor, Master Refrigeration and Air Conditioning Mechanic, and Master Refrigeration and Air Conditioning Mechanic, Limited; approves or disapproves the applications for such licenses; and certifies to the Director of Occupations and Professions the applications of those who successfully meet the requirements for licensing.

3. In accordance with applicable laws, rules, and regulations, suspends or revokes the following classes of licenses and registrations: Refrigeration and Air Conditioning Contractor, Master Refrigeration and Air Conditioning Mechanic, and Master Refrigeration and Air Conditioning Mechanic, Limited.

4. Develops, administers, and grades examinations in conjunction with the Office of Administration of the Department of Occupations and Professions which will render such clerical services and assistance in developing and grading examinations as may be feasible.

5. Conducts hearings, as necessary, relating to eligibility, suspension, revocation, or denial of license or registration.

6. Collaborates with the Director of Occupations and Professions in relating the administrative, fiscal, and housekeeping activities to the professional and technical activities, to assure efficiency of operations of the Department and of the Board.

B. The Office of the Director and the Office of Administration of the Department of Occupations and Professions shall fulfill functional responsibilities and shall perform the divers administrative, fiscal, and housekeeping activities specified in Part IV of Reorganization Order No. 59, as amended.

PART IV

Repeal of previous orders.—All Commissioners' Orders or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, repealed.

PART V

Effective date.—This Order shall be effective on and after November 1, 1955.

ORGANIZATION ORDER NO. 116.—INTER-DEPARTMENTAL STATISTICAL COMMITTEE

Organization Ord. No. 116, 56–1399, July 17, 1958, ordered that:

There is hereby established in the Government of the District of Columbia a committee to be known as the Inter-Departmental Statistical Committee.

Functions.—Reviews and appraises overall District Government statistical programs and, at the request of a department or agency head, reviews and appraises individual statistical programs and, as appropriate, comments upon and makes recommendations and suggestions for improvements and changes to the officials concerned.

Serves in an advisory capacity to the Commissioners and department and agency heads in connection with the development and use of standards, methods and techniques for collecting, summarizing, analyzing and interpreting statistical data relating to the work performed by such departments and agencies, both collectively and individually.

Serves as a forum, among the several District Government departments and agencies, for the transfer, exchange and coordination of statistical information and data that might be of interest to and serve the needs of a multiple number of such departments and agencies, including the opportunity, through inter-departmental arrangements and agreements, of obtaining statistical data in such form as to meet specific needs and requirements.

Develops and formalizes standards for adaptation and use in connection with the preparation and publication of statistical data released to the public.

Serves in an advisory capacity to District of Columbia and Federal Government agencies, private and professional organizations, and business and industrial firms, and other similar groups that are desirous of obtaining information of a statistical nature in connection with municipal organization, functions, and activities.

Encourages and promotes, among the several District of Columbia departments and agencies, standardization in timing and scheduling the collection of statistical data to avoid duplication of effort, grouping and subdividing of census tracts to provide for greater uniformity and consistency in amassing and collecting population data, and similar matters.

Composition.—The committee shall be composed of the following District of Columbia employees:

[The names of the members of the committee are omitted.]

The following officials also are invited to participate actively as members of the Committee:

[The names of the officials are omitted.]

The Inter-Departmental Committee also shall include such additional members as District Government department and agency heads, from time to time, are requested by the Committee to designate as their representatives, including those department and agency heads not under full administrative jurisdiction of the Board of Commissioners as well as public and private agencies and officials.

Organization.—The Committee shall determine its own internal organization, including the designation of a chairman and the establishment of subcommittees for purposes of performing the functions assigned to the Committee.

ORGANIZATION ORDER NO. 117.—COMMISSIONERS' ADVISORY COUNCIL ON FIRE PREVENTION

Organization Ord. No. 117, 56–2028, Oct. 4, 1956, as amended July 14, 1960, ordered that:

Establishment.—There is hereby established in the Government of the District of Columbia a permanent council of citizens and District officials to be known as the Commissioners' Advisory Council on Fire Prevention.

PART I

Purpose.—The purpose of the Advisory Council is to increase community participation in the District Government's fire prevention program and to act in an advisory capacity to the Commissioners and the Fire Chief on fire prevention matters affecting the general public.

PART II

Function.—It is the intent of the Board of Commissioners that the Advisory Council shall in general advise and assist the Commissioners and the Fire Chief in the following respects:

1. Advise and assist in coordinating the fire prevention program of the Fire Department with the activities of schools, community groups, and public and private organizations.

2. Interpret the fire prevention program of the Fire Department to the public.

3. Assist in stimulating community interest, understanding, and participation in fire prevention by sponsoring activities such as public demonstrations and discussions, newspaper, radio and television publicity, fire prevention contests in schools, stores, churches, and similar organizations, and local observance of Fire Prevention Week.

4. Study and make appropriate recommendations with respect to proposals for new policies and statutes, or changes in existing policies and statutes, affecting the fire prevention program of the Fire Department.

5. Advise on community fire prevention needs and the formulation and execution of programs necessary to effective control of fire, including assistance in developing budgetary requirements of the Fire Department.

PART III

Composition.—A. The Council shall consist of ten members appointed by the Board of Commissioners and subject to removal at the discretion of the Board of Commissioners. After July 14, 1960, every appointment of a member shall be for a term of three years, and every vacancy shall be filled only for the unexpired portion of the term, but after the expiration of his term each such member shall continue to serve until his successor is appointed and has qualified. Every person who, on July 14, 1960, is a member shall continue to serve for the balance of the term to which he has been appointed (any vacancy in said balance of said term to be filled by appointment for the unexpired portion thereof) and upon expiration of said term the three year term herein provided shall immediately commence, but such member shall continue to serve until his successor is appointed and has qualified.

B. No person who has served six years or more consecutively as a member shall be reappointed as such member until after the expiration of one year from the end of such service, but this limitation shall not apply to persons selected for membership among officers and employees of the District of Columbia.

PART IV

Organization.—The Council shall determine its own organization including the establishment of auxiliary committees, perfect its own rules of procedure, and designate its own officers, except that for the first year the Commissioners shall designate one member to serve as Chairman. Secretarial services shall be furnished by the Fire Department.

PART V

Oath of Office.—Members shall take an oath of office as follows:

"I, _____, having been duly appointed by the Board of Commissioners as a member of the Commissioners' Advisory Council on Fire Prevention, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Council to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties; so help me God."

ORGANIZATION ORDER NO. 118.—EMERGENCY AMBULANCE SERVICE

Organization Ord. No. 118, 57–1667, Aug. 27, 1957, ordered that:

There is hereby established in the District of Columbia an Emergency Ambulance Service, to consist of emergency ambulance vehicles, equipment and crews of the Fire Department and the Department of Public Health, and emergency ambulance units furnished by private voluntary hospitals which agree to observe the "Operating Instructions for Emergency Ambulances" (including present and future amendments) adopted by the Board of Commissioners, D. C. The Fire Department shall have coordinating supervision of the Emergency Ambulance Service, including the operation of a central dispatching service for emergency ambulances and the operational control of Department of Public Health emergency ambulance vehicles, equipment and crews assigned to the Service. The Fire Department may enter into agreements with other District departments to obtain reimbursement for services rendered such departments in connection with the Fire Department's coordination, operation, and supervision of the Emergency Ambulance Service. Participation by the Department of Public Health in the Emergency Ambulance Service will continue for the balance of the 1958 fiscal year.

This Order shall take effect on and after September 6, 1957.

ORGANIZATION ORDER NO. 119.—EMERGENCY AMBULANCE SERVICE COMMITTEE

Organization Ord. No. 119, 57–1669, Aug. 27, 1957, as amended June 23, 1959, May 21, 1963, and Sept. 9, 1964, ordered that:

There is hereby established in the District of Columbia a committee of citizens and District officials to be known as the Emergency Ambulance Service Advisory Committee.

PART I

Purpose.—The Emergency Ambulance Service Advisory Committee shall in general advise and assist the Commissioners and the Fire Chief in matters affecting the District of Columbia Emergency Ambulance Service and shall serve as an advisory group on coordination of the activities of the various governmental and non-govern-

mental organizations having an interest in the continued efficient operation of the Emergency Ambulance Service.

PART II

Functions.—The functions of the Emergency Ambulance Service Advisory Committee shall be as follows:

A. To study and make recommendations to the Board of Commissioners and to the Fire Chief on any matters which the Fire Chief or the Commissioners may refer to the Committee, or on matters of the Committee's own choosing, concerning the Emergency Ambulance Service. Any member of the Committee may, on behalf of the organization which he represents, request the Committee Chairman to include on the Committee agenda such matters concerning the Emergency Ambulance Service as his organization may desire to have brought to the attention of the Committee.

B. To review and make recommendations to the Fire Chief regarding changes in the present "Operating Instructions for Emergency Ambulances" proposed by the Fire Chief or by members of the Committee.

C. To develop plans and recommendations regarding the future needs of the District of Columbia for emergency ambulance service. Such planning activities may include but not be limited to planning for:

1. Development, as needed, of additional hospital and other District emergency service and facilities not now a part of the Emergency Ambulance Service.

2. Coordination and use of hospitals, emergency ambulance and other emergency facilities, both governmental and non-governmental, throughout the Washington Metropolitan area.

3. Coordination of the Emergency Ambulance Service with the facilities of the various Federal hospitals in the Washington Metropolitan area.

4. Consideration of inspection, regulation and use by the District Government of private ambulances used in ambulance service.

D. To survey the experience of other cities and their metropolitan areas in regard to emergency medical and ambulance service and to study and develop recommendations for possible improvements in the Emergency Ambulance Service suggested by the experience of these other cities.

PART III

Composition.—The following departments and agencies of the District Government shall designate one representative each to serve on the Emergency Ambulance Service Advisory Committee; this representative shall have the authority to speak for his department or agency:

Fire Department.
Police Department.
Office of the Coroner.
Department of Public Health.
Board of Police and Fire Surgeons.

Each private voluntary hospital maintaining one or more ambulances in the Emergency Ambulance Service may designate one representative to the Committee. The Public Health Advisory Council, Freedmen's Hospital, The Washington Hospital Center, the D.C. Medical Association, and the Medico-Chirurgical Society of D.C., Children's Hospital, Providence Hospital, Hadley Memorial Hospital, and Georgetown University Hospital each may designate one representative to the Committee. Such other organizations as the Commissioners admit to membership on the Committee may designate one representative each.

Each private voluntary hospital maintaining one or more ambulances in the Emergency Ambulance Service may designate one representative to the Committee. The Public Health Advisory Council, Freedmen's Hospital, the Washington Hospital Center, the D.C. Medical Association, and the Medico-Chirurgical Society of D.C. each may designate one representative to the Committee. Such other organizations as the Commissioners admit to membership on the Committee may designate one representative each.

Organizations designating representatives to the Committee as stated above shall also designate alternate members to serve in the absence of the regular members.

Committee members and alternates shall serve without compensation and until the organization which they represent notifies the Committee Chairman of the appointment of their successor. It is the intent of the Commissioners that District departments and agencies and non-governmental organizations entitled to membership on the Committee shall keep current their designation of their representatives and alternates on this Committee.

PART IV

Chairman.—The Chairman of the Emergency Ambulance Service Advisory Committee shall be appointed by the President of the Board of Commissioners from the membership of the Committee and shall serve until his successor is appointed.

PART V

Organization.—The Emergency Ambulance Service Advisory Committee shall determine its own organization, including the establishment of subcommittees, establish its own rules of procedure, and designate its officers except for the position of Chairman. Secretarial service and administrative support shall be provided by the Fire Department. All meetings of the Committee shall be at the call of the Chairman, Committee members shall have the right to request, through the Chairman, a meeting of the Committee at any time when the organization which they represent has a matter which it desires to bring to the attention of the Committee.

PART VI

Reports.—The Emergency Ambulance Service Advisory Committee, within 30 days after the end of each fiscal year, shall report to the Board of Commissioners on their activities during the preceding year. In this report the Committee shall make such recommendations to the Commissioners as they consider appropriate relative to the Emergency Ambulance Service and to the future operations of the Committee.

PART VII

Effective date.—This Order shall be effective on and after September 6, 1957.

ORGANIZATION ORDER NO. 120.—CHARITABLE SOLICITATION ADVISORY COUNCIL

[Organization Order No. 120 was rescinded and the Charitable Solicitation Advisory Council was abolished by Commissioners' Order No. 61–676, dated Apr. 18, 1961.]

ORGANIZATION ORDER NO. 121.—DEPARTMENT OF GENERAL ADMINISTRATION, FINANCE OFFICE

Organization Ord. No. 121, 57–3276, Dec. 12, 1957, as amended Apr. 24, 1956, Nov. 13, 1958, Oct. 25, 1960, Aug. 24, 1961, Apr. 26, 1962, Sept. 25, 1963, Aug. 11, 1964, Mar. 30, 1965, and Apr. 15, 1965, ordered:

That Reorganization Order No. 20, dated November 10, 1952, as amended, relative to the establishment of the Finance Office, is hereby superseded in its entirety and replaced as follows:

PART I

Finance office.—A. The Finance Office, headed by a Finance Officer, established in Reorganization Order No. 20, dated November 10, 1952, as amended, including all functions, positions, and personnel, and all duties, powers, and authorities of all officers and employees assigned thereto (with the additions and deletions provided herein), shall continue under the direction and control of the Director of General Administration.

B. The Finance Office shall be headed by a Finance Officer who shall be responsible for the proper exercise of all functions and responsibilities assigned to the Finance Office. Except as otherwise specifically provided herein, all functions previously vested by statute in the Officers and Boards established under Reorganization Order No. 20, as amended, including the power to summon the attendance of any person to be examined under oath and the power to administer such oaths, are hereby transferred to the Finance Officer. He shall have full authority over the Finance Office and all personnel assigned thereto, including authority to reassign functions and personnel and to redelegate to other officials of the Finance Office such of the powers herein delegated as, in his judgment, are warranted in the interest of efficiency and good administration. This authority shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

Purpose.—The Finance Office is established for the purpose of: administering the laws and regulations relating to taxes, fees, and assessments; collecting and depositing all revenues of the District of Columbia in appropriate depositories and maintaining appropriate accounts relating thereto; maintaining centralized general ledger and appropriation accounts and controls reflecting the assets and liabilities and financial operations of the District of Columbia, and allotment accounts for control of funds available for expenditure, and preparing necessary accounting reports and financial statements thereon; and preauditing, certifying and properly disbursing District of Columbia funds.

PART III

Organization.—A. There are hereby established in the Finance Office, under the supervision and direction of the Finance Officer, the following organizational components: Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division.

B. There shall be established in the Finance Office such other organizational components subordinate to those established in this Order and such positions, with such duties and titles as the Finance Officer, with the approval of the Director of General Administration, shall from time to time determine.

PART IV

Functions.—The functions to be performed by the Finance Office include but are not limited to the following:

A. *Office of the Finance Officer:*

1. Develops and proposes to the Director of General Administration and the Board of Commissioners major programs, policies and procedures on all taxation and fiscal matters within the purview of the Finance Office's functions.

2. Is responsible for overall administration, execution and interpretation of the applicable laws and regulations relating to taxation and finance within the purview of the Finance Office's functional responsibility and scope of operations.

3. Plans the programs and prescribes the policies of the Finance Office and plans, directs, coordinates and supervises its activities in accordance with the overall policies of the Department of General Administration.

4. Reviews proposed plans and legislation relating to finance and revenue matters originating within the Finance Office or with the departments or agencies of the District of Columbia Government, and consults with and advises the Director of General Administration and the Board of Commissioners in fiscal and revenue matters.

5. Studies the fiscal system for the purpose of determining the economic consequences of the existing structure or alternate structures and develops overall fiscal research program including estimating tax revenue; prepares monthly, annual and special reports.

6. Reviews and approves or modifies assessments of real property prior to action by the Board of Equalization and Review; reviews personal property assessments and administrative determinations of tax liability for all other taxes and takes appropriate action.

7. When such action is warranted, waives interest or penalties, or both, on all taxes administered by the Finance Office other than special assessments. For those amounts in excess of the tolerance established by the Finance Officer, with the approval of the Director of General Administration, for routine processing, billing and collecting of penalty and interest, maintains appropriate records showing actions taken and reasons therefor.

8. For those taxes other than real estate taxes administered by the Finance Office, makes final determinations on all requests for tax exemption in accordance with applicable laws, regulations, and Corporation Counsel opinions; and maintains appropriate records showing actions taken and reasons therefor.

9. For those taxes administered by the Finance Office, makes final determinations on all offers in compromise for settling tax liability; and maintains appropriate records showing actions taken and reasons therefor. In those cases where litigation is pending or where no legal precedent has previously been established but legal advice is necessary or desirable, consults with the Corporation Counsel.

10. Plans and administers, for the Finance Office, centralized budget, accounting, procurement, administrative services, personnel and management improvement activities; and coordinates these activities, including the development and justification of Finance Office budget estimates, with the overall program of the Department of General Administration.

11. Administers, as agent of the Commissioners of the District of Columbia, the provisions of Pub. L. 85–558, 85th Congress, 2d Session, approved July 25, 1958 [D.C. Code Sec. 25–124].

12. Certifies to the Secretary of the Treasury amounts requested to be restored from lapsed appropriations as being necessary for the payment of audited claims under such appropriations and, provided, the D.C. Budget Office shall be informed of all such amounts certified, pursuant to the provisions of Section 14, District of Columbia Appropriation Act 1959, approved August 6, 1958.

13. Except as to such duties and functions as are performed in connection therewith by the Recorder of Deeds, D.C., administers, as agent of the Commissioners, the provisions of Title III of Public Law 87–408, 87th Congress, approved March 2, 1962.

B. *Property Tax Division:*

1. Values all real estate, taxable and exempt, and all taxable tangible personal property for assessment purposes.

2. Makes studies of property values and develops appraisal standards and techniques.

3. Conducts sales ratio studies and determines depreciation and obsolescence factors.

4. Prepares and maintains tax maps and other necessary records.

5. Approves the levying of all special assessments against real estate as provided by law and regulations; assesses rents for vault space upon information furnished by the Director of Highways; and, upon written notification from the Director of Licenses and Inspections, the Director of Public Health, or the Board for the Condemnation of Insanitary Buildings, that a nuisance has been abated or an illegal or insanitary condition has been corrected, as the case may be, including a statement of the exact cost of such abatement or correction, is authorized to record proper assessment and render bills thereon as provided by law.

6. Administers real estate tax sales.

7. Performs such incidental duties as may be necessary for the proper performance of the functions assigned.

C. *Revenue Division:*

1. Develops and conducts audit programs and determines extent of tax liability in connection with the administration of income and franchise, sales, use and excise, inheritance and estate and other related taxes.

2. Develops and conducts investigation and compliance programs and determines extent of tax liability in connection with the aforesaid taxes.

3. Confers with taxpayers with respect to protests of proposed assessments.

4. Administers and executes the licensing requirements of the tax laws and regulations administered by the Finance Office.

5. Performs such incidental duties as may be necessary for the proper performance of the functions assigned.

D. *Treasury Division:*

1. Collects revenues of the District of Columbia, accounts for and distributes all collections into appropriate revenue accounts, and deposits with the Treasurer of the United States all funds so received.

2. Makes disbursements in accordance with law and regulation, in cash or by checks drawn on the Treasurer of the United States, based on vouchers and payrolls duly certified by a designated certifying officer, and is accountable therefor.

3. Is responsible for all balances with the United States Treasury.

4. Dispenses and accounts for tax stamps.

5. Is responsible for the custody of trust fund securities.

6. Conducts programs relating to the enforcement of collections of delinquent taxes, referring to the Corporation Counsel those accounts requiring court action.

7. Conducts investigations and takes such action as is provided by law to enforce collection of delinquent and unpaid tax accounts, including the filing of liens and the seizure of goods and chattels and the public or private sale of same.

8. Confers with other jurisdictions with respect to reciprocal agreements on tax matters, and makes appropriate recommendations to higher authority.

9. Sells at private sale all goods and chattels seized for nonpayment of District taxes when the highest bid offered therefor at public auction is not sufficient to meet the amount of taxes, penalties and costs due thereon; and defrays the cost of advertising, handling, auctioneer's fee and other expenses incidental to the holding of such sale, from the proceeds therefrom.

E. *Accounting Division:*

1. Maintains centralized general ledger accounts and controls reflecting the assets and liabilities and financial operations of the District of Columbia, and establishes and maintains allotment accounts for control of funds available for expenditure.

2. Maintains accounting records for, prepares, and certifies payrolls.

3. Preaudits and certifies the correctness and propriety of obligations and expenditures.

4. Maintains records and reports and performs duties pertinent to retirement administration and accounting, the Federal Employees Life Insurance program, and United States savings bond accounting.

5. Compiles and prepares accounting information and reports for the purpose of reflecting the financial status and condition of the District Government or any of its parts.

6. Reviews requests for official travel by all District offices and employees as to form and authority, issues transportation requests and instructs travelers and departments in the requirements of the travel regulations and Commissioners' travel policies.

F. *Data Processing Division:*

1. Utilizing electronic data processing systems and related equipment, performs centralized data processing operations for the Finance Office, including but not limited to tax, accounting, and payroll programs.

2. From time to time, performs automatic data processing services for the departments and agencies of the District of Columbia, based on the needs and requirements of such departments and agencies and the Division's schedule of operations.

3. Performs such other related duties as may be necessary for the proper performance of the functions assigned.

PART V

Board of Equalization and Review.—A. There is established in the Finance Office, a Board of Equalization and Review composed of the Finance Officer as Chairman, and two or more qualified officials of the Finance Office to be designated by the Finance Officer. The Chairman may designate an alternate Chairman to serve in his stead.

B. The Board shall formulate rules of procedure for the conduct of its affairs. Any three members of said Board meeting at the call of the Chairman shall constitute a quorum.

C. The functions to be performed by the Board of Equalization and Review shall include but not be limited to the following:

1. Reviews and equalizes real estate assessments in the manner prescribed by law.

2. Hears complaints against real estate assessments and takes appropriate action in the manner prescribed by law.

3. Transmits equalized assessments to the Board of Commissioners for approval as prescribed by law.

PART VI

Committee on Special Assessment Appeals.—There is hereby established a Committee on Special Assessment Appeals, such Committee to comprise an Assistant Corporation Counsel designated by the Corporation Counsel, the Finance Officer, and the Head of the Property Tax Division of the Finance Office. The Assistant Corporation Counsel shall be Chairman of this Committee.

The Committee is hereby delegated the following authorities and its decisions thereon shall be final: (1) to abate, reduce, or adjust special assessments due the District of Columbia in accordance with its findings; and (2) to waive, in whole or in part, interest or penalties, or both, on special assessments due the District of Columbia.

PART VII

Abolition of Boards and Offices.—The existing Board of Assistant Assessors (Real Estate), the existing Board of Personal Tax Appraisers, the existing Board of Equalization and Review, the existing Committee on Special Assessment Appeals, and the existing Offices established in Reorganization Plan No. 20, as amended, are abolished.

PART VIII

Repeal of previous orders.—Reorganization Order No. 20, as amended, and all Commissioners' Orders, or parts of Commissioners' Orders, in conflict with the provisions of this order are, to the extent of such conflict, hereby repealed.

PART IX

Effective date.—This order shall become effective on and after December 12, 1957.

ORGANIZATION ORDER NO. 122.—DEPARTMENT OF HIGHWAYS AND TRAFFIC

Organization Ord. No. 122, 59–33, Jan. 8, 1959, amended Oct. 17, 1961, Oct. 22, 1964, and Feb. 18, 1964, ordered:

That Reorganization Order No. 53, dated June 30, 1953, as amended, is hereby redesignated Organization Order No. 122, and amended to read as follows:

PART I

Department of Highways and Traffic.—There is established, under the direction and control of the Engineer Commissioner, a Department of Highways and Traffic, headed by a Director.

PART II

Purpose.—The Department of Highways and Traffic is established for the purpose of planning, designing, constructing, operating, maintaining and repairing the highway, bridge and traffic control facilities, and the electrical apparatus, equipment and communications systems for the District of Columbia.

PART III

A. *Director, Department of Highways and Traffic.*—The Director, Department of Highways and Traffic, as head of the Department, and as agent of the Commissioners of the District of Columbia where so designated in municipal regulations, shall be responsible for developing, proposing and implementing highway and traffic programs and policies; for the type, design, location, construction, operation and maintenance of a highway system, including the establishment and change of grades for streets and alleys; and for the planning and operation of a traffic system. In carrying out these authorities and responsibilities, the Director shall be cognizant of and take into account the economics, costs, esthetics and effect on physical environment. Except as hereinafter otherwise provided, the Director shall have full authority over the Department and all functions, resources, officials and personnel assigned thereto, including the power to delegate authority and assign responsibility to officials and personnel of the Department in such degree as, in his judgment, is necessary to establish and maintain efficiency and good administration. All authority vested in the Director, including all authority redelegated by the Director pursuant to authorities specified herein, shall be exercised in accordance with applicable laws, rules, regulations, and applicable Commissioners' Orders or directives issued pursuant to Commissioners' Orders.

B. The Director shall administer and enforce the provisions of the Act of August 22, 1964, Public Law 88–486, 88th Congress, governing the removal or treatment of dead, dangerous or diseased trees on public or private space, which act amended the original act entitled "An Act to authorize the Commissioners of the District of

Columbia to remove dangerous or unsafe buildings and parts thereof, and for other purposes," approved March 1, 1899, as amended.

C. The Director shall establish, within the Offices and Bureaus hereinafter described, so many organizational components with specified functions as he may deem appropriate and thereafter may alter, change or modify such organizational components; provided, that all actions establishing, altering, changing or modifying such organizational components shall be submitted at least ten days prior to the effective date of such actions, to the Director, Department of General Administration for appropriate action pursuant to applicable Commissioners' Orders.

PART IV

Organization and functions.—The Department of Highways and Traffic shall be comprised of the following major organizational components in which responsible officials and personnel assigned thereto shall perform the functions described herein:

A. *Office of Business Administration.*—Plans, directs and coordinates a comprehensive program of business administration activities necessary to meet the objectives and program requirements of the Department, including but not limited to estimates of Highway Fund revenues, budgetary matters, files, and records, accounting systems and procedures, procurement, position classification, personnel, management improvement, organizational planning and similar administrative services.

B. *Office of Planning and Programming.*—Plans an integrated system of highways for the District of Columbia including performance of necessary research and formulation of master plans; recommends programs designed to effectively implement such plans; initiates basic geometric features of highway projects and guides and controls the interpretation and application of such features; coordinates plans and programs with Federal, State and District agencies; performs public relations activities.

C. *Bureau of Design, Engineering and Research.*—Develops or obtains from consultants, all engineering and design data and other information, and plans, designs and specifications, for the construction of highway projects in accordance with the plans and programs of the Office of Planning and Programming; prepares consultant agreements, construction contracts, and cost estimates; recommends awards of contracts; implements Federal Aid Projects; determines necessity for, and schedules, the acquisition by the Department of General Administration of property for highways and performs other services in connection therewith; coordinates construction and controls the allocation of highway space for construction and repair of underground utility facilities and maintains maps and other records of all surface and underground facilities; approves or disapproves issuance of permits for the use of public space and performs related inspections; performs testing and research services relating to materials; evaluates the quality of construction and other materials; develops standard material specifications; furnishes advice on technical matters; furnishes expert testimony in legal cases; coordinates its activities with concerned Federal, District or private agencies.

D. *Bureau of Construction and Maintenance.*—Directs the construction, maintenance, repair, and inspection program for highway projects and municipal wharves; performs field survey work on highway projects; procures, maintains, repairs and houses departmental vehicles and equipment and such non-departmental vehicles and equipment as the Commissioners order from time to time; performs landscaping in street right-of-way and activities related to the maintenance and beautification of such streets; operates draw spans; controls the transporting of over or undersize loads through the District; participates and furnishes equipment during emergency snow removal; furnishes expert testimony in legal cases; coordinates its activities with concerned Federal, District or private agencies; maintains grounds and public parking under the jurisdiction and control of the District of Columbia Government other than those specifically assigned to other District Government departments, agencies and institutions; and operates and maintains special-use buildings and facilities under the exclusive jurisdiction of the Department of Highways and Traffic, including the maintenance of adjacent grounds and the providing of necessary protective, elevator, custodial and other related services.

E. *Bureau of Traffic Engineering and Operations.*—Develops, engineering and design data and other information, programs, plans, designs and specifications for the construction, maintenance, and repair of traffic control facilities, channelization, traffic signals, signs, markings, parking meters, and street lighting; performs related inspection, develops, engineering and design data and other information, plans, designs, and specifications for the installation, maintenance, and repair of radio, electronic and communication systems (excluding radio and communication systems of the Police and Fire Department); prepares traffic regulations; develops and executes provisions of the Emergency Snow Plans. Furnishes expert testimony in legal cases; coordinates its activities with concerned Federal, District, or private agencies.

PART V

Repeal of previous orders.—All Commissioners' Orders and parts of Commissioners' Orders in conflict with any of the provisions of this Order are to the extent of such conflict, hereby repealed, but nothing contained in this Order shall in any way alter, amend or repeal any municipal regulation adopted or promulgated by the Commissioners.

PART VI

Effective date.—This Order shall become effective on and after January 8, 1959.

ORGANIZATION ORDER NO. 123.—HOSPITAL ADVISORY COUNCIL

Organization Ord. No. 142, rescinded Reorganization Order No. 60, and Organization Orders 123, Aug. 4, 1959, as amended July 14, 1960, and 129, and replaced them with Organization Order 142, as set out in this appendix.

ORGANIZATION ORDER NO. 124.—PUBLIC INFORMATION UNIT

Organization Ord. No. 124, 59–1911, Oct. 22, 1959, ordered that:

There is hereby established in the Executive Office, under the Board of Commissioners, a Public Information Unit, headed by a Public Information Officer, who shall be responsible for supplementing the existing procedures for the preparation and dissemination, chiefly through the media of radio and television, of information to the public concerning the Government of the District of Columbia.

ORGANIZATION ORDER NO. 125.—COMMISSIONERS' COUNCIL ON HUMAN RELATIONS

Organization Ord. No. 125, 61–846, May 9, 1961, as amended Oct. 10, 1963, Jan. 30, 1964, Sept. 17, 1964, and July 15, 1965, ordered that:

In accordance with the public policy of the United States that all citizens without regard to their race, religion, color, ancestry or national origin, sex or age shall have equality of opportunity with respect to employment in the government and in the use of government facilities and services, the Board of Commissioners issued its policy orders prohibiting discrimination in the District of Columbia Government and in connection with work performed under District Government contracts ordered that:

Commissioners' Order No. 58–535, dated April 9, 1958, as amended, establishing a Commissioners' Council on Human Relations, is hereby redesignated Organization Order No. 125, and amended to read as follows:

That in keeping with these policy orders and with the public policy of the United States to encourage harmonious relations among the residents of every community and to encourage the granting of equality of opportunity by persons engaged in private business, the Board of Commissioners hereby creates the Commissioners' Council on Human Relations.

1. *Purpose.*—The purpose of the Council shall be to advise and assist the Commissioners to promote, foster, and encourage (a) the full and impartial application and observance of the Commissioners' policy on nondiscrimination within the District Government as it relates to employment and use of District-owned facil-

ities; (b) the full and impartial application and observance of fair employment practices by persons holding District Government contracts; (c) with the approval of persons or corporations concerned, the observance and practice of fair employment policies by persons or firms in the District of Columbia; and (d) the observance and practice of good human relations, mutual understanding and equality of opportunity among the various racial, religious and ethnic groups of the community.

2. *Functions.*—a. The Council shall study, and upon complaint inquire into, and advise and assist the Board of Commissioners in relation to the following:

(1) Commissioners' nondiscrimination policy order on employment in District Government and use of District-owned facilities.

(2) Procedures to promote, assure, and maintain equal access to and advancement in employment in the District Government.

(3) Procedures prescribed by the District Government to assure compliance with the nondiscrimination-in-employment clause inserted in District contracts, in accordance with the policies of the Commissioners mentioned herein.

(4) Complaints of discrimination in employment patterns and practices contrary to the Commissioners' policy relating to District Government contracts.

(5) Programs for assisting officials, supervisors and employees of the District of Columbia Government in improvement of human relations practices.

(6) Educational programs for employer, labor, civic, educational, religious, and other nongovernmental groups in order to eliminate or reduce the basic causes of discrimination on the ground of race, creed, color or national origin.

(7) Complaints of discrimination in housing filed under the provisions of Article 45, Police Regulations, prohibiting discrimination by reason of race, color, religion or national origin against persons seeking or utilizing housing units in the District of Columbia.

(8) Complaints of discrimination in employment filed under the provisions of Article 47, Police Regulations, prohibiting discrimination by reason of race, color, religion, national origin or sex against persons seeking or engaged in employment in the District of Columbia.

b. The Council shall receive and may investigate complaints of tension, conflict and practices of discrimination and of efforts or activities of individuals or groups to incite discord, tension, hate and suspicion which may lead to breaches of peace and public disorder.

c. The Council shall serve in an advisory and consultative capacity to all departments, advisory boards, regulatory agencies and for other organizations of District Government to assure the effective compliance with the Commissioners' nondiscrimination policies and orders.

d. The Council shall perform any other advisory duties as directed by the Commissioners for the promotion of better human relations and understanding among community groups.

3. *Composition and term of office.*—The Council shall consist of eleven (11) members selected by the Board of Commissioners. Persons appointed to serve on the Council shall be outstanding persons residing or having their principal places of business in the District of Columbia and representing a cross section of the viewpoints of the community. Salaried District Government employees shall not be eligible to serve as members of the Council. Members shall hold office for terms of three (3) years. Should a vacancy occur through the death, incapacity or resignation of a member, a successor shall be appointed to complete the unexpired term and in the same manner as regular appointments. No person who has served six years or more consecutively as a member shall be reappointed as such member until after the expiration of one year from the end of such service.

4. *Oath of office.*—Members shall take an oath of office as follows:

"I, _____, having been duly appointed by the Board of Commissioners as a member of the Commissioners' Council on Human Relations, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Council to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties; so help me God."

5. *Compensation.*—Members shall serve without compensation.

6. *Organization.*—The Board of Commissioners shall designate an Executive Director to serve the Council and such additional staff as the Board may deem necessary. The Executive Director to the Council shall have no vote. At the initial meeting in each fiscal year, following the appointment of new members, the Council shall determine its own organization, name its own officers other than the Chairman, who shall be designated by the Board of Commissioners. It shall meet at the call of the Board of Commissioners, the presiding officer of the Council, or a majority of the Council membership.

7. *Administration.*—The Executive Director of the Council shall be responsible for the administration of the Council. Expenses incurred by the Council as a whole, or by individual members, or its staff, shall be met from funds provided for the administration of District affairs.

8. *Reports.*—The Council shall regularly report its activities to the Board of Commissioners.

ORGANIZATION ORDER NO. 126.—COMMISSIONERS' ADVISORY COMMITTEE ON PRACTICAL NURSING

Organization Ord. No. 126, 61–1046, June 19, 1961, ordered that:

There is hereby created in the District of Columbia an Advisory Committee on Practical Nursing.

PART I

Purpose.—The purpose of the Committee shall be to advise the Commissioners in preparing for carrying out the provisions of Public Law 86–708 [D.C. Code § 2–421 et seq.] pertaining to the licensing of practical nurses in the District of Columbia which shall become effective July 29, 1961.

PART II

Functions.—A. The Committee shall consider the following matters and advise the Commissioners thereon:

(1) The promulgation of regulations designed to implement Public Law 86–708 [D.C. Code § 2–421 et seq.].

(2) The establishment of fees to be collected by the Department of Occupations and Professions for services rendered in connection with the licensing of practical nurses in the District of Columbia.

(3) The establishment of standards for the accreditation of schools of public nursing in the District of Columbia.

(4) The establishment of policies and procedures pertaining to the licensing of practical nurses in the District of Columbia.

(5) The issuance of bylaws pertaining to the functions and activities of the District of Columbia Practical Nursing Examining Board to be established pursuant to Public Law 86–708 [D.C. Code § 2–421 et seq.].

B. The Committee shall serve in an advisory capacity to the Director, Department of Occupations and Professions.

C. The Committee shall perform other advisory duties pertaining to Public Law 86–708 [D.C. Code § 2–421 et seq.] as directed or requested by the Commissioners.

PART III

Composition.—The Committee shall consist of seven members appointed by the Board of Commissioners on the basis of personal qualification. Persons appointed to membership on the Committee shall be of outstanding ability and shall be currently employed in the District of Columbia either as a practical nurse or as a graduate nurse duly registered under the Act of February 9, 1907, as amended, with at least five years of experience as a

nurse since graduation. Three members of the Committee shall be practical nurses and four members shall be graduate nurses.

PART IV

Term of office.—All appointments of members to the Committee shall expire as of midnight July 28, 1961, at which time the Committee shall be abolished.

PART V

Compensation.—Members shall serve without compensation.

PART VI

Oath of office.—Members shall take an oath of office as follows:

"I, ----------, having been duly appointed by the Board of Commissioners as a member of the Advisory Committee on Practical Nursing, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Committee to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties; so help me God."

PART VII

Organization.—Except for a Chairman who shall be designated by the Board of Commissioners, the Committee shall determine its own organization select its own officers and establish its own rules of procedure. The Committee shall meet upon the call of the Commissioners, the Chairman of the Committee, or a majority of the Committee membership.

ORGANIZATION ORDER NO. 127.—COMMITTEE ON EMPLOYEE CONDUCT

Organization Ord. No. 127, 61–1430, Aug. 17, 1961, ordered that:

There is hereby designated a Committee on Employee Conduct composed of the three special assistants to the Commissioners. The Special Assistant to the President of the Board of Commissioners shall serve as permanent chairman. The Attorney-Editor, Office of the Secretary to the Board of Commissioners, shall serve as staff to the Committee.

The purpose of the Committee is to provide a point of contact, organizationally close to the Commissioners, for receiving and reviewing complaints, including anonymous calls, and for the handling of inquiries regarding matters that indicate possible misconduct by District Government officials and employees.

The Committee shall receive complaints, including anonymous calls and handle inquiries regarding matters that indicate possible misconduct on the part of District Government officials and employees; obtain and review all of the facts pertaining to such complaints; and advise the Commissioners in those instances where the nature and seriousness of the complaint or inquiry warrants the attention of the Commissioners.

District Government departments and agencies will be expected to cooperate and assist the Committee in the performance of its functions.

Nothing in this Order shall supersede or modify the provisions of Reorganization Order No. 48, dated June 26, 1953, as amended, which established Police Trial and Review Boards; Reorganization Order No. 39, dated June 18, 1953, which established Fire Trial Boards; or Organization Order No. 125, dated May 9, 1961, as amended, which established the Commissioners' Council on Human Relations.

ORGANIZATION ORDER NO. 128.—COMMISSIONERS' COMMITTEE ON COMMUNITY RENEWAL

Organization Ord. No. 128, 62–285, Feb. 13, 1962, ordered:

There is hereby established in the Government of the District of Columbia a Commissioners' Committee on Community Renewal.

PART I

Policy.—The Government of the District of Columbia, working in close liaison and in cooperation with the National Capital Housing Authority, National Capital Planning Commission, and D.C. Redevelopment Land Agency, in accordance with the Housing Act of 1961, dedicates itself, and such of its resources and facilities as are available for such purposes, to the development of a realistic set of goals and objectives for the prevention and elimination of blight and deterioration in the District of Columbia through a Community Renewal Program.

PART II

Purpose.—The primary purpose of the Commissioners' Committee on Community Renewal shall be to advise the Board of Commissioners, through the Assistant Engineer Commissioner for Urban Renewal, on a realistic set of goals and objectives for the elimination of blight and deterioration in the District of Columbia through a Community Renewal Program.

PART III

Functions.—The activities of the Committee shall include, but are not limited to, the following activities:

1. To develop a basis of fact regarding existing structural conditions, neighborhood environment and blighting influences within the District of Columbia by:

a. Identifying all slum, blighted, deteriorated and deteriorating areas; and

b. Analyzing the nature and degree of blight and blighting influences within the area.

2. To identify the scope and character of the total need for renewal activities and the type of renewal treatment required to meet these needs within the framework of a Comprehensive Plan.

3. To establish the basic urban renewal objectives and policies to guide the development and effectuation of an overall, long-range program of urban renewal.

4. To establish the total program requirements necessary to achieve the basic objective of eliminating blight in the District of Columbia and relate this need to the anticipated resources of the District in regard to the following:

a. Financing such a program.

b. Handling the anticipated relocation load.

c. Providing the necessary rehousing accommodations.

d. Having the necessary legal authority, administration machinery and capacity for the enforcement of codes and ordinances, and for carrying out such a renewal program.

5. To establish a basic frame of reference and a procedure for the selection and delineation of individual projects and the determination of the priority and scheduling of individual projects within the overall Community Renewal Program.

6. To coordinate the preparation of the Community Renewal Program with the development of the Comprehensive Plan for the Nation's Capital.

PART IV

Composition and membership.—1. The Commissioners' Committee on Community Renewal shall consist of the Assistant Engineer Commissioner for Urban Renewal, who shall serve as chairman, and the following ex-officio members:

Executive Director, National Capital Housing Authority;

Director, National Capital Planning Commission;

Executive Director, D.C. Redevelopment Land Agency;

Director, Department of General Administration;

Director, Department of Licenses and Inspections.

2. Staff assistance to the Committee will be furnished by the Office of Urban Renewal as determined by the Assistant Engineer Commissioner for Urban Renewal, who shall designate an Executive Secretary to the Committee from the Office of Urban Renewal.

3. The Commissioners' Committee on Community Renewal shall determine its own rules of procedure and may, if it so desires, establish and fill such additional officer positions, from its membership, as it may consider appropriate.

PART V

Effective date.—This Order shall be effective on and after Feb. 13, 1962.

ORGANIZATION ORDER NO. 129.—COMMITTEE ON MENTAL HEALTH NEEDS

Organization Order No. 142, rescinded Reorganization Order No. 60, and Organization Orders 123 and 129, 62–593, Mar. 19, 1962, and replaced them with Organization Order 142, as set out in the appendix.

ORGANIZATION ORDER NO. 130.—OFFICE OF RECORDER OF DEEDS, REAL ESTATE RECORDATION TAX

Organization Order No. 130, 62–756, Apr. 26, 1962, relating to the recordation tax act [§ 45–721 et seq.] is set out as a note to section 45–721. [Repealed by Order No. 63–197, Jan. 24, 1963. See Org. Order 101.]

ORGANIZATION ORDER NO. 131.—MANPOWER ADVISORY COMMITTEE FOR D.C.

Organization Ord. No. 131, 62–1076, June 19, 1962, as amended June 8, 1965, ordered:

There is hereby established in the Government of the District of Columbia a committee of persons representing management, labor, and the public at large to be known as the Manpower Advisory Committee for the District of Columbia.

PART I

Purpose.—The purpose of the Committee is to insure full community participation and support in the District's program of providing occupational training for the unemployed or underemployed under the provisions of the Manpower Development and Training Acts of 1962 and 1965, and in the various aspects of the youth program and the Youth Opportunity Center as authorized by the Youth Opportunity Act.

PART II

Functions.—The Committee shall advise the Board of Commissioners, the Superintendent of Schools, and the Director of the United States Employment Service for the District of Columbia in the administration in the District of Columbia of the Manpower Development and Training Act and the Youth Opportunity Act. The Committee shall:

1. Study manpower requirements for the area.
2. Identify manpower problems and enlist public and private support to alleviate or resolve them.
3. Recommend appropriate training and retraining programs.
4. Call attention to manpower problems requiring furtheir study and enlist competent authority to conduct such studies.
5. Make suggestions to strengthen training programs.
6. Examine and evaluate all proposals for MDTA training and recommend adoption or rejection.
7. Act as liaison with the public to assure understanding and support of the Youth Opportunity Center and its neighborhood branches.
8. Help arouse public support and the means to provide needed services for youth.
9. Help obtain commitments from employers to hire youth served by the Center.
10. Aid in obtaining management cooperation in making surveys of occupational opportunities for youth.
11. Work for cooperation and support of labor in develping employment opportunities for youth.
12. Help in removing artificial barriers to employment.
13. Help coordinate the Center's program with the community's economic development.
14. Help establish cooperative working relationships with other community agencies serving youth.
15. Provide technical advice on specific Center activities.
16. Suggest methods to strengthen training programs designed to qualify youth for the world of work.

PART III

Composition.—The Committee shall consist of nine (9) members appointed by the Board of Commissioners and subject to removal at the discretion of the Board of Commissioners. The members shall be chosen so that three represent management, three represent labor and three represent the public at large. Members shall serve without compensation.

PART IV

Terms of appointment.—All appointments of members to the Committee shall expire as of midnight, June 30, 1968, at which time the Committee shall be abolished.

PART V

Organization.—The Committee shall designate its own officers.

ORGANIZATION ORDER NO. 132.—COMMITTEE ON YOUTH OPPORTUNITY AND COMMUNITY IMPROVEMENT

Organization Ord. No. 132, 62–1280, July 24, 1962, ordered that:

Preamble. A resolution, issued on June 29, 1962, by the President's Committee on Juvenile Delinquency and Youth Crime, reads in part as follows:

> "To expedite a program of youth services, we are now allocating $100,767 from funds made available under the Juvenile Delinquency And Youth Offenses Control Act of 1961 to employ an immediate planning staff for the Washington metropolitan area.
>
> "This staff, directly responsible to us, will work in close cooperation with the Board of Commissioners and the departments of the City, and will consult with interested citizens and groups throughout the metropolitan area. They will report * * * on the design of a planning program and appropriate vehicles for action. They will make recommendations on the best structure needed to support this plan of action."

Pursuant to the intent and purposes of this Resolution, it is hereby ordered:

PART I

Committee on Youth Opportunity and Community Improvement.—There is established, under the supervision and control of the Board of Commissioners, a Committee on Youth Opportunity and Community Improvement, herein referred to as the Committee.

PART II

Functions.—The Committee shall perform the following functions:

A. Serve as an advisory group to the Board of Commissioners in connection with the grant to the District of Columbia, as announced in the Committee Resolution.

B. Serve as an advisory and consulting group to the planning staff which is responsible, under the President's Committee, for designing a planning program for the District of Columbia, on such matters as the organizational structure needed for effective planning and action programs, and the preparation of the District's application for a planning grant scheduled for review by the President's Committee before the end of 1962.

PART III

Composition.—The Committee shall consist of the designated representative of the following organizations:

A. *Community Organizations*—

1. Americans for Democratic Action.
2. Archdiocese of Washington.
3. Boy Scouts of America, National Capital Area Council.
4. Council of Churches, National Capital Area.
5. District of Columbia Chamber of Commerce.
6. D.C. Congress of Parents and Teachers.
7. D.C. Junior Chamber of Commerce.
8. Democratic Central Committee for D.C.
9. District of Columbia Medical Association.
10. Federation of Business Men's Associations, Metropolitan Area.
11. Federation of Citizens Associations.
12. Federation of Civic Associations.
13. Greater Washington Central Labor Council.
14. Health and Welfare Council.
15. Jewish Community Council of Greater Washington.
16. Junior League of Washington, Inc.
17. K Street Young Women's Christian Association.
18. League of Women Voters.
19. Metropolitan Washington Board of Trade.
20. National Association for the Advancement of Colored People.
21. National Conference of Christians and Jews.

A. *Community Organizations*—Continued
22. National Council of Jewish Women.
23. Republican Committee for the D.C.
24. Washington Urban League.
25. Young Men's Christian Association, Twelfth Street Branch.

B. *Universities*—

1. American University.
2. Catholic University of America.
3. Georgetown University.
4. George Washington University.
5. Howard University.
6. University of Maryland.

C. *Government agencies*—

1. Commissioners' Offices.
2. Commissioners' Youth Council.
3. Department of General Administration.
4. Department of Public Health.
5. Department of Public Welfare.
6. Department of Vocational Rehabilitation.
7. Metropolitan Police Department.
8. National Capital Housing Authority.
9. Office of Urban Renewal.
10. Public Library.
11. Public Schools.
12. Recreation Department.
13. The Juvenile Court of the District of Columbia.
14. U.S. Employment Service for the D.C.

Additional organizations may be represented on the Committee, from time to time, in order to insure maximum community support of the planning and action programs.

PART IV

Terms of appointment.—A. Terms of appointment of members shall continue until such time as the permanent organizational structure needed for effective planning and action programs is determined and established, at which time all appointments shall automatically expire and the Committee shall be abolished.

B. Alternate representatives may be designated, at the discretion of the organization or member representing an organization. However, such matters as voting privileges will be restricted to one vote per organization represented.

PART V

Compensation.—Members shall serve without compensation.

PART VI

Organization.—A. The Committee shall be initially composed of a Chairman, three Associate Vice Chairmen, and a Secretary, to be elected by simple majority of Committee members present and voting at its initial meeting. These five elected officers shall comprise the Executive Board of the full Committee. The Executive Board may be expanded to include additional members, elected at large, in the discretion of the membership.

B. The Chairman, upon the advice and consent of the Executive Board, may appoint such subcommittees as are considered necessary to fulfill the purpose and functions of the Committee.

PART VII

Secretarial service.—Secretarial services shall be provided from the planning staff which is responsible to the President's Committee.

ORGANIZATION ORDER NO. 133

[There is no material for this organization order, since it was vacated before publication. However the number has been reserved for future material.]

ORGANIZATION ORDER NO. 134.—ADVISORY COUNCIL ON VOCATIONAL REHABILITATION

Organization Ord. No. 134, 62–1959, Oct. 11, 1962, as amended June 14, 1966, ordered that:

PART I

A. *Establishment.*—There is hereby established in the Government of the District of Columbia a permanent committee of citizens to be known as the Advisory Council on Vocational Rehabilitation.

B. *Functions.*—The functions of the Council are to advise the Board of Commissioners and the Director, Department of Vocational Rehabilitation, with respect to the following:

1. Policy and operational aspects of the vocational rehabilitation program of the District of Columbia. The Council shall make such recommendations as it may deem appropriate with respect to matters affecting the vocational rehabilitation program; keeping appropriate District officials informed of the reactions of those segments of the public affected by or interested in the vocational rehabilitation program; and providing leadership among organizations and the public at large to create understanding of the program and to enlist cooperation in its implementation.
2. Fees for rehabilitation services provided to the Department's clients.
3. Interpretation of the varied medical, occupational, and other aspects of the vocational rehabilitation program for interested citizens.
4. Provision of the leadership necessary for members of medical and related professional groups to understand the program.
5. Such recommendations as it may deem appropriate with respect to rehabilitation matters affecting the program; and
6. Provision of adequate in-service staff training in rehabilitation understanding for the staff of the Department.

C. *Composition and Membership:*

1. The Advisory Council on Vocational Rehabilitation shall consist of twenty-one (21) members in addition to four ex officio members who shall be the Chairman of the Commissioners' Committee on Employment of the Handicapped, and the three medical Consultants to the Director, Department of Vocational Rehabilitation. Members shall be chosen on the basis of their experience, reputation, or demonstrated interest in the field of vocational rehabilitation of the physically handicapped.
2. Members shall be appointed by the Board of Commissioners after consideration of nominations made by the Director, Department of Vocational Rehabilitation, and such other sources as they may consider appropriate.

D. *Terms of Appointment:*

1. Members shall hold office for terms of three years, except of the six new appointments of members effective June 14, 1966, two shall serve terms expiring March 15, 1967; two shall serve terms expiring March 15, 1968; and two shall serve terms expiring March 15, 1969. Should a vacancy occur through the death, incapacity or resignation of a member, a successor may be appointed to complete the unexpired term in the same manner as regular appointments. No person who has served six years or more consecutively as a member shall be reappointed as a member until after the expiration of one year from the end of such service.
2. If a member is appointed more than one day after the date ending the preceding term, the term of such member shall expire three years from the date ending the preceding term rather than three years from the date of his appointment.

E. *Compensation.*—Members shall serve without compensation.

F. *Organization.*—At the initial meeting each year following the appointment of new members, the Council shall elect from among its members such officers as it deems necessary. All meetings of the Council will be on call of the Chairman, who shall call at least one meeting during each quarter of each fiscal year.

PART II

Effective date.—This Order shall be effective on and after October 11, 1962.

ORGANIZATION ORDER NO. 135.—COMMISSIONERS' ADVISORY COMMITTEE ON PHYSICAL THERAPY

Organization Ord. No. 135, 62–2144, Nov. 15, 1962, ordered that:

There is hereby created in the District of Columbia an Advisory Committee on Physical Therapy.

PART I

Purpose.—The purpose of the Committee shall be to advise the Commissioners in preparing for carrying out the provisions of Public Law 87–280 [D.C. Code § 2–451 et seq.] pertaining to the licensing of physical therapists in the District of Columbia, which shall become effective February 20, 1963.

PART II

Functions.—A. The Committee shall consider the following matters and advise the Commissioners thereon:

(1) The promulgation of regulations designed to implement Public Law 87–280 [D.C. Code § 2–451 et seq.].

(2) The establishment of fees to be collected by the Department of Occupations and Professions for services rendered in connection with the licensing of physical therapists in the District of Columbia.

(3) The establishment of policies and procedures pertaining to the licensing of physical therapists in the District of Columbia.

(4) The issuance of by-laws pertaining to the functions and activities of the District of Columbia Physical Therapists Examining Board to be established pursuant to Public Law 87–280 [D.C. Code § 2–451 et seq.].

B. The Committee shall serve in an advisory capacity to the Director, Department of Occupations and Professions.

C. The Committee shall perform other advisory duties pertaining to Public Law 87–280 [D.C. Code § 2–451 et seq.] as directed or requested by the Commissioners.

PART III

Composition.—The Committee shall consist of three members appointed by the Board of Commissioners on the basis of personal qualifications. Persons appointed to membership on the Committee shall be of outstanding ability. They shall be currently practicing as physical therapists in the District of Columbia, with at least five years experience in physical therapy.

PART IV

Term of Office.—All appointments of members to the Committee shall expire as of midnight February 19, 1963, at which time the Committee shall be abolished.

PART V

Compensation.—Members shall serve without compensation.

PART VI

Oath of Office.—Members shall take an oath of office as follows:

"I, _____, having been duly appointed by the Board of Commissioners as a member of the Advisory Committee on Physical Therapy, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Committee to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties; so help me God."

PART VII

Organization.—Except for a Chairman who shall be designated by the Board of Commissioners, the Committee shall determine its own organization, select its own officers, and establish its own rules of procedure. The Committee shall meet upon the call of the Commissioners, the Chairman of the Committee, or a majority of the Committee membership.

ORGANIZATION ORDER NO. 136.—CITIZENS COUNCIL FOR THE DISTRICT OF COLUMBIA

Organization Ord. No. 136, formerly Reorganization Ord. No. 2, C.O. 302,853/12, July 1, 1952, as amended Jan. 21, 1954, as redesignated Organization Ord. No. 136 and amended by Order No. 62–2262, Dec. 4, 1962, ordered that:

PART I

Citizens Council for the District of Columbia. There is hereby established a permanent committee of citizens to be known as the Citizens Council for the District of Columbia.

PART II

Purpose.—The purpose of the Council is to increase citizen participation in the municipal government and to act in an advisory capacity to the Commissioners on matters affecting the general public.

PART III

Functions.—The Council shall:

1. Advise the Board of Commissioners on such matters as the Commissioners request.

2. Advise the Board of Commissioners on other matters as the Council itself considers appropriate.

3. Assist the Board of Commissioners in interpreting District Government programs to the public.

PART IV

Composition.—The Council shall consist of not more than twenty-five (25) members, who shall be residents of the District of Columbia, selected by the Board of Commissioners on the basis of personal qualification. Members shall hold no full-time office for which compensation is paid from funds of the District of Columbia.

PART V

Terms of office.—Members shall hold office for terms of three years, except that, of the initial appointment of additional and new members following the effective date of this Order, six (6) shall serve until June 30, 1963, six (6) until June 30, 1964, and five (5) until June 30, 1965. The eight (8) incumbent members of the Council shall continue to serve the unexpired portion of their terms. Should a vacancy occur through the death, incapacity or resignation of a member, a successor may be appointed to complete the unexpired term and in the same manner as regular appointments. No person shall serve more than two consecutive terms but may be reappointed after a lapse of one year.

PART VI

Oath of office.—Members shall take on oath of office as follows:

"I, _____, having been duly appointed by the Board of Commissioners as a member of the Citizens Council, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Council to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties; so help me God."

PART VII

Compensation.—Members shall serve without compensation, but appropriate expenses will be reimbursed as indicated herein.

PART VIII

Organization.—The Secretary to the Board of Commissioners shall serve as the Secretary to the Council, but shall have no vote. At the initial meeting in each fiscal year, following the appointment of new members, the Council shall determine its own organization and name its own officers, provided that the internal standing Committee organization generally shall correspond to the functional grouping of the three Commissioners; and any subcommittee organization generally shall correspond to the major District Government departments and agencies. The Council shall meet at least once a month. It shall hold additional meetings at the call of the Board of Commissioners, the presiding officer of the Council, or a majority of the Council membership.

PART IX

Administration.—The Secretary to the Board of Commissioners is responsible for the files and housekeeping activities of the Council, and will provide the necessary stenographic and clerical services. Expenses incurred by the Council as a whole, or by individual members, when authorized by the Commissioners or their designated agent, will be paid for from appropriate District funds.

PART X

Reports.—The Council in its discretion is hereby authorized to release to the press and to the public generally, before reporting thereon to the Commissioners, the reports and recommendations of the Council on matters on which action has been taken, except in those instances where otherwise requested by the Commissioners.

ORGANIZATION ORDER NO. 137.—PUBLIC WELFARE ADVISORY COMMITTEE ON DAY CARE

Organization Ord. No. 137, 63–999, Apr. 18, 1963, as amended May 14, 1963, ordered that:

Pursuant to Public Law 87–543, approved July 25, 1962, there is hereby created in the Government of the District of Columbia a committee of citizens and government officials, representing agencies concerned with day care or day care services and professional or civic or other public or nonprofit private agencies, organizations, or groups concerned with the provision of day care, to be known as the Public Welfare Advisory Committee on Day Care.

PART I

Purpose.—The purpose of the Committee is to increase citizen participation in the municipal government's public welfare program and to act in an advisory capacity to the Director of Public Welfare on all matters of general policy involved in the provision of day care services under the District plan.

PART II

Functions.—The Public Welfare Advisory Committee on Day Care shall advise the Director of Public Welfare in the following respects:

1. Study and make appropriate recommendations with respect to proposals for new departmental policies and programs, or changes in existing departmental policies and programs, affecting provision of day care services in the District of Columbia.

2. Advise on community day care needs and the formulation and execution of long-range plans necessary to satisfy those needs.

3. Advise in coordinating the programs and activities of the Department of Public Welfare with those of community groups and private and nonprofit organizations.

4. Advise in the development of resources and the establishment of standards for day care services in the District of Columbia.

PART III

Composition.—The Committee shall consist of not more than twenty-seven (27) members, nor less than a number divisible by three, appointed by the Board of Commissioners on the basis of their personal qualifications and demonstrated interest and leadership in the field of day care. The Committee shall include at least two representatives of the Department of Public Welfare, one representative of the Department of Public Health and one representative of the Board of Education. Such other appointment shall, to the extent possible, be made in such a manner as to provide a maximum degree of perspective on, and insight into, the day care needs of the community.

PART IV

Term of office.—The terms of office of members of the Committee shall be three years, except that, of the persons first appointed as members of said Committee, one-third of them shall be appointed for one year, one-third for two years, and one-third for three years. Should a vacancy occur through the death, incapacity, removal, or resignation of a member, a successor shall be appointed to complete the unexpired term of the member. After the expiration of his term each member shall continue to serve until his successor is appointed and has qualified. No person who has served six years or more consecutively as a member shall be reappointed as a member until after the expiration of one year from the end of such service.

PART V

Compensation.—Members shall serve without compensation.

PART VI

Organization.—The Committee shall elect its own chairman and otherwise determine its own organization and designate its own officers. Secretarial services shall be furnished by the Department of Public Welfare.

ORGANIZATION ORDER NO. 138.—LABOR-MANAGEMENT ADVISORY COMMITTEE TO D.C. APPRENTICESHIP INFORMATION CENTER

Organization Ord. No. 138, 63–1552, June 25, 1963, ordered that:

There is hereby created in the District of Columbia a Labor-Management Advisory Committee to the D.C. Apprenticeship Information Center.

PART I

Purpose.—The purpose of the Committee shall be to serve in an advisory capacity to the D.C. Apprenticeship Information Center in promoting equal opportunity in apprenticeship and training in the District of Columbia.

PART II

Functions.—

(1) The Committee shall furnish advice on the following matters:

(a) Ways and means of locating apprenticeship job openings and qualified applicants for testing, counseling and referral, by the Center, to available jobs.

(b) Development of a cadre of group leaders who understand the apprenticeship program and who can provide leadership among minority groups in resolving apprenticeship problems.

(2) The Committee shall serve as a source of contact between employer and labor representatives of the apprenticeable trades, community leadership who are promoting equal opportunity in apprenticeship training, and the Department of Labor personnel who have staff responsibility for the Center's operation.

PART III

Composition.—The Committee shall consist of ten (10) members appointed by the Board of Commissioners, four (4) representing labor, four (4) representing management, and two (2) representing the public, provided that at least one member representing labor and one member representing management shall be appointed from among the members of the D.C. Apprenticeship Council.

PART IV

Terms of office.—The initial term of office of members shall be for one year. Thereafter the terms of office of members of the Committee shall be three years, except that, of the persons first appointed at that time as members, one-third shall be appointed for one year, one-third for two years, and one-third for three years. Should a vacancy occur through the death, incapacity, removal, or resignation of a member, a successor shall be appointed to complete the unexpired term of the member. After the expiration of his term each member shall continue to serve until his successor is appointed and has qualified. No person who has served six years or more consecutively as a member shall be reappointed as a member until after the expiration of one year from the end of such service.

PART V

Compensation.—Members shall serve without additional compensation.

PART VI

Organization.—The Committee shall elect its own chairman and otherwise determine its own officers. The Secretary of the D.C. Apprenticeship Council shall serve as permanent Secretary to the Committee.

ORGANIZATION ORDER NO. 139.—COMMISSIONERS' PLANNING AND URBAN RENEWAL ADVISORY COUNCIL

Organization Ord. No. 139, 64–188, Feb. 11, 1964, as amended Nov. 10, 1964, and Jan. 18, 1966; ordered that:

Commissioners' Order No. 57–508, dated Mar. 26, 1957, as amended, establishing the Commissioners' Planning Advisory Council, and Organization Order No. 110 (Commissioners' Order No. 58–1485), dated Sept. 4, 1958, as amended, establishing the Commissioners' Urban Renewal Council, are hereby rescinded and replaced by Organization Order No. 139 which reads as follows:

PART I

Commissioners' Planning and Urban Renewal Advisory Council.—There is hereby established in the Government of the District of Columbia a permanent committee of

citizens to be known as the Commissioners' Planning and Urban Renewal Advisory Council.

PART II

Purpose.—The purpose of the Commissioners' Planning and Urban Renewal Advisory Council is to advise and assist the Board of Commissioners in connection with long-range planning and programing, including urban renewal, and to provide citizen leadership in the physical renewal and preservation of the District of Columbia.

PART III

Functions.—In accomplishing its purpose, the Council shall:

(1) Review and make appropriate recommendations on long-range plans and public works programs.

(2) Study and make appropriate recommendations on Urban Renewal activities.

(3) Study and make recommendations on special housing problems as they affect ethnic and racial minorities, large low-income families, low middle-income families, single individuals, handicapped persons, the aging, and students, including the problems of availability of housing, financing, and impact of urban renewal and public improvement programs.

(4) Exercise leadership within the community to encourage and stimulate the broadest possible community and citizen interest, understanding and participation in planning, programing, budgeting, and urban renewal.

PART IV

Composition and membership.—The Council shall consist of thirteen (13) members appointed by the Board of Commissioners, who shall be residents of the District of Columbia for a period of at least 3 years immediately prior to appointment. Persons appointed to membership on the Council shall be selected insofar as possible in such a way as to provide in the aggregate a maximum degree of perspective upon, and insight into, the planning and urban renewal needs of the District of Columbia.

Notwithstanding any other provisions of this Order, active members of either of the two predecessor Councils, i.e., Commissioners' Planning Advisory Council or Urban Renewal Council, herein disestablished, are eligible, with their consent, to be appointed to and serve on the Council hereby established.

PART V

Terms of appointment.—1. Members shall hold office for terms of 3 years, except that on the initial appointments of members following the effective date of this Order, one-third shall serve for 1 year, such terms to expire Jan. 15, 1965; one-third shall serve for 2 years, such terms to expire Jan. 15, 1966; and one-third shall serve for 3 years, such terms to expire Jan. 15, 1967. Should a vacancy occur through the death, incapacity or resignation of a member, a successor may be appointed to complete the unexpired term in the same manner as regular appointments. After the expiration of his term, each member shall continue to serve until a successor has been appointed and has qualified. No person who has served 6 years or more consecutively as a member shall be reappointed as a member until after the expiration of 1 year from the end of such service.

2. If a member is appointed more than 1 day after the date ending the preceding term, the term of such member shall expire 3 years from the date ending the preceding term rather than 3 years from the date of his appointment.

PART VI

Oath of office.—Members shall take an oath of office as follows:

"I _____, having been duly appointed by the Board of Commissioners as a member of the Commissioners' Planning and Urban Renewal Advisory Council of the District of Columbia, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Council to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties, so help me God."

PART VII

Compensation.—Members shall serve without compensation, but appropriate expenses will be reimbursed as indicated below.

PART VIII

Organization.—

1. The Board of Commissioners shall designate the Chairman of the Council.

2. The Council shall otherwise determine its own organization, including the establishment of auxiliary committees.

3. The Council shall convene at least nine times each year at regularly scheduled meetings. It shall hold additional meetings at the request of the Assistant Engineer Commissioner for Planning and Programing, the Board of Commissioners, or a majority of the Council membership. When meetings are called by the members, the Assistant Engineer Commissioner for Planning and Programing shall be notified in advance in order that the necessary staff assistance may be provided, as appropriate.

PART IX

Administration.—

1. Staff assistance to the Council shall be furnished by staff available to the Engineer Commissioner.

2. Subject matter specialists shall be made available from operating departments as may be appropriate to assist the Council in its deliberations.

3. Expenses incurred by the Council as a whole or by individual members, when authorized by the Board of Commissioners, will become an obligation against funds so designated.

PART X

Reports.—Reports and recommendations of the Council shall be furnished to the Board of Commissioners and the Director of General Administration.

PART XI

Effective date.—This Order is effective on and after Jan. 16, 1964.

ORGANIZATION ORDER NO. 140.—DEPARTMENT OF PUBLIC WELFARE

Organization Ord. No. 140, 64–191, Feb. 11, 1964, Oct. 8, 1965, and June 7, 1966, ordered that:

Reorganization Order No. 58, dated June 30, 1953, as amended, is hereby redesignated Organization Order No. 140, and amended to read as follows:

PART I

Department of Public Welfare.—There is hereby established in the Government of the District of Columbia a Department of Public Welfare, headed by a Director. The supervisory responsibility of the Board of Commissioners for activities of the Department of Public Welfare shall be exercised through a designated Commissioner.

PART II

Purpose.—The Department of Public Welfare is established for the purpose of planning, implementing and directing public welfare programs which will most effectively fulfill the community's obligations to its underprivileged, and performing certain other allied functions, including the furnishing of institutional care as provided by law.

PART III

Director, Department of Public Welfare.—A. The Director, Department of Public Welfare, as head of the Department, and as agent of the Commissioners of the District of Columbia, where designated in municipal regulations, shall be responsible for developing and implementing a public welfare program consistent with Federal laws and programs and Commissioners' Orders. The Director shall perform all the functions vested in the Commissioners by the District of Columbia Public Assistance Act of 1962, except the adoption and promulgation of regulations. In carrying out these authorities and responsibilities, the Director shall be cognizant of and take into account the social obligations of the government to its people in as economical and business-like manner as possible, consistent

with the intent of applicable laws and within the resources available. The Director shall consult with the Commissioners, or the designated Commissioner through whom the supervisory responsibility of the Commissioners is exercised, on matters which are of primary importance to the operation and activities of the Department.

B. Except as hereinafter otherwise provided, the Director shall have full authority over the Department and all functions, resources, officials and personnel assigned thereto, including the power to redelegate authority and assign responsibility to officials and personnel of the Department in such degree as in his judgment is necessary to establish and maintain efficiency and good administration. All authority vested in the Director, including all authority redelegated by the Director pursuant to authorities specified herein, shall be exercised in accordance with applicable laws, regulations and Commissioners' Orders or directives issued pursuant to Commissioners' Orders.

C. The power to consent to surgical operations on wards other than in certain types of emergency situations to be specified by the Director, the power to consent to the adoption of wards whose parents have been permanently deprived of custody by court order, the power to discharge wards when desirable prior to the expiration of their period of commitment, and the power to make final decisions on appeals and grievances presented by clients in connection with actions taken by components of the Department, shall be limited to the Director or a deputy or acting director. The authority vested in the Director to execute agreements with the U.S. Department of Agriculture, subject to the approval of the Board of Commissioners, for the acceptance and distribution of surplus food commodities donated by such Department may be exercised only by the Director, a deputy director or acting director. When recommended by the corporation counsel, the director, a deputy director or acting director is authorized to approve compromises and settlements of all claims and suits instituted on behalf of wards.

The Director or his duly authorized agent is authorized to apply for administration and act as administrator on behalf of the District of Columbia in any estate in which the assets consist solely of personal property valued at $500 or less and in which the District of Columbia is the principal creditor of said estate by reason of services rendered or expenditures made by the Department. All funds so collected shall be deposited into Miscellaneous Trust Fund Account. Small Estate Claims, Department of Public Welfare, the Miscellaneous Trust Fund Account in the Accounting Division, Finance Office, to be thereafter disbursed by the Disbursing Officer, Finance Office, upon direction of the Administrator and certification by the Chief of the Accounting Division, Finance Office, that the disbursements are in accordance with the final order of the U.S. District Court for the District of Columbia, Holding a Probate Court.

D. The Department is designated as the District agency to administer or supervise the administration of a District plan to carry out the objectives of the Older Americans Act of 1965 (Public Law 89–73) and Federal regulations issued pursuant thereto, with respect to aged and aging residents of the District. The Director, in consultation with the District of Columbia Interdepartmental Committee on Aging, shall develop, for the approval of the Commissioners, a District plan which shall meet the requirements of section 303 of such Act.

E. The Director may establish under the major organizational components, hereinafter described, so many organizational components with specified functions as he may deem appropriate and thereafter may alter, change or modify such organizational components; provided, that all actions establishing, altering, changing or modifying such organizational components shall be submitted at least 10 days prior to the effective date of such actions, to the Director, Department of General Administration, for review as to conformance with sound principles of management and organization and applicable Commissioners' Orders and policies. Questions which cannot be resolved between the Departments concerned shall be referred to the Board of Commissioners.

PART IV

Organization and functions.—The Department of Public Welfare shall be comprised of the following major organizational components in addition to the Office of Investigations and Collections and certain volunteer, medical and technical staff consultants within the Director's office, in which responsible officials and personnel assigned there to shall perform the functions described herein.

A. *Controller and Deputy Director for Administration.*—Plans, directs, and coordinates the administrative and business management of the Department. Exercises full authority over the performance of all (normal) staff and auxiliary functions including program analysis, evaluation and review; budget; personnel; procurement; management improvement; statistical research; accounting; organizational planning; data processing; distribution of surplus foods; and related administrative services. Participates in and assumes leadership responsibility for policy and financial program planning, review and appraisal for purposes of establishing workable policies and program objectives and measuring the Department's results and effectiveness in applying its policies and achieving its objectives. Coordinates efforts with the Director and the other deputies and maintains liaison with the Department of General Administration and with other District and Federal Government agencies.

B. *Deputy Director for Institutional Services.*—Plans and directs the activities and operations and exercises supervision and control of the Department's welfare institutions. Implements policies and regulations governing the operation of these facilities to insure effectiveness of the treatment program and the security and safety of the residents. Maintains the physical plant and grounds and accounts for expenditures. Participates in overall Departmental planning, budget justifications and implementation of the programs. Coordinates with the Director and the other deputies in regard to related activities. Maintains liaison with other appropriate District, State, Federal, and community agencies.

C. *Deputy Director for Family and Children Services.*—Plans, develops, and proposes policies and regulations for governing the family and children services provided by the Department. Implements and administers approved policies and regulations governing the family and children services provided to insure effectiveness of the direct assistance and services to individuals, families and children in the community. Initiates and administers policies and regulations to implement all public assistance and welfare laws (including, without limitation, the Social Security Act, the District of Columbia Public Assistance Act of 1962, and the Juvenile Court Act), and the care, custody, placement, and adoption of children. Directs the operation of all family and children services and exercises supervisory responsibility over the divisions concerned to insure proper implementation of policies and the maintenance of accurate standards of performance. Participates in overall departmental planning, budget justifications and implementation of the programs. Coordinates with the Director and the other deputies in regard to related activities. Maintains liaison with other appropriate District, State, Federal, and community agencies.

PART V

Repeal of previous orders.—All Commissioners' Orders and parts of Commissioners' Orders in conflict with any of the provisions of this Order are to the extent of such conflict, hereby repealed, but nothing contained in this Order shall in any way alter, amend, or repeal any municipal regulation adopted or promulgated by the Commissioners.

PART VI

Effective date.—This Order shall become effective on and after Feb. 11, 1964.

ORGANIZATION ORDER NO. 141.—DEPARTMENT OF PUBLIC HEALTH

Organization Ord. No. 141, 64–193. Feb. 11, 1964, as amended Jan. 8, 1965, June 3, 1965, March 22, 1966, June 7, 1966, and June 30, 1966, ordered that:

Reorganization Order No. 52 (Commissioners' Order L.S. 4259–B), dated June 30, 1953, as amended, and Reorganization Order No. 57 (Commissioners' Order L.S. 4262–B), dated June 30, 1953, as amended Aug. 11, 1964,

and Aug. 20, 1964, are hereby combined, amended, and redesignated Organization Order No. 141 to read as follows:

PART I

Department of Public Health.—There is established, under the direction and control of a Commissioner, a Department of Public Health, headed by a Director of Public Health.

PART II

Purpose.—The Department of Public Health is established for the purpose of planning, implementing, and directing public health and hospital care programs, including the enforcement of applicable laws and regulations which will effectively maintain and improve the health and well-being of the people of the District of Columbia and for the performance of certain allied medical and para-medical functions.

PART III

Director of Public Health, Department of Public Health.—A. The Director of Public Health, as agent of the Commissioners of the District of Columbia, where so designated in Commissioners' Orders or District Regulations, shall be responsible for carrying out the purposes and functions set forth in Part II hereof. The Director shall advise and consult with the Commissioners, or the designated Commissioner through whom the supervisory responsibility of the Commissioners in exercised, on matters which are of primary importance to the operation and activities of the Department.

The Director, as head of the "State agency," for mental health and mental retardation programs (Public Law 88–156 and Public Law 88–164) shall (1) plan the construction of and operate community mental health centers, (2) collaborate with the Director of Public Welfare and the Superintendent of Schools in developing programs for the mentally retarded and plan the construction of mental retardation facilities, and (3) provide assistance, upon request, to the Director of Public Welfare and to other departments as appropriate in the operation of mental retardation facilities.

The Director shall, in planning, developing, and administering the District's program of counseling and referral of male youth rejected for military service because of medical reasons, collaborate with the Director of the Department of Vocational Rehabilitation and other District Government program directors concerned.

The Director, as head of the "State agency" for purposes of the Social Security Amendments of 1965 (Public Law 89–97), shall offer consultation when requested by the Secretary of Health, Education, and Welfare, pursuant to the provisions of subsection 1863 of the act, and provide the services required by the terms of any agreement made with the Secretary, pursuant to the provisions of subsection 1864 of the act. The Director shall also administer the State plan and make such reports as are required pursuant to the provisions of subsection 1902 of the act.

The Director, in consultation with the Director of the Department of Buildings and Grounds and other District departments concerned, shall plan and develop programs for the construction and modernization of hospitals and other medical facilities.

B. Except as hereinafter otherwise provided and subject to applicable laws, rules, regulations, and Commissioners' Orders or directives issued pursuant to Commissioners' Orders, the Director shall have full authority over the Department and all functions, resources, officials and personnel assigned thereto, including the power to redelegate authority and assign functions to officials and personnel of the Department in such degree as in his judgment is necessary to establish and maintain efficiency and good administration. He may, pursuant to Sec. 32–327, D.C. Code, 1961 ed. [now 1967 ed.], accept such voluntary services as are necessary in connection with the establishment and maintenance of the medical services of the Department.

C. The Director may establish under the major organizational components, hereinafter described, so many organizational components with specified functions as he may deem appropriate and thereafter may alter, change or modify such organizational components: *Provided,* That all actions establishing, altering, changing or modifying such organizational components shall be submitted at least 10 days prior to the effective date of such actions, to the Director, Department of General Administration, for review as to conformance with sound principles of management and organization and applicable Commissioners' Orders and policies. Questions which cannot be resolved between the departments concerned shall be referred to the Board of Commissioners.

PART IV

Organization and functions.—The Department of Public Health shall be comprised of the following major organizational components, each headed by an associate director, in which responsible officials and personnel assigned thereto shall perform the functions described herein:

A. *Associate Director for Administration.*—Plans, directs, and coordinates the administrative and business management of the Department. Under the Director, exercises full authority over the performance of all staff and auxiliary functions including budget and finance; management analysis and manpower utilization; program planning, research, statistics and data processing; administrative services including building management and office services; and procurement and supply management on a centralized basis. Participates in and assumes leadership responsibility for developing department policies and maintains and correlates the codified health regulations; examines the need for legislation and regulations, drafts recommended changes and provides advice and assistance in related matters. Participates in, and assumes leadership for, financial program planning, review and appraisal for purposes of establishing workable policies and program objectives and for purposes of measuring the Department's results and effectiveness in applying its policies and achieving its objectives. Coordinates efforts with the Director and the Associate Directors and maintains liaison with appropriate District and Federal Government agencies and private health organizations; and supervises and directs the activities of the following organizational entities:

1. *Budget and Finance Division.*—Prepares the Department's annual and supplemental budget requests; maintains budgetary control of funds and authorized positions; develops and administers a departmental financial and cost reporting system meshed with the Department's program and performance reporting and analysis system and with the District's Quarterly and Annual reporting systems; prepares special cost analyses and budget and accounting reports as appropriate.

Collects accounts for patients receiving health services at District Government institutions and facilities, St. Elizabeths Hospital, and contract hospitals, referring to the Corporation Counsel those accounts requiring court action. Applies for administration and acts as administrator on behalf of the District of Columbia in any estate in which the assets consist solely of personal property valued at $500 or less and in which the District of Columbia is the principal creditor of said estate by reason of services rendered or expenditures made by the Department. Deposits all funds so collected into Miscellaneous Trust Fund Account (by individual estate), Department of Public Health, the Miscellaneous Trust Fund Account in the Accounting Division, Finance Office, to be thereafter disbursed by the Disbursing Officer, Finance Office, upon direction of the administrator and certification by the Chief of the Accounting Division, Finance Office, that the disbursements are in accordance with the final order of the U.S. District Court for the District of Columbia, Holding a Probate Court.

2. *Management Analysis Division.*—Provides management analysis to the bureaus, offices, and institutions of the Department; conducts studies and surveys of record systems, directives, manuals, procedures, manpower and equipment utilization, forms management and space utilization; recommends new or improved methods, procedures, forms and equipment for improving economy and efficiency of the operations; and assists in implementing and installing the approved management improvements.

Provides centralized machine processing for the Department and maintains accounts and renders bills by

automatic data processing for health services furnished patients at District Government institutions and facilities, St. Elizabeths Hospital, and private contract hospitals. Notifies the Budget and Finance Division of the Department of Public Health and D.C. General and Glenn Dale Hospitals of delinquent accounts.

3. *Planning, Research and Statistics Division.*—Reviews periodically the programs of the Department with the objective of improving or modifying existing programs and evaluating them in relation to potential or proposed new programs. Keeps abreast of developments in the health field by monitoring new concepts and programs under consideration at the Federal level in which the District may ultimately wish to participate or be required to participate. Prepares and coordinates the preparation of a department-wide program and performance reporting and analysis system.

Initiates, studies, and carries out research projects and maintains liaison with appropriate Federal agencies concerned with research grants; provides summarization of statistical data reflecting the performance of the bureaus, offices and hospitals; supplies statistical services in the measurement of program performance; administers and maintains custody of birth and death records; and maintains liaison with statistical and research officials in both governmental and private health and welfare organizations.

4. *Personnel Division.*—Administers a centralized personnel program, a staff training program for the Department and such other related programs as may be developed by the department; provides a recruitment service for the bureaus, offices and hospitals; maintains an employee relations service; promotes and administers an employee incentive award program; maintains a position classification service, including the preparation of position descriptions, and the classification of positions within the limits of delegated authority in accordance with District of Columbia Government and U.S. Civil Service Commission standards.

5. *Administrative Services Division.*—Provides maintenance, repairs, custody, and security for the building, grounds, and furnishings used by the Department where such responsibility is not vested in other departments and agencies; furnishes centralized office services, including mail and messenger service; furnishes central files and records service; furnishes patient and interbuilding transportation service, reproduction and assembly services; performs special studies and services.

6. *Procurement and Supply Division.*—Provides centralized procurement and supply management functions and services; maintains or supervises the maintenance of a perpetual inventory of storage items and accountability for all personal property; conducts periodic physical inventories; maintains control of or supervises the control, receipt, warehousing and distribution of all items; and maintains liaison with the Procurement and Finance Offices of the Department of General Administration.

7. *Health Education and Information.*—Develops and implements programs and projects of health education and information, designed to promote the widespread use of preventive health measures in the community and adequate personal and social health and sanitary habits, to combat the spread of communicable diseases, abate the effects of chronic diseases and provide for a healthful environment.

Maintains relationship with the various news media; develops and disseminates educational material; provides centralized visual aids and information to the general public; and maintains liaison with the Public Information Unit, with voluntary health agencies and with community organizations.

B. *Associate Director for Preventive Services.*—Develops and implements a program of preventive services executed by the bureaus under his direction; and coordinates the activities of these bureaus. Assists in determining policies and programs designed to insure coordination of activities among the major component program areas of the Department and in minimizing duplication of services and activities in these areas; renders advice to the Director in connection with problems, activities and the direction of preventive services under his supervision. Supplies medical, nursing, and other para-medical preventive services to the public, private and parochial schools, and consultative and other services to the Departments of Public Welfare, Corrections, and Vocational Rehabilitation, the Coroner and the Board of Police and Fire Surgeons, as appropriate. Provides consultative services to community health agencies and other private agencies and facilities engaged in preventive health services.

1. *Bureau of Maternal and Child Health.*—Develops and executes major programs and policies and enforces regulations for the promotion and protection of maternal and child health in the District of Columbia, including the provision of a comprehensive range of integrated multidisciplinary medical and other professional services in clinics, hospitals, schools (public and private) and homes, except for mental health activities, which are performed by the staff of the Associate Director for Mental Health and Retardation; cooperates with staff of Associate Director for Mental Health and Retardation in the provision of services for the mentally retarded, enforces standards of care for maternity patients, infants and children in hospitals, other institutions and places, such as public, private, and parochial schools, caring for children away from their own homes, including those in foster homes, day care centers or nursery schools.

2. *Bureau of Nursing.*—Furnishes public health nursing care in public, private, and parochial schools, homes and clinics, including family health instruction and carries out epidemiological investigations. Develops, in collaboration with medical, professional, and lay groups, policies and standards of public health nursing care provided in departmental facilities and services. Provides for the inspection of nursing and personal care homes and allied institutions.

3. *Bureau of Communicable Disease Control.*—Makes epidemiological studies of the prevalence and means of transmittal of contagious diseases and the procedures to prevent the spread thereof; develops and enforces regulations for the control of contagious diseases; quarantines, isolates, or restricts the movement of diagnosed contagious disease patients and determines when quarantine may be lifted; performs or supervises programs of immunization; investigates outbreaks of food poisoning and examines food handlers; investigates instances of rabies and other animal diseases affecting humans and institutes proper methods of control; operates the D.C. Pound and exercises the police powers delegated by the Commissioners incident thereto, and enforces regulations pertinent to the care of animals.

4. *Bureau of Chronic Disease Control.*—Provides preventive health services for chronic diseases, including heart, rheumatism, arthritis, diabetes, glaucoma, and others; provides diagnostic and detection clinics and home care services; makes studies and reports upon morbidity trends in chronic diseases, and promotes community health measures to control them through early detection and prevention; and plans, coordinates and executes programs, including enforcement of laws and regulations applicable to tuberculosis control, venereal disease control, and cancer and neoplastic disease control.

5. *Bureau of Laboratories.*—Provides centralized laboratory services for the Department and other Departments such as Police, Public Welfare, Corrections, the Coroner and the Board of Police and Fire Surgeons, as appropriate, in support of the preventive and medical care programs including a chemistry laboratory, a bacteriological laboratory, a serology laboratory, and other special laboratory facilities and services. Recommends and enforces standards and regulations for the operation of private laboratories.

6. *Bureau of Dental Health.*—Provides a coordinated departmentwide public health dentistry program, including operation of neighborhood dental clinics for preventive and treatment services; provides dental hygienist services in the public, private and parochial schools, and other departments as appropriate; provides oral surgery for adults and other dental services as appropriate; and provides communitywide preventive dental health activities.

7. *Bureau of Special Services.*—Develops and implements communitywide programs and services not otherwise assigned, including a Districtwide employee health service, an occupational health program, an accident prevention program, medical social services, nutritional services, and health mobilization services.

C. *Associate Director for Mental Health and Retardation.*—Responsible for proposing, developing and administering a community mental health program for the prevention of mental illness and mental retardation, treatment of the mentally ill and mentally retarded and rehabilitative measures to help these patients to live in their communities; develops and coordinates all activities in the Department in the prevention or alleviation of mental illness or mental retardation; coordinates all mental health and retardation activities with other units of the Department or in the community to prevent duplication of services and activities; supplies mental health and mental retardation services to the public, private and parochial schools, and to other D.C. Government components as required and appropriate; and supervises the discharge of duties imposed by law on the Commissioners with respect to alcohol and narcotics addiction.

Develops comprehensive community-based mental health programs utilizing all relevant services already existing in the community; makes arrangements for providing preventive, therapeutic and rehabilitative services needed by the population of each of the four mental health center areas of the District of Columbia; determines need for and recommends modification or expansion of services to satisfy changes in community needs; coordinates the Departmental programs with programs of other Departments or community agencies; determines needs for acquiring mental health services through contract arrangements with other facilities which can provide additional or special services; and provides information on immediate availability of medical, welfare, recreational, vocational, educational and job placement services for patients of the area mental health centers.

Develops and coordinates clinical and other programs for the diagnosis, treatment and rehabilitation of persons suffering from alcoholism or drug dependence; furnishes programs of diagnostic and consulting services on alcoholism and drug addiction to the Courts, other D.C. Government components and various agencies in the community; develops policies and procedures governing case finding, screening, in-take, diagnosis, treatment, rehabilitation and disposition of cases; initiates educational programs for patients, their families, personnel and students essential for the furtherance of preventive and treatment activities in alcoholism and drug dependency; and works cooperatively with others in the Department of Public Health, and the community in general in resolving problems and stimulating public interest and participation in the area of alcoholism and drug addiction programs, research and services.

Plans for providing diagnostic services, clinic, residential and day care programs and facilities, special training, recreational. educational, vocational, and work therapy activities for mentally retarded children and adults; develops a coordinated program for all these services, utilizing all available community resources and proposing new services as needed by D.C. Departments; initiates and directs surveys and studies to determine effectiveness of mental retardation programs; evaluates the need for and assists in development of sheltered workshop programs; and plans formal and in-service training programs for personnel in the field of mental retardation, coordinating these activities with the staff of the Bureau of Maternal and Child Health through the Associate Director for Preventive Services.

1. *Bureau of Centralized Psychiatric Services.*—Develops and operates centralized residential care facilities for children and adolescents including a full range of partial residential services coordinated with the services for these two groups provided in the community psychiatric centers; develops and operates hospital services providing midrange care and long-term psychiatric care for adult patients coordinated with the care given in the community mental health centers; establishes a security hospital division providing care and management of prisoner patients and other patients requiring maximum security care; coordinates the facilities listed in a manner commensurate with the Courts of the District of Columbia for residential evaluation of individuals charged with crime and for treatment of individuals when the legal process has been stayed because of their mental illness; evaluates the need for and develops centralized and area services to the community and makes recommendations for provision of same; and directs the centralized psychiatric activities of the Bureau in the fields of clinical psychology services, legal psychiatric services and centralized residential care.

a. *Clinical Psychology Services Division.*—Develops and administers clinical psychology phases of the Departmental mental health and retardation programs, including patient service, training and research; acts as public relations representative with community agencies directly concerned with clinical psychology programs; and plans the over-all formal clinical psychology training programs within the Bureau.

b. *Legal Psychiatric Services Division.*—Provides a centralized service offering non-residential diagnostic treatment and consulting services to the Courts of the District of Columbia; recommends referral of patients to appropriate facilities (Mental Health Centers and other treatment facilities); and provides consultation services to other District of Columbia components and to community agencies as required.

2. *Community Mental Health Centers.*—Each community mental health center will be the equivalent of a bureau and will provide a complete mental health service to the citizens of a defined geographical area of the District of Columbia, including utilization of staff psychiatrists for diagnostic and treatment service for patients from all community resources; utilization of clinical psychology, social service, nursing, rehabilitative, chaplain, volunteer, welfare, education and training, recreational, vocational guidance, work therapy, job placement staff and supportive services, including an acute unit, emergency service, housekeeping and food service; administer the development and operation of the area community mental health center; act as consultant to other organizations participating in mental health programs; collaborate with public and private agencies to develop training and education in psychiatry and related disciplines in the community, in the Department of Public Health and within the Associate Directorate for Mental Health and Retardation; establish methods and procedures for selecting, diagnosing, managing and disposing of psychiatric patients; participate in treatment of patients, as advisable; direct the evaluation and coordination of the work of the Center with the inpatient, outpatient, and partial residential psychiatric services provided by the Associate Directorate for Mental Health and Retardation; develop and direct comprehensive mental health programs consisting of preventive measures, diagnosis of mental illness, classification, treatment and rehabilitation of children and adults in the community mental health centers, including satellite clinics, and direct home psychiatry services for the alleviation of mental illness and referral to appropriate agencies; and provide programs of clinical, in-service and formal professional education and research.

Patients will be assigned to one of five treatment Divisions as listed below:

Children's Division
Adolescent Division
Adult Psychiatric Division
Geriatric Psychiatric Division
Alcoholism and Drug Addiction Division

D. *Associate Director for Hospitals.*—Develops and implements a program of medical care and hospital facilities executed by the components under his direction, and coordinates the activities of these components. Assists in determining policy and programs designed to insure coordination of activities among the major component program areas of the Department to minimize duplication of services and activities among these areas; and renders advice to the Director in connection with problems, activities, and the direction of medical care and hospital facilities under his supervision. Supplies medical care and hospital services to the Departments of Public Welfare, Corrections, Vocational Rehabilitation, and the Board of Police and Fire Surgeons, as appropriate.

1. *D.C. General Hospital.*—Provides comprehensive hospital care and treatment including inpatient services, outpatient services and emergency room treatment; conducts medical research; and maintains intramural and extramural training facilities and services for medical, nursing and other hospital personnel.

2. *Glenn Dale Hospital.*—Provides hospital care and treatment for tuberculosis patients, patients suffering from other chronic disease conditions, and patients in medical emergencies; conducts medical research; and maintains intramural and extramural training facilities and services for medical and hospital personnel.

3. *Bureau of Pharmacies.*—Provides pharmacy controls and services for the Department and other departments, as appropriate, in support of the preventive, mental health, and medical-care programs.

E. *Associate Director For Environmental Health.*—Develops and implements a program of environmental health to be executed by the bureaus under his director; and coordinates the activities of these bureaus; assets in determining policy and programs designed to insure coordination of activities among the major component program areas of the Department in minimizing duplication of services and activities between these areas; and renders advice to the Director in connection with problems, activities, and the direction of environmental health services under his supervision.

1. *Bureau of Public Health Engineering.*—Furnishes public health engineering services for the purpose of reducing air pollution, radiation hazards, industrial hazards, water pollution, and contamination from sewage; and furnishes public health consulting services to businesses, industries, and to District agencies.

2. *Bureau of Milk Control.*—Provides for the inspection and approval of dairy farms, milk processing plants, the manufacture and handling of frozen desserts and other dairy products; recommends standards and methods for compliance with the laws and regulations applicable thereto; and enforces all the health laws and regulations with respect to such dairy products.

3. *Bureau of Food and Drugs.*—Provides for inspection of conditions and methods of operation in food and drug establishments; recommends standards of food sanitation and drug purity, maintains a food technology service for the benefit of food service industries with emphasis on standards and methods of improving sanitation; studies use of potentially dangerous chemicals; and recommends and enforces appropriate laws and regulations with respect to these functions.

4. *Bureau of Community Hygiene.*—Provides for the inspection of sanitary and other conditions in commercial establishments, vacant land, and public space; conducts public relations and educational activities to maintain standards of sanitation and wholesome environmental conditions in commercial establishments, vacant land, and public space; provides vector control on vacant land, public space, and in commercial and industrial areas; and enforces health regulations applicable thereto, except for those enforced by the Bureau of Milk and Veterinary Services and the Bureau of Food and Drugs.

F. *Associate Director for Medical Care.*—Develops, implements, and coordinates a comprehensive medical care program for the District. Directs the functions assigned to the Bureaus under this Directorate. Coordinates those patient care and related services which are essential to the total medical care program, with those services developed from other public and private resources. Consults with the Departments of Public Welfare and Vocational Rehabilitation and with other appropriate public and private agencies to insure their full participation in planning and implementing the medicare program. Coordinates medicare program plans, policies and procedures with the staff offices of the Department of General Administration to insure conformity and consistency with policies of the Board of Commissioners governing the District's Financial management program. Maintains liaison with appropriate District, Federal and private agencies. Serves under the Director of Public Health as the principal administrator of the "State agency" established to meet the requirements of the Social Security Amendments of 1965 (Public Law 89–97). Interprets the appropriate application of Federal laws and regulations, affecting the operation of the medical care program in the District of Columbia.

1. *Bureau of Resources Development.*—Plans the balanced development of new, additional or improved medical care resources in the District in accordance with existing and projected requirements. Consults with administrators of independent laboratories, hospitals, extended care facilities, and home health agencies to assist them in meeting established standards and/or improving the quality of services which they provide. Stimulates potential developers of additional medical care facilities needed to make care available at the level and intensity required.

Establishes and maintains standards for private or public institutions and other medical care services which provide services to patients under the medical care program and insures that providers of such services meet such standards. Directs the inspection and certification of all medical care provider facilities and independent laboratories. Negotiates contractual arrangements with vendors of medical care services including medical care institutions, physicians, other health care personnel, and pharmacies.

2. *Bureau of Patient Services.*—Serves as the Chief of the District's central unit for medical care program services. This includes: intake to the various components of the medical care programs; liaison with staff members of the Department of Public Welfare whose responsibility it is to determine patients' financial eligibility for medical care program benefits; development and implementation of client and medical vendor appeal procedures; implementation of systems to provide medical benefits; interpretation of needs as they relate to patient care; surveillance of utilization of medical services; and insurance of continuity of patient care. Authorizes approval of transportation for individual patients to or from service facilities and authorizes purchase of transportation not available from District resources.

3. *Bureau of Processing and Review.*—Plans and executes the administrative functions that are necessary to meet the legal requirements and policies governing the operation of the Directorate for Medical Care. Coordinates these functions with the centralized administrative services of the Department of Public Health, with other Departmental components, and with other public and private agencies. Establishes requirements for program and fiscal systems and directs implementation of these systems and their application to and integration with the medical care complex and adjunct services. Develops and implements administrative and financial accounting, reporting, and control systems and procedures, in collaboration with the Department of General Administration. Maintains appropriate surveillance and controls over reporting systems to insure accomplishment of program objectives. Establishes requirements for case and other appropriate analyses of program elements and interprets and applies these toward program improvements.

Establishes procedures required to implement contracts and agreements relative to the provision of medical care services, reviews operations thereunder and validates or rejects claims against the Department of Public Health arising therefrom. Reviews and certifies claims for reimbursement by Department of Public Health under Federal Medical Care programs.

PART V

Department as Sole Agency for District.

A. The Department shall be the sole agency of the District of Columbia (1) to plan, develop, and administer the District's program of counseling and referral of male youth rejected for military service because of medical reasons, and (2) to enter into one or more contractual agreements with the Secretary of Health, Education, and Welfare relating to such program.

B. The Department shall be the sole agency of the Commissioners (1) for carrying out the purposes of Title XVII of the Social Security Act, as amended, and for the performance of all acts required by such title to be performed, (2) to prepare and to administer, or supervise the administration of, the District of Columbia plan to carry out the purposes of Part C of the Mental Retardation Facilities Construction Act (title I, P.L. 88–164, approved October 31, 1963), and (3) to prepare and administer, or supervise the administration of, the District of Columbia plan to carry out the purposes of the Community Mental Health Centers Act (title II, P.L. 88–164, approved October 31, 1963).

C. The Department shall be the District agency of the Commissioners to furnish the consultation, certifications

and coordination provided for in subsections 1863 and 1864 of the Social Security Amendments of 1965 (Public Law 89–97), and shall administer the State plan for medical assistance and make such reports as are provided for by subsection 1902 of the act, except as to the making of determinations of eligibility for such medical assistance.

D. The Department shall be the sole agency responsible for administering in the District the plan required under title VI of the Public Health Service Act, as amended, relating to programs for the construction and modernization of hospitals and other medical facilities and other related activities.

PART VI

Effective date.—The provisions of this Order shall become effective on and after Feb. 11, 1964.

ORGANIZATION ORDER 142.—PUBLIC HEALTH ADVISORY COUNCIL

Organization Order No. 142, 64–194, Feb. 11, 1964, ordered that:

Reorganization Order No. 60, Public Health Advisory Council, as amended, Organization Order No. 123, Hospital Advisory Council, as amended, Organization Order No. 129, Committee on Mental Health needs, C.O. 302,386/1, dated Mar. 21, 1950, reappointing an Advisory Committee on Alcoholic Rehabilitation, as amended, and letters of Commissioner Karrick, dated Oct. 25, 1957, creating the Food Service Industry Advisory Committee, to the Director of Public Health, are hereby rescinded and replaced by Organization Order No. 142, which reads as follows:

There is hereby created in the District of Columbia a committee of citizens representing the community at large to be known as the Public Health Advisory Council established pursuant to the authority vested in the Commissioners by Reorganization Plan No. 5 of 1952, and pursuant to the requirements of Title 42, §§ 291b(a)(2) and 291u(a)(1) of the U.S. Code, 1958 ed. (pertinent parts of the Hill-Burton Act) and the requirements of § 24–514 of the D.C. Code, 1961 ed. [now 1967 ed.].

PART I

Purpose.—The Public Health Advisory Council is established to provide for advisory participation by citizens, lay and professional, in the District Government's public health program including the construction and regulation of hospitals, medical and related facilities, and to act in an advisory capacity to the Director of Public Health on matters affecting the public.

PART II

Functions.—It is the intent of the Board of Commissioners that the Public Health Advisory Council shall, in general, study and advise the Director of Public Health and inform the Committee on Public Health, Education, and Welfare of the Citizens Council in the following respects:

1. Study and make appropriate recommendations with respect to proposals for new policies, regulations, and statutes or changes in existing policies, regulations, or statutes, affecting the public health including hospital programs.

2. Advise on public health and hospital needs and desires and the formulation and execution of programs necessary to satisfy those needs and desires.

3. Advise and assist in coordinating the programs and activities of the Department of Public Health with those of community groups, associations, and professional organizations.

4. Interpret the activities of the Department of Public Health to the public and stimulate public interest, understanding and participation of the community in solving public health problems.

5. Study the need for hospital services, beds, and facilities and make recommendations with respect thereto based upon a continuing evaluation of such services, beds, and facilities.

6. Evaluate proposals for operation, construction, and utilization of hospitals and related facilities, public or private, within the District (except Federal hospitals) financed in whole or in part through reimbursement or other processes from public funds, such recommendations to include but not be limited to location of such hospitals, type and number of beds, and services to be furnished.

7. Study and evaluate the budget, programs, operations, and activities of the Department and make appropriate recommendations with respect to changes which may appear desirable.

PART III

Composition and Membership.—The Council shall consist of 21 members (residents of the District of Columbia for a period of at least 1 year immediately prior to appointment) appointed by the Board of Commissioners on the basis of personal qualifications, or official position in the District of Columbia Government. Persons appointed to membership on the Council shall be selected insofar as possible in such a way as to provide in the aggregate a maximum degree of perspective upon, and insight into, the health and hospital needs and desires of the community.

Members shall hold no full- or part-time office for which compensation is paid from District funds or from Federal grants to the District of Columbia with the exception of those appointed because of their official position in the District of Columbia Government.

The Council shall consist of the representatives described in the three groups as follows—

1. *Public Health—General:*
   (a) Two or more individuals of outstanding ability in the medical profession.
   (b) One or more individuals knowledgeable in medical rehabilitation techniques.
   (c) One or more individuals of outstanding ability in engineering.
   (d) One or more individuals of outstanding ability in the pharmaceutical profession.
   (e) One or more individuals of outstanding ability in the nursing profession.
   (f) One or more individuals of outstanding ability in the food service industry.
2. *Public Health—Hospitals:*
   (a) Four or more individuals included among whom are representatives of nongovernmental organizations or groups, District Agencies and consumers of hospital services who are familiar with the need for such services.
   (b) Two or more individuals knowledgeable in rehabilitation techniques.
3. *Community and Civic:*
   (a) Five or more outstanding and knowledgeable individuals to bring to the Council the public health needs and desires of the community.

PART IV

Term of office.—To be fixed at 3 years except for initial appointments as follows: Of the 21 members first appointed as members of said Council, 7 shall be appointed for 1 year, 7 for 2 years, and 7 for 3 years. Should a vacancy occur through the death, incapacity, resignation, or removal of a member, a successor shall be appointed to complete the unexpired term of that member. After the expiration of his term each member shall continue to serve until his successor is appointed and qualified. No person who has served 6 years or more consecutively as a member shall be reappointed as a member until after the expiration of 1 year from the end of such service.

PART V

Oath of office.—Members shall take an oath of office as follows:

"I, _____, having been duly appointed by the Board of Commissioners as a member of the Public Health Advisory Council, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Council to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties, so help me God."

PART VI

Compensation.—Members shall serve without compensation, but appropriate expenses will be reimbursed as indicated below.

PART VII

Organization.—The Public Health Advisory Council shall determine its own organization, establishing appropriate committees and subcommittees, and shall perfect its own rules of procedures; *Provided,* That one of its Committees shall be constituted to meet the requirements of the Hospital Survey and Construction Act, as amended, and one of its Committees be constituted to meet the requirements of § 24–514 of the D.C. Code, 1961 ed. [now 1967 ed.] (Rehabilitation of Alcoholics). The Council shall elect its own officers annually from among its own members. It shall convene at least nine times each year at regularly scheduled meetings. It shall hold additional meetings at the call of the Director of Public Health, or a majority of the Council membership. The Director of Public Health shall be notified of all such meetings sufficiently in advance and shall have the option of attending or sending his designated agent as observer.

PART VIII

Administration.—The Director of Public Health shall assist the Council in matters of administration of the Council and shall provide it with necessary staff services as needed. Expenses incurred by the Council as a whole or by individual members, when authorized by the Board of Commissioners, will become an obligation against funds so designated.

PART IX

Reports.—Reports and recommendations of the Council shall be furnished to the Director of Public Health or to the Citizens Council, or both, and may be released at such time and under such circumstances as the Director of Public Health or the Public Health Advisory Council may determine.

PART X

Effective date.—The provisions of this Order shall become effective on and after Feb. 11, 1964.

ORGANIZATION ORDER NO. 143.—COMMISSIONERS' ADVISORY COUNCIL ON HIGHER EDUCATION IN THE DISTRICT OF COLUMBIA

Organization Ord. No. 143, 64–341, Mar. 6, 1964, as amended Aug. 10, 1965, ordered that:

There is hereby created in the Government of the District of Columbia a committee of private citizens, educators and representatives of institutions of higher learning, including junior colleges and technical institutes, in the District of Columbia. Such committee shall be known as the Commissioners' Advisory Council on Higher Education in the District of Columbia.

PART I

Purpose.—The Council shall act in an advisory capacity to the Board of Commissioners with respect to matters concerning higher education in the District of Columbia and particularly with respect to the formulation and administration of a plan for the financing of construction, rehabilitation, and other improvements of academic and related facilities in institutions of higher learning, including junior colleges and technical institutes, in the District of Columbia.

PART II

Functions.—The Council shall:

A. Advise the Board of Commissioners in the formulation of a plan for higher education in the District of Columbia which plan shall meet the requirements of section 105(a) of the Higher Education Facilities Act of 1963 (Public Law 88–204; 77 Stat. 363).

B. Recommend to the Board of Commissioners projects that may be eligible for Federal aid under the aforesaid Act.

C. Advise the Board of Commissioners with regard to applications submitted for Federal grants and loans pursuant to the aforesaid Act.

D. Advise the Board of Commissioners with regard to policy matters in the administration of the plan for higher education in the District of Columbia.

PART III

Composition.—The Council shall consist of twenty-six (26) members appointed by the Board of Commissioners on the basis of personal qualifications and on the basis of broad representation of the public and of institutions of higher education, including junior colleges and technical institutes in the District of Columbia, and the Superintendent of Public Schools of the District of Columbia who shall serve *ex officio.* The members of the Council shall include, but not be limited to, at least one representative of the District of Columbia Board of Education, one representative each of American, Catholic, George Washington, Georgetown, and Howard universities, at least two representatives of the junior colleges located within the District of Columbia, at least two representatives of the technical institutes located within the District of Columbia, a representative of the Metropolitan Washington Board of Trade, a representative of the American Association of University Women, Washington branch, at least one representative of the professional honor societies in the District of Columbia, a representative of the Federation of Citizens Associations, and a representative of the Federation of Civic Associations.

PART IV

Term of office.—The term of office of members of the Council shall be for 3 years, except that, of the persons first appointed as members, one-third shall be appointed for 1 year, such term to expire Mar. 6, 1965; one-third for 2 years, such term to expire Mar. 6, 1966; and one-third for 3 years, such term to expire Mar. 6, 1967. Should a vacancy occur through the death, incapacity or resignation of a member, a successor shall be appointed to complete the unexpired term. No person who has served 6 years consecutively as a member shall be eligible for reappointment until the expiration of 1 year.

PART V

Oath of office.—Members of the Council shall take an oath of office as follows:

"I, ----------, having been duly appointed by the Board of Commissioners as a member of the Commissioners' Advisory Council on Higher Education in the District of Columbia, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Council to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties; so help me God."

PART VI

Compensation.—Members of the Council shall serve without compensation.

PART VII

Organization.—The Board of Commissioners shall designate an Executive Director to serve the Council and such additional staff as the Board may deem necessary. The Executive Director of the Council shall have no vote. The Council shall determine its own organization, name its own officers, except that the Chairman shall be designated by the Board of Commissioners. It shall meet at the call of the Board of Commissioners, or of the presiding officer of the Council, or of a majority of the Council membership.

PART VIII

Administration.—The Executive Director of the Council shall be responsible for the administration of the Council.

PART IX

Reports.—The Council shall regularly report its activities to the Board of Commissioners.

ORGANIZATION ORDER NO. 144.—INTERDEPARTMENTAL COMMITTEE ON AGING

Organization Ord. No. 144, 64–632, Apr. 28, 1964, as amended Mar. 30, 1965, and Oct. 8, 1965, ordered that:

There is hereby established in the Government of the District of Columbia an Interdepartmental Committee on Aging.

PART I

Purpose.—The purpose of the Committee is to provide the organizational framework for governmental and community action in connection with the needs and problems of the aged and aging, and the community conditions, affected by or affecting the aging.

PART II

Functions.—(1) To study, collect, maintain, and disseminate factual data and pertinent information relative to all aspects of aging in the District of Columbia, including but not limited to the general and specific needs of the aging, available and potential resources, services, facilities and programs for the aging, and contributions which can be made by the aging.

(2) To stimulate, inform, and educate local organizations, the community at large, and older people themselves about aging, about needs and resources for the aging, and about the part they can play in improving conditions for the aging.

(3) To serve as a medium through which various public and nonpublic organizations can exchange information, coordinate programs, and engage in joint endeavors.

(4) To provide advice and information to D.C. Government departments and agencies, and nongovernmental organizations that may be considering the inauguration of services, programs, or facilities for the aging.

(5) To stimulate, promote and support nongovernmental community and private efforts and direct service programs to avoid the necessity for initiating and extending programs at public expense.

(6) To advise and make recommendations to the Director of Public Welfare in the development and implementation of a District plan to carry out the objectives of the Older Americans Act of 1965 (Public Law 89–73, approved July 14, 1965), including planning and developing potential programs and activities, both governmental and nongovernmental, relating to the special problems or welfare of older persons.

(7) To promote employment opportunities for older workers, including opportunities for uncompensated volunteer work.

(8) To identify areas needing research, encourage research, and assist in obtaining funds for research and demonstration projects.

PART III

Composition.—The Committee shall consist of the Director of Public Welfare, the Director of Public Health, the Director of Vocational Rehabilitation, and the Director of General Administration, each serving ex officio and without additional compensation; and the Superintendent of Schools, the Director of Recreation, the Director of the U.S. Employment Service for D.C., and the Executive Director of the National Capital Housing Authority, and the Director of D.C. Public Library, who shall serve without additional compensation and with their concurrence. The Director of Public Welfare shall serve as permanent chairman. Each member may designate an alternate member to serve during his temporary absence, and may utilize the services of staff of his Department in furthering the objectives of the Committee.

PART IV

Organization.—The Committee is authorized to establish and disestablish so many advisory subcommittees as it considers advisable and useful, and to appoint, with their concurrence, such government and citizen members to the subcommittees as it considers necessary and appropriate, provided that members of said advisory subcommittees shall serve without compensation.

PART V

Staff Assistance.—The Director of Public Welfare, in his capacity as Chairman, is authorized to designate an Executive Secretary to serve the Committee and such additional staff as he considers necessary, to be paid out of properly authorized funds, subject to the concurrence of the Committee, and the approval of the Commissioners.

PART VI

Meetings and Reports.—The Committee shall meet at the call of the Chairman or a majority of the Committee membership. The Committee Chairman shall report periodically the activities of the Committee to the Board of Commissioners.

ORGANIZATION ORDER NO. 145.—COMMITTEE ON SPECIAL EVENTS

Organization Ord. No. 145, 64–1133, Aug. 4, 1964, as amended Apr. 8, 1965, and June 17, 1965, ordered that:

PART I

Purpose.—The purpose of the Committee shall be to assist the Commissioners by providing the coordinated planning of arrangements and services in connection with special events and ceremonies (conventions, parades, receptions, rallies, etc.), which by their nature do not logically fall within the jurisdicton of the welcoming committee established to coordinate ceremonies for visiting foreign dignitaries, yet which require the cooperation and participation of departments and agencies of the municipal government.

PART II

Functions.—The Committee shall:

(1) Determine what municipal services are required as each special event occurs.

(2) Plan and coordinate these municipal services among the District departments and agencies that will provide such services.

(3) Coordinate District Government plans with those of Federal agencies (i.e., National Park Service), when necessary.

(4) Advise the Commissioners as to the estimated cost of District services and recommended ways to meet such costs as are not covered by appropriated monies.

PART III

Composition.—The Committee shall consist of the Secretary to the Board of Commissioners, who shall serve as Chairman; the Directors of Public Health, General Administration, Highways and Traffic, Sanitary Engineering, Licenses and Inspections, and Buildings and Grounds; the Police Chief; the Fire Chief; the Corporation Counsel; and an Assistant Engineer Commissioner; each serving ex officio and without additional compensation. Each member may designate an alternate to serve in his absence, and may utilize the services of staff of his Department in furthering the objectives of the Committee.

The Chairman may request the services of additional Department Heads, as necessary and appropriate, including participation on the Special Committee as temporary members, and the Heads of Departments are hereby authorized to provide such services to the extent of their capability.

PART IV

Meetings and Reports.—The Committee shall meet at the call of the Commissioners or at the call of the Chairman. Reports and recommendations of the Committee shall be forwarded to the Board of Commissioners for approval.

ORGANIZATION ORDER NO. 146.—RELOCATION ADVISORY COMMITTEE

Organization Ord. No. 146, 65–339, Mar. 16, 1965, as amended Dec. 21, 1965, and May 19, 1966, ordered that:

PART I

Establishment.—There is hereby established in the Government of the District of Columbia a permanent Relocation Advisory Committee.

PART II

Functions.—The Committee shall be guided by Public Law 88–629 [D.C. Code § 5–728] (herein referred to as the Act) and such regulations as may be promulgated by the

Commissioners pursuant thereto. Its functions are as follows:

(1) Advise the Commissioners on the priorities of public works projects, necessitating the provision of relocation services and payments authorized by the Act.

(2) Develop and recommend to the Commissioners the priority guidelines for relocation assistance to individuals, families and businesses to be displaced by the acquisition of real property by the District of Columbia or the United States, and those who may be displaced by condemnation of unsafe and insanitary buildings or enforcement of the laws or regulations relating to housing.

(3) With respect to the Commissioners' responsibility to determine the availability of housing for displaced individuals and families, as required by Section 3 of the Act, review and advise the Commissioners regarding reports submitted by the Relocation Assistance Office of the D.C. Redevelopment Land Agency which pertain to:

(a) Housing needs of those residing in each site to be acquired.

(b) Availability of relocation housing to meet the needs of those to be displaced.

(4) Review all reports prepared by the Relocation Assistance Office of the Redevelopment Land Agency involving payments and relocation services that have been or may be provided pursuant to the Act.

(5) At the direction of the Commissioners or the Assistant Engineer Commissioner for Urban Renewal, perform such other related tasks as are deemed pertinent.

PART III

Composition and Membership.—The Relocation Advisory Committee shall consist of the following members *ex officio:*

(1) Assistant Engineer Commissioner for Urban Renewal who shall serve as Chairman. In his absence or unavailability, he shall designate a staff member of the Office of Urban Renewal as his representative who shall be acting Chairman.

(2) The Director, Department of Highways and Traffic, or his designated representative.

(3) The Director, Department of Licenses and Inspections, or his designated representative.

(4) The Director, Department of General Administration, or his designated representative.

(5) The Executive Director, D.C. Redevelopment Land Agency, or his designated representative.

(6) The Executive Director, National Capital Housing Authority, or his designated representative.

(7) The Director, National Capital Planning Commission, or his designated representative.

(8) The Administrator, General Services Administration, or his designated representative.

(9) The Superintendent of Schools, or his designated representative.

(10) The Director, Department of Buildings and Grounds, or his designated representative.

(11) The Administrator of the National Capital Transportation Agency, or his designated representative.

PART IV

Definitions.—Whenever the term "Commissioners" is used in this Order, it shall mean the Board of Commissioners, D.C., or its designated representative.

PART V

Administration.—Staff assistance to the Committee shall be furnished by staff available to the Engineer Commissioner.

PART VI

Effective date.—This order shall be effective on and after March 16, 1965.

ORGANIZATION ORDER NO. 147.—DEPARTMENT OF SANITARY ENGINEERING

Organization Ord. No. 147, 65–1154, Aug. 19, 1965, ordered that:

Reorganization Order No. 28, dated Apr. 3, 1953, as amended, [for history see Reorg. Ord. No. 28, ante] is hereby redesignated Organization Order No. 147, and amended to read as follows:

PART I

Department of Sanitary Engineering.—There is hereby established in the Government of the District of Columbia a Department of Sanitary Engineering, headed by a Director of Sanitary Engineering. The supervisory responsibility of the Board of Commissioners for the activities of the Department shall be exercised through the Engineer Commissioner.

PART II

Purpose.—The purpose of the Department of Sanitary Engineering is to plan, provide, operate and maintain sanitary services, systems and facilities which will maintain, improve and promote the well-being of the community and its people, including: distribution of water; control and disposal of storm water; collection, treatment and disposal of sewage; administration of revenues and special fund activities relating to water and sewer services; cleaning of streets and alleys; and collection, processing and disposal of refuse.

PART III

Director of Sanitary Engineering.—A. The Director of Sanitary Engineering shall be responsible for carrying out the purposes set forth in Part II above. On matters of primary importance to the activities of the Department of Sanitary Engineering, the Director shall consultant and advise with the Commissioners, or the Engineer Commissioner.

B. Except as otherwise provided in this Order, and subject to applicable laws, rules, regulations, Commissioners' Orders, and directives issued pursuant to Commissioners' Orders, the Director shall have full authority over the Department of Sanitary Engineering and all functions, resources, facilities, and personnel assigned to it; this includes authority to redelegate authority and assign personnel of the Department in such degree as in his judgment is necessary to establish and maintain effectiveness and efficiency of operations.

C. The Director may establish in the Department, under the major organizational components described below, such subordinate components with specified functions as he may deem appropriate, and thereafter may change, modify or abolish such components, provided: that all such proposed actions shall be submitted, at least 10 working days prior to the effective date of the actions, to the Director, Department of General Administration for review as to conformance with applicable Commissioners' Orders and policies, and with sound principles of organization and management. Questions which cannot be resolved between the Departments concerned shall be referred to the Board of Commissioners.

PART IV

Organization and Functions.—The Department of Sanitary Engineering shall comprise the following major organizational components, in which responsible personnel assigned thereto shall perform the functions described.

A. *Office of the Director:*

1. Develops and proposes major sanitary engineering policies to the Board of Commissioners.

2. Advises and assists the Engineer Commissioner in matters related to sanitary engineering, and represents him in coordinating the sanitary engineering activities of the District of Columbia with those of other Federal, State or local jurisdictions.

3. Provides advisory services to other District agencies on matters relating to sanitary engineering, and coordinates common interests.

4. Orders all construction projects involving both assessable and non-assessable facilities, including determination of assessability, within the framework of the programs for which the Director is responsible.

5. Provides for the operation and maintenance of special-use buildings and facilities under the exclusive jurisdiction of the Department, including maintenance of adjacent grounds and provision of necessary protective, elevator, custodial and related services.

B. *Office of Program Planning and Review:*

1. Provides advice and assistance to the Director and other Departmental officials on metropolitan area affairs, comprehensive plans and policies, and overall program management.

2. Under general administrative supervision of the Director, maintains liaison with Federal, State and local jurisdictions on matters relating to the Department's interests; negotiates and administers agreements with such jurisdictions for provision or exchange of services; and coordinates common interests, including Federal grants.

3. Evaluates governmental, economic and demographic trends in the National Capital Region, including existing or proposed District, Federal, State and local policies, to determine the effect of such trends and policies upon Departmental activities.

4. Plans and recommends long range policies and programs to meet requirements for Departmental services.

5. Coordinates Departmental research activities, including development and administration of contracts or other arrangements for research.

6. In collaboration with the Office of Business Administration and other components, analyzes Department operations, including costs, and establishes standards or formulas for determining rates for services provided.

7. Appraises existing and proposed programs, including budget estimates and justifications, to evaluate their effectiveness and efficiency, and recommends changes in program systems, organization or management designed to improve overall Departmental performance.

C. *Office of Business Administration:*

1. Provides technical advice and assistance to the Director and other officials on matters relating to fiscal and administrative management.

2. Collects and processes fiscal, administrative and workload data, including budget estimates, justifications. periodic reports and special studies as directed; develops and installs general, revenue and cost accounting systems, including necessary internal audits.

3. In collaboration with the Office of Program Planning and Review, analyzes costs of services provided by the Department; recommends rates to be charged for such services; and develops and administers a revenue collection program, including reading of meters, computation of charges, billing for payment, and handling of complaints.

4. Develops and administers a program of personnel management, including policies, procedures and standards for position classification, recruitment, placement, training, promotion, awards, leave, employee and union relations, and performance evaluation.

5. Develops and administers a management improvement program, including procedures analysis, paperwork management and work simplification.

6. Develops and administers a supply management and administrative services program, including Department-wide supply policies, procedures and standards; maintains central inventory controls.

7. Develops and administers a safety program for the Department.

D. *Associate Director for Engineering and Construction.*—Serves as principal advisor and assistant to the Director and Deputy Director on matters relating to sanitary engineering system and facility planning, design and construction. Responsible for development and administration of policies and programs for the planning, design, engineering, mapping, construction and repair of sanitary engineering systems and facilities, including the development and administration of construction and consultant contracts. Administers the Department's activities in the District of Columbia 6-year capital improvement program. Coordinates capital improvement programs of the Department with those of other District, Federal, State and local agencies. Supervises and coordinates the following organizational components:

1. *System Planning Division.*—Responsible for long and short range planning of complete sanitary engineering systems, including broad plans for construction, extension, replacement, and modification of water distribution, sewerage, water pollution control, storm water, and refuse disposal facilities. Collaborates with the Office of Program Planning and Review in analyzing and determining requirements for sanitary engineering systems and facilities under jurisdiction of the Department. Reviews detailed facility plans of other Departmental components to assure proper interrelationships, capacities and priorities in the development of complete systems. Collaborates with other District agencies in planning institutional sanitary engineering facilities.

2. *Design and Engineering Division.*—Responsible for the design of water distribution, sewerage, water pollution control, storm water, and refuse disposal facilities, including preparation of detailed maps, profiles, drawings, specifications and cost estimates. Recommends authorization of assessable and non-assessable projects by force account or contract, including evaluation of bids and recommending award of contracts. In collaboration with operating divisions as appropriate, develops or evaluates specifications, methods, standards, materials and equipment for construction, operation, maintenance and repair of sanitary engineering systems and facilities; collects, maintains and disseminates technical data relating to such matters. Analyzes the operation and maintenance of motor vehicle equipment in order to develop or evaluate specifications for new equipment, develop and recommend maintenance systems and methods, and establish standards of performance. Coordinates design and engineering work with that of other District agencies and with public utilities, and collaborates with other District agencies in the design of institutional sanitary engineering facilities.

3. *Construction and Repair Division.*—Responsible for performance, through force account or contract, of all construction and major repair of sanitary engineering systems and facilities, including inspection, testing, and the supervision of contract performance. Performs field investigations and surveys for design and construction projects, including development of line, grade and other construction data; provides survey and soil investigation services for other Department components. Coordinates field construction and repair work with that of other District, Federal and other agencies and public utilities.

E. *Associate Director for Water Services.*—Serves as principal advisor and assistant to the Director and Deputy Director on the operation and maintenance of systems and facilities for the supply and distribution of water, the control and disposal of storm water, and the collection, treatment and disposal of sewage. Develops and administers policies and programs for the operation and maintenance of such systems and facilities, including the Potomac Interceptor. Coordinates these programs with those of other District, Federal, State and local agencies. As appropriate, reviews system improvement plans and proposals, and recommends acceptance or modification. Supervises and coordinates the following organizational components:

1. *Water Operations Division.*—Responsible for the operation and maintenance of the District's water distribution system and facilities, including water transmission and distribution mains water pumping stations, storage reservoirs, and appurtenances. Plans and supervises water waste and other surveys; chlorinates water and water mains; makes capacity determinations and flow, leakage and pressure tests. Prepares specifications for, installs, tests, maintains and repairs water meters. Coordinates activities of the water distribution system with those of the water supply system operated by the U.S. Army Corps of Engineers; maintains liaison with the Department of Public Health on water purity and with the Fire Department on fire protection. Furnishes technical advice and assistance to other agencies on the operation and maintenance of institutional water systems. Operates supporting stores, yards, shops and equipment as required.

2. *Sewer Operations Division.*—Responsible for the operation and maintenance of sanitary storm and combined sewer systems and facilities, including the Potomac Interceptor. Operates, maintains and repairs sewage and storm-water pumping stations, the Barry Road screening station, and appurtenances. Cleans storm-water receiving basins; maintains stream beds; and conducts mosquito control operations in catch-basins and in open areas where required. Furnishes technical advice and assistance to other agencies on the operation and maintenance of institutional sewer systems. Operates supporting stores, yards, shops and equipment as required.

3. *Water Pollution Control Division.*—Responsible for the treatment and disposal of sewage and liquid wastes delivered from the sewer system of the District of Columbia, including operation, maintenance and repair facilities

and equipment for this purpose. Conducts research relating to sewage treatment and other water pollution control problems. Conducts routine and special water sampling operations. Performs waste water analyses and related laboratory services for the Department and other agencies. Furnishes technical advice and assistance to other agencies on the operation and maintenance in institutional sewage treatment facilities. Operates supporting stores, shops and equipment as required.

F. *Sanitation Division.*—Responsible for the collection, processing and disposal of refuse and other solid wastes in the District of Columbia, including: cleaning of all streets and alleys; collection of street debris (except that from storm damage to trees), trash, garbage, ashes and other refuse; conduct of nuisance abatement operations as required of the Department; and incineration or other treatment and disposal of refuse. Plans and performs, or coordinates performance of snow removal operations of Department. Operates, maintains and repairs facilities and equipment for refuse collection and disposal, including motor vehicles, street cleaning buildings, the Refuse Transfer Station, incinerators and landfills. Cooperates with citizen and other organizations in anti-litter and clean-up campaigns and educational programs. Furnishes technical advice and assistance to other agencies on the collection and disposal of refuse at institutions. Operates supporting garages, stores, shops, and equipment as required.

PART V

Repeal of Previous Orders.—All Commissioners' Orders and parts of Commissioners' Orders in conflict with any of the provisions of this Order are, to the extent of such conflict, hereby repealed, but nothing in this Order shall in any way alter, amend or repeal any District regulation adopted or promulgated by the Commissioners.

PART VI

Effective date.—This Order shall become effective on and after August 19, 1965.

ORGANIZATION ORDER NO. 148.—COMMISSIONERS' INTERAGENCY COMMITTEE ON BEAUTIFICATION PROGRAMS

Organization Ord. No. 148, 65–1676, Dec. 7, 1965, as amedend Mar. 8, 1966, ordered that:

PART I

Purpose.—The Committee shall act in an advisory capacity to the Board of Commissioners regarding government and community action to beautify public space in the District of Columbia.

PART II

Functions.—(1) To advise the Commissioners on the development of a comprehensive beautification program for District-owned or supported properties through landscaping, planting, development of neighborhood greens and commons, and decorative and ornamental treatment.

(2) To advise the Commissioners on the use of funds available to the District in support of beautification projects, both from the regular resources of District Government agencies and through the additional funds available to the District from Federal legislation and private contributions.

PART III

Composition.—The Committee shall be composed of the following members, *ex officio:*

Director of Highways and Traffic
Director of the National Capital Housing Authority
Director of General Administration
Director of Buildings and Grounds
Executive Assistant, D.C. Office of the Urban Renewal
Superintendent of Recreation
Director of Sanitary Engineering
Superintendent of Schools
Corporation Counsel
Chairman, Commission of Fine Arts
Director, D.C. Redevelopment Land Agency
Director, National Capital Region of the National Park Service
Chairman, National Capital Planning Commission
Director of Public Health

PART IV

Organization.—The Board of Commissioners shall designate a Chairman and a Vice Chairman. The Committee is authorized to establish and disestablish so many subcommittees as it considers advisable and useful, including the appointment of such citizen subcommittee members as may be considered appropriate, provided that the members of said advisory subcommittees shall serve without compensation and subject to their respective concurrence.

PART V

Staff assistance.—The Director of the Department of Highways and Traffic is authorized to provide staff services and assistance to the Committee, to be paid out of properly authorized funds.

PART VI

Meetings and reports.—The Committee shall meet at the call of the Chairman. The Chairman shall report periodically the activities of the Committee to the Board of Commissioners.

PART VII

Public Space Committee.—Nothing in this Order shall be interpreted to amend or change the present functions and responsibilities of the Public Space Committee.

ORGANIZATION ORDER NO. 149.—INTERDEPARTMENTAL COMMITTEE ON MEDICARE

Organization Order No. 149, 66–409, Mar. 31, 1966, ordered that:

There is hereby established in the Government of the District of Columbia an Interdepartmental Committee on Medicare.

PART I

Purpose.—The purpose of the Committee is to facilitate coordination among the Departments of Public Health, Public Welfare, Vocational Rehabilitation and General Administration in planning and implementing the District's Medicare program, and to properly relate Medicare plans, policies and procedures with Commissioners' policies governing internal financial management of District Government programs and to plans of the Department of General Administration for installing a District-wide Management Information System.

PART II

Functions.—(1) Serves as an organizational arrangement to facilitate consultation and coordination among the Directors of Public Health, Public Welfare, Vocational Rehabilitation and General Administration on interdepartmental matters pertaining to the District's participation in Titles XVIII and XIX.

(2) Resolves interdepartmental problems and questions in which program interrelationships require clarification or adjustment, and the points of view of the Directors require common agreement.

(3) Serves as a means for coordinating and interrelating the individual data systems (ADP) plans and operations of the four departments—Public Health, Public Welfare, Vocational Rehabilitation, and General Administration—and for assuring that individual departmental plans are developed in a manner consistent with the overall goals and objectives for a comprehensive District-wide Management Information System.

(4) Serves as a medium whereby the Director of Public Health, as head of the "State Agency," regularly informs the participating District Government department directors regarding the status of on-going and proposed Medicare plans and activities.

PART III

Composition.—The Committee shall consist of the Director of Public Health, who shall serve as Chairman, the Director of Public Welfare, the Director of Vocational Rehabilitation, and the Director of General Administration.

PART IV

Meetings.—The Committee shall meet monthly, or more frequently, at the call of the Chairman or upon request of the majority of the Committee membership.

PART V

Termination.—The Committee shall be considered an Ad Hoc group, to terminate December 31, 1966.

ORGANIZATION ORDER NO. 150.—TECHNICAL ADVISORY COMMITTEE ON ADULT LITERACY (AD HOC)

Organization Order No. 150, 66–868, June 23, 1966, ordered that:

PART I

Establishment.—There is hereby established in the Government of the District of Columbia an Ad Hoc committee of non-governmental persons and citizens to be known as the Technical Advisory Committee on Adult Literacy.

PART II

Purpose.—The purpose of the Committee shall be to serve as a technical advisory group to the Commissioners, the Commissioners' Interdepartmental Operating Committee on Adult Literacy, the Board of Education and any consultant so employed by the Board, in the identification, motivation and enrollment of the undereducated; the provision of necessary resources in facilities, materials and teaching personnel; the professionalization of the teacher of basic adult education; the discovery and utilization of better methods and materials; and the mobilization and coordination of all potential community agencies, public and private, to reduce the undereducation of adults in the District of Columbia.

PART III

Composition.—(a) The Committee shall consist of twelve (12) members appointed by the Board of Commissioners. Members shall be chosen on the basis of their experience, reputation, and demonstrated interest in the field of adult education, and shall include representation from the fields of psychology, sociology, and psychiatry; from community groups and institutions; and from professional or semi-professional organizations.

(b) The Committee shall consist of such ex officio members as the Board of Commissioners determines to be necessary. Such ex officio members may be selected from such professional organizations as the National Association for Public School Adult Education (NEA), the National Commission for Adult Literacy, the Adult Education Branch of the U.S. Office of Education, and the national office of the Adult Education Association of the U.S.A.

(c) All members shall serve without compensation.

PART IV

Organization.—The Committee shall determine its own organization and select its own Chairman. The Committee shall meet at the call of the Commissioners, the Board of Education, or of its Chairman.

PART V

Termination.—All appointments of members to the Committee shall expire as of midnight, December 31, 1968, at which time the Committee shall be abolished.

ORGANIZATION ORDER NO. 151.—INTERDEPARTMENTAL OPERATING COMMITTEE ON ADULT LITERACY (AD HOC)

Organization Order No. 151, 66–869, June 23, 1966, ordered that:

There is hereby established in the Government of the District of Columbia an ad hoc Interdepartmental Operating Committee to Adult Literacy.

PART I

Purpose.—The purpose of the Committee shall be to develop, implement, and coordinate a total adult literacy program in the various departments of the District Government and with Federal, public and private agencies involved in the program.

PART II

Functions.—The Committee shall:

(1) Assist in the preparation of a comprehensive, long-range program to attack and reduce adult illiteracy in the District of Columbia.

(2) Through mutual effort, insure that all elements of the adult literacy program are implemented in the D.C. departments and agencies on a timely basis, and coordinate the program with the work of participating Federal, public and private agencies.

(3) Seek the advice and work closely with the Technical Advisory Committee on Adult Literacy on all aspects of the program.

(4) Participate in the preparation of an application for a grant as one method of financing the adult literacy program.

(5) Participate in the development of annual budget estimates to cover that part of the adult literacy program financed from D.C. appropriated funds.

(6) Develop new ideas and new approaches to the adult literacy problem and present these to the Board of Commissioners for approval.

PART III

Composition.—(a) The Committee shall be composed of representatives of the following departments and agencies, and shall be appointed by and represent the heads of these departments and agencies in the development, implementation, and coordination of the adult literacy program:

(1) D.C. Public Schools
(2) Department of General Administration
(3) Department of Public Health
(4) Department of Public Welfare
(5) Metropolitan Police Department
(6) Department of Recreation
(7) Department of Licenses and Inspections
(8) Department of Corrections
(9) Board of Parole
(10) Office of Urban Renewal
(11) D.C. Public Library
(12) Department of Vocational Rehabilitation
(13) Youth Council

(b) In addition, members may be invited to serve from agencies under the full administrative jurisdiction of the Board of Commissioners, and from Federal, public and private groups, as the Committee determines appropriate.

(c) Members shall serve without additional compensation.

PART IV

Organization.—The Committee shall determine its own organization. Upon appointment, the Advisor to the Commissioners on Adult Literacy shall serve as permanent Chairman. The Committee may select its own Chairman and Vice Chairman in the interim. The Committee shall meet at the call of the Commissioners or of its Chairman.

PART V

Termination.—All appointments of members to the Committee shall expire as of midnight, December 31, 1968, at which time the Committee shall be abolished.

ORGANIZATION ORDER NO. 152.—COMMITTEE ON SPECIAL INVESTIGATIONS

Organization Order No. 152, 66–1513, Oct. 4, 1966, ordered that:

There is hereby established in the Government of the District of Columbia a Committee on Special Investigations.

PART I

Purpose.—The purpose of the Committee shall be to guide and assist department heads in recommending actions that may be indicated as a result of alleged wrongdoing on the part of District employees.

PART II

Scope.—The activities of the Committee shall apply only to those departments and agencies that are under the administrative jurisdiction of a Commissioner or the Board of Commissioners, with the exeception of the Police and Fire Departments.

PART III

Functions.—When convened by its Chairman, the Committee shall:

A. Review all pertinent facts regarding the alleged employee wrongdoing; and

B. Recommend what further action, if any, should be taken.

PART IV

Composition.—A. The Committee shall be composed of the following officials:

1. The Corporation Counsel
2. The D.C. Personnel Officer
3. The Commissioners' Staff Assistant for Special Studies and Investigations
4. The department head involved

B. The Corporation Counsel and the D.C. Personnel Officer may designate alternate members to the Committee.

C. Members shall serve without additional compensation.

PART V

Organization.—The Commissioners' Staff Assistant for Special Studies and investigations shall serve as permanent Chairman. The Committee will convene at the call of its Chairman.

PART VI

Term of Members.—The Committee and all appointments of its members shall remain in effect until rescinded.

PART VII

Effective date.—This Order is effective immediately.

See also supplement to this Order as follows:

Organization Order No. 152—SUPPLEMENT

Procedure for Investigation of Alleged Employee Wrongdoing

Whenever alleged wrongdoing on the part of a District employee is indicated or suspected, whether made known by a letter of complaint or by information otherwise received, the following procedure shall apply:

The Department Head or a Commissioner

1. If a Commissioner believes a need exists for the services of the Commissioners' Staff Assistant for Special Studies and Investigations, sends the complaint for appropriate investigation to the Commissioners' Staff Assistant. If the Department Head determines that he needs the assistance of the Commissioners' Staff Assistant, brings the complaint to the attention of the appropriate Commissioner, together with all known details, and then immediately forwards the complaint of alleged wrongdoing to the Commissioners' Staff Assistant.

The Commissioners' Staff Assistant

2. On receiving a complaint from a source other than a Department Head, notifies the appropriate Commissioner and the Department Head concerned;

3. When instructed by a Commissioner or requested by a Department Head, makes appropriate investigation of the alleged wrongdoing, convening the Committe on Special Investigations at any time either during the course of the investigation or at its completion;

4. Upon completion of the investigation and after the report concerning the matter has been prepared, forwards a copy of the investigation case file to the Department Head involved for his review.

The Department Head

5. Takes no action with regard to the matter, not even contacting employees complained against but, within the shortest time practicable, reviews the file and returns it to the Commissioners' Staff Assistant.

The Commissioners' Staff Assistant

6. Convenes the full Committee to study the file, discuss it, and make recommendations;

7. Reports the Committee's recommendations for proposed actions to the appropriate Commissioner or Commissioners, advising him or them of the facts and actions proposed;

8. Following such report, retains the case file for further action, including referral to other appropriate agency or agencies, if indicated.

ORGANIZATION ORDER NO. 153.—METROPOLITAN POLICE DEPARTMENT

Organization Order No. 153, 66–1727, Nov. 10, 1966, ordered that:

Reorganization Order No. 7 (C.O. 302, 253/14) dated September 16, 1952 and Reorganization Order No. 46 (C.O. L.S. 4236–B) dated June 26, 1963, as amended, are hereby replaced by Organization Order No. 153, which reads as follows:

PART I

Metropolitan Police Department.—The Metropolitan Police Department, headed by a Chief of Police, shall be subject to the direction and control of the President of the Board of Commissioners.

PART II

Purpose.—The Metropolitan Police Department shall provide maximum protection of life and property in the community through the prevention and detection of crime, through the enforcement of all local and locally applicable statutes, regulations and ordinances, through the latest techniques of criminology, through an active police-community relations program, and through cooperation with Federal police agencies in the enforcement of Federal laws.

PART III

Chief of Police, Metropolitan Police Department.—A. The Chief of Police, as agent of the Commissioners of the District of Columbia, where so designated in this or in other Commissioners' Orders, in Dsitrict regulations, or in law, shall be responsible for carrying out the purposes and functions set forth in PART II hereof.

B. Except as hereinafter otherwise provided and subject to applicable laws, rules, regulations and Commissioners' Orders or directives issued pursuant to Commissioners' Orders, the Chief of Police shall have full power and authority over the Department and all functions, resources, officials and personnel assigned thereto, including the power to redelegate authority and assign functions to officials and personnel of the Department in such degree as in his judgment is necessary to establish and maintain efficiency and good administration.

C. The Chief of Police shall organize the Metropolitan Police Department generally in accordance with, the organizational components hereinafter described, consisting of so many organizational components with such specified functions as he may deem appropriate and thereafter he may alter, change or modify such organizational components: Provided, That all actions organizing, altering, changing or modifying such components shall be submitted at least ten days prior to the effective date of such actions, to the Director, Department of General Administration, for review as to conformance with sound principles of management and organization and applicable Commissioners' Orders and policies. Questions which cannot be resolved between the Departments concerned shall be referred to the Board of Commissioners.

D. The Chief of Police, with the concurrence of the D.C. Personnel Office, Department of General Administration, is authorized to designate the rank (Title) as included in the D.C. Police and Firemen's Salary Act of 1958, as amended, and as considered applicable, for each position which is required to be performed by members of the Metropolitan Police Department in the rank of Technician or by officers in the rank of Lieutenant or above. Such designated rank (Title) shall be based on the difficulty of work and responsibility assigned to the position consistent with the titles and classes included in the D.C. Police and Firemen's Salary Act of 1958, as amended.

PART IV

Organization and Functions.—The Metropolitan Police Department shall consist of the Office of the Chief of Police headed by the Chief, an Office of Planning and Development headed by a Director, and four major organizational components each headed by an Assistant Chief. The head of each major organizational component and the Director of the Office of Planning and Development shall report directly to the Chief of Police, and the personnel assigned to such offices and components shall perform the functions described herein:

A. *Chief of Police.*—Develops and proposes such major programs and policies to the Board of Commissioners as are necessary to maintain a modern, efficient and effective police department. Plans and prescribes departmental policy within the limits of overall policy enunciated by the Board of Commissioners to include the coordination, direction and control of all Metropolitan Police programs,

services, and operations of the District of Columbia. Advises and assists the President of the Board of Commissioners on all District of Columbia matters relating to police service, responsibility and operation. Develops, presents and justifies departmental budget estimates. Maintains discipline within the Department. Maintains contact with representatives of the community at large, news media, and civic and professional organizations.

B. *Director of Planning and Development.*—Researches, develops and present plans, programs, regulations, and procedures designed to improve police effectiveness. Reviews, analyzes, and up-dates departmental policies, plans regulations, and procedures to insure that they are currently required, effective and properly recorded. Assists organizational units in the preparation and improvement of their operating and administrative plans and procedures. Participates in the installation and implementation of new policies, plans and procedures, including financial and other management systems. Provides other administrative and management consultation service to the Department as directed by the Chief.

C. *Assistant Chief for Field Operations.*—Centralizes all field forces into a single command which: Supervises the entire patrol force in the prevention and supression of crime, apprehension of criminals and persons believed to have committed a crime, and preservation of peace and protection of life and property. Makes criminal investigations and, in collaboration with Technical Services, obtains and preserves physical evidence needed in the identification of the criminal offender. Controls vehicular traffic, enforces traffic laws and regulations, and investigates traffic accidents. Processes juvenile matters that come to the attention of the police from notification to disposition, keeping appropriate records and coordinating the juvenile delinquency program within the Department and with Federal and District agencies. Makes special details of police forces, as necessary, in response to high crime incidence, need for extraordinary services in the control of public gathering or other special and ceremonial events.

Field Operations shall be comprised of the following Divisions:

Patrol Division; Criminal Investigations Division; Traffic Division; Youth Division; and, Special Operations Division.

D. *Assistant Chief for Administrative Services.*—Centralizes management of departmental administrative functions into a single command which: Develops, promotes and maintains a strong community relations program between the Department at all levels and the community and the schools, including preparation for the Chief of Police of community relations guidelines, directives, and policy issuances; and advises the Chief of Police on the effect of proopsed policies on community relations. Administers all departmental personnel matters relating to both members of the force and civilian employees, as prescribed by applicable statutes and regulations, and maintains all records pertinent thereto; administers a system of appointment, promotions, resignations, retirements and other matters related to departmental personnel. Prepares the departmental budget and maintains appropriate records of payroll, purchasing and other fiscal accounting required in the administration of the Department. Develops, administers, and/or conducts a wide range of training programs—recruit indocrination, field training, in-service training, and advanced training and education—and evaluates for the Chief of Police the effectiveness of the various training programs.

Administrative Services shall be comprised of the following Divisions: Community Relations Division; Fiscal Affairs Division; Training Division; and Personal Division.

E. *Assistant Chief for Technical Services.*—Centralizes management of departmental technical facilities into a single command which: Receives, reviews, reproduces, files and distributes all complaint and offense reports; collects, classifies and files fingerprints and transcripts of criminal histories of arrested persons; maintains a fulltime mobile laboratory to search for and lift latent prints, photograph crime scenes and recover and maintain items of evidence; receives, records, preserves, and delivers to a line unit for service all warrants received by the Department. Receives all complaints, reports of crime, and requests for service from the public and forwards to appropriate unit for action. Supervises and maintains police communications equipment and systems including telephonic, teletype and radio equipment. Receives, controls, stores, maintains, and issues departmental property and supplies; maintains and disposes all evidence, contraband, and lost and found property and abandoned vehicles. Maintains, repairs, and inspects all departmental vehicles; operates a motor pool system for the efficient dispatch of departmental motor fleet; provides centralized duplicating and printing services and provides janitorial services for all departmental buildings except the headquarters building. Collects and disseminates accurate, current information about crime patterns, police workloads, and other statistical data, through the use of a computer-based information ssytem.

Technical Services shall be composed of the following Divisions: Records Division; Communications Division; Property Division; and Data Processing and Information Division.

F. *Assistant Chief for Inspectional Services.*—Centralizes all inspectional services into a single command which: Receive, files and processes all complaints against departmental personnel and maintains appropriate files and statistics thereon; investigates or provides staff supervision for the investigation of complaints made against departmental personnel; conducts confidential investigations affecting departmental personnel at the initiation and direction of the Chief of Police. Ascertains and evaluates for the Chief of Police, through observation, examination, and inquiry, the efficiency of management, the effectiveness and economy of operations, the preparedness of personnel to perform their assigned duties, the adequacy of facilities, and the compliance with policies, procedures and rules; inspects and evaluates the adequacy and effectiveness of procedures, material resources, and crime reporting processes. Informs the Chief of Police of the status of vice conditions in the city and provides supervision of vice enforcement activities. Collects and appropriately disseminates information about groups and individuals that threaten the security of national and local government, crime conditions that are susceptible to organized and syndicate control, and allegations of fraudulent business practices.

Inspectional Services shall be composed of the following Divisions: Internal Affairs Division; Field Inspections Division; Morals Division; and the Intelligence Division.

PART VI

Effective date.—This Order reorganizing the Metropolitan Police Department into five major entities reporting to the Chief of Police shall be effective November 24, 1966. The authority for implementing the lower echelons in the organization by the Chief of Police in collaboration with the Director of General Administration shall proceed on a progressive but timely basis, with total implementation to be completed as soon as possible and with quarterly progress reports to be submitted to the Board of Commissioners until final completion. The actions to implement this Order shall be executed pursuant to applicable laws and regulations.

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Chapter 1.—HEALING ARTS PRACTICE

SUBCHAPTER I.—LICENSURE AND OTHER REGULATORY PROVISIONS

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SUBCHAPTER III.—REPORTING OF INJURIES CAUSED BY FIREARMS OR OTHER DANGEROUS WEAPONS

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SUBCHAPTER I.—LICENSURE AND OTHER REGULATORY PROVISIONS

§ 2–101. The healing art—Definitions—Exclusions.

For the purpose of this subchapter, the following words and phrases have the meanings assigned to them, respectively, except where the context otherwise requires:

(a) "Disease" means any blemish, defect, deformity, infirmity, disorder, disease, or injury of the human body or mind, and pregnancy, and the effects of any of them.

(b) "The healing art" means the art of detecting or attempting to detect the presence of any disease; of determining or attempting to determine the nature and state of any disease, if present; of preventing, relieving, correcting, or curing, or of attempting to prevent, relieve, correct, or cure any disease; of safeguarding or attempting to safeguard the life of any woman and infant through pregnancy and parturition; and of doing or attempting to do any of the acts enumerated above: *Provided,* That for the purposes of this subchapter the term "the healing art" does not include—

(1) Dentistry as defined in chapter 3 of this title; nor

(2) Podiatry as defined in section 2–711; nor

(3) Optometry as defined in chapter 5 of this title; nor

(4) Pharmacy as defined in chapter 6 of this title; nor

(5) Nursing as defined in chapter 4 of this title.

(c) "To practice" means to do or to attempt to do, or to hold oneself out or to allow oneself to be held out as ready to do, any act enumerated in subsection (b) of this section as constituting a part of the healing art, for a fee, gift, or reward, or in anticipation of any fee, gift, or reward, whether tangible or intangible.

(d) "Commission" means the Commission on Licensure to Practice the Healing Art, created by this subchapter.

(e) "Board" means a board of examiners created by this subchapter.

(f) "Drugless healing" means any system of healing that does not resort to the use of drugs, medicine, or operative surgery for the prevention, relief, or cure of any disease.

(g) "School" means any school, college, or university. (Feb. 27, 1929, 45 Stat. 1326, ch. 352, § 1.)

CROSS REFERENCES

Duty to prevent blindness of new-born infants, see § 6–201.

Duty to report births, see § 6–301.

Exempted from operation of law regulating barbers, see § 2–1115.

Exempted from operation of law regulating cosmetologists, see § 2–1324.

Exemption from pharmacy regulations, see § 2–601.

Exemption from provisions of Alcoholic Beverage Control Act, see § 25–109.

Furnishing or prescribing drugs to drug addicts, see § 2–611.

Prescribing poisonous medicines, drugs, or compounds, see § 2–612.

CROSS REFERENCES TO BOARDS AND COMMISSIONS NOT FOUND IN THIS TITLE

Alcoholic Beverage Control Board, see § 25–104.

"Authority" for administration of Alley Dwelling Act, see § 5–104.

Board for condemnation of insanitary buildings, see § 5–616.

Board of Education, see § 31–101.

Board of Equalization and Review of Taxation. see §§ 47–605, 47–2405.

Board of Library Trustees, see § 37–104.

Board of Personal Tax Appeals, see § 47–605.

Board of Public Welfare, see § 3–102 et seq.

Board of Tax Appeals, see § 47–2402.

Board of Zoning Adjustment, see § 5–420.

Commission on Mental Health, see § 21–502.

Commission to acquire land connecting Zoological and Rock Creek Parks, see §§ 8–157, 8–158.

Committee to make awards for meritorious service by members of police and fire department, see § 4–702.

Department of Vehicles and Traffic, see § 40–603.

Department of Weights, Measures, and Markets, see § 10–101.

District Unemployment Compensation Board, see § 46–315.

Federal Parole Board, see § 24–209.

Health Department, see § 6–101 et seq.

Insurance Department, see § 35–101.

Jury Commission, see § 11–2303.

Minimum Wage Board, see § 36–401.

National Capital Park and Planning Commission, see § 1–1002.

Permanent Board of Assistant Tax Assessors, see § 47–604.

Probation Department for Juveniles, see § 11–1523.

Public Service Commission, see § 43–201.

Real Estate Commission, see § 45–1403.

Trial boards for Metropolitan Police or Fire Department, see §§ 4–122, 4–601 to 4–604.

Zoning Advisory Council, see § 5–417.

Zoning Commission, see §§ 5–412 to 5–428.

NOTES TO DECISIONS

Burden of proof

Statutes prohibiting practicing healing art without license but exempting certain practices under direction of person licensed to practice healing art, and providing that burden of proof of exemption shall be on defendant, gives defendant affirmative defense and requires no more than that defendant's evidence, with or without other evidence be sufficient to create reasonable doubt as to guilt and does not require defendant to prove defense beyond reasonable doubt. *Dowell* v. *United States* (D. C. Mun. App. 1952, 87 A. 2d 630).

Evidence

In prosecution for practicing healing art without license, evidence was sufficient to take case to jury. *Dowell* v. *United States* (D. C. Mun. App. 1952, 87 A. 2d 630).

Liability of hospital

Where judgment was obtained against appellant hospital for the death by negligence of a patient resulting from a transfusion of incompatible blood erroneously tested and reported as compatible by a technician in the hospital laboratory, such judgment must be affirmed since the doctrine of respondent superior applies. Such responsibility is unaffected even though agreeably to the requirements of this title, the technical work was put under the "direction of a physician." *National Homeopathic Hospital* v. *Phillips* (1950, 181 F. 2d 293, 86 U. S. App. D. C. 295).

Scope

This section embraces "the practice of the healing art," instead of merely "the practice of medicine and surgery." *Rubin* v. *United States* (1930, 37 F. 2d 991, 59 App. D. C. 195).

§ 2–102. License required—Terms of license to be observed.

No person shall practice the healing art in the District of Columbia who is not (a) licensed so to do, or (b) if exempted from licensure under sections 2–133 or 2–134, then duly registered.

No person shall practice the healing art in the District of Columbia otherwise than in accordance with the terms of his license or of his registration, as the case may be. (Feb. 27, 1929, 45 Stat. 1327, ch. 352, §§ 2, 3.)

CROSS REFERENCE

Commissioners' authority to regulate, modify, or eliminate license requirements and promulgate regulations in certain cases, see §§ 47–2344, 47–2345.

NOTES TO DECISIONS

Civil action

Where defendant, who was not licensed under this section, represented to plaintiff that he could either cure or help her by giving her treatments for arthritis for a price, and plaintiff paid part of price, plaintiff was entitled to recover from defendant amount paid on ground that she was not in pari delicto with defendant and, even if she were, the law having been passed for protection of public, public interest would be best served by requiring defendant to pay back fruits of his illegal agreement. *Rubin* v. *Douglas* (D. C. Mun. App. 1948, 59 A. 2d 690).

Evidence

Evidence that defendant told patient he would cure her of asthma for a stated price, that patient was put to bed in rear bedroom of defendant's home, and that defendant put patient on a diet, brought food to her, and administered pills and liquid medicine was sufficient to sustain conviction for "practicing the healing art" without a license. *Powers* v. *United States* (1942, 128 F. 2d 300, 75 U.S. App. D.C. 371, certiorari denied 62 S. Ct. 1300, 316, U. S. 693, 86 L. Ed. 1764).

Information

An information charging in language of this section that defendant unlawfully practiced the healing art by examining, treating, and prescribing for a named person without having first obtained a license to do so was sufficient to charge an offense even though it did not include the definition of practice in section 2–101. *Powers* v. *United States* (1942, 128 F. 2d 300, 75 U.S. App. D. C. 371, certiorari denied 62 S. Ct. 1300, 316 U.S. 693, 86 L. Ed. 1764).

Record failed to show that trial court had erroneously permitted informations charging violation of Healing Arts Practice Act, this chapter, in administering treatment without being licensed to do so to be amended after jury had been sworn. *Aitchison* v. *United States* (D. C. Mun. App. 1953, 98 A. 2d 791).

Liability of hospital

Where judgment was obtained against appellant hospital for the death by negligence of a patient resulting from a transfusion of incompatible blood erroneously tested and reported as compatible by a technician in the hospital laboratory, such judgment must be affirmed since the doctrine of respondent superior applies. Such responsibility is unaffected even though agreeably to the requirements of this title, the technical work was put under the "direction of a physician." *National Homeopathic Hospital* v. *Phillips* (1950, 181 F. 2d 293, 86 U.S. App. D. C. 295).

Review

In determining whether evidence was sufficient to sustain conviction for unlawfully practicing the healing art without a license, the reviewing court was required to look at all of defendant's actions as they appeared in the record and to conclude therefrom whether the evidence was sufficient to support the determination of the trial court. *Powers* v. *United States* (1942, 128 F. 2d 300, 75 U.S. App. D.C. 371, certiorari denied 62 S. Ct. 1300, 316 U. S. 693, 86 L. Ed. 1764).

§ 2–103. Commission on licensure—Creation—Seal.

There is hereby created a Commission on Licensure to Practice the Healing Art in the District of Columbia, consisting of the president of the Board of Commissioners of the District of Columbia, the United States Commissioner of Education, the United States Attorney for the District of Columbia, the superintendent of public schools of the District of Columbia, and the director of public health of the District of Columbia, each ex officio. The Commission shall elect a president and a vice-president. The director of public health shall be the secretary and treasurer of the commission. The Commission shall make and from time to time may alter such rules as it deems necessary for the conduct of its business, and for the execution and enforcement of the provisions of this subchapter. It shall adopt a common seal, and from time to time alter the same as to it seems proper. The courts shall take judicial notice of such seal. (Feb. 27, 1929, 45 Stat. 1327, ch. 352, §§ 4, 5; June 25, 1948, 62 Stat. 909, ch. 646, § 1; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CODIFICATION

A former second paragraph of this section as set out in the 1961 ed. of the D.C. Code was comprised of section 5 of the act of Feb. 27, 1929, 45 Stat. 1327, ch. 352. Section 1 of the act of Sept. 14, 1961, 75 Stat. 518, Pub. L. 87–248 [set out in section 2–103a] amends section 5 by inserting (a) immediately before the first word of the section and by adding a subsection (b) thereto. For the sake of clarity it was deemed advisable to separate section 5, as amended, from this section of the Code and transfer it to section 2–103a.

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States Attorney" for "United States District Attorney." See 28 U.S.C. § 501.

CROSS REFERENCES

Application of this chapter to Pharmacy Board, see § 2–608.

Nature and extent of examination prescribed by rules, see §§ 2–115, 2–117.

Rules and regulations by examining boards, see § 2–106.

Rules and regulations in general, see § 1–226.

§ 2–103a. Standards of education and training—Register of approved schools and hospitals—License on years of practice—Graduate of foreign medical schools.

(a) The Commission shall establish minimum standards of preprofessional and professional education in the healing art and may establish minimum standards for hospitals for interne training. It may determine whether preprofessional and professional schools, and whether hospitals, attain such standards. It shall keep a record of its investigations and determinations with respect to all schools and hospitals and shall approve and enter in a proper register every school and every hospital attaining the prescribed standard or which had attained such standard during its existence. The Commission may redetermine from time to time the standing of any school or hospital and may revise

its register accordingly. The Commission shall give no credit for any certificate, diploma, or degree emanating from any school, and it may refuse to give any credit for any certificate or diploma emanating from any hospital, not duly registered as provided by this subchapter: *Provided,* That this requirement as to registration shall not apply in the case of persons applying for license on years of practice under the provisions of section 2–120.

(b) Notwithstanding the requirements of the preceding subsection relating to registration, in the case of persons presenting evidence of graduation from a medical school or training in a hospital not located in the United States, the commission is authorized to accept certificates from the Educational Council for Foreign Medical Graduates or other organizations approved by (1) the American Medical Association, (2) the Association of American Medical Colleges, (3) the Federation of State Medical Boards, and (4) the American Hospital Association as being qualified to examine and evaluate the professional skill, training, and qualifications of graduates of foreign medical schools, such certificates to show that the applicants have successfully qualified under an American Medical Qualification Examination of such Educational Council for Foreign Medical Graduates, or an examination comparable in form and comprehensive coverage of subject matter to an American Medical Qualification Examination. (Feb. 27, 1929, 45 Stat. 1327, ch. 352, § 5; June 25, 1948, 62 Stat. 909, ch. 646, § 1; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Sept. 14, 1961, 75 Stat. 518, Pub. L. 87–248, § 1.)

AMENDMENT

1961—Sec. 1, act Sept. 14, 1961, inserted (a) before the first word of the first paragraph and added subsection (b) thereto. The first paragraph is transferred from section 2–103 of the Code. See note to section 2–103.

§ 2–104. Commission on licensure to receive and record applications for licenses—Issuance of licenses—Registration and payment of fees—Penalties.

The Commission shall receive, number consecutively, and record all applications presented in due form for licenses and for registration; but such applications may be classified according to their respective purposes, and numbered consecutively and registered according to the several classes thus established. If the Commission finds that an applicant is entitled to a license by virtue of an outstanding license to practice medicine and surgery in the District of Columbia or by virtue of years of practice, under the provisions of section 2–120, or by virtue of reciprocity, under the provisions of section 2–121, or by virtue of a certificate or diploma by a national examining board as provided in section 2–121a, it shall issue to him a license accordingly. If the Commission finds that an applicant has submitted satisfactory proof of age, moral character, preprofessional education, professional education, and, if required by the Commission, of hospital training, but must be subjected to an examination to determine his professional fitness, under section 2–122, it shall certify him to the proper examining board for that purpose; and upon receipt of a report from any such board, satisfactory to the Commission, showing that the applicant has passed such an examination, the Commission, being of the opinion that the applicant is in all other respects legally qualified, shall issue to him a license to practice the healing art in the manner described in his application and as authorized by law, in whatever class the Commission shall find him qualified to so practice.

During the month of December each year, every person holding a license to practice the healing art in the District of Columbia issued by the Commission on Licensure shall register with the secretary-treasurer of said Commission his name and office address and such other information as the Commission may deem necessary upon blanks obtainable from said secretary-treasurer and thereupon pay a registration fee of $2, said fee to be paid in the manner provided in section 2–135. On or before the 1st day of December each year it shall be the duty of the secretary-treasurer to mail to each person holding a license to practice the healing art in the District of Columbia issued by the Commission on Licensure, at his last-known address, a blank form for registration. Every person holding more than one type of license to practice the healing art in the District of Columbia issued by the Commission on Licensure shall be required to register each license separately. In the event of failure to register on or before the 31st of December a penalty of $5 will be imposed which shall be paid in the manner provided in section 2–135. Should the licentiate fail to register and pay the penalty imposed, and continue to practice his profession in the District of Columbia, he shall at the end of ten days from said date be considered as practicing without a license and penalized as otherwise provided in this subchapter.

Upon receipt of the application blank properly executed together with the $2 registration fee the registrant shall be mailed a registration card showing that the registration fee has been paid for the coming calendar year.

On or before the 1st day of April each year, the said Commission shall cause to be printed and mailed to each person who shall have registered in accordance with the provisions of this section a list of the names of all such registered persons. (Feb. 27, 1929, 45 Stat. 1327, ch. 352, § 6; Sept. 26, 1942, 56 Stat. 757, ch. 562, § 1; Apr. 20, 1948, 62 Stat. 174, ch. 216, § 1.)

AMENDMENTS

1948—Act April 20, 1948, amended the first paragraph by adding the words "or by virtue of a certificate or diploma by a national examining board as provided in section 2–121a".

1942—Act Sept. 26, 1942, added last three paragraphs.

AUTHORITY TO CHANGE FEES

Commissioners authorized and empowered to increase or decrease, from time to time, the fee specified in this section, see §§ 1–252, 1–253.

CROSS REFERENCE

Honorariums to various board members and commissioners, honorariums without prejudice to other compensation, see §§ 1–254, 1–259.

§ 2–105. Power to appoint and discharge examiners and other employees—Contract for quarters and supplies.

The Commission may (a) appoint, suspend, and remove such examiners, counsel, clerks, inspectors, and other officers and employees as may be authorized by law; (b) enter into contracts for the use and

occupancy of such quarters as may be necessary for its purposes; but the Commissioners of the District of Columbia are hereby authorized to furnish such quarters without cost to the Commission if the necessary space is available in any building under their control; and (c) buy such supplies as may be necessary for its work and for the execution and enforcement of this subchapter: *Provided,* That the Commission incurs no indebtedness in excess of money actually available. (Feb. 27, 1929, 45 Stat. 1328, ch. 352, § 7.)

§ 2–106. Boards of Examiners—Appointment and tenure—Qualifications—Rules.

The Commission shall appoint boards of examiners as follows: (a) A Board of Examiners in the Basic Sciences; (b) a Board of Examiners in Medicine and Osteopathy; (c) a Board of Examiners in Chiropractic; and (d) a Board of Examiners in Naturopathy. The commission shall appoint (e) a Board of Examiners in Midwifery; and (f) such other boards of examiners in drugless healing as are necessary under the provisions of this subchapter. The Board of Examiners in the Basic Sciences, and the Board of Examiners in Medicine and Osteopathy, shall each consist of five members. Boards of Examiners in Midwifery and boards of examiners in drugless healing may consist of three to five members, as the Commission deems proper. No examiner shall be appointed for a term longer than five years, and all appointments shall be made so that the term of one member of each board shall expire on the 31st day of December of each year. The Commission shall appoint no person as a member of any such board who is not a citizen of the United States and who has not been a resident of the District of Columbia for at least three years immediately preceding his appointment. The Commission may appoint as members of such boards persons employed in the service of the federal government and of the government of the District of Columbia; and persons so employed may accept such appointment and may receive such compensation for their services as examiners as may be provided by law and by the regulations of the Commission. A member of any board is not debarred by such membership from employment under the federal government or the government of the District of Columbia, not inconsistent with the discharge of his duties as a member of such board.

Each examining board shall elect a chairman and a secretary and may make such rules regarding the discharge of its duties as the Commission may approve. Each board shall conduct examinations and make reports as required by law and by the rules of the commission. (Feb. 27, 1929, 45 Stat. 1328, ch. 352, §§ 8, 9.)

CROSS REFERENCE

General provisions as to rules and regulations, see § 2–103.

§ 2–107. Board of Examiners in Basic Sciences—Qualifications.

The Commission shall appoint the several members of the Board of Examiners in the Basic Sciences so that there will be on said Board at all times one or more members capable of determining whether applicants have or have not a sufficient knowledge of the sciences of anatomy, physiology, chemistry, bacteriology, and pathology to enable such applicants to understand and to apply such sciences in the study and practice of the healing art. No member of the Board of Examiners in the Basic Sciences shall teach or practice the healing art while serving in that capacity. (Feb. 27, 1929, 45 Stat. 1328, ch. 352, § 10.)

§ 2–108. Reference of applicants to Board of Examiners in Basic Sciences—Examination—Subjects—Acceptance of examination before foreign board—Certification to other boards.

The Commission shall refer to the Board of Examiners in the Basic Sciences every applicant for a license to practice the healing art in the District of Columbia, except those entitled to licenses by virtue of licenses to practice medicine and surgery in the District of Columbia outstanding February 27, 1929, or by virtue of years of practice of osteopathy or some form of drugless healing in the District of Columbia at that time, for determination of the applicant's ability to understand and to apply the sciences of anatomy, physiology, chemistry, bacteriology, and pathology to the study and practice of the healing art. The Commission shall refer such applicants so that the Board of Examiners in the Basic Sciences and any member of that Board shall not know the method of practice the applicant has studied or the method of practice he intends to follow. The Board of Examiners in the Basic Sciences may examine any applicant referred to it, but it may accept in lieu of examination proof that the applicant has passed, before a Board of Examiners in the Basic Sciences, by whatsoever name it may be known, or before any examining or licensing board in the healing art as that art is hereinbefore defined, of any State, Territory, or other jurisdiction under the United States, or of any foreign country, an examination in anatomy, physiology, chemistry, bacteriology, and pathology, as comprehensive and as exhaustive as that required in the District of Columbia under authority of this subchapter. The Board of Examiners in the Basic Sciences shall report its findings to the Commission. An applicant who is reported by the Board as qualified in the sciences of anatomy, physiology, chemistry, bacteriology, and pathology, but who is not entitled to a license to practice the healing art, without examination, shall be certified by the Commission to the Board of Examiners in Medicine and Osteopathy, or a board of Examiners in drugless healing, as the case may be, for determination of his professional fitness. An applicant who is reported by the Board as qualified in said sciences and who is entitled to a license by reciprocity, without examination, or by virtue of a certificate or diploma issued by a national examining board, shall thereupon be given such a license. The Commission shall issue no license to practice the healing art to any person who has not been reported by the Board of Examiners in the Basic Sciences as qualified in the sciences of anatomy, physiology, chemistry, bacteriology, and pathology, except to such persons as

are entitled to licenses by virtue of licenses to practice medicine and surgery in the District of Columbia outstanding on February 27, 1929, and by virtue of years of practice of osteopathy or some form of drugless healing in said district prior to February 27, 1929, and except to applicants for licenses to practice midwifery. (Feb. 27, 1929, 45 Stat. 1329, ch. 352, § 11; Apr. 20, 1948, 62 Stat. 175, ch. 216, § 2.)

AMENDMENT

1948—Act April 20, 1948, added the words "or by virtue of a certificate or diploma issued by a national examining board" in the next-to-last sentence.

§ 2–109. Board of Examiners in Medicine and Osteopathy to be appointed by Commission—Duties and qualifications.

The Commission shall appoint as members of the Board of Examiners in Medicine and Osteopathy persons who have been graduated with the degree of doctor of medicine, doctor of osteopathy, or some equivalent degree by a school registered under this subchapter and who have taught or practiced, or taught and practiced, medicine and surgery or osteopathy for not less than five consecutive years, the last three of which, at least, immediately preceding their respective appointments, have been in the District of Columbia.

The Board of Examiners in Medicine and Osteopathy shall be composed of four practitioners of medicine and surgery, one of whom shall be an adherent of the homeopathic school, and an osteopath. The degrees doctor of medicine and doctor of osteopathy shall be accorded the same rights and privileges under governmental regulations. They shall examine into the qualifications of all persons referred to them who desire to practice medicine and osteopathy. The questions propounded to such applicants shall be identical in every respect; with the exception of questions in the practice of medicine and practice of osteopathy which shall be propounded to applicants of these respective schools only, as the case may be, and the replies shall be examined and graded by the member or members of the board representing such schools of practice.

The Board of Examiners in Medicine and Osteopathy shall certify to the commission applicants whom they have found qualified to be licensed to practice medicine and surgery, or osteopathy and surgery, as the case may be. (Feb. 27, 1929, 45 Stat. 1329, ch. 352, § 12.)

CODIFICATION

Act June 3, 1896, 29 Stat. 198, ch. 313, entitled "An act to regulate the practice of medicine and surgery, to license physicians and surgeons, and to punish persons violating the provisions thereof in the District of Columbia," created a Board of Medical Supervisors of the District of Columbia and defined its powers and duties. Presumably, this board has been superseded and its duties and powers transferred to the commission on licensure by the act of 1929, cited to the text, and such parts of the act of 1896 as are inconsistent with the act of 1929 are repealed by § 49 (§ 2–140) thereof.

§ 2–110. Reference of applicants to Board of Examiners in Medicine and Osteopathy.

The Commission shall refer to the Board of Examiners in Medicine and Osteopathy every applicant for a license to practice the healing art who does not intend and in his application agree to limit his practice to some named drugless method of healing and who is not entitled to a license without examination: *Provided,* That no applicant shall be certified to the Board of Examiners in Medicine and Osteopathy for examination who has not been reported by the Board of Examiners in the Basic Sciences as qualified in the sciences of anatomy, physiology, chemistry, bacteriology, and pathology. (Feb. 27, 1929, 45 Stat. 1330, ch. 352, § 13.)

§ 2–111. Creation of examining board upon petition of adherents of any drugless method of healing—Definition of method of practice—Appointment of board members—Qualifications.

On petition of five or more adherents of any drugless method of healing, the Commission shall appoint a board of examiners to determine the fitness of applicants for licenses to practice the healing art in the District of Columbia according to that method. Every such petitioner, at the time of signing the petition, shall have practiced the healing art in some manner, not necessarily in the manner described in the petition, for not less than five consecutive years immediately preceding, in the District of Columbia. The petition shall define the method of healing for which an examining board is desired, so as clearly to differentiate that method from the unrestricted practice of the healing art. The petition shall show as nearly as may be the number of schools teaching the method of healing described in it, and shall show the nature and extent of the facilities available for the education and training of practitioners of that method. It shall supply such other information as the commission may designate. The petition shall be sworn to by each of the petitioners to the best of his knowledge and belief.

Upon the filing of proper petition for the appointment of an examining board to determine the qualifications of applicants for licenses to practice according to the method of healing defined in the petition, the Commission shall by resolution provide for the appointment of such a board and define exactly the method of practice to be covered by it and to be pursued by applicants licensed after examination by it. After the adoption of any such resolution, the Commission shall from time to time appoint boards to examine such applicants as may apply for licenses to practice the method of healing defined in such resolution. The Commission shall appoint as members of any such board persons of good repute who have been graduated with some degree appropriate to the method of practice that the appointee has followed or intends to follow, by some school registered under this subchapter, and who have somewhere taught or practiced, or taught and practiced, the method of healing defined in the resolution for not less than five years immediately preceding their respective appointments, under authority of licenses empowering them so to do. In making such appointments, however, the commission shall give preference, when circumstances permit and other things are equal, to persons who have taught or practiced, or taught and practiced, the healing art according to the method defined in the resolution, in the District of Columbia, under

licenses authorizing them so to do, for not less than three years immediately preceding their respective appointments: *Provided,* That any adherent of a method of healing for which the Commission has provided a board of examiners, who has been graduated with an appropriate degree by some school representative of that method, who has practiced according to that system in the District of Columbia for not less than five consecutive years immediately preceding February 27, 1929, and who is entitled to a license, without examination, by virtue of the provisions of section 2–120, is eligible for appointment as a member of that board. (Feb. 27, 1929, 45 Stat. 1330, ch. 352, § 14.)

§ 2–112. Reference of applicants to appropriate board of examiners.

The Commission shall refer to the appropriate board of examiners in drugless healing every applicant for a license to practice the healing art according to any method of drugless healing defined by the Commission, who intends and in his application agrees to limit his practice to the system so defined, for determination of the applicant's fitness so to practice, and who is not entitled to a license to practice without examination: *Provided,* That no applicant shall be certified to any board of examiners in drugless healing who has not been reported by the Board of Examiners in the Basic Sciences as qualified in the sciences of anatomy, physiology, chemistry, bacteriology, and pathology. (Feb. 27, 1929, 45 Stat. 1331, ch. 352, § 15.)

§ 2–113. Board of Examiners in Midwifery—Appointment—Reference of applicants to board.

The Commission may appoint, from time to time, as it deems expedient, a Board of Examiners in Midwifery, consisting of not less than three and not more than five persons, who have practiced the healing art in the District of Columbia for not less than three years immediately preceding their respective appointments, under authority of licenses authorizing them so to practice. Appointments to such boards shall be made for such terms as the Commission deems proper. The Commission may abolish any such board at any time. The Commission shall refer to a Board of Examiners in Midwifery every applicant for a license to practice midwifery who intends and in her application agrees to limit her practice to the care of women during normal pregnancy and parturition, in so far as the licentiate is able to determine whether pregnancy and parturition are normal in any particular case, for determination of the applicant's fitness so to practice, and who is not entitled to a license by virtue of an outstanding license to practice midwifery in the District of Columbia in force on February 27 1929. (Feb. 27, 1929, 45 Stat. 1331, ch. 352, §§ 16, 17.)

CROSS REFERENCES

Duties of midwife as to prevention of blindness of newborn infants, see §§ 6–201 to 6–204.

Duty of midwife to report births, see § 6–301.

§ 2–114. Examinations—Time of holding—Notice—Publication.

Examinations shall be held by the Board of Examiners in Medicine and Osteopathy, the Boards of Examiners in Drugless Healing, and the Board of Examiners in Midwifery at such times as the commission may by rule or by special order determine. Examinations shall be held by the Board of Examiners in the Basic Sciences at such times as the Commission may by rule or by special order determine, having due relation to the dates of the examinations held by the Board of Examiners in Medicine and Osteopathy and the Boards of Examiners in Drugless Healing. The Commission shall publish notice of the time and place of each examination and of other pertinent information concerning it, not less than thirty days before the first day of each such examination, in one or more newspapers of local circulation and, except in so far as relates to examinations for licenses to practice midwifery, in one or more medical or osteopathic journals of national circulation; and if there be any board or boards of examiners in drugless healing, then in a journal or journals, if there be any, of national circulation, representing a method or methods of healing corresponding to the method or methods represented by such board or boards. (Feb. 27, 1929, 45 Stat. 1331, ch. 352, § 18; Aug. 11, 1939, 53 Stat. 1419, ch. 718.)

AMENDMENT

1939—Act Aug. 11, 1939, struck out the words "beginning on the second Monday in January and July of each year and at such other" following the word "midwifery" in the fourth line and inserted in lieu thereof the words "at such."

§ 2–115. Examinations—Method of conducting—Uniform standard.

The Commission shall by rule prescribe the nature and extent of the examinations to be conducted by each of the examining boards. All applicants examined by the Board of Examiners in the Basic Sciences shall be subjected to the same examination and rated on the same scale, as nearly as may be. All applicants, except applicants for licenses to practice midwifery, shall be subjected to the same examination and rated on the same scale, by the respective examining boards to which they are referred by the Commission, in the diagnosis and prevention of communicable disease. Every examination shall be in writing, in the English language, but each shall be supplemented, if practicable, by laboratory and clinical tests and, if the Commission deems proper, may be supplemented by oral examinations. Every examination shall be conducted, so far as the character of the examination permits, so that no examining board and no member thereof shall know the identity of the person examined. In any one examination by any one board the questions propounded to and the problems set for each applicant shall be as nearly the same as the character of the examination will permit. As a guide for determining whether an applicant has or has not passed, the Commission shall fix by rule a uniform standard for all applicants, except that the commission may fix maximum credits to be allowed for such experience as the applicant may have had as a licensed practitioner and in the discretion of the Commission may require an applicant claiming any such credit to be subjected to clinical and laboratory tests to demonstrate what credit he shall be allowed, if any. The general rules formulated by the commission to govern examination may be modified with

respect to examinations conducted by the Board of Examiners in the Basic Sciences and by Boards of Examiners in Midwifery, in so far as the nature and function of the examinations conducted by those boards require. Except as hereinbefore stated, all examinations shall conform as nearly as may be to a uniform standard, to the end that every licensed practitioner of the healing art in the District of Columbia may conform so far as may be possible to a single uniform standard of professional fitness. (Feb. 27, 1929, 45 Stat. 1332, ch. 352, § 19.)

CROSS REFERENCE

General provisions concerning rules and regulations, see § 2–103.

§ 2–116. Examining boards to submit examination questions to Commission.

The Board of Examiners in the Basic Sciences, the Board of Examiners in Medicine and Osteopathy, and each board of examiners in drugless healing before which any applicant is to appear at the next ensuing examination, shall submit to the Commission, not less than ten days before each examination, such questions as may be required by the rules of the Commission governing examinations. The Commission shall cause the questions so submitted to be prepared for distribution and to be distributed in the course of the examination at appropriate times; but from the questions submitted by the several examining boards in the diagnosis and prevention of communicable diseases, the commission shall select the questions to be used, and if the commission deems proper may revise and supplement such questions, and shall submit to all applicants appearing at one examination the identical questions with respect to the subject named. (Feb. 27, 1929, 45 Stat. 1332, ch. 352, § 20.)

§ 2–117. Examinations—Method of conducting—Reports of boards.

The Commission shall provide the place or places and all necessary facilities for examinations, including such supervisors or proctors as the commission deems necessary. The Commission shall assign to each applicant a number under which his examination shall be conducted, with a view to the concealment of the identity of the examinee from the examiner, so far as may be practicable. The supervisor or proctor designated by the Commission shall collect all examination papers and deliver them or cause them to be delivered to the several examiners who are to examine them. Each examining board shall, as speedily as possible, examine all applicants referred to it and report its findings to the Commission. All reports of written examinations shall be made under the numbers of the several examiners and not under their names; but each board shall report to the Commission, under the names of the several examinees, the results of the clinical and laboratory tests and of the oral examination, if any, to which the examinee has been subjected. The written and the oral examination and the clinical and the laboratory tests shall each be rated on a basis of one hundred, and the reports of the several boards of examiners shall be made accordingly. The relative weight to be given to each, the passing grade, and the weight to be allowed for experience, shall be fixed by the Commission by regulations. The final standing of each applicant shall be determined by the Commission in accordance therewith. (Feb. 27, 1929, 45 Stat. 1332, ch. 352, § 21.)

CROSS REFERENCE

General provisions concerning rules and regulations, see § 2–103.

§ 2–118. Commission to issue licenses based on reports of boards—Retention of examination papers—Papers open to inspection.

The Commission shall carefully consider the reports of the Board of Examiners in the Basic Sciences and of the examining board by which any applicant has been examined, purporting to show the qualifications of the applicant. If the Commission is satisfied that the applicant is qualified to practice the healing art in accordance with law and within the limits fixed by his application, the Commission shall issue to him a license attesting that fact and authorizing him so to practice in whatever class of practice the commission has found him qualified, so long as that license is unsuspended and unrevoked. All reports of examining boards and all questions to and answers by applicants in written examinations shall be open to inspection by any person who shows to the satisfaction of the Commission that he has some proper interest in them. All examination papers shall be preserved by the Commission for a period of not less than two years. The Commission shall record all licenses in a book kept for that purpose, which shall be duly indexed. Licenses shall be consecutively numbered, except that licenses of different classes may be numbered and recorded in separate series. Licenses shall show on their faces the class of practice for which they are issued, and licentiates shall display the same prominently in their offices at all times. (Feb. 27, 1929, 45 Stat. 1333, ch. 352, § 22.)

§ 2–119. Applications for licenses to be filed with Commission—Contents of applications—Fees—Refunds.

Any person desiring to practice the healing art in the District of Columbia shall apply to the Commission, in writing, for authority so to do. The application shall be in such form and accompanied by such evidence of the qualifications of the applicant as the Commission requires. Each application shall show whether the applicant (a) seeks a license (1) on the basis of a license to practice medicine and surgery in the District of Columbia, under section 2–120; (2) on the basis of years of practice, under section 2–120; (3) on the basis of reciprocity, under section 2–121; (4) by virtue of a certificate or diploma issued by a national examining board, as provided in section 2–121a; or (5) on the basis of examination under section 2–122; or (b) seeks registration as a person exempted from licensure, under section 2–133. Each application shall be accompanied by a fee, as follows: For a license on the basis of a license to practice medicine and surgery in the District of Columbia, a fee of $1; on the basis of years of practice in the District of Columbia, a fee of $25; for a license on the basis of reciprocity, a fee of $50; for a license on the basis of a certificate or diploma from a national examining board, a fee

of $25; for certification of applications for license by reciprocity in other jurisdictions, a fee of $10; for a license on the basis of examination, a fee of $25; for registration as a person exempted from license, a fee of $1; but physicians and surgeons of the United States Army, Navy, and Public Health Service, and medical officers in any other branch of the federal government whatsoever, and practitioners of the healing art residing within and licensed by states bordering on the District of Columbia, who do not maintain an office or appoint places where patients may be met within the District of Columbia, applying for registration as persons exempted from licensure in the District of Columbia, shall not be required to pay any fee in connection with any such application. The Commission may, on showing of any adequate cause, refund to an applicant for a license on the basis of examination any or all of the fee paid by him, prior to the reference of his application to an examining board for consideration, and thereafter if the applicant is by reason of sickness or other adequate cause prevented from entering the examination, the Commission may refund not more than 50 per centum of such fee. An applicant for a license by reciprocity who fails to establish his right to such a license, and an applicant for registration as a person exempted from licensure who fails to establish his right to such registration, may be repaid by the Commission not to exceed 80 per centum of the amount deposited by him with his application. (Feb. 29, 1929, 45 Stat. 1333, ch. 352, § 23; Apr. 20, 1948, 62 Stat. 175, ch. 216, § 3(a), (b).)

AMENDMENT

1948—Act April 20, 1948, added provisions relating to certificate or diplomas issued by a national examining board, in third and fourth sentences.

AUTHORITY TO CHANGE FEES

Commissioners authorized and empowered to increase or decrease, from time to time, the fees specified in this section, see §§ 1–252, 1–253.

§ 2–120. Licensees in medicine, surgery, or midwifery under prior law to be relicensed—Osteopaths, chiropractors, and those who practice the healing arts to apply for license—License without examination.

Every person licensed to practice medicine and surgery or to practice midwifery in the District of Columbia under the provisions of an Act entitled "An Act to regulate the practice of medicine and surgery, to license physicians and surgeons, and to punish persons violating the provisions thereof in the District of Columbia," as approved June 3, 1896, as amended, who desires to continue so to practice after February 27, 1929, shall apply for a license so to do. As soon as practicable after February 27, 1929, the Commission shall by publication give notice of this requirement in one or more newspapers of general circulation in the District of Columbia and in one or more medical journals of national circulation. Application for such relicensing shall be made within ninety days after the publication of such notice. A licentiate who within the time thus limited applies for relicensing may continue to practice until the Commission has acted on his application and granted to him a new license, if he be entitled thereto. A licentiate who fails to make application for relicensing within the time thus limited, but who later makes such application, shall not practice until after a new license, if the Commission finds him entitled thereto, has been issued to him. Every license issued under the provisions of this section shall show whether the licentiate was licensed in the first instance on the basis of a diploma and of registration without examination, or on the basis of examination, and shall show the date of such original registration, if there be any, and of such original license.

Any person who was engaged in the practice of osteopathy in the District of Columbia on or before January 1, 1928, may deliver to the Commission, within ninety days after February 27, 1929, a written application for a license to practice osteopathy and surgery in the District of Columbia, together with satisfactory proof that the applicant is not less than twenty-one years of age and of good moral character, and had previously obtained a diploma from some legally incorporated school or college of osteopathy, and had been actively engaged in the practice of osteopathy for the past ten years, or had previously obtained a diploma from some legally incorporated college of osteopathy whose requirements were equal to those recognized by the American Osteopathic Association.

When the Commission is satisfied as to the qualifications of the applicant as aforesaid, it shall issue to him a license to practice osteopathy and surgery: *Provided,* That the Commission may, in its discretion, issue to such applicants licenses to practice osteopathy only, which licenses shall not permit the practice of surgery unless they satisfy the commission that they have had adequate clinical facilities at their respective colleges of graduation, or by hospital work, to enable them to practice surgery. Each license so to do shall show that it was issued on the basis of years of practice in the District of Columbia and without examination.

Any person who was engaged in the practice of chiropractic in the District of Columbia on or before January 1, 1928, may deliver to the Commission, within ninety days after February 27, 1929, a written application for license to practice chiropractic in the District of Columbia, together with satisfactory proof that the applicant is not less than twenty-one years of age and of good moral character, and had previously obtained a diploma from some legally chartered or incorporated and duly established school or college of chiropractic and was actually engaged in the practice of chiropractic in said District on January 1, 1928.

When the Commission is satisfied as to the qualifications of the applicant as aforesaid, it shall issue to him a license to practice chiropractic. Each license so to do shall show that it was issued on the basis of actual practice in the District of Columbia without examination.

Any person who has been engaged in the practice of the healing art as defined in this subchapter in the District of Columbia on or before January 1, 1928, according to any other drugless method of healing, who has been graduated with a degree appropriate to the system of drugless healing that he has practiced by a legally chartered or incorporated and

duly established school, and who desires to continue so to practice, shall within ninety days after February 27, 1929, submit proof, satisfactory to the commission, of such date of practice and of graduation, of the fact that he is not less than twenty-one years of age and of good moral character, and of the name, character, and limits of the method of healing practiced by him. When the Commission is satisfied as to the qualifications of the applicant as aforesaid, it shall issue to the applicant a license to practice the healing art in accordance with the system described by the applicant, if recognized by the commission as a named system of drugless healing, which shall be clearly defined and limited in the license so as to distinguish it from all other systems of practice. A license issued in any such case shall show that it was issued on the basis of years of practice and not on the basis of examination. (Feb. 27, 1929, 45 Stat. 1334, ch. 352, § 24; Aug. 11, 1937, 50 Stat. 620, ch. 579.)

AMENDMENT

1937—Act Aug. 11, 1937, eliminated sentence which read as follows: "After five years after February 27, 1929, the Commission shall issue no license to practice the healing art in the District of Columbia on the basis of a license to practice medicine and surgery or to practice midwifery, in the District of Columbia, in force on February 27, 1929."

CROSS REFERENCE

Refund of fees where license is refused, see § 47–1017.

§ 2–121. Reciprocity with other States and foreign countries—Exception—Proof required.

An applicant who desires to obtain a license without examination, by virtue of a license issued to him by a state, territory, or other jurisdiction forming a part of the United States, or by a foreign country, shall submit proof, satisfactory to the Commission, that he is not less than twenty-one years of age and is of good moral character; that he was licensed to practice the healing art in the jurisdiction whence he comes under conditions that at that time would have enabled him to obtain a license to practice the healing art in the District of Columbia, or to have obtained a license under the provisions of this subchapter were it then in force; that he practiced the healing art after the issuance of said license for not less than one continuous year out of three years immediately preceding the date of his application and that he intends, if licensed by the Commission, to practice in the District of Columbia. The required one continuous year's practice may be either private, institutional or governmental, or a combination thereof. The applicant shall submit, also, proof that the licensing agency of the jurisdiction whence he comes or desires to come grants, under substantially the same terms and conditions, to licentiates of the District of Columbia of the same class, licenses to practice the healing art within its jurisdiction. When the Commission is satisfied as to the qualifications of the applicant as aforesaid and as to the readiness of the licensing agency of the jurisdiction whence the applicant comes to license, under substantially the same terms and conditions, licentiates of the licensing agency of the District of Columbia of the same class, the Commission shall issue to the applicant a license to practice the healing art corresponding in scope as nearly as may be to the license issued to him by the jurisdiction whence he comes: *Provided,* That an applicant who has been examined under authority of the Commission and who has failed, shall not thereafter be licensed by the Commission by virtue of reciprocity with another jurisdiction. (Feb. 27, 1929, 45 Stat. 1335, ch. 352, § 25; Dec. 15, 1944, 58 Stat. 805, ch. 587.)

AMENDMENTS

1944—Act Dec. 15, 1944, amended section by striking out "that he practiced the healing art under authority of said license for not less than two consecutive years immediately preceding the date of his application" and inserting in lieu thereof "that he practiced the healing art after issuance of said license for not less than one continuous year out of three years immediately preceding the date of his application" in the first sentence, inserting the second sentence, and striking out words "without examination" and inserting in lieu thereof "under substantially the same conditions and terms" wherever appearing in second and third sentences.

NOTES TO DECISIONS

Evidence

In prosecution for administering medical treatment in District of Columbia without being licensed to do so, in view of fact that naturopathic association had no authority to authorize practice of any type of medicine in state adjacent to District of Columbia, exclusion of certificate of incorporation of such association and certificate issued by another association certifying to defendant's qualification as a naturopathic physician, which also had no such authority, was proper. *Aitchison* v. *United States* (D. C. Mun. App. 1953, 98 A. 2d 791).

Reciprocity

Maryland license to practice healing would not authorize licensee to come into District of Columbia and practice healing art. *Aitchison* v. *United States* (D. C. Mun. App. 1953, 98 A. 2d 791).

§ 2–122. Evidence to be submitted with application—Licensing of those practicing before effective date of this chapter—Education and training.

Each applicant for a license to practice the healing art, to be issued after examination, shall submit with his application proof satisfactory to the Commission that he is not less than twenty-one years of age; that he is of good moral character; that he has had not less than two years of preprofessional education and training in a college or university acceptable to the Commission before entering on the study of the healing art; that he has been graduated from a professional school registered under this subchapter; with the degree of doctor of medicine, doctor of osteopathy, or some equivalent degree; and, if required by the Commission, that he has had not less than one year of training in a hospital registered by the Commission under this chapter; *Provided,* That the commission shall by rule provide for determining whether an applicant who has been graduated from a professional school registered under this Act at a time when such school was not so registered may be admitted to examination, and such commission shall, in determining whether any such applicant shall be admitted to examination under this section, take into consideration whether the curriculum and the qualifications of the faculty of such school were substantially the same during the period the school was attended by the applicant as they were at the time the school first became registered under this Act, and if the commission shall so find, such applicant shall be admitted to examination: *Provided further,* That an applicant

who has had the education and training required above, in preprofessional and professional schools, but whose graduation has been deferred by the professional school he last attended until after he has completed his training in a registered hospital, may be admitted to examination; but no license shall be issued to any such applicant until after he has been graduated from a registered school: *Provided further,* That an applicant for a license to be issued after examination who was graduated before February 27, 1929, by a school registered under this subchapter may, if otherwise qualified, be admitted to examination upon proof by the applicant of such preprofessional and professional education and training, and of such graduation, as were required by the laws of the District of Columbia regulating the practice of medicine and surgery at the time of such graduation: *Provided further,* That an applicant for a license to practice osteopathy and surgery who has been graduated as aforesaid prior to December 31, 1930, shall be examined and licensed on showing that he was graduated by a high school acceptable to the Commission before he entered on the study of osteopathy and that he in all other respects is qualified as aforesaid for examination: *And provided further,* That an applicant for a license to practice drugless healing, who has been graduated before December 31, 1935, may be admitted to examination on proof that before entering on the study of drugless healing he was graduated by a high school acceptable to the Commission and that he in all other respects is qualified as aforesaid for examination, and was graduated by a school registered under this subchapter, teaching the method of healing that he intends to follow, with a degree appropriate to that method of healing, after not less than three graded courses of resident study and training of at least six months each. After December 31, 1935, every such applicant shall be required to submit, before he is referred to an examining board for examination, evidence of not less than two years' education in a college acceptable to the Commission and not less than four graded resident courses of professional study of not less than nine months each, in the same manner and to the same extent as are required of other applicants for licenses to practice the healing art.

An applicant for a license to practice midwifery shall submit proof, satisfactory to the Commission, that before beginning the study of midwifery she had been graduated by a high school acceptable to the Commission and thereafter studied midwifery in a school of midwifery registered under this subchapter, for at least two graded courses of six months each, including attendance of not less than twenty-five cases of labor, and was duly graduated by that school. (Feb. 27, 1929, 45 Stat. 1336, ch. 352, § 26; Sept. 14, 1961, 75 Stat. 518, Pub. L. 87–248, § 2.)

AMENDMENT

1961—Section 2, act Sept. 14, 1961, amended section by (a) striking "studied the healing art through not less than four graded courses of not less than nine months each, in a professional school or schools registered under this Act [this chapter], and has been graduated by such a school", and inserting in lieu thereof "been graduated from a professional school registered under this Act" [this chapter]; and (b) by inserting immediately after *"Provided,"* where it first appears in the section the following: "That the commission shall by rule provide for determining whether an applicant who has been graduated from a professional school registered under this Act [this chapter] at a time when such school was not so registered may be admitted to examination, and such commission shall, in determining whether any such applicant shall be admitted to examination under this section, take into consideration whether the curriculum and the qualifications of the faculty of such school were substantially the same during the period the school was attended by the applicant as they were at the time the school first became registered under this Act [this chapter], and if the commission shall so find, such applicant shall be admitted to examination: *Provided further,".*

§ 2–122a. Certificate or diploma from national examining board—Proof required.

The Commission may issue a license, without examination, to anyone holding a certificate or diploma from a national examining board: *Provided,* That the examination given by the national examining board was as comprehensive and as exhaustive as that required in the District of Columbia. The applicant for license on this basis shall submit with his application proof satisfactory to the Commission that he is not less than twenty-one years of age; that he is of good moral character; that he has had not less than two years of preprofessional education and training in a college or university acceptable to the Commission before entering on the study of the healing art; that he has studied the healing art through not less than four graded courses of not less than nine months each, in a professional school or schools registered under this subchapter, and has been graduated by such school with the degree of doctor of medicine, doctor of osteopathy, or some equivalent degree; and, if required by the Commission, that he has had not less than one year of training in a hospital registered by the Commission under this subchapter: *Provided further,* That the license issued on the basis of a certificate or diploma from a national examining board shall so state on its face. (Feb. 27, 1929 ch. 352, § 25(a), as added Apr. 20, 1948, 62 Stat. 175, ch. 216, § 4.)

NOTES TO DECISIONS

Authority of Commission

Under statute authorizing the Commission on Licensure to Practice the Healing Art to issue license, without examination, to anyone holding diploma from a national examining board in certain circumstances, the Commission was not deprived of such power by allegation that there were two such national boards, and the Commission was authorized to determine whether signatory upon certificate presented by applicant was a national examining board. *Wendel* v. *Spencer et al.* (1954, 217 F. 2d 858, 95 U.S. App. D.C. 25).

§ 2–123. Suspension and revocation of license—Procedure.

The United States District Court for the District of Columbia, sitting as a court of equity, may suspend or revoke any license issued and any registration effected under this subchapter, upon evidence showing to the satisfaction of the court that the licentiate or registrant, as the case may be, has been guilty of misconduct or is professionally incapacitated.

Proceedings looking toward the suspension or revocation of a license or registration shall be begun by petition filed in the United States District

Court for the District of Columbia in the name of the Commission on Licensure to Practice the Healing Art, or of the Commissioners of the District of Columbia, or of the major and superintendent of police of said District, and shall be verified by oath. Proceedings shall be conducted according to the ordinary rules of equity practice and such supplementary rules as said court may deem expedient to carry into effect the purpose and intent of this subchapter; and said court is hereby authorized to make such supplementary rules. An appeal may be taken from the decision of the United States District Court for the District of Columbia to the United States Court of Appeals for the said District. Any such appeal on behalf of the Commission or of the Commissioners of the District of Columbia or of the major and superintendent of police of said District may be filed without bond. The United States District Court for the District of Columbia may determine whether a license or registration shall be suspended or be revoked, and if such license is to be suspended said court may determine the duration of such suspension and the conditions under which such suspension shall terminate. (Feb. 27, 1929, 45 Stat. 1337, ch. 352, § 27; June 25, 1936, 49 Stat. 1921 ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

TRANSFER OF FUNCTIONS

See note under section 4–103 concerning the transfer of functions from the Major and Superintendent of Police to the Chief of Police.

CROSS REFERENCES

Revocation or suspension of licenses for violation of Uniform Narcotic Drug Act, see § 33–418.

Revocation or suspension of license upon conviction of felony, see § 2–131.

NOTES TO DECISIONS

Additional remedy

District of Columbia Code provision authorizing revocation of license of person convicted in United States District Court for the District of Columbia of any felony, without further hearing or procedure, provides an additional remedy for revocation of license and did not preclude resort to action in equity by Commission on Licensure to Practice the Healing Art for revocation of license under statute authorizing same in case of misconduct. *Dr. H. M. Ladrey* v. *Commission On Licensure etc.* (1958, 261 F. 2d 68, 104 U.S. App. D.C. 239, certiorari denied 79 S. Ct. 288, 358 U.S. 920, 3 L. Ed. 2d 239, rehearing denied 79 S. Ct. 351, 358 U.S. 948, 3 L. Ed. 2d 353).

Due process

Under District of Columbia Code permitting revocation of license because of misconduct after institution of action in United States District Court for the District of Columbia sitting as a court of equity, where complaint charged in words of criminal statute that physician had performed an abortion physician could not contend that the word "misconduct" was too vague and indefinite to meet requirements of due process. *Dr. H. M. Ladrey* v. *Commission On Licensure etc.* (1958, 261 F. 2d 68, 104 U.S. App. D.C. 239, certiorari denied 79 S. Ct. 288, 358 U.S. 920, 3 L. Ed. 2d 239, rehearing denied 79 S. Ct. 351, 385 U.S. 948, 3 L. Ed. 2d 353).

Evidence

In equity action by Commission on Licensure to Practice the Healing Art seeking revocation of physician's license to practice medicine and surgery in District of Columbia, evidence sustained finding that physician committed an abortion on patient who died as a result thereof. *Dr. H. M. Ladrey* v. *Commission On Licensure etc.* (1958, 261 F. 2d 68, 104 U.S. App. D.C. 239, certiorari denied 79 S. Ct. 288, 358 U.S. 920, 3 L. Ed. 2d 239, rehearing denied 79 S. Ct. 351, 358 U.S. 948, 3 L. Ed. 2d 353).

Rules of interpretation

Under statute authorizing District Court of the United States for the District of Columbia sitting as a court of equity to suspend license upon evidence showing that licentiate has been guilty of misconduct, licentiate has available to him full protection of rules and "misconduct" as a ground for suspension or revocation is not left as a matter of opinion but is susceptible to complete exposition under rules and requires proof as a matter of fact accordingly. *Dr. H. M. Ladrey* v. *Commission On Licensure etc.* (1958, 261 F. 2d 68, 104 U.S. App. D.C. 239, certiorari denied 79 S. Ct. 288, 358 U.S. 920, 3 L. Ed. 2d 239, rehearing denied 79 S. Ct. 351, 358 U.S. 948, 3 L. Ed. 2d 353).

Wire tapping

Fact that witness in equitable action for revocation of physician's license made phone call to physician and allowed police officer to listen to conversation on extension line, did not constitute wire tapping or violate statute prohibiting the interception and divulging of intercepted communications. *Dr. H. M. Ladrey* v. *Commission On Licensure etc.* (1958, 261 F. 2d 68, 104 U.S. App. D.C. 239, certiorari denied 79 S. Ct. 288, 358 U.S. 920, 3 L. Ed. 2d 239, rehearing denied 79 S. Ct. 351, 358 U.S. 948, 3 L. Ed. 2d 353).

§ 2–124. Filing false data—Disclosing identity number—False impersonation of applicant prohibited.

No person shall file or attempt to file with the Commission any statement, diploma, certificate, credential, or other evidence when he knows, or when he might by reasonable diligence ascertain, that it is false and misleading.

No person who has been referred by the Commission to an examining board for examination and to whom has been assigned by the Commission a number under which to write and deliver his answers in connection with the written examination shall disclose to any examiner, or permit to be disclosed to any examiner, the number so assigned, or in any other avoidable manner enable the examiner to determine the identity of the applicant whose papers he is examining.

No person shall allow any other person to impersonate him in any manner whatsoever, in obtaining or attempting to obtain any certificate, license, or registration. (Feb. 27, 1929, 45 Stat. 1337, ch. 352, §§ 28–30.)

§ 2–125. Premature disclosure of examination—False impersonation of licensee prohibited.

No person shall disclose, directly or indirectly, to an applicant for a license, in advance of any examination or test to which the applicant is to be subjected, any question to be propounded to the applicant or any test to which he is to be subjected. No applicant for a certificate, license, or registration under this subchapter, and no other person whosoever shall procure or undertake to procure any such disclosure.

No person licensed or registered under this subchapter shall allow any other person to impersonate

him in connection with practice under any such license or registration.

No person shall impersonate a person licensed or registered under this subchapter in connection with the practice of the healing art under such license or registration. (Feb. 27, 1929, 45 Stat. 1337, ch. 352, §§ 31–33.)

§ 2–126. Altering or forging diploma or seal of Commission.

No person shall alter or forge, or attempt to alter or forge, any diploma or other evidence of graduation in the healing art, or any certificate or evidence of any kind, with the intent that it shall be used to evade the provisions of this subchapter.

No person shall alter or forge, or attempt to alter or forge, any license or evidence of registration, or counterfeit the seal of the Commission, or make any counterfeit impression of that seal. (Feb. 27, 1929, 45 Stat. 1338, ch. 352, §§ 34, 35.)

§ 2–127. Unfair rating of applicants prohibited.

No person having any office or duty to perform with respect to the licensing or registration of applicants for licenses and for registration under the provisions of this subchapter shall knowingly rate unfairly or give any unauthorized advantage to, or impose any unfair disadvantages on, any such applicant. (Feb. 27, 1929, 45 Stat. 1338, ch. 352, § 36.)

§ 2–128. False swearing to be perjury.

Any person who swears or affirms to the truth of any matter or opinion that he knows to be false, for the purpose of evading, hindering, or impeding the purposes of this subchapter is guilty of perjury. Any person who swears or affirms falsely, outside of the District of Columbia, if his oath or affirmation be delivered to the Commission in said District shall be guilty of perjury in said District and shall be tried and punished under the laws thereof. (Feb. 27, 1929, 45 Stat. 1338, ch. 352, § 37.)

§ 2–129. License may be refused for cause—Procedure—Attendance of witnesses before Commission—Review and appeal.

The Commission may refuse to license or to register any person for any cause that in the judgment of the Commission would, under the provisions of section 2–123, authorize the United States District Court for the District of Columbia to suspend or revoke a license or registration, if issued or granted. Before the Commission refuses to license or register any applicant for any cause under the provisions of this section, it shall give that applicant an opportunity to be heard in person or by attorney, and to produce witnesses on his behalf. Witnesses may be produced on behalf of the Commission and on behalf of any interested person. The attendance and testimony of witnesses may be compelled by subpœna issued by the United States District Court for the District of Columbia, and said court is hereby authorized to issue and to enforce such subpœnas, on petition of the Commission. Any person failing or refusing, without just cause, to appear and testify in response to any such subpœna, or in any way obstructing the course of any hearing to which he has been subpœnaed, is guilty of contempt of court and may be punished as other persons guilty of contempt of court are punished. Any member of the Commission may administer oaths at any such hearing. On the petition of an applicant to whom a license or registration has been denied by the Commission by virtue of this section, the action of the Commission may be reviewed by the District of Columbia Court of Appeals in the manner provided by sections 11–742, 17–303, 17–304, 17–305(b), 17–306 and 17–307 of the District of Columbia Code. (Feb. 27, 1929, 45 Stat. 1338, ch. 352, § 38; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 31, 1954, 68 Stat. 1048, ch. 1173, § 1; Dec. 23, 1963, 77 Stat. 615, Pub. L. 88–241, § 2.)

AMENDMENT

1963—Section 2 of act Dec. 23, 1963, amended the seventh sentence, substituted "in the manner provided by sections 11–742, 17–303, 17–304, 17–305(b), 17–306 and 17–307" for "on a writ of certiorari, subject to appeal to the United States Court of Appeals for the District of Columbia, in the same manner as appeals are taken in similar cases".

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

"Municipal Court of Appeals for the District of Columbia" was substituted for "United States District Court for the District of Columbia" in the last sentence in view of act Aug. 31, 1954, which vested exclusive jurisdiction to review orders of the Commission in the Municipal Court of Appeals. See § 11–742(a)(6).

Act July 8, 1963, § 6, substituted "District of Columbia Court of Appeals" for "Municipal Court of Appeals for the District of Columbia". Provisions identical with those of said section 6 were contained in act Oct. 23, 1962, 76 Stat. 1172, Pub. L. 88–873, § 6, which was repealed by act Dec. 23, 1963, 77 Stat. 620, Pub. L. 88–241, § 21(a).

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 23, 1963, was made effective on Jan. 1, 1964. See note preceding ch. 1, Title 11.

§ 2–130. Penalties.

(a) Any person violating the provisions of this subchapter, except section 2–102, shall be punished by a fine of not more than $100 or by imprisonment for not more than ninety days, or by both such fine and imprisonment.

(b) Any person violating the provisions of section 2–102 shall be punished, for the first offense, by a fine of not more than $500 or by imprisonment for not more than six months, or by both such fine and imprisonment; for the second offense, by a fine of not more than $1,000 or by imprisonment for not more than one year, or by both such fine and imprisonment; and for the third and subsequent offenses, by a fine of not more than $5,000 or imprisonment for not more than five years, or by both such fine and imprisonment.

(c) For the purposes of subsection (b) of this section, an offender shall be considered a second or subsequent offender, as the case may be, if he previously has been convicted of the offense of practicing medicine or the healing art without a license, either in the District of Columbia or in any of the

States or Territories of the United States. After an offender has been convicted of the violation of the provisions of section 2–102, but prior to pronouncement of sentence, the court shall be advised by the United States attorney whether the conviction is the offender's first or a subsequent offense. If it is not a first offense, the United States attorney shall file an information setting forth the prior conviction or convictions. The offender shall have the opportunity in open court to affirm or deny that he is identical with the person previously convicted. If he denies the identity, sentence shall be postponed for such time as to permit a trial before a jury on the sole issue of the offender's identity with the person previously convicted. If the offender is found by the jury to be the person previously convicted, or if he acknowledges that he is such person, he shall be sentenced as prescribed in subsection (b) of this section. (Feb. 27, 1929, 45 Stat. 1338, ch. 352, § 39; June 22, 1954, 68 Stat. 269, ch. 338, § 1.)

AMENDMENT

1954—Act June 22, 1954, inserted the exception as to violations of section 2–102 in subsection (a) and added subsections (b) and (c).

§ 2–131. Suspension or revocation of license upon conviction of felony—Appeal as supersedeas.

If a person licensed or registered under the provisions of this subchapter be convicted in the United States District Court for the District of Columbia of any felony, the court, without further hearing or procedure, may suspend for such time and under such conditions as it deems proper, or may revoke, the license or registration of the defendant, in addition to imposing any other penalty provided by law. An appeal by the defendant in any such case from the conviction of the offense shall act as a supersedeas to the judgment of the court suspending or revoking his license or registration. (Feb. 27, 1929, 45 Stat. 1338, ch. 352, § 40; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

NOTES TO DECISIONS

Application for reinstatement

Determination of whether petitioner was fit to again practice medicine was not matter for court but for Commission on Licensure. *United States* v. *W. A. Goodloe* (D.C. D.C. 1964, 228 F. Supp. 165).

Revocation by court of license of petitioner to practice medicine did not bar appropriate governmental agency from considering application for new license. *Id.*

Commission on Licensure had power, after court had revoked license of petitioner to practice medicine, to entertain and pass upon merits of application for restoration of right to practice medicine and no action of court was needed as a prerequisite. *Id.*

§ 2–132. Enjoining unlawful practice of healing art—Procedure.

The unlawful practice of the healing art may be enjoined by the United States District Court for the District of Columbia, sitting as a court of equity, on petition by the Commission, or by the Commissioners of the District of Columbia, or by the major and superintendent of police of this District; but no such proceeding shall be entertained in advance of the conviction of the person sought to be enjoined, of violation of the provisions of this subchapter. In any such proceeding, it shall not be necessary to show that any person is individually injured by the act or acts complained of. No injunction, either temporary or permanent, shall be granted until after final trial and final judgment on the merits of the case, nor until after a hearing is had on the petition. If, on the trial, it is shown that the respondent has been unlawfully practicing the healing art, the court shall perpetually enjoin him from so practicing or continuing to practice, unless and until he has been duly licensed so to do. Procedure in such cases shall be the same as in any other injunction suit, as nearly as may be. The remedy by injunction given hereby is in addition to criminal prosecution and punishment based thereon, and not in lieu thereof. Such cases shall be advanced for trial on the docket of the trial court, and shall be advanced and tried in the appellate court, in the same manner and under the same law and regulations as apply to other suits for injunction. (Feb. 27, 1929, 45 Stat. 1338, ch. 352, § 41; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

TRANSFER OF FUNCTIONS

See note under section 4–103 concerning the transfer of functions from the Major and Superintendent of Police to the Chief of Police.

FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, see Rule 65, 28 U.S.C. App.

§ 2–133. Exemptions from operation of license laws—Officers of Federal Government—Consultants—Treatment of specified patients.

The provisions of this subchapter forbidding the practice of the healing art without a license shall not apply (a) to commissioned surgeons of the United States Army, Navy, or Public Health Service, or to medical officers in any other branch of the federal government whatsoever, in the discharge of their official duties; nor (b) to practitioners of the healing art duly licensed to practice their respective callings in states or territories, or in jurisdictions under the control of the federal government, or in foreign countries, and actually called from such states, territories, jurisdictions, or countries, in consultation, to visit specified patients in the District of Columbia or to give demonstrations or clinics under the auspices and for the members of an incorporated organization made up of licensed practitioners of the healing art in the District of Columbia; nor (c) to practitioners licensed to practice their respective callings in states and territories, and in other juris-

dictions forming a part of the United States, or in foreign countries, and called from such states, territories, jurisdictions, or countries to visit, on their own behalf and not in consultation, specified patients in the District of Columbia: *Provided,* That all practitioners claiming exemption under the provisions of this section, except those called into the District of Columbia on consultations only, shall file with the Commission, in such manner as the commission may prescribe, evidence of their right to such exemption. Upon proof of that right, to the satisfaction of the commission, the commission shall enter the name of the applicant in a register kept for that purpose and shall issue to the applicant a certificate in evidence of such registration. (Feb. 27, 1929, 45 Stat. 1339, ch. 352, § 42.)

NOTES TO DECISIONS

Emergency

Treatment of lady suffering from advanced cancer several times a week for two months was not the "treatment of any case of actual emergency" within Healing Arts Practice Act exception authorizing emergency treatment by physicians not licensed within District of Columbia. *Aitchison* v. *United States* (D. C. Mun. App. 1953, 98 A. 2d 791).

Where purported physician, who was not licensed within District of Columbia, in response to telephone call wherein patient complained that he had pains in his chest, called on patient, diagnosed his illness and gave him some pills, physician was not engaged in the "treatment of any case of actual emergency" within Healing Arts Practice Act exception authorizing unlicensed physicians to administer treatment in actual emergency. *Id.*

Instructions

In absence of request for instruction exonerating person accused of violating Healing Arts Practice Act if he had administered medical treatment in the District of Columbia only in emergency cases, error could not be predicated upon alleged refusal of court to so instruct. *Aitchison* v. *United States* (D.C. Mun. App. 1953, 98 A. 2d 791).

§ 2–134. Exemptions from operation of license laws—Emergency cases—Massage, dietetics, or hygienic measures, X-ray or laboratory technicians—Prayer or spiritual treatment—Sale of drugs.

The provisions of this subchapter shall not be construed to apply to (a) the treatment of any case of actual emergency; or (b) to the practice of massage, or dietetics, or the use of hygienic measures, for the relief of disease or to the practice of any other form of physiotherapy for the relief of disease, or to the practice of X-ray or laboratory technicians, under the direction of a person licensed to practice the healing art in the District of Columbia: *Provided,* That clinical and radiographic laboratories in operation and practitioners of clystertory treatment, within the District of Columbia January 1, 1928, may continue to so operate under the provisions of this subchapter; or (c) to the use of ordinary hygienic, dietetic, or domestic remedies: *Provided,* That such use is not in violation of the provisions of sections 2–101 and 2–102; or (d) to persons treating human ailments by prayer or spiritual means, as an exercise or enjoyment of religious freedom: *Provided,* That the laws, rules, and regulations relating to communicable diseases and sanitary matters are not violated; or (e) to the sale, manufacture, or advertising of drugs and medicines: *Provided,* That the vendor, maker, or advertiser refrains from any attempt to diagnose: *Provided,* That it shall not be necessary to negative any of the aforesaid exemptions in any prosecution brought under this subchapter, but the burden of proof of any such exemption shall be on the defendant. (Feb. 27, 1929, 45 Stat. 1339, ch. 352, § 43.)

NOTES TO DECISIONS

Burden of proof

In prosecution for practicing healing art without license, instruction that defendant had burden of proof of statutory exemption, and that burden of proof is such proof by competent evidence to find beyond reasonable doubt that every material fact of such proof is necessary to acquittal, was reversible error. *Dowell* v. *United States* (D. C. Mun. App. 1952, 87 A. 2d 630).

Emergency

Treatment of lady suffering from advanced cancer several times a week for two months was not the "treatment of any case of actual emergency" within Healing Arts Practice Act exception authorizing emergency treatment by physicans not licensed within District of Columbia. *Aitchison* v. *United States* (D. C. Mun. App. 1953, 98 A. 2d 791).

Where purported physican, who was not licensed within District of Columbia, in response to telephone call wherein patient complained that he had pains in his chest, called on patient, diagnosed his illness and gave him some pills, physician was not engaged in the "treatment of any case of actual emergency" within Healing Arts Practice Act exception authorizing unlicensed physicians to administer treatment in actual emergency. *Id.*

Evidence

Statutes prohibiting practicing healing art without license but exempting certain practices under direction of person licensed to practice healing art, and providing that burden of proof of exemption shall be on defendant, gives defendant affirmative defense and requires no more than that defendant's evidence, with or without other evidence be sufficient to create reasonable doubt as to guilt and does not require defendant to prove defense beyond reasonable doubt. *Dowell* v. *United States* (D. C. Mun. App. 1952, 87 A. 2d 630).

Instructions

In absence of request for instruction exonerating person accused of violating Healing Arts Practice Act if he had administered medical treatment in the District of Columbia only in emergency cases, error could not be predicated upon alleged refusal of court to so instruct. *Aitchison* v. *United States* (D. C. Mun. App. 1953, 98 A. 2d 791).

Liability of hospital

Where judgment was obtained against appellant hospital for the death by negligence of a patient resulting from a transfusion of incompatible blood erroneously tested and reported as compatible by a technician in the hospital laboratory, such judgment must be affirmed since the doctrine of respondent superior applies. Such responsibility is unaffected even though agreeably to the requirements of Title 2 of the Code, the technical work was put under the "direction of a physician." *National Homeopathic Hospital* v. *Phillips* (1950, 181 F. 2d 293, 86 U. S. App. D. C. 295).

§ 2–135. Funds to be paid to Collector of Taxes—Payment of expenses.

All money payable under the provisions of this subchapter shall be paid to the Collector of Taxes of the District of Columbia and be by him deposited as a special fund to the credit of the Commission. The Commission shall pay from such fund all of the expenses of carrying this subchapter into effect. Payments by the Commission shall be made by check, signed by the president and treasurer of the Commission. Members of the several examining boards and all officers and employees of the Commission

shall be paid at such rates as the Commission deems proper. (Feb. 27, 1929, 45 Stat. 1340, ch. 352, § 44; Sept. 26, 1942, 56 Stat. 758, ch. 562, § 2.)

AMENDMENT

1942—Act Sept. 26, 1942, deleted from second sentence the following language: "except such as may be incident to criminal prosecutions and to supervision and investigation with a view to criminal prosecution, the cost of which shall be paid from appropriations in the same manner as the expenses of other criminal prosecutions and supervisory work and investigations incident thereto are paid."

§ 2–136. Boards of Medical Supervisors and Examiners to deliver records and property to Commission.

As soon as practicable after February 27, 1929, the Board of Medical Supervisors of the District of Columbia, the Board of Medical Examiners of said District, the Board of Homeopathic Medical Examiners, and the Board of Electric Medical Examiners shall deliver to the Commission on Licensure to Practice the Healing Art in the District of Columbia all records and property in their possession, respectively. The Board of Medical Supervisors of the District of Columbia shall transfer to said Commission all money remaining to the credit of said board after the payment in full of all outstanding obligations against it; and the money so transferred may be used by the Commission to defray the expenses of carrying this subchapter into effect in the same manner as other money coming into the custody of the Commission is used for that purpose. (Feb. 27, 1929, 45 Stat. 1340, ch. 352, § 45.)

§ 2–137. Enforcement.

It shall be the duty of the Commissioners of the District of Columbia and of the major and superintendent of police of said District to enforce the provisions of this subchapter. Criminal prosecution shall be conducted by the United States Attorney for the District of Columbia. Proceedings looking toward the suspension or revocation of licenses or registration and toward the issue of injunctions, under the provisions of this subchapter, shall be conducted by the corporation counsel for the District of Columbia. (Feb. 27, 1929, 45 Stat. 1340, ch. 352, § 46; June 25, 1948, 62 Stat. 909, ch. 646, § 1; Nov. 8, 1965, 79 Stat. 1308, Pub. L. 89–347, § 5.)

AMENDMENT

1965—Section 5 of act Nov. 8, 1965, amended section by striking out "by said United States attorney when instituted on behalf of the Commission and", and "when instituted on behalf of the Commissioners of said District or by the major and superintendent of police of said District", in the last sentence.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States Attorney" for "United States District Attorney." See 28 U.S.C. § 501.

EFFECTIVE DATE OF 1965 AMENDMENTS

The first sentence of section 11, act Nov. 8, 1965, provided: "Sections 5 through 8, inclusive [secs. 2–137, 2–407, 2–502 and 2–909] and section 10 [sec. 20–2301 note] shall take effect thirty days from the approval of this Act, but shall not in any case apply to proceedings instituted prior to the approval of this Act."

TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under section 4–103.

NOTES TO DECISIONS

Mandamus

The District of Columbia Municipal Court had jurisdiction to direct that charge of practicing healing arts without license should be tried by jury, and an erroneous decision on the question would not constitute such unlawful exercise of authority as would entitle Government to writ of mandamus directing Municipal Court to expunge jury trial order from the record. *United States* v. *Kronheim* (D. C. Mun. App. 1951, 80 A. 2d 280).

Trial by jury

The District of Columbia Municipal Court acting on demand for jury trial in prosecution for practice of healing arts without license was performing a judicial function, and not a ministerial act which could be controlled by mandamus. *United States* v. *Kronheim* (D. C. Mun. App. 1951, 80 A. 2d 280).

§ 2–138. Commission to report to Congress.

The Commission shall report annually to Congress, on the first Monday in December, its proceedings under the provisions of this subchapter during the next preceding fiscal year, with recommendations for such further legislation as may be necessary to protect the people of the District of Columbia from ignorance and quackery in the practice of the healing art in said District. (Feb. 27, 1929, 45 Stat. 1340, ch. 352, § 47.)

§ 2–139. Short title.

This subchapter may be cited as the "Healing Arts Practice Act, District of Columbia, 1928." (Feb. 27, 1929, 45 Stat. 1340, ch. 352, § 48.)

§ 2–140. Saving clause—Prior, contrary, or inconsistent laws repealed.

Matters pending before the Board of Medical Supervisors of the District of Columbia on February 27, 1929, shall be disposed of by the Commission in accordance with the provisions of this subchapter unless in the judgment of the Commission it would be unjust or oppressive so to do; any matter, which in the judgment of the Commission, it would be unjust or oppressive so to dispose of, may be disposed of by the Commission, in so far as may be practicable, in accordance with the provisions of the law in force when the matter first came before the Board of Medical Supervisors. Criminal prosecutions may be instituted and, if instituted on February 27, 1929, may be continued, and penalties may be imposed, under the provisions of the law in force at the time of the alleged offense, notwithstanding the passage of this subchapter. Except as provided above, all laws contrary to this subchapter or inconsistent therewith are hereby repealed. (Feb. 27, 1929, 45 Stat. 1340, ch. 352, § 49.)

§ 2–141. Delegation of functions of "Commission"—Definition.

Wherever the term "commission" is used in this subchapter, such term shall mean the office or agency to which the Board of Commissioners of the District of Columbia, pursuant to the authority contained in Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), has delegated or may from time to time delegate the functions required to be performed by this subchapter. (Feb. 27, 1929, 45 Stat. 1340, ch. 352, § 50, as added, Sept. 14, 1961, 75 Stat. 519, Pub. L. 87–248, § 3.)

§ 2–142. Liability of physician or nurse for negligence in rendering medical assistance at the scene of an accident.

No physician licensed to practice medicine or osteopathy in the District of Columbia or in any State, and no registered nurse licensed in the District of Columbia or in any State, shall be liable in civil damages for any act or omission, not constituting gross negligence, in the course of such physician or nurse rendering (in good faith and without expectation of receiving or intending to seek compensation) medical care or assistance at the scene of an accident or other medical emergency in the District of Columbia and outside a hospital. (Nov. 8, 1965, 79 Stat. 1302, Pub. L. 89–341, § 1.)

CODIFICATION

This section was not enacted as a part of the "Healing Arts Practice Act, District of Columbia, 1928", which constitutes this subchapter.

SUBCHAPTER II.—REPORTING OF CERTAIN PHYSICAL ABUSES OF CHILDREN

§ 2–161. Purpose of subchapter.

The purpose of this subchapter is to provide for the protection of children who have had physical injury inflicted upon them or who have suffered physical harm due to neglect. Physicians who become aware of such cases should report them to the Metropolitan Police Department of the District of Columbia thereby causing the protective services of the District of Columbia to be brought to bear in an effort to protect the health and welfare of these children to prevent further abuses, and preserve family life whenever possible. (Nov. 6, 1966, 80 Stat. 1354, Pub. L. 89–775, § 1.)

§ 2–162. Reports by physicians and institutions.

Notwithstanding section 14–307, any physician in the District of Columbia, including persons licensed under subchapter I of this chapter, having reasonable cause to believe that a child under the age of eighteen brought to him or coming before him for examination, care, or treatment has in his opinion had serious physical injury or injuries inflicted upon him other than by accidental means, or has suffered serious physical harm due to neglect, shall report or cause reports to be made in accordance with this subchapter: *Provided,* That when a physician in the performance of service as a member of the staff of a hospital or similar institution attends a child, he shall notify the person in charge of the hospital or institution or his designated agent who shall report or cause reports to be made in accordance with this subchapter. (Nov. 6, 1966, 80 Stat. 1354, Pub. L. 89–775, § 2.)

§ 2–163. Nature and contents of reports—To whom made.

An oral report shall be made immediately by telephone or otherwise, and followed as soon thereafter as practicable by a report in writing, to the Metropolitan Police Department of the District of Columbia. Such reports shall contain the names and addresses of the child and his parents or other persons responsible for his care, if known, the child's age, nature and extent of the child's injuries (including any evidence of previous injuries), and may furnish any other information which the physician or other persons required to make the report believes might be helpful in establishing the cause of the injuries and the identity of the perpetrator. (Nov. 6, 1966, 80 Stat. 1354, Pub. L. 89–775, § 3.)

§ 2–164. Immunity from liability.

Any person, hospital, or institution participating in good faith in the making of a report pursuant to this subchapter shall have immunity from liability, civil or criminal, that might otherwise be incurred or imposed with respect to the making of such report. Any such participant shall have the same immunity with respect to participation in any judicial proceeding involving such report. (Nov. 6, 1966, 80 Stat. 1354, Pub. L. 89–775, § 4.)

§ 2–165. Evidence not privileged if Juvenile Court so determines.

Notwithstanding the provisions of section 14–306 and 14–307, neither the physician-patient privilege nor the husband-wife privilege shall be a ground for excluding evidence in any proceeding in the Juvenile Court of the District of Columbia concerning the welfare of such child, provided that the Juvenile Court determines such privilege should be waived in the interest of public justice. (Nov. 6, 1966, 80 Stat. 1355, Pub. L. 89–775, § 5.)

§ 2–166. Application of subchapter with respect to spiritual healing.

Notwithstanding any other provision of this subchapter, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to have been neglected within the purview of this subchapter. (Nov. 6, 1966, 80 Stat. 1355, Pub. L. 89–775, § 6.)

SUBCHAPTER III.—REPORTING OF INJURIES CAUSED BY FIREARMS OR OTHER DANGEROUS WEAPONS

§ 2–181. Reports by physicians and institutions.

Any physician in the District of Columbia, including persons licensed under subchapter I of this chapter, having reasonable cause to believe that a person brought to him or coming before him for examination, care or treatment has suffered injury caused by a firearm, whether self-inflicted, accidental or occurring during the commission of a crime, or has suffered injury caused by any dangerous weapon in the commission of a crime, shall report or cause reports to be made in accordance with this subchapter: *Provided,* That when a physician in the performance of service as a member of the staff of a hospital or similar institution attends any person so injured, he shall notify the person in charge of the hospital or institution or his designated agent who shall report or cause reports to be made in accordance with this subchapter. (Nov. 6, 1966, 80 Stat. 1355, Pub. L. 89–776, § 1.)

§ 2–182. Nature and contents of reports—To whom made.

An oral report shall be made immediately by telephone or otherwise, and followed as soon thereafter as possible by a report in writing, to the Metropolitan Police Department of the District of Columbia. Such reports shall contain, if readily available, the name, address, and age of the injured person, and shall also contain the nature and extent of the person's injuries, and any other information which the physician or other person required to make the report believes might be helpful in establishing the cause of the injuries and the identity of the person who caused the injuries. (Nov. 6, 1966, 80 Stat. 1355, Pub. L. 89–775, § 2.)

§ 2–183. Immunity from liability.

Any person, hospital, or institution participating in good faith in the making of a report pursuant to this subchapter shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to the making of such report. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report (Nov. 6, 1966, 80 Stat. 1355, Pub. L. 89–776, § 3.)

Chapter 2.—ANATOMICAL BOARD

Sec.
2–201. Anatomical Board of the District of Columbia—Creation, duties, and powers.
2–202. Dead bodies for burial at public expense to be reported to board—Removal—Exceptions.
2–203. Board may receive bodies and distribute among schools and boards—Allotment—Notice.
2–204. Bond to be furnished by school receiving bodies.
2–205. Bodies to be used in District of Columbia—Purposes of use.
2–206. Purchase, sale, traffic, transmission, and disturbance or removal from grave of bodies prohibited—Penalty.
2–207. Bodies to be delivered at expense of institutions receiving them.
2–208. Penalty for wilful neglect to perform duties.
2–209. Prosecutions.

§ 2–201. Anatomical Board of the District of Columbia—Creation, duties, and powers.

There shall be, and is hereby, created, in and for the District of Columbia, a board for the control of the dead human bodies hereinafter described, and for the distribution of such bodies among and to the schools in said District conferring the degree of doctor of medicine or doctor of dental surgery, or both; the Post Graduate School of Medicine, incorporated by an Act of Congress, approved February 7, 1896, entitled "An Act to incorporate the Post Graduate School of Medicine of the District of Columbia;" the medical schools of the United States Army and Navy; the medical examining boards of the United States Army, Navy, and Public Health Service; and the Commission on Licensure for the Practice of the Healing Arts. Said board shall be known as the "Anatomical Board of the District of Columbia," and shall consist of the director of public health of said District and two representatives from each school aforesaid actually engaged in teaching, to be selected by and from the faculty thereof in accordance with the by-laws of such faculty, except in the case of the medical schools of the United States Army and Navy, the representatives from which shall be selected and detailed by the Surgeon-General of the Army and the Surgeon-General of the Navy. Said Anatomical Board shall have full power to establish by-laws for its government and to appoint and to remove proper officers and agents, and shall keep full and complete records of its transactions and of all material facts pertaining to the receipt and distribution of bodies. Said records shall be open at all times for inspection by any member of said Anatomical Board and by the United States Attorney for the District of Columbia. (Apr. 29, 1902, 32 Stat. 173, ch. 638, § 1; Aug. 14, 1912, 37 Stat. 309, ch. 288; Feb. 27, 1929, 45 Stat. 1326, ch. 352; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CODIFICATION

Act Aug. 14, 1912, changed the name of the Marine Hospital Service to the Public Health Service.

The words "Board of Medical Supervisors" were changed to read "Commission on Licensure to Practice the Healing Arts" on authority of Act Feb. 27, 1929.

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

CROSS REFERENCES

Disposition of human bodies in general, see §§ 27–101 to 27–131.

Public crematory, see §§ 27–129 to 27–131.

§ 2–202. Dead bodies for burial at public expense to be reported to board—Removal—Exceptions.

Every public officer, agent, and servant, and every officer, agent, and servant of any and every almshouse, prison, jail, asylum, morgue, hospital, and other public institutions and offices having charge or control of dead human bodies requiring to be buried at public expense, shall notify said Anatomical Board, or such person as may be designated by the said board, whenever any dead human body comes into his possession, charge, or control for burial at public expense. And every such officer, agent, and servant shall, upon application by said Anatomical Board or its agent, without fee or reward, and complying with the laws and regulations governing the removal of dead human bodies in the District of Columbia, deliver every such body to said board and permit said board or its agent to take and remove the same. The notice aforesaid shall be given in writing and forwarded to said Anatomical Board within twenty-four hours after said officer, agent, or servant comes into possession, charge, or control of such body for burial, and shall include such material information as said board may designate. But no such body shall be delivered if the deceased person, during his last illness, without suggestion or solicitation, requested to be buried or cremated; or if within the time specified above and before the actual delivery thereof any person claiming to be and satisfying the officer in charge of such body that he is of kindred or is related by marriage to the deceased shall claim the said body for burial or cremation, or request in writing that it be buried at public expense; or if within the time specified above and before actual delivery any person claiming to be and satisfying the officer in charge of said body that he is a friend of the deceased arranges to

have the same properly buried or cremated without expense to the District, or if the deceased person was a traveler who died suddenly; but in any such case said body shall be buried or delivered to said applicant for burial. (Apr. 29, 1902, 32 Stat. 173, ch. 638, § 2.)

TRANSFER OF FUNCTIONS

Reorganization Order No. 57 of the Board of Commissioners dated June 30, 1953, combined with Reorganization Order No. 52, District of Columbia Pound, and redesignated Organization Order No. 141, dated Feb. 11, 1964, established under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of members as prescribed in this Code. Prior to its redesignation the order abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanitorium, and the Anatomical Board and transferred their functions and positions to the new department. The organization of the new department was set out in the order which was issued pursuant to Reorganization Plan No. 5 of 1952. The redesignated order and plan are set out in the Appendix to Title 1, Administration.

§ 2–203. Board may receive bodies and distribute among schools and boards—Allotment—Notice.

The said Anatomical Board may receive the bodies reported to it as aforesaid, and may distribute and deliver such as are received among and to such of the schools and boards entitled thereto as request in writing to receive the same, except as otherwise expressly directed in this chapter. Each such school and board shall receive annually, as nearly as may be practicable, such proportion of the entire number of bodies distributed as the number of students enrolled and in regular attendance at such school, and the number of candidates appearing for examination before such board, respectively, engaged bona fide at such school, or examined by said board in dissecting, and operative surgery on the cadaver, bears to the total number of students so enrolled in attendance, and engaged, and of persons so examined, in the District of Columbia. The secretary, dean, or other proper officer of each such schools and boards shall report to said Anatomical Board the names of all such students in attendance at such school or persons examined by said board, as the case may be, at such times and in such form as said board may direct. All bodies shall be delivered among such schools and boards in regular order so as to maintain, as nearly as may be practicable, an equitable allotment at all times; and bodies assigned to any school or board in regular order and refused by such school or board without sufficient cause shall be charged against the quota of such school or board in such manner as not to prejudice any other school or board. But no body shall be delivered to any school or board unless within not less than twenty-four hours prior to such delivery notice of the death has been given by said Anatomical Board to the nearest known kinsman, relative by marriage, or friend of the deceased, or if none such be known, published by said Anatomical Board at least once in a daily newspaper published in the city of Washington, District of Columbia. The notice required by this section shall be deemed to have been given if served in writing on the person to be notified, or if left at his usual place of residence with some adult person residing therein, or a member of the family of such person. Said Board shall take receipts by name, or, if the name be unknown, by a description, for each body delivered; all receipts so obtained by said Board shall be properly filed by it. (Apr. 29, 1902, 32 Stat. 174, ch. 638, § 3.)

§ 2–204. Bond to be furnished by school receiving bodies.

No school except the medical schools of the United States Army and Navy shall receive any body under the provisions of this chapter until said school has given bond to the District of Columbia, and the Board of Commissioners of said District has approved such bond, which said bond shall be in the penal sum of two hundred dollars and conditioned that all bodies which said school shall receive shall be used in said District and only for the promotion of the science and art of medicine and of dentistry. (Apr. 29, 1902, 32 Stat. 174, ch. 638, § 4.)

§ 2–205. Bodies to be used in District of Columbia—Purposes of use.

It shall be the duty of each and every officer, agent, and employee of every school and board receiving bodies under the provisions of this chapter to see that such bodies are used in the District of Columbia and for the promotion of the science and art of medicine and of dentistry, and for no other purpose whatsoever, and that after being so used the remains thereof are disposed of in accordance with law. (Apr. 29, 1902, 32 Stat. 174, ch. 638, § 5.)

§ 2–206. Purchase, sale, traffic, transmission, and disturbance or removal from grave of bodies prohibited—Penalty.

Any person who shall, in the District of Columbia, sell or buy any body aforesaid, or in any way traffic therewith, or transmit or convey any such body to any place outside of said District, or cause or procure any such body to be so transmitted or conveyed, or who shall, in said District, disturb or remove, without legal permit, any body from any grave or vault, shall, on conviction thereof, be fined not more than two hundred dollars or imprisoned in the workhouse of said District for not more than one year. (Apr. 29, 1902, 32 Stat. 175, ch. 638, § 6.)

CROSS REFERENCE

Grave robbery, buying or selling dead bodies, penalty, see § 22–3103.

§ 2–207. Bodies to be delivered at expense of institutions receiving them.

Neither the United States nor the District of Columbia, nor any officer, agent, or servant thereof, shall be at any expense by reason of the delivery of any body or bodies aforesaid, except such as may be properly chargeable on account of bodies delivered to the medical schools of the Army and Navy, the medical examining boards of the Army, the Navy, and the Public Health Service, and the Commission on Licensure for the Practice of the Healing Arts; but all expenses of such delivery and distribution, except as hereinbefore specified, and of said Anatomical Board, shall be paid by the schools receiving

such bodies, in such manner as may be specified by said board and by such school in proportion to the number of bodies which it has received; and no school which has failed or refused to pay its just proportion of such expense as determined by said board shall be allowed to receive any body or bodies, or parts thereof, while the amount so due remains unpaid. (Apr. 29, 1902, 32 Stat. 175, ch. 638, § 7; Aug. 14, 1912, 37 Stat. 309, ch. 288; Feb. 27, 1929, 45 Stat. 1326, ch. 352.)

CODIFICATION

Act Aug. 14, 1912, changed the name of the Marine Hospital Service to the Public Health Service. The words "Board of Medical Supervisors" have been changed to read "Commissioners on Licensure to Practice the Healing Arts," in accordance with act Feb. 27, 1929.

§ 2–208. Penalty for wilful neglect to perform duties.

Any person having any duty enjoined upon him by the provisions of this chapter who wilfully neglects, refuses, or fails to perform the same, shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars or by imprisonment in the workhouse of the District of Columbia for not more one year. (Apr. 29, 1902, 32 Stat. 175. ch. 638, § 8.)

§ 2–209. Prosecutions.

All prosecutions under this chapter shall be in the District of Columbia Court of General Sessions, on information brought in the name of said District on its behalf. (Apr. 29, 1902, 32 Stat. 175, ch. 638, § 9; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 78, Pub. L. 88–60, § 6.)

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

Chapter 2A.—HUMAN TISSUE BANKS

Sec.
2–251. Statement of policy and purpose.
2–252. Definitions.
2–253. Tissue bank licenses and regulations.
2–254. Penalties.
2–255. Donation of tissue.
2–256. Tissue donations by those having right to body.
2–257. Persons entitled to the body.
2–258. Office of the Coroner.
2–259. Exemption of licensed undertakers from act.
2–260. Coordination of act with reorganization plan No. 5.

§ 2–251. Statement of policy and purpose.

Because of the rapid medical progress in the field of tissue preservation, tissue transplantation, and tissue culture, and because it is in the public interest to aid the development of this field of medicine, it is the policy and purpose of Congress in enacting this chapter and the amendments to sections 27–119a and 27–125 to encourage and aid the development of reconstructive medicine and surgery and the development of medico-surgical research by providing for the licensing and regulation of tissue banks, and by facilitating antemortem and postmortem authorizations for donations of tissue. (Sept. 10, 1962, 76 Stat. 534, Pub. L. 87–656, § 2.)

POPULAR NAME

Section 1, act Sept. 10, 1962, provided that "This Act [set out as Title 2, Ch. 2A, and as amendments to sections 27–119a and 27–125] may be cited as the 'District of Columbia Tissue Bank Act' ".

CROSS REFERENCE

For other applicable provisions relating to disposition of dead bodies, see §§ 2–201 to 2–209, and §§ 27–101 to 27–131.

§ 2–252. Definitions.

For the purposes of this chapter and sections 27–119a and 27–125, except where the context indicates a different meaning—

"Commissioners" means the Commissioners of the District of Columbia or their designated agent.

"Donor" means any person who, in accordance with the provisions of this chapter and sections 27–119a and 27–125, bequeaths or donates his tissue for removal after death in furtherance of the purposes of this chapter and section 27–119a and 27–125, and also means any deceased person whose tissue is donated or disposed of for the purpose of this chapter and sections 27–119a and 27–125.

"Tissue" means any portion of the body of a dead human.

"Tissue bank" means a facility for procuring, removing, and disposing of portions of bodies of dead humans for the purposes of reconstructive medicine and surgery, and research and teaching in reconstructive medicine and surgery. (Sept. 10, 1962, 76 Stat. 534, Pub. L. 87–656, § 3.)

§ 2–253. Tissue bank licenses and regulations.

(a) No person shall operate any tissue bank in the District of Columbia without a valid license issued pursuant to this chapter and sections 27–119a and 27–125. No such license shall be issued except to persons duly licensed or duly registered as physicans under the Healing Arts Practice Act of the District of Columbia or to persons holding valid licenses to operate and maintain hospitals for humans pursuant to the Act entitled "An Act to regulate the establishment and maintenance of private hospitals and asylums in the District of Columbia" approved April 20, 1908.

(b) The Commissioners are authorized, after public hearing, to adopt and promulgate rules and regulations prescribing, without limitation, (1) the terms and conditions under which a tissue bank license may be issued and renewed; (2) the fees to be paid for the issuance and renewal of such licenses; (3) the duration of such licenses; (4) the grounds for suspension and revocation of such licenses; (5) the operation of tissue banks; (6) the conditions under which tissue may be processed, preserved, stored, and transported; and (7) the making, keeping, and disposition of records by tissue banks or by other persons processing, preserving, storing, or transporting tissue.

(c) The Commissioners may, after notice and hearing, deny, suspend, or revoke any tissue bank license issued or applied for pursuant to this chapter and sections 27–119a and 27–125.

(d) Any person aggrieved by any final decision or final order of the Commissioners denying, suspending, or revoking any tissue bank license or renewal thereof, issued or applied for under this chapter and sections 27–119a and 27–125, may obtain a review of such decision or order in the District of Columbia Court of Appeals, and may seek review by the United States Court of Appeals for the District of Columbia of any judgment of the District of Columbia Court of Appeals entered pursuant to its review of any such decision or order, all in accordance with subsection (f) of section 11–772.

(e) Except with respect to the provisions as to licensing, the provisions of this chapter and sections 27–119a and 27–125, and the regulations made pursuant thereto, shall apply to Federal agencies situated in the District of Columbia, and to District of Columbia agencies. (Sept. 10, 1962, 76 Stat. 535, Pub. L. 87–656, § 4; July 8, 1963, 77 Stat. 78, Pub. L. 88–60, § 6.)

REFERENCES IN TEXT

The Healing Arts Practice Act of the District of Columbia is set out as chapter 1 in Title 2 of the D.C. Code and the act to regulate the establishment and maintenance of private hospitals and asylums in the District of Columbia approved Apr. 20, 1908, is set out in sections 32–301 to 32–305.

Section 11–772, referred to in text is now covered by sections 11–321, 11–741, 11–742, 17–101, 17–102, 17–103, 17–104, 17–301, 17–302, 17–303, 17–304, 17–305, 17–306, 17–307.

CHANGE OF NAME

Act July 8, 1963, § 6, substituted "District of Columbia Court of Appeals" for "Municipal Court of Appeals for the District of Columbia". Provisions identical with those of said section 6 were contained in act Oct. 23, 1962, 76 Stat. 1172, Pub. L. 88–873, § 6, which was repealed by act Dec. 23, 1963, 77 Stat. 620, Pub. L. 88–241, § 21(a).

EFFECTIVE DATE

Section 14 of act Sept. 10, 1962, provides, "This Act [set out as Title 2, Chapter 2A, and sections 27–119a and 27–125] except section 4 [2–253] shall take effect upon approval. Section 4 [2–253] shall take effect 60 days after the Commissioners have initially promulgated regulations pursuant to such section."

§ 2–254. Penalties.

Any person violating any provision of this chapter and the amendments to sections 27–119a and 27–125, or any regulation made pursuant to this chapter and the amendments to sections 27–119a and 27–125, shall be fined not more than $300, or be imprisoned for not more than ninety days. Prosecution for violations of this chapter and the amendments to sections 27–119a and 27–125 and regulations made pursuant thereto shall be brought in the name of the District of Columbia. (Sept. 10, 1962, 76 Stat. 535, Pub. L. 87–656, § 5.)

§ 2–255. Donation of tissue.

(a) Any person who, under the law of the District of Columbia, has capacity to make a valid will, may by will, codicil, or any written statement donate his tissue for the purposes of this chapter and sections 27–119a and 27–125. Any person who, in accordance with this chapter and sections 27–119a and 27–125, donates his tissue may, but shall not be required to, designate the purpose for which his tissue is to be used. Any physician or hospital validly operating a tissue bank shall have full authority to take the tissue so donated and use the same for the purposes enumerated in this chapter and section 27–119a and 27–125.

(b) No particular words shall be required for such person to donate his tissue, but any will, codicil, or written statement shall be liberally construed to effectuate the intent and purpose of the person desiring to donate his tissue for any purpose authorized by this chapter and sections 27–119a and 27–125. If, pursuant to this section or section 2–256, a person donates tissue by a written statement other than by a will or codicil, such statement shall be signed by him and be witnessed by two persons of legal age.

(c) A provision in any will, codicil, or written statement which donates tissue as provided by this chapter and sections 27–119a and 27–125 shall become effective immediately upon the death of the testator or donor, and shall constitute the authority for any physician or hospital validly operating a tissue bank to remove said tissue. (Sept. 10, 1962, 76 Stat. 535, Pub. L. 87–656, § 6.)

§ 2–256. Tissue donations by those having right to body.

Any person having the right to a body for the purpose of burial may by a written statement donate any tissue from such body to any tissue bank, and in such written statement may designate the purpose or purposes for which such tissue is to be used. Such writing shall constitute full authority for the tissue bank to use such tissue for the purposes of this chapter and sections 27–119a and 27–125. (Sept. 10, 1962, 76 Stat. 536, Pub. L. 87–656, § 7.)

§ 2–257. Persons entitled to the body.

For the purposes of this chapter and the amendments to section 27–119a and 27–125, the order of priority in which persons are entitled to the body for burial and who may donate tissue therefrom shall be the following:

(a) The surviving spouse.

(b) If there be no surviving spouse, or if the surviving spouse is incompetent, unavailable, or does not claim the body for burial, then an adult child, a parent, an adult brother, or an adult sister of the decedent. Any one of such persons may make such donation: *Provided,* That tissue shall not be removed pursuant to a donation made by any one of such persons designated in this subsection if, before such tissue is removed, any one of such persons shall, in writing, notify the tissue bank which is to remove the tissue that he objects to such removal.

(c) Any person whom the deceased during his lifetime designated by written instrument to take charge of his body for burial.

(d) The person or agency who or which assumes custody of the body for burial, in any case in which the person designated as provided in paragraph (c) or all of the persons mentioned in paragraph (a) or (b) of this section have failed to claim the body. (Sept. 10, 1962, 76 Stat. 536, Pub. L. 87–656, § 8.)

§ 2–258. Office of the Coroner.

(a) The Commissioners are authorized to appoint such number of licensed physicians as they deem

appropriate to perform such of the functions of the Coroner of the District of Columbia as the Commissioners shall prescribe. The Commissioners are authorized to fix the compensation of such physicians at a rate or rates not in excess of the per diem equivalent of the maximum rate for grade 18 of the General Schedule established by sections 5104 and 5332 of title 5, U.S. Code. The Commissioners are further authorized, in their discretion, to accept the services of such physicians without compensation.

(b) The Coroner of the District of Columbia may, in his discretion, allow tissue to be removed from any dead human body in his custody or under his jurisdiction: *Provided,* That such tissue removal shall not interfere with other functions of the Office of the Coroner: *Provided further,* That the person who, in accordance with section 2–257, is entitled to the body for burial, shall first authorize such tissue removal. (Sept. 10, 1962, 76 Stat. 536, Pub. L. 87–656, § 9.)

CODIFICATION

In subsec. (a) the reference "established by sections 5104 and 5332 of title 5, U.S. Code" was substituted for "of the Classification Act of 1949, as amended" on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended, was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised enacted title 5, U.S.C., into law), and is now covered by various provisions of title 5, U.S.C. The "General Schedule", also referred to in this section, is continued by 5 U.S.C. § 5104, and the General Schedule pay rates are set forth in 5 U.S.C. § 5332.

TRANSFER OF FUNCTIONS

For provisions transferring certain functions of the Commissioners to the Coroner, see Reorganization Order No. 51, App. to Title 1.

CROSS REFERENCE

For other provisions relating to the Coroner, see secs. 11–1901 to 11–1906 and 1 App., Reorganization Order No. 51.

§ 2–259. Exemption of licensed undertakers from act.

Nothing in this chapter and sections 27–119a and 27–125 shall be construed (1) to prohibit undertakers licensed pursuant to section 47–2344a from discharging their duties, or (2) to prohibit or affect in any way the authority, duties, rights, or obligations vested, imposed, or granted by the Act entitled "An Act for the promotion of anatomical science and to prevent the desecration of graves in the District of Columbia", approved April 29, 1902. (Sept. 10, 1962, 76 Stat. 537, Pub. L. 87–656, § 12.)

REFERENCES IN TEXT

The act for the promotion of anatomical science, etc., approved Apr. 29, 1902, is set out in Title 2, chapter 2, of the D.C. Code.

§ 2–260. Coordination of act with reorganization plan No. 5.

Nothing in this chapter and sections 27–119a and 27–125 shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this chapter and sections 27–119a and 27–125 in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan. (Sept. 10, 1962, 76 Stat. 537, Pub. L. 87–656, § 13.)

REFERENCES IN TEXT

Reorganization Plan No. 5 of 1952, referred to in text is set out in the Appendix to Title I.

Chapter 3.—DENTISTS

Sec.

2–301. Board of Dental Examiners—Appointment—Qualifications—Eligibility—Term of office.
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2–328. Practicing without a license—Violations of law—Penalties.
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§ 2–301. Board of Dental Examiners—Appointment—Qualifications—Eligibility—Term of office.

Members of the Board of Dental Examiners, five in number, shall be appointed by the Board of Commissioners of the District of Columbia.

No person shall be eligible for appointment to the Board of Dental Examiners who is not a citizen of the United States and who has not been for five years next preceding his appointment a resident of and in the active and reputable practice of dentistry in the District of Columbia. Appointments shall be for a term of five years or until their successors are appointed and qualified, and shall be from a list of three to seven eligibles submitted by the dental societies of the District of Columbia; and no officer or member of the faculty of any dental school or college shall be eligible for appointment upon said Board. (July 2, 1940, 54 Stat. 716, ch. 513, § 1.)

CODIFICATION

Act July 2, 1940, purported to amend act June 6, 1892 (27 Stat. 42, ch. 89) and acts amendatory thereof (June 7, 1924, 43 Stat. 599, ch. 315, § 1). The former law (D. C. 1929, Title 20, §§ 211–238) was substantially rewritten and superseded by act July 2, 1940.

CROSS REFERENCES

Application of act to dental hygienists, see §§ 2–322 to 2–327.

Definitions, see § 2–330.

Dentist not to prescribe drugs or medicines except in course of treatment of patients, see § 2–611.

Exempted from operation of Healing Arts Practice Act, see § 2–101.

Exempted from operation of law regulating cosmetologists, see § 2–1324.

Exemption from provisions of Alcoholic Beverage Control Act, see § 25–109.

General penalty for violations of the act, see § 2–328.

Honorariums to various board members and commissioners, see § 1–254.

Persons exempted from operation of act, see § 2–317.

NOTES TO DECISIONS

Purpose

The purpose of this chapter is to maintain high professional standards and to eliminate "bait advertising" as a means of competition. *Johnston* v. *Board of Dental Examiners, D. C.* (1943, 134 F. 2d 9, 77 U. S. App. D. C. 119, certiorari denied 63 S. Ct. 1177, 319 U. S. 758, 87 L. Ed. 1710).

§ 2–302. Officers—Bond—Rules and regulations for admission to and practice of dentistry—Dental internes for hospitals—Sessions of board.

The Board of Dental Examiners shall organize by electing from its members a president, and a secretary-treasurer who shall give bond to the United States in the sum of $5,000. The board shall make and adopt such rules and regulations not inconsistent herewith as it deems necessary to effect the purposes of this chapter, including (but not limited thereto) rules and regulations respecting the eligibility of candidates, the scope of examinations, the conducting of examinations, and the said Board hereby is specifically authorized to make and enforce such rules as it may deem proper for the purpose of regulating professional announcements and the number of offices of a licensed dentist. The Board, in its discretion, and under such rules and regulations as it may prescribe, is hereby authorized to permit in hospitals the use of dental internes who are graduates of approved dental schools. The Board shall hold in January and June of each year, in such place as it may designate, examinations to determine the fitness of applicants for licenses as dentists under this chapter. (July 2, 1940, 54 Stat. 716, ch. 513, § 2.)

CROSS REFERENCES

Board has same general authority over dental hygienists, see § 2–327.

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47–2344, 47–2345.

Promulgation, publication, and notice of rules and regulations, see § 2–331.

Rules and regulations in general, see § 1–226 and notes.

See note to § 2–301.

NOTES TO DECISIONS

Advertising, regulations as to

Regulation of Board of Dental Examiners limiting a licensee to a single advertisement not to exceed 2¼ inches in width and 1 inch in height in a copy of any newspaper or publication at one time is reasonable under this chapter. *Johnston* v. *Board of Dental Examiners, D. C.* (1943, 134 F. 2d 9, 77 U. S. App. D. C. 119, certiorari denied 63 S. Ct. 1177, 319 U. S. 758, 87 L. Ed. 1710).

Generally

Under this chapter giving Board of Dental Examiners authority to make regulations, the Board's regulations are valid so long as they are not unreasonable or arbitrary. *Johnston* v. *Board of Dental Examiners, D. C.* (1943, 134 F. 2d 9, 77 U. S. App. D. C. 119 certiorari denied 63 S. Ct. 1177, 319 U. S. 758, 87 L. Ed. 1710).

Under this chapter giving Board of Dental Examiners authority to make regulations, if doubt exists as to validity of Board's regulations, they are to be upheld. *Id.*

§ 2–303. Official seal—Record of proceedings—Register of licenses issued or revoked—Certified copy of record as evidence.

The Board of Dental Examiners shall have an official seal, and shall keep a record of its proceedings, a complete record of the credentials of each licensee, and a register of persons licensed as dentists and of licenses revoked. A transcript of an entry in such records, certified by the secretary-treasurer under seal of the Board, shall be evidence of the facts therein stated. (July 2, 1940, 54 Stat. 716, ch. 513, § 3.)

CROSS REFERENCE

Powers and duties of the Board as to dental hygienists, see § 2–327.

§ 2–304. Procedure—Attendance of witnesses—Production of books and papers.

The said Board shall have power to require the attendance of persons and the production of books and papers and to require such persons to testify in any and all matters within its jurisdiction. The president and secretary-treasurer of the Board shall have power to issue subpenas and each shall have authority to administer oaths. Upon the failure of any person to attend as a witness, when duly subpenaed, or to produce documents when duly directed by said board, the Board shall have power to refer the said matter to any judge of the United States District Court for the District of Columbia, who may order the attendance of such witness, or the production of such documents, or require the said witness to testify, as the case may be, and upon the failure of the witness to attend, to testify, or to produce such documents, as the case may be, such witness may be punished for contempt of court as for failure to obey a subpena issued or to testify

in a case pending before said court. Witnesses who have been subpenaed by the Board, and who testify if called upon, shall be paid the same fees that are paid witnesses in the United States District Court for the District of Columbia. (July 2, 1940, 54 Stat. 716, ch. 513, § 4; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia", and "judge" for "justice."

§ 2–305. Duty of secretary-treasurer to enforce law—Jurisdiction of court—Services of corporation counsel—Investigation by police, board, or its assistants.

(1) It shall be the duty of the secretary-treasurer of the Board to enforce the provisions of all laws relating to the practice of dentistry in the District of Columbia, and all violations of said laws shall be prosecuted in the District of Columbia Court of General Sessions by the Corporation Counsel or one of his assistants; and the Corporation Counsel and his assistants shall render such other legal services as may from time to time be required by the Board of Dental Examiners.

(2) The major and superintendent of the Metropolitan Police Department shall detail such members of his force as may be necessary to assist the Board in the investigations and prosecutions incident to the enforcement of this chapter. The Board is authorized to employ such other persons as it deems necessary to assist in the investigation and prosecutions incident to the enforcement of this chapter. (July 2, 1940, 54 Stat. 717, ch. 513, § 5; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under section 4–103.

CROSS REFERENCE

Power of Board over dental hygienists, see § 2–327.

§ 2–306. Annual report of finances and official acts.

The Board of Dental Examiners shall make annual reports to the District commissioners, containing a statement of moneys received and disbursed and a summary of its official acts during the preceding year. (July 2, 1940, 54 Stat. 717, ch. 513, § 6.)

§ 2–307. Application for license, form and requirements—Photograph—Citizenship — Verification—Fees.

Any person who desires to practice dentistry within the District of Columbia shall file with the secretary-treasurer of the Board a written application for a license, and furnish satisfactory proof that he is a citizen of the United States or has duly declared his intention to become a citizen of the United States, and is a graduate of a dental college approved by the Board. Such application must be upon the form prescribed by the Board, verified by oath, and accompanied by the required fee and a recent unmounted autographed photograph of the applicant. Any license issued to a person who is a citizen of a foreign country and who has duly declared his intention to become a citizen of the United States shall automatically terminate and the registration of the candidate be annulled in the event such candidate shall fail to submit to the Board satisfactory evidence within six years from the date of such license that he has become a citizen of the United States. (July 2, 1940, 54 Stat. 717, ch. 513, § 7.)

CROSS REFERENCE

Application for license as dental hygienist, see § 2–323.

§ 2–308. Application for license—Examination—Admission without examination—Reciprocity with States or Territories—Waiver of examination.

An applicant for a license to practice dentistry shall appear before the Board at its first meeting after the filing of his application, and pass a satisfactory examination, consisting of practical demonstrations and written or oral test, or both, in the following subjects: Anatomy, anesthetics, bacteriology, chemistry, histology, operative dentistry, oral surgery, orthodontia, pathology, physiology, prosthetic dentistry, materia medica, metallurgy, and therapeutics, and such other subjects as the Board may from time to time direct: *Provided,* That the Board may waive the theoretical examination in the case of an applicant who furnishes proof satisfactory to said Board that he is a graduate from a reputable dental college of a state or territory of the United States, approved by the Board, and holds a license from a similar dental board, with requirements equal to those of the District of Columbia, and who, for five consecutive years next prior to filing his application, has been in the lawful and reputable practice of dentistry in the state or territory of the United States from which he applies: *Provided,* That the laws of such state or territory accord equal rights to a dentist of the District of Columbia holding a license from the board of the District of Columbia, who desires to practice his profession in such state or territory of the United States. An applicant desiring to register in the District of Columbia under this section must furnish the Board with a letter from the secretary of the Board of Dental Examiners under seal of the Board of Dental Examiners of the state or territory of the United States from which he applies, which shall state that he has been in the lawful and reputable practice of dentistry in the state or territory from which he applies for the five years next prior to filing his application, and shall also attest to his moral character and professional qualifications. The Board of Dental Examiners may, in its discretion, waive the theoretical examination and issue a license to any applicant who holds a certificate from the National Board of Dental Examiners: *Provided,* That such applicant shall pass a practical examination given by the Board of Dental

Examiners: *Provided further,* That in exercising its discretion to waive theoretical examinations the Board of Dental Examiners shall satisfy itself that the examination given by the National Board of Dental Examiners was as comprehensive as that required in the District of Columbia. (July 2, 1940, 54 Stat. 717, ch. 513, § 8; July 17, 1959, 73 Stat. 222, Pub. L. 86–98, § 1.)

AMENDMENT

1959—Act July 17, 1959, added sentence beginning "The Board of Dental Examiners" and ending with "District of Columbia".

AUTHORITY OF COMMISSIONERS

Section 2 of Pub. L. 86–98 provided that: "The foregoing amendment of said Act of June 6, 1892, as amended, shall not be considered as affecting the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), and the performance of any function vested by said plan in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners shall continue to be subject to delegation by said Board of Commissioners in accordance with section 3 of such plan. Any function vested by this amendatory act in any agency established pursuant to such plan shall be deemed to be vested in said Board of Commissioners and shall be subject to delegation in accordance with said plan."

CROSS REFERENCE

Examination and admission to practice of dental hygienists, see §§ 2–324, 2–326.

NOTES TO DECISIONS

Decisions under former law

Writ of mandamus will not issue when applicant has adequate remedy at law with permission to take a subsequent examination before board of dentistry. *United States ex rel. McDuffie* v. *Hawley* (1921, 269 F. 479, 50 App. D. C. 137).

§ 2–309. License—Form and execution—Registration—Duplicate licenses.

If such applicant passes the examination and is, in the opinion of the Board, of good moral character, he shall receive a license from the Board, attested by its seal, signed by the members of the Board, and registered with the director of public health, which, after being registered with the director of public health, shall be conclusive evidence of his right to practice dentistry in the District of Columbia. If the loss of a license is satisfactorily shown, a duplicate thereof shall be issued by the Board upon payment of the required fee. (July 2, 1940, 54 Stat. 718, ch. 513, § 9; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

TRANSFER OF FUNCTIONS

The functions of the Health Officer [Now known as Director of Public Health] relative to the registration of dentists were transferred to the Director of the Department of Occupations and Professions on Jan. 21, 1964, by subsection F of part VII of Organization Order No. 59 set out in the appendix to Title I.

§ 2–310. Practice of dentistry declared to be subject to regulation and control as affecting public health and safety.

The practice of dentistry in the District of Columbia is hereby declared to affect the public health and safety and to be subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the dental profession merit and receive the confidence of the public and that only qualified dentists be permitted to practice dentistry in the District of Columbia. All provisions of this chapter relating to the practice of dentistry shall be construed in accordance with this declaration of policy. (July 2, 1940, 54 Stat. 718, ch. 513, § 10.)

§ 2–311. Revocation or suspension of license—Jurisdiction of court—Grounds.

The United States District Court for the District of Columbia may revoke or suspend the license of any dentist in the District of Columbia upon proof satisfactory to said court—

(a) That said license or registration was procured through fraud or misrepresentation.

(b) That the holder thereof has been convicted of an offense involving moral turpitude.

(c) That the holder thereof is guilty of chronic or persistent inebriety, or addiction to habit-forming drugs.

(d) That the holder thereof is guilty of advertising professional superiority or the performance of professional services in a superior manner; advertising prices for professional service; advertising by means of large display, glaring light signs, or containing as a part thereof the representation of a tooth, teeth, bridgework, or any portion of the human head; employing or making use of solicitors or free publicity press agents directly or indirectly; or advertising any free dental work, or free examination; or advertising to guarantee any dental service or to perform any dental operation painlessly.

(e) That such holder is guilty of conduct which disqualifies him to practice with safety to the public.

(f) That such holder is guilty of hiring, supervising, permitting, or aiding unlicensed persons to practice dentistry.

(g) That such holder, being a manager, proprietor, operator, or conductor of a place where dental operations are performed, employs a person who is not a licensed dentist to practice dentistry as defined in this chapter, or permits such persons to practice dentistry in his office.

(h) That such holder is guilty of unprofessional conduct.

The following acts on the part of a licensed dentist are hereby declared to constitute unprofessional conduct:

(1) Practicing while his license is suspended.

(2) Wilfully deceiving or attempting to deceive the Board or their agents with reference to any matter under investigation by the board.

(3) Advertising by any medium other than the carrying or publishing of a modest professional card or the display of a modest window or street sign at the licensee's office, which professional card or window or street sign shall display only the name, address, profession, office hours, telephone connections, and, if his practice is so limited, his specialty: *Provided,* That in case of announcement of change of address or the starting of practice, the usual size card of announcement may be used. The size of said cards or signs shall be designated by the Board.

(4) Practicing dentistry under a false or assumed name or corporate name other than a partnership name containing the names of the partners, or any name except his full proper name which shall be the name used in his license granted by the Board.

(5) Violating this chapter or aiding any person to violate this chapter or violating or aiding any person to knowingly violate the dental practice act of any state or territory.

(6) Practicing in the employment of, or in association with, any person who is practicing in an unlawful or unprofessional manner.

The foregoing specifications of acts constituting unprofessional conduct shall not be construed as a complete definition of unprofessional conduct nor as authorizing or permitting the performance of other or similar acts not denounced, or as limiting or restricting the said court from holding that other or similar acts also constitute unprofessional conduct. (July 2, 1940, 54 Stat. 718, ch. 513, § 11; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CODIFICATION

The former law (D.C. Code, 1929 ed., title 20, §§ 213, 226, 228) gave the Board power to revoke or suspend licenses or to reinstate licenses. However, the present act contains several additional causes for revocation or suspension. See, also, Codification note under § 2–301.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

CROSS REFERENCES

Dentist not to prescribe drugs or medicines except in course of treatment of patients, see § 2–611.

Revocation or suspension of dentist's license for improper employment of dental hygienist, see § 2–325.

Revocation or suspension of license for violation of the Uniform Narcotic Act, see § 33–418.

Revocation or suspension of license of dental hygienist, see § 2–325.

NOTES TO DECISIONS

Advertising

This section, by terms of which a dentist who employs "bait advertising", large or glaring light signs, pictorial or diagrammatic exhibitions or other extravagant means of alluring or attracting patients, subjects himself to suspension or revocation of his license to practice, contains terms sufficiently definite. *Johnston* v. *Board of Dental Examiners, D. C.* (1943, 134 F. 2d 9, 77 U. S. App. D. C. 119, certiorari denied 63 S. Ct. 1177, 319 U. S. 758, 87 L. Ed. 1710).

This section, prohibiting advertising by any medium other than display of modest sign at licensee's office which shall display only the name, address, profession, office hours, telephone connection and, if his practice is so limited, his specialty, gives dentist right to maintain a window or building sign at his office and to put on that sign any and all of such information. *Id.*

Regulation of Board of Dental Examiners limiting a licensee to a single advertisement not to exceed 2¼ inches in width and 1 inch in height in a copy of any newspaper or publication at one time is reasonable under this chapter. *Id.*

Signs

This section, authorizing Board of Dental Examiners to make regulations designating size of sign does not require that the Board consider each licensee separately in respect to location of his office building, his floor space, and local traffic conditions, etc. *Johnston* v. *Board of Dental Examiners, D.C.* (1943, 134 F. 2d 9, 77 U.S. App. D.C. 119, certiorari denied 63 S. Ct. 1177, 319 U. S. 758, 87 L. Ed. 1710).

Under this section authorizing Board of Dental Examiners to designate the size of signs of licensee, the Board has authority to designate the number of signs that a licensee may employ since the word "signs" as used in this section means aggregate signs. *Id.*

Regulation of Board of Dental Examiners providing that window signs and signs flush with building may not exceed 288 square inches in area with lettering limited to 3 inches in height and that signs of licensee protruding from building may not exceed 144 square inches in area with letters similarly limited to 3 inches in height is not unreasonable. *Id.*

Under this chapter, giving Board of Dental Examiners authority to designate size of licensee's sign, if a general dimensional regulation is reasonable and substantially effectuates the purpose of an act designed to promote public health and safety, it does not contravene U. S. Const. Amend. 5 guaranteeing "due process of law". *Id.*

§ 2–312. Procedure in revoking or suspending license—Petition—Appeal—Terms of suspension.

The United States District Court for the District of Columbia may suspend or revoke any license issued and any registration upon evidence showing to the satisfaction of the court that the licentiate or registrant, as the case may be, has been guilty of misconduct or is professionally incapacitated.

Proceedings looking toward the suspension or revocation of a license or registration shall be begun by petition filed in the United States District Court for the District of Columbia in the name of the Board of Dental Examiners and shall be verified by oath. Proceedings shall be conducted according to the ordinary rules of equity practice and such supplementary rules as said court may deem expedient to carry into effect the purposes and intent of this chapter; and said court is hereby authorized to make such supplementary rules. An appeal may be taken from the decision of the United States District Court for the District of Columbia to the United States Court of Appeals of said District. Any such appeal on behalf of the Board of Dental Examiners may be filed without bond. The United States District Court for the District of Columbia may determine whether a license or registration shall be suspended or revoked, and if such license is to be suspended said court may determine the duration of such suspension and the conditions under which such suspension shall terminate. (July 2, 1940, 54 Stat. 719, ch. 513, § 12; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CODIFICATION

The former law (D. C. Code, 1929 ed., title 20, § 228) provided for reinstatement of dentist or dental hygienist after revocation or suspension, but there seems to be no provisions in the present law for such reinstatement. See also, Codification note under § 2–301.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

§ 2–313. Fees—Expenses of board—Compensation of members.

That in addition to the fees heretofore fixed herein each applicant for a license as dentist shall deposit with his application a fee of $20; with each applica-

tion for a duplicate license a fee of $5 shall be paid to said Board, and for each certificate issued by said board a fee of $1 shall be paid. That out of the fees paid to said board, as provided by this chapter, there shall be defrayed all expenses incurred in carrying out the provisions herein contained, including the detection and prosecution of violations of this act, together with a fee of $10 per diem for each member of said Board for each day he may be actually engaged upon business pertaining to his official duties as such Board member: *Provided,* That such expense shall in no event exceed the total of receipts. (July 2, 1940, 54 Stat. 719, ch. 513, § 13.)

CODIFICATION

The former law (D.C. Code, 1929 ed., title 20, § 229) contained similar provisions and also provided for payment of unexpended funds for any fiscal year in excess of $1,000 into the Treasury of the United States to the credit of the District of Columbia. See, also, Codification note under § 2–301.

AUTHORITY TO CHANGE FEES

Commissioners authorized and empowered to increase or decrease, from time to time, the fees specified in this section, see §§ 1–252, 1–253.

CROSS REFERENCES

Annual registration fees, see §§ 2–314, 2–327.
Fees for dental hygienists, see §§ 2-323, 2–326, 2–327.
Refund or fees where license is refused, see § 47–1017.

§ 2–314. Annual registration of dentists—Fees—Penalty for failure to register—Reinstatement—Copy of register to each dentist.

During the month of December of each year, every licensed dentist shall register with the secretary-treasurer of the Board his name and office address and such other information as the Board may deem necessary upon blanks obtainable from said secretary-treasurer, and thereupon pay a registration fee of $5. On or before the 1st day of November of each year it shall be the duty of the secretary-treasurer of the Board to mail to each dentist licensed in the District of Columbia, at his last-known address, a blank form for registration. In the event of failure to register on or before the 31st day of December a fine of $5 and the registration fee of $5 will be imposed, and should the practitioner fail to register and pay the fine imposed and continue to practice his profession in the District of Columbia, he shall at the end of ten days from said date be considered as practicing illegally and penalized as otherwise provided for in this chapter. If he suspends his practice he may, in the discretion of the Board, upon furnishing satisfactory evidence as to his moral character and professional standing, be reinstated at any time upon registering and paying a prescribed fee of $25. On or before the 1st day of February, annually, said board shall issue a printed register of the names and addresses so received, together with other information deemed interesting to the profession, a copy of which shall be mailed or otherwise sent to each registrant thereon. (July 2, 1940, 54 Stat. 720, ch. 513, § 14.)

CODIFICATION

The former (D.C. Code, 1929 ed., title 20, § 230) contained similar provisions; however, the registration fee was $2 and the reinstatement fee was $5. See, also, Codification note under § 2–301.

AUTHORITY TO CHANGE FEES

Commissioners authorized and empowered to increase or decrease from time to time, the fees specified in this section, see §§ 1–252, 1–253.

CROSS REFERENCES

Annual registration of dental hygienists, see § 2–327.
Fees in general, see §§ 2–313, 2–323.

§ 2–315. "Practice of dentistry" defined.

Any person shall be deemed to be practicing dentistry who performs, or attempts or advertises to perform, any dental operation or oral surgery or dental service of any kind gratuitously or for a salary, fee, money, or other remunerations paid, or to be paid, directly or indirectly, to himself or to any other person or agency; or who is a manager, proprietor, operator, or conductor of a place where dental operations, oral surgery, or dental services are performed; or who directly or indirectly, by any means or method, furnishes, supplies, constructs, reproduces, or repairs any prosthetic denture, bridge, appliance, or any other structure to be worn in the human mouth, except on the written prescription of a duly licensed and practicing dentist; or who places such appliance or structure in the human mouth or attempts to adjust the same, or delivers the same to any person other than the dentist upon whose prescription the work was performed; or who advertises to the public, by any method, to furnish, supply, construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth; or who diagnoses or professes to diagnose, prescribes for or professes to prescribe for, treats or professes to treat disease, pain, deformity, deficiency, injury, or physical condition of human teeth or jaws, or adjacent structures; or who extracts or attempts to extract human teeth, or corrects or attempts or professes to correct malpositions of teeth or of the jaws; or who gives, or professes to give interpretations or readings of dental roentgenograms; or who administers an anesthetic of any nature in connection with a dental operation; or who uses the words "dentist," "dental surgeon," "oral surgeon," the letters "D. D. S.," "D. M. D.," or any other words, letters, title, or descriptive matter which in any way represent him as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of human teeth or jaws, or adjacent structures; or who states, or advertises or permits to be stated or advertised, by sign, card, circular, handbill, newspaper, radio, or otherwise, that he can perform or will attempt to perform dental operations or render a diagnosis in connection therewith or who engages in any of the practices included in the curricula of recognized dental colleges. Notwithstanding the provisions of this section, no person shall be deemed to be practicing dentistry who on July 2, 1940, is operating a radiographic laboratory for the purpose of making radiographs, or giving written clinical interpretations or readings of dental radiographs, to be used solely by dentists and physicians in making diagnoses. (July 2, 1940, 54 Stat. 720, ch. 513, § 15.)

CODIFICATION

The former law (D.C. Code, 1929 ed., title 20, § 231) contained a much shorter and less complete definition of

the practice of dentistry. See, also, Codification note under § 2–301.

CROSS REFERENCES

Dentist not to prescribe drugs or medicines except in course of treatment of patients, see § 2–611.

Services which may be rendered or performed by a dental hygenist, see § 2–325.

§ 2–316. Practicing under improper name—Penalty.

On and after July 2, 1940, it shall be unlawful for any person or persons to practice or offer to practice dentistry or dental surgery under any name except his proper name, which shall be the name used in his license granted to him as a dentist, as provided for in this chapter; and unlawful to use the name of any company, association, corporation, trade name, or business name in connection with the practice of dentistry as defined in this law. Any person convicted of a violation of the provisions of this section shall be fined for the first offense not more than $200, and upon a second or any subsequent conviction thereof, by a fine not to exceed $500, and upon conviction his license may be suspended or revoked. (July 2, 1940, 54 Stat. 721, ch. 513, § 16.)

§ 2–317. Exemptions.

Nothing in this chapter shall apply to a bona fide student of dentistry in the clinic rooms of a reputable dental college; to a legally qualified physician or surgeon unless he practices dentistry as a specialty; to a qualified anesthetist, physician, or registered nurse employed to give an anesthetic for a dental operation under the direct supervision of a licensed dentist; to a dental surgeon of the United States Army, Navy, Public Health Service, or Veterans' Administration, in the discharge of his official duties, nor to a lawful practitioner of dentistry in another state or territory making a clinical demonstration before a dental society, convention, association of dentists, or dental college, or performing his duties in connection with a specific case on which he may have been called to the District of Columbia. (July 2, 1940, 54 Stat. 721, ch. 513, § 17.)

CODIFICATION

The former law (D.C. Code, 1929 ed., title 20, § 233) did not exempt qualified anesthetists. See, also, Codification note under § 2–301.

§ 2–318. Display of license and annual registration card—Penalty for violation.

Whoever engages in the practice of dentistry and fails to keep displayed in a conspicuous place in the operating room in which he practices, and in such manner as to be easily seen and read, the license and annual registration card granted him pursuant to the laws of the District of Columbia, shall be fined not more than $50. (July 2, 1940, 54 Stat. 721, ch. 513, § 18.)

§ 2–319. Sale of or offer to sell diploma or certificate—Fraudulent use—Alteration—Penalty.

Whoever sells or offers to sell a diploma conferring a dental degree or a certificate granted for postgraduate work, or a license granted pursuant to this chapter, or whoever, not being the person to whom a diploma, certificate, or license was granted, procures such diploma, certificate, or license with intent to use the same as evidence of his right to practice dentistry, or whoever, with fraudulent intent, alters any diploma, certificate, or license, or uses or attempts to use the same, shall be fined not more than $1,000. (July 2, 1940, 54 Stat. 721, ch. 513, § 19.)

CODIFICATION

The former law (D.C. Code, 1929 ed., title 20, § 235) provided for a fine of not less than $100 nor more than $200. See, also, Codification note under § 2–301.

§ 2–320. Practice of dentistry under false name—False representations concerning degree, application for license or examination—Penalty.

Whoever practices dentistry under a false name, or assumes a title, or appends or prefixes to his name letters which falsely represent him as having a degree from a chartered dental college, or makes use of the words "dental college" or "school" or equivalent words when not lawfully authorized so to do, or impersonates another at an examination held by the board, or knowingly makes a false application or a false representation in connection with such examination, shall be fined not more than $1,000. (July 2, 1940, 54 Stat. 721, ch. 513, § 20.)

CODIFICATION

The former law (D.C. Code, 1929 ed., title 20, § 236) provided for a fine of not less than $100 nor more than $200. See, also, Codification note under § 2–301.

§ 2–321. Postgraduate classes in dentistry—Approval of board—Penalty for violation.

No person or persons, corporation, or educational institution, except those now duly chartered, shall conduct classes or a school for postgraduate dentistry in the District of Columbia unless with the approval of the board, and whoever violates this provision shall, upon conviction, be fined not more than $500. (July 2, 1940, 54 Stat. 721, ch. 513, § 21.)

§ 2–322. Dental hygienists—License and registration.

It shall be unlawful for any person to follow the occupation of dental hygienist in the District of Columbia without having first complied with the provisions of this chapter and having been registered as hereinafter provided. (July 2, 1940, 54 Stat. 722, ch. 513, § 22.)

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47–2344, 47–2345.

Persons exempted from act, see § 2–317.

§ 2–323. Dental hygienists—Eligibility and qualifications — Application — Form and requirements — Photograph—Verification—Fees.

Any person of good moral character and a citizen of the United States being not less than eighteen years of age, who desires to register as a dental hygienist in the District of Columbia and files with the secretary-treasurer of the board a written application for a license, and furnishes satisfactory proof that he is a graduate of a training school for dental hygienists requiring a course of not less than one academic year, and approved by the board, may make application to be licensed as a dental hygienist in the District of Columbia upon the form prescribed by the Board, verified by oath, and accompanied by the required fee ($10), and a recent unmounted

autographed photograph of applicant. (July 2, 1940, 54 Stat. 722, ch. 513, § 23.)

AUTHORITY TO CHANGE FEES

Commissioners authorized and empowered to increase or decrease, from time to time, the fees specified in this section, see §§ 1–252, 1–253.

CROSS REFERENCES

Fees, see §§ 2–313, 2–326, 2–327.
Power of the board, see § 2–327.
Refund of fees when license is refused, see § 47–1017.

§ 2–324. Dental hygienists — Examination — License — Form and execution—Registration—Waiver of theoretical examination.

An applicant for a license as dental hygienist shall appear before the Board at its first examination after the filing of his application and pass a satisfactory examination consisting of practical demonstrations and written or oral tests on such subjects as the board may direct. If such applicant passes the examination and is of good moral character, he shall receive a license from the board, attested by its seal, signed by the members of the Board, which after being registered with the director of public health shall be conclusive evidence of his right to practice as a dental hygienist in the District of Columbia according to the provisions of this chapter. The Board of Dental Examiners may, in its discretion, waive the theoretical examination and issue a license to any applicant who holds a certificate from the National Board of Dental Examiners: *Provided,* That such applicant shall pass a practical examination given by the Board of Dental Examiners: *Provided further,* That in exercising its discretion to waive theoretical examinations the Board of Dental Examiners shall satisfy itself that the examination given by the National Board of Dental Examiners was as comprehensive as that required in the District of Columbia. (July 2, 1940, 54 Stat. 722, ch. 513, § 24; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Aug. 20, 1964, 78 Stat. 558, Pub. L. 88–460, § 1.)

CODIFICATION

The former law (D.C. Code, 1929 ed., title 20, § 223) authorized admission after 2 years' experience with a licensed dentist, if applicant registered with the board within three months after June 7, 1924. See, also, Codification note under § 2–301.

AMENDMENT

1964—Act Aug. 20, 1964, amended the section by adding the last sentence thereto.

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

AUTHORITY OF COMMISSIONERS NOT AFFECTED BY ACT OF AUG. 20, 1964

Section 2 of act Aug. 20, 1964, provided as follows:

"The foregoing amendment [Act. Aug. 20, 1964] shall not be considered as affecting the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), and the performance of any function vested by said plan in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners shall continue to be subject to delegation by said Board of Commissioners in accordance with section 3 of such plan. Any function vested by this amendatory Act in any agency established pursuant to such plan shall be deemed to be vested in said Board of Commissioners and shall be subject to delegation in accordance with said plan."

§ 2–325. Employment of more than two dental hygienists—Permission of board—Services permitted to be performed—Revocation of licenses.

No licensed dentist may employ more than two such licensed dental hygienists without written permission of the Board. Public institutions and the Health Department of the District of Columbia may employ such licensed dental hygienists and shall not be limited as to the number of licensed dental hygienists that may be employed. A licensed dental hygienist may remove calcic deposits, accretions, and stains from the surfaces of the teeth, but shall not perform any other operation, or diagnose or treat any pathological conditions of the teeth or tissues of the mouth. A registered dental hygienist may operate only under the general direction or supervision of a licensed dentist, in his office or in any public school or other institution rendering dental services, not in violation of the provisions of this chapter. The United States District Court for the District of Columbia may suspend, or revoke, the license of any dentist who shall permit any dental hygienist, operating under his supervision, to perform any operation other than that permitted under the provisions of this section, and it also may suspend or revoke, the license of any dental hygienist violating the provisions of this chapter; the procedure to be followed in the case of such suspension or revocation, shall be the same as that prescribed by law in the case of suspension or revocation of the license of a dentist. (July 2, 1940, 54 Stat. 722, ch. 513, § 25; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

CROSS REFERENCE

General provisions for revocation or suspension of licenses, see §§ 2–311, 2–312.

§ 2–326. Admission to practice on practical examination—Reciprocity with States or Territories—Fees.

Any dental hygienist of good moral character duly licensed to practice as such in any State or Territory of the United States, having and maintaining an equal standard of laws regulating the practice of dental hygiene with the laws of the District of Columbia, who has been in the lawful practice of dental hygiene for a period of not less than two years in such state or territory and who files with the secretary-treasurer of the board of the District of Columbia a certificate from the Board of the state or territory in which he is licensed, certifying to his professional qualifications and length of service, and who passes a satisfactory practical examination conducted by the Board, may at the discretion of the board be licensed without further examination upon the payment of the required fee of $10 and the certificate fee of $1: *Provided,* That the laws of such State or Territory accord equal rights to a dental hygienist of the District of Columbia holding a license from the board of the District of Columbia who desires to practice dental hygiene in such state or territory of the United States. (July 2, 1940, 54 Stat. 722, ch. 513, § 26.)

CODIFICATION

The former law (D.C. Code, 1929 ed., title 20, § 223) authorized admission after 2 years' experience with a licensed dentist, if applicant registered with the board within 3 months after June 7, 1924. See, also, Codification note under § 2–301.

AUTHORITY TO CHANGE FEES

Commissioners authorized and empowered to increase or decrease, from time to time, the fees specified in this section, see §§ 1–252, 1–253.

§ 2–327. Duties and powers of board—Practice of dental hygiene declared to be subject to regulation and control as affecting public health and safety.

The duties and powers of the Board respecting the practice of dentistry as set forth in this chapter shall apply, unless otherwise specified, equally and in all respects whatsoever to the practice of dental hygiene; and the practice of dental hygiene is hereby declared to affect the public health and safety and to be subject to regulation and control in the public interest to the same extent as herein set forth with respect to the practice of dentistry. The annual registration fee for licensed dental hygienists shall be $3. (July 2, 1940, 54 Stat. 723, ch. 513, § 27.)

AUTHORITY TO CHANGE FEES

Commissioners authorized and empowered to increase or decrease, from time to time, the fees specified in this section, see §§ 1–252, 1–253.

CROSS REFERENCE

Annual registration, see § 2–314.

§ 2–328. Practicing without a license—Violations of law—Penalties.

Whoever engages in the practice of dentistry without a license so to do, or whoever violates any provision of law relating to the practice of dentistry or dental hygiene or the application for examination and licensing of dentists and dental hygienists, for which no specific penalty has been prescribed shall be fined not more than $1,000. (July 2, 1940, 54 Stat. 723, ch. 513, § 28.)

CODIFICATION

The former law (D.C. Code, 1929 ed., title 20, § 237) provided for a fine of not less than $50 or more than $100. See, also, Codification note under § 2–301.

CROSS REFERENCES

Conducting postgraduate course in dentistry without approval of board, see § 2–321.

Failure to display license and annual registration card, see § 2–318.

Failure to register annually, see § 2–314.

Improper employment of dental hygienists by licensed dentists, see § 2–325.

Practicing dental hygiene without a license, see § 2–322.

Practicing under false name, false representations generally, see § 2–320.

Revocation or suspension of license, see §§ 2–311, 2–312.

Sale of diploma, dental degree, certificate or license or fraudulent alteration thereof, see § 2–319.

Unlawful use of names, see § 2–316.

§ 2–329. Second or subsequent offense—Penalty.

A second or subsequent conviction under sections 2–319 to 2–321, 2–328, shall be punished by the maximum penalties prescribed therein, or imprisonment in jail or workhouse not less than six months nor more than one year, or by both such fine and imprisonment. (July 2, 1940, 54 Stat. 723, ch. 513, § 29.)

CODIFICATION

The former law (D.C. Code, 1929 ed., title 20, § 238) provided for imprisonment of not less than ten or more than sixty days. See, also, Codification note under § 2–301.

§ 2–330. Definitions.

When used in this chapter—

(1) Personal pronouns include all genders.

(2) The term "Board" means the Board of Dental Examiners.

(3) Advertising shall be deemed to include those in public print, by radio, or any other form of public announcement.

(July 2, 1940, 54 Stat. 723, ch. 513, § 30.)

§ 2–331. Rules and regulations—Promulgation—Notice.

Rules and regulations adopted by the Board shall become effective thirty days after promulgation: *Provided,* That notice of such rules and regulations is published once a week for three consecutive weeks during that period in a newspaper of general circulation in the District of Columbia, and that notice be mailed to each registered dentist and dental hygienist in the District of Columbia. (July 2, 1940, 54 Stat. 723, ch. 513, § 31.)

SEPARABILITY OF PROVISIONS

Section 32 of act July 2, 1940, provided as follows: "Should any section or provision of this Act [this chapter] be decided by the courts to be unconstitutional or invalid, the validity of the Act as a whole or of any part thereof other than the part decided to be unconstitutional shall not be affected. The right to alter, amend, or repeal this Act is hereby expressly reserved."

REPEAL

Section 33 of act July 2, 1940, provided as follows: "All Acts or parts thereof heretofore enacted into law and inconsistent herewith are hereby repealed."

CROSS REFERENCE

Power of the board to make rules and regulations, see § 2–302.

Chapter 4.—NURSES AND PHYSICAL THERAPISTS

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SUBCHAPTER I.—REGISTERED NURSES

§ 2-401. Registration required.

No person shall in the District of Columbia in any manner whatsoever represent herself to be a registered, certified graduate, or trained nurse, or allow herself to be so represented, unless she has been and is registered or is registered by the Nurses' Examining Board in accordance with the provisions of this subchapter. (Feb. 9, 1907, 34 Stat. 887, ch. 913, § 1; Mar. 2, 1929, 45 Stat. 1519, ch. 540, § 1.)

AMENDMENT

1929—Act Mar. 2, 1929, added "certified graduate, or trained nurse."

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

Definition of terms, see § 2-411.

Duties as to prevention of blindness of newborn infants, see §§ 6-201 to 6-204.

Duty to report births, see § 6-301.

Exempted from operation of Healing Arts Practice Act, see § 2-101.

Exemption from operation of law regulating barbers, see § 2-1115.

Persons exempted, see § 2-410.

§ 2-402. Examining board—Constitution—Qualifications—Tenure—Removal.

The Nurses' Examining Board shall be composed of five members appointed by the Commissioners of the District of Columbia. Those persons who are members of the Nurses' Examining Board on June 30, 1929, shall continue to be members of the said Board for the remainder of the terms for which they were appointed. The term of each member of said board shall be five years. All appointments shall be made so that the term of one member expires on the 30th day of June of each year. Each vacancy or unexpired term shall be filled by appointment from a list of five nominees submitted to the Commissioners of the District of Columbia by the Graduate Nurses' Association of the District of Columbia. Each nominee shall have had not less than five years' experience in the profession of nursing, be a registered nurse registered in the District of Columbia, and a member of the Graduate Nurses' Association of the District of Columbia. The Graduate Nurses' Association of the District of Columbia shall make such nominations to the said Commissioners. No member of said Board shall enter upon the discharge of her duties until she has taken oath faithfully and impartially to perform the same; and the said Commissioners may remove any member of said Board for neglect of duty or for any just cause. (Feb. 9, 1907, 34 Stat. 887, ch. 913, § 2; Mar. 2, 1929, 45 Stat. 1519, ch. 540, § 2.)

CODIFICATION

Prior to the amendment by act Mar. 2, 1929, section provided for the nomination by the Graduate Nurses' Association of 10 of its members to the Commissioners for appointment of 5 to the Board, and for the filling of vacancies from 3 nominees submitted by the said association.

§ 2-403. Examining board—Organization—Officers—Duties—By-laws—Registration of nurses—Examinations—Notice—Inspection of schools.

The Nurses' Examining Board shall meet in the District of Columbia annually in the month of April for the annual organization of the Board. At each such organization meeting the Board shall elect from its members a president and a vice-president, and it shall also appoint an executive secretary of the Board, who shall not be a member of the Board, but who shall possess the requirements necessary for membership in the Board. The executive secretary shall ex officio act as treasurer of the Board and as such shall furnish a bond in the penal sum which shall be fixed by the Commissioners of the District of Columbia. The said Board shall adopt such

by-laws as it shall deem necessary for carrying into effect the provisions of this subchapter and may amend such by-laws from time to time at the discretion of said Board. The executive secretary shall be required to keep a record of all meetings of the Board and also a register of all nurses duly registered or reregistered under this subchapter, and to furnish a certificate of registration or of reregistration to all such nurses; also to maintain a registry of nurses' training schools in the District of Columbia approved by said Board. The Board shall hold examinations not less frequently than once a year, and notice of each examination shall be given in one daily newspaper published in Washington and in one nursing journal at least thirty days prior to the examination. The executive secretary shall inspect all recognized schools of nursing in the District of Columbia, and report to said Board as to the sufficiency and quality of training afforded by said schools. The executive secretary may be removed by a majority vote of the said Board for neglected duty or any just cause. (Feb. 9, 1907, 34 Stat. 888, ch. 913, § 3; Mar. 2, 1929, 45 Stat. 1519, ch. 540, § 3.)

CODIFICATION

The first sentence of section 3 of act March 2, 1929, provided that: "The Nurses' Examining Board shall meet in the District of Columbia between June 30, 1929, and July 15, 1929, and organize the Board in accordance with the provisions of this Act." It also provided that the secretary-treasurer holding office on July 1, 1929, shall cease to do so thereafter. These provisions are omitted as executed.

AMENDMENT

1929—Act Mar. 2, 1929, provided for a vice-president and an executive secretary, required a register of training schools be kept, and added the last two sentences of the section.

CROSS REFERENCE

Rules and regulations in general, see § 1–226 and notes.

§ 2–404. Registration — Application — Requirements—Registration of training schools.

Every nurse desiring to register in the District of Columbia shall make application to the Nurses' Examining Board for examination and registration, and at the time of making such application shall pay to the treasurer of said Board $15. Said applicant must furnish satisfactory evidence that she is over nineteen years of age, or that she will attain the age of nineteen years within six months after the date fixed for the necessary examination to be held by said Board after the date of such application. Except as otherwise provided in this subchapter, an applicant shall not be registered unless she has passed an examination by the Nurses' Examining Board. No nurse shall be registered in the District of Columbia who has not attained the age of nineteen years. Said applicant must also furnish satisfactory evidence of good moral character, and further that she holds a diploma from training school for nurses which has been registered by the Nurses' Examining Board of the District of Columbia: *Provided, however,* That no training school shall be registered which does not maintain proper educational standards and give not less than two years' training in a general hospital, or in a special hospital with adequate affiliations, all of which shall be determined by the Nurses' Examining Board. (Feb. 9, 1907, 34 Stat. 888, ch. 913, § 4; Mar. 2, 1929, 45 Stat. 1520, ch. 540, § 4; Aug. 8, 1946, 60 Stat. 933, ch. 885, § 1; July 30, 1963, 77 Stat. 114, Pub. L. 88–81, § 1.)

AMENDMENTS

1963—Act July 30, 1963, amended the section by striking "twenty-one" wherever the same appears and inserting in lieu thereof, "nineteen". This amendment reduces the age limitation from "twenty-one" to "nineteen".

1946—Act Aug. 8, 1946, increased the application fee from $10 to $15.

1929—Act Mar. 2, 1929, raised the amount of the application fee from $5 to $10; provided for registration of those who will attain the age of 21 within 6 months after examination; required passing of examination; and provided that no one shall be registered who is under 21 years old.

AUTHORITY TO CHANGE FEES

Commissioners authorized and empowered to increase or decrease, from time to time, the fees specified in this section, see §§ 1–252, 1–253.

CROSS REFERENCE

Refund of fees where license is refused, see § 47–1017.

§ 2–405. Registration without examination of nurses holding State licenses.

The Nurses' Examining Board shall register in like manner without examination any graduate or trained nurse registered as a nurse by examination in another state or territory who holds a diploma from a nurse's training school outside of the District of Columbia which, in the opinion of said Board, maintains a standard substantially equivalent to that provided for by this subchapter. (Feb. 9, 1907, 34 Stat. 889, ch. 913, § 9; Mar. 2, 1929, 45 Stat. 1520, ch. 540, § 6.)

AMENDMENT

1929—Act Mar. 2, 1929, changed words "person who has been registered as a professional nurse" to "any graduate or trained nurse registered as a nurse by examination * * * who holds a diploma from a nurses' training school."

§ 2–406. Annual registration—Nurses—Training schools—Cancellation by failure to reregister—Restoration.

Each nurse who has been registered in the District of Columbia shall be reregistered each year on the 1st day of July upon application to the executive secretary of said board and the payment of a fee of $1: *Provided,* That such fee of $1 shall not be payable in case the applicant has been originally registered within the twelve months next preceding the day for reregistration. Application for reregistration may be made within sixty days preceding the day of reregistration. Registration of any nurse who does not thus apply for reregistration for any year shall be automatically canceled as of the beginning of such year. The by-laws adopted by the Nurses' Examining Board shall define the conditions upon which the registration of a nurse may be restored. Schools of nursing in the District of Columbia may apply to said Board for registration and, with the exception of schools of nursing maintained at government expense, shall pay a fee of $25 at the time application is made. Each such school registered shall apply each year for reregistration, and, with the exception of schools of nursing maintained at government expense, at the same time pay a fee of $1. On the petition of an applicant to whom regis-

tration or reregistration has been denied by the nurses' examining board, the action of the board may be reviewed by the District of Columbia Court of Appeals in the manner provided by sections 11–742, 17–303, 17–304, 17–305(b), 17–306 and 17–307 of the District of Columbia Code. (Mar. 2, 1929, 45 Stat. 1521, ch. 540, § 7; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 31, 1954, 68 Stat. 1048, ch. 1173, § 1; July 8, 1963, 77 Stat. 78, Pub. L. 88–60, § 6; Dec. 23, 1963, 77 Stat. 615, Pub. L. 88–241, § 3.)

AMENDMENT

1963—Section 3 of act Dec. 23, 1963, amended the section by striking the colon at the end of the first proviso and changing it to a period and striking out the second proviso and substituted "in the manner provided by sections 11–742, 17–303, 17–304, 17–305(b), 17–306 and 17–307" for "on a writ of certiorari, subject to appeal to the United States Court of Appeals for the District of Columbia, in the same manner as appeals are taken in similar cases".

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

"Municipal Court of Appeals for the District of Columbia" was substituted for "United States District Court for the District of Columbia" in view of act Aug. 31, 1954, which vested exclusive jurisdiction to review orders of the Board in the Municipal Court of Appeals. See § 11–742(a)(7).

Act July 8, 1963, § 6, substituted "District of Columbia Court of Appeals" for "Municipal Court of Appeals for the District of Columbia". Provisions identical with those of said section 6 were contained in act Oct. 23, 1962, 76 Stat. 1172, Pub. L. 88–873, § 6, which was repealed by act Dec. 23, 1963, 77 Stat. 620, Pub. L. 88–241, § 21(a).

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 23, 1963, was made effective on Jan. 1, 1964. See note preceding ch. 1, Title 11.

AUTHORITY TO CHANGE FEES

Commissioners authorized and empowered to increase or decrease, from time to time, the fees specified in this section, see §§ 1–252, 1–253.

§ 2–407. Suspension or revocation of certificate for filing false document or evidence—Procedure—Appeal.

No person shall file or attempt to file with the Nurses' Examining Board of the District of Columbia any statement, diploma, certificate, credential, or other evidence when she knows, or when she might by reasonable diligence ascertain, that it is false and misleading. The United States District Court for the District of Columbia, sitting as a court of equity, may suspend or revoke any certificate issued and any registration effected under this subchapter upon evidence showing to the satisfaction of the court that the registrant has been guilty of misconduct or is professionally incapacitated. Proceedings looking toward the suspension or revocation of a certificate or registration shall be begun by petition filed in the United States District Court for the District of Columbia in the name of the Nurses' Examining Board, or of the Commissioners of the District of Columbia, or of the major and superintendent of police of said District, and shall be verified by oath. Proceedings shall be conducted by the Corporation Counsel of the District of Columbia according to the ordinary rules of equity practice and such supplementary rules as said court may deem expedient to carry into effect the purpose and intent of this subchapter. An appeal may be taken from the decision of the United States District Court for the District of Columbia to the Court of Appeals of said District. Any such appeal on behalf of the Commissioners of the District of Columbia or of the major and superintendent of police of said District may be filed without bond. The United States District Court for the District of Columbia may determine whether a certificate or registration shall be suspended or be revoked, and if such certificate or registration is to be suspended said court may determine the duration of such suspension and the conditions under which said suspension shall terminate. (Feb. 9, 1907, 34 Stat. 888, ch. 913, § 6; Mar. 2, 1929, 45 Stat. 1521, ch. 540, § 8; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Nov. 8, 1965, 79 Stat. 1308, Pub. L. 89–347, § 6.)

CODIFICATION

Prior to the amendment by act Mar. 2, 1929, section provided for the revocation by the majority vote of the board for obtaining registration by fraud or for being guilty of "any act derogatory to the standards and morals of the profession"; and provided for 30 days' notice to the nurse.

AMENDMENT

1965—Section 6 of act Nov. 8, 1965, amended section by striking out in the fourth sentence, "United States Attorney for the District of Columbia" and inserting in lieu thereof, "Corporation Counsel of the District of Columbia".

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

EFFECTIVE DATE OF 1965 AMENDMENTS

The first sentence of section 11, act Nov. 8, 1965, provided: "Sections 5 through 8, inclusive [secs. 2–137, 2–407, 2–502 and 2–909] and section 10 [sec. 20–2301 note] shall take effect thirty days from the approval of this Act, but shall not in any case apply to proceedings instituted prior to the approval of this Act."

TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under section 4–103.

CROSS REFERENCE

Revocation or suspension of license for violation of Uniform Narcotic Drug Act, see § 33–418.

§ 2–408. Expenses to be paid from registration fees—Salaries and allowances—Audit—Annual report.

All expenses incident to the execution of the provisions of this subchapter shall be paid from fees collected (a) from schools of nursing, (b) from registration or reregistration of nurses, and (c) from the following services—

(1) for repeat examinations of nurses;

(2) for the evaluation of each high-school record of a candidate for admission to a school of nursing;

(3) for verification of records;

(4) for a duplicate certificate of registration upon proof acceptable to the nurses' examining board that the original certificate has been lost or destroyed;

(5) for duplicate annual registration cards;

(6) for mailing a certificate of registration a second time if no notification of change of address has been made; and

(7) for proctoring examination for out-of-State applicants when the examination is held at a time other than the regular examination of the District of Columbia. The fees referred to in clause (c) shall be reasonable fees fixed by the nurses' examining board, subject to the approval of the Commissioners of the District of Columbia.

The executive secretary of said Board may receive a salary to be fixed by said Board at its annual organization meeting in accordance with section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]. Each member of the Board shall receive a per diem allowance at the rate of $10 per day for each full day such member is actually engaged in the performance of duties as a member of the Board. The payment of such per diem allowance shall be made from any unexpended balance in the treasury of said Board remaining on June 30 of the year during which the services have been rendered, and if the unexpended balance is insufficient to meet the total amount of such per diem allowance, the rate of compensation shall be reduced to a rate which will permit payment from such unexpended balance. Such expenses shall in no event exceed the total of receipts. All registration or reregistration fees shall be paid to the treasurer of the Board, and shall be paid out under the orders of the Board. It shall be the duty of the auditor of the District of Columbia to audit the accounts of the Nurses' Examining Board at the end of each fiscal year and to make report thereof in writing to the Commissioners of the District of Columbia. The said auditor shall have free access to all books, papers, and records of the Board. The Nurses' Examining Board shall make annual reports to the Commissioners of the District of Columbia containing a statement of moneys received and disbursed, and a summary of its official acts during the preceding year. (Feb. 9, 1907, 34 Stat. 889, ch. 913, § 7; Mar. 2, 1929, 45 Stat. 1521, ch. 540, § 9; July 2, 1945, 59 Stat. 315, ch. 224; Aug. 8, 1946, 60 Stat. 933, ch. 885, § 2; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a).)

CODIFICATION

The reference in this section to "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

Prior to the amendment by act Mar. 2, 1929, section contained the first sentence of the present section, provided that, if any balance remained on June 30th of each year, the secretary and treasurer should receive $100 and the Board members a per diem of $5, and provided that money received by the treasurer should be paid out under the orders of the Board.

AMENDMENTS

1949—Act Oct. 28, 1949, § 1106(a), which was a part of the Classification Act of 1949, and which has since been repealed, substituted "Classification Act of 1949" for "Classification Act of 1923". See codification note above.

1946—Act Aug. 8, 1946, amended first sentence by setting out itemization of services.

1945—Act July 2, 1945, amended section by striking the second sentence and inserting in lieu thereof a new sentence.

TRANSFER OF FUNCTIONS

Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952 and effective Sept. 2, 1952 established in the Government of the District of Columbia under the direction and control of the Board of Commissioners, a Department of General Administration headed by a Director. The order transferred to the Director all of the functions and positions of the Office of the Auditor. Reorganization Order No. 19 established in the Department of General Administration an Internal Audit Office headed by an Internal Audit Officer. The function of auditing the accounts of the Nurses Examining Board referred to in section 2–408 was transferred from the Auditor to the Internal Audit Officer. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1, Administration.

AUTHORITY TO CHANGE FEES

Commissioners authorized and empowered to increase or decrease, from time to time, the fees specified in this section, see §§ 1–252, 1–253.

CROSS REFERENCE

Honorariums to various board members and commissioners, see §§ 1–254 to 1–259.

§ 2–409. Penalties.

Any person who shall violate any of the provisions of this subchapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding $200 or by imprisonment in the workhouse for a period not exceeding sixty days. (Feb. 9, 1907, 34 Stat. 889, ch. 913, § 8; Mar. 2, 1929, 45 Stat. 1522, ch. 540, § 10.)

AMENDMENT

1929—Act Mar. 2, 1929, reenacted section without change.

§ 2–410. Nonregistered nurses may practice as such.

Nothing in this subchapter shall be construed to prevent any person from nursing any other person in the District of Columbia, either gratuitously or for hire: *Provided,* That such person so nursing shall not represent herself as being a registered, certified, graduate, or trained nurse. (Feb. 9, 1907, 34 Stat. 889, ch. 913, § 10; Mar. 2, 1929, 45 Stat. 1522, ch. 540, § 11.)

AMENDMENT

1929—Act Mar. 2, 1929, changed the words "a registered nurse" to "a registered, certified, graduate or trained nurse", and deleted the provision that "Nothing in this act shall be construed to authorize any person to practice medicine or surgery, or midwifery * * * otherwise than in accordance with" the act of June 3, 1896, regulating the practice of medicine and surgery.

§ 2–411. Construction.

The word "she" and the derivatives thereof, wherever they occur in this subchapter, shall be construed so as to include the word "he" and derivatives. (Feb. 9, 1907, 34 Stat. 889, ch. 913, § 11; Mar. 2, 1929, 45 Stat. 1522, ch. 540, § 12.)

AMENDMENT

1929—Act Mar. 2, 1929, reenacted section without change.

SUBCHAPTER II.—PRACTICAL NURSES

§ 2–421. Definitions.

As used in this subchapter—

(a) The term "Commissioners" means the Commissioners of the District of Columbia sitting as a board or their authorized agent or agents.

(b) The word "person" includes corporations, companies, associations, firms, partnerships, societies, and schools of practical nursing, as well as natural persons.

(c) The word "she" and the derivatives thereof shall be construed to include the word "he" and the derivatives thereof.

(d) The term "school of practical nursing" means a school or institution for the training of practical nurses.

(e) The term "Washington metropolitan area" means that area comprising the District of Columbia, Montgomery and Prince Georges Counties, Maryland, the counties of Arlington and Fairfax, Virginia, and the cities of Alexandria, Falls Church, and Fairfax, Virginia, and shall include those areas adjacent to the District of Columbia within a radius of thirty miles from the United States Capitol Building. (Sept. 6, 1960, 74 Stat. 803, Pub. L. 86–708, § 2; July 25, 1966, 80 Stat. 326, Pub. L. 89–518, § 1.)

AMENDMENT

1966—Section 1 of act July 25, 1966, added subsec. (e), defining "Washington metropolitan area".

EFFECTIVE DATE OF 1966 AMENDMENT

Section 3 of act July 25, 1966, 80 Stat. 326, Pub. L. 89–518, provided: "The amendments made by this Act [amending this section and § 2–429] shall take effect on the thirtieth day following the date of the enactment of this Act [July 25, 1966]."

SHORT TITLE

Section 1 of act Sept. 6, 1960, provided that: "This Act [adding this subchapter] shall be known and may be cited as the 'District of Columbia Practical Nurses' Licensing Act' ".

§ 2–422. Exemption of Federal and District employees.

This subchapter shall not apply to any person employed in the District of Columbia by the Federal Government or any agency thereof, while such person is acting in the discharge of her official duties. (Sept. 6, 1960, 74 Stat. 803, Pub. L. 86–708, § 3.)

§ 2–423. Restrictions on persons engaged in nursing.

Nothing in this subchapter shall be construed to prevent any person from nursing any other person in the District of Columbia, either gratuitously or for hire: *Provided,* That such person so nursing shall not represent herself as being a licensed practical nurse. (Sept. 6. 1960, 74 Stat. 803, Pub. L. 86–708, § 4.)

§ 2–424. Use of title "Licensed Practical Nurse" and abbreviation "L.P.N.".

(a) From and after the effective date of this subchapter, no person shall, in the District of Columbia, in any manner whatsoever, represent herself to be a licensed practical nurse or allow herself to be so represented unless she is licensed in accordance with the provisions of this subchapter.

(b) Any person licensed to practice as a licensed practical nurse in the District of Columbia shall have the right to use the title "Licensed Practical Nurse" and the abbreviation "L.P.N.". No other person shall assume such title or use such abbreviation. (Sept. 6, 1960, 74 Stat. 803, Pub. L. 86–708, § 5.)

EFFECTIVE DATE

Subchapter effective 120 days after funds are appropriated for the purpose of administering the provisions of this subchapter, see section 2–440.

§ 2–425. Commissioners authorized to delegate functions.

The Commissioners are hereby vested with full power and authority to delegate, from time to time. to their designated agent or agents, any of the functions vested in them by this subchapter. (Sept. 6, 1960, 74 Stat. 803, Pub. L. 86–708, § 6.)

TRANSFER OF FUNCTIONS

Reorganization Order No. 59 of the Board of Commissioners, dated June 30, 1953, as amended, established within the Department of Occupations and Professions, a Practical Nurses' Examining Board. There was delegated to said Examining Board the technical and professional functions vested in the Commissioners by sections 2–427 to 2–431 and section 2–433. The administrative functions authorized to be performed by such sections were delegated to the Director. The functions of adopting and prescribing rules and regulations were reserved to themselves by the Commissioners. The order is set out in the appendix to title 1.

§ 2–426. Establishment of Practical Nurses' Examining Board—Composition—Terms—Compensation.

The Commissioners may establish a Practical Nurses' Examining Board to perform any of the functions vested in the Commissioners by this subchapter, and, if so established, such Board shall be composed of such number of graduate nurses and practical nurses and possessing such qualifications as the Commissioners shall determine: *Provided,* That the graduate nurse members of such Board shall be in the majority; shall be registered under subchapter I of this chapter; and shall have had at lease five years of experience since graduation in the nursing service: *Provided further,* That all practical nurse members of such Board shall, from and after the expiration of ninety days from the effective date of this subchapter, be licensed under this subchapter: *And provided further,* That at least two practical nurse members of such Board shall be present at each meeting of the Board. The members of such Board shall serve for such terms and for such compensation as the Commissioners shall determine. (Sept. 6, 1960, 74 Stat. 803, Pub. L. 86–708, § 7.)

EFFECTIVE DATE

Subchapter effective 120 days after funds are appropriated for the purpose of administering the provisions of this subchapter, see section 2–440.

§ 2–427. Rules and regulations—Curricula and standards for nursing schools—Examination and licensing—Renewal of licenses—Commissioners may make studies and investigations, subpena witnesses—Application to compel attendance.

(a) The Commissioners are authorized to adopt from time to time and prescribe such rules and regulations as may be necesary to enable them to carry into effect the provisions of this subchapter. The Commissioners shall prescribe minimum curricula and standards for schools and for programs preparing persons for licensure under this subchapter. They may provide for surveys of such schools and programs at such times as they may deem necessary. They shall accredit such schools and programs as meet the Commissioners' requirements and the requirements of this subchapter. They shall evaluate and approve programs for affiliation. They shall examine, license, and renew the license of any duly qualified applicant.

(b) The Commissioners may make such studies and investigations, and obtain or require the furnishing of such information under oath or affirmation or otherwise, as they deem necessary or proper to assist them in prescribing any regulation or order under this subchapter, or in the administration and enforcement of this subchapter, and regulations and orders thereunder. For such purposes, the Commissioners may administer oaths and affirmations, may require by subpena or otherwise the attendance and testimony of witnesses and the production of documents at any designated place. In the event of contumacy or refusal to obey any such subpena or requirement under this section, the Commissioners may make application to the District of Columbia Court of General Sessions for an order requiring obedience thereto. Thereupon the court, with or without notice and hearing, as it, in its discretion, may decide, shall make such order as is proper and may punish as a contempt any failure to comply with such order in accordance with the provisions of subsection (c) of section 11–756. (Sept. 6, 1960, 74 Stat. 803, Pub. L. 86–708, § 8; July 3, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 2–428. Qualification requirements—Written examination—Exception—Application fee—Closed and reopened applications.

(a) Except as provided in section 2–429, an applicant for a license to practice as a licensed practical nurse shall submit to the Commissioners written evidence, verified by her oath, that the applicant (1) is at least 18 years of age; (2) is of good moral character; is in good physical and mental health, as certified by a physician licensed to practice in the District of Columbia; (4) has completed at least two years of high school or the equivalent thereof as determined by the Commissioners; and (5) has successfully completed an accredited program for the training of licensed practical nurses approved by the Commissioners, or the equivalent thereof as determined by them. The applicant shall meet such other qualification requirements as the Commissioners may prescribe. Except as otherwise provided in this subchapter, the applicant shall be required to pass a written examination in such subjects as the Commissioners may determine. Each written examination may be supplemented by an oral or practical examination. If the applicant passes such examinations, the Commissioners shall issue to the applicant a license to practice as a licensed practical nurse if they are satisfied that she possesses the required qualifications.

(b) The Commissioners may issue a license to practice as a licensed practical nurse without examination to any applicant who has been duly licensed or registered as a licensed vocational or practical nurse or a person entitled to perform similar service under a different title, by examination, under the laws of a State, territory, or possession of the United States, the Commonwealth of Puerto Rico, or a foreign country, if they are satisfied that the applicant meets the qualifications required of licensed practical nurses in the District of Columbia.

(c) An applicant for a license to practice as a licensed practical nurse shall at the time such application is made pay the required fee for an original license. An application shall be closed and filed as closed and incomplete at the end of a year from the time that the application was received if the applicant has failed to take all steps required of her to obtain a license. In order to reopen an application which has been closed or withdrawn, the applicant shall pay the same fee as is required for an original license. (Sept. 6, 1960, 74 Stat. 804, Pub. L. 86–708, § 9.)

§ 2–429. Conditions for issuance of license without written examination.

(a) Upon receipt of an application, accompanied by the required fee for an original license, the Commissioners shall issue a license to practice as a licensed practical nurse, without written examination, to any person who shall make application therefor prior to the expiration of one year immediately following the effective date of this subchapter: *Provided,* That (A) the Commissioners find that such person (1) is at least twenty-one years of age; (2) is of good moral character; (3) is in good physical and mental health as certified by a physician licensed to practice in the District of Columbia; (4) has been actively engaged in caring for the sick in the District of Columbia for the year immediately preceding the effective date of this subchapter; (5) has had three or more years of experience in the care of the sick prior to the effective date of this subchapter; and (6) has submitted evidence satisfactory to the Commissioners that she is competent to practice as a licensed practical nurse, and (B) either the application is endorsed by two physicians licensed to practice in the District of Columbia who have personal knowledge of the applicant's nursing qualifications and by two persons who have employed the applicant in the capacity of practical nurse, or the applicant is listed on a nurses' registry licensed in the District of Columbia.

(b)(1) Upon receipt of an application, accompanied by the required fee for an original license,

the Commissioners shall issue a license to practice as a licensed practical nurse, without written examination, to any person who shall make application therefor prior to the expiration of the ninetieth day immediately following the effective date of this subsection if (A) the Commissioners find that such person (i) is at least twenty-one years of age; (ii) is of good moral character; (iii) is in good physical and mental health as certified by a physician licensed to practice in the District of Columbia; (iv) has resided in the District of Columbia and been actively engaged in caring for the sick in the Washington metropolitan area for the year immediately preceding the effective date of this Act; (v) has had three or more years of experience in the care of the sick prior to the effective date of this Act; and (vi) has submitted evidence satisfactory to the Commissioners that she is competent to practice as a licensed practical nurse, and (B) either the application is endorsed by two physicians licensed to practice in the District of Columbia who have personal knowledge of the applicant's nursing qualifications and by two persons who have employed the applicant in the capacity of practical nurse, or the applicant is listed on a nurses' registry licensed in the District of Columbia.

(2) Any person whose application under subsection (a) was not approved because such person did not meet the requirement of clause (4) of such subsection may have such application reconsidered in accordance with the requirements of paragraph (1) of this subsection if, no later than the ninetieth day following the effective date of this subsection, such person makes a written request to the Commissioners for such reconsideration. Such application shall be reconsidered without additional charge to such person other than the repayment to the District of Columbia of any fee or portion thereof, paid in connection with the submission of such application under subsection (a), which may have been refunded to such person, and such person may submit, without charge, such additional information in support of such application as she may desire. (Sept. 6, 1960, 74 Stat. 804, Pub. L. 86–708, § 10; July 25, 1966, 80 Stat. 326, Pub. L. 89–518, § 2.)

REFERENCES IN TEXT

Words in both pars. (1) and (2) of subsec. (b), "effective date of this subsection", refer to effective date of amendments made by act July 25, 1966, which added subsec. (b) to this section.

Words "effective date of this Act", appearing twice in par. (1) of subsec. (b), presumably also refer to effective date of act July 25, 1966, which added subsec. (b) to this section.

See note headed "Effective Date of 1966 Amendment", below.

AMENDMENT

1966—Section 2 of act July 25, 1966, designated the then existing single paragraph as subsec. (a), and added subsec. (b).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act July 25, 1966, as effective on thirtieth day following July 25, 1966, see § 3 of such act, set out in note under § 2–421.

EFFECTIVE DATE

Subchapter effective 120 days after funds are appropriated for the purpose of administering the provisions of this subchapter, see section 2–440.

NOTES TO DECISIONS

Application under "grandfather clause"

Even though statute did not in express terms require that formal hearing be held when application for license as practical nurse was made under "grandfather clause", an application which substantially complied with statutory provisions could not be denied unless applicant had clear opportunity to meet Board's challenge to her qualifications and unless court was apprised of basis of finding against applicant; and while procedure of Board could be informal, it would have to conform to recognized standards of fairness, and record would have to be made which would permit review of Board's action by court. *C. Corbett* v. *L. Kinlein et al.* (D.C. App. 1963, 191 A. 2d 246).

Experience requirement

Actual experience of one year, eleven months, and eleven days plus several months more and association of nurse with practical nurses' registry and availability to work for some four years prior to enactment of Practical Nurses' Licensing Act substantially complied with grandfather clause requiring three years' experience in caring for the sick, and rejection of application for licensure as practical nurse was abuse of discretion. *C. Brewster* v. *M. L. Kinlein et al.*, as members etc. (D.C. App. 1965, 209 A. 2d 788).

The statement of practical nurses' examining board that 9 months' nursing experience satisfied the 1-year experience requirement for issuance of license did not provide reasonable basis in law for board's decision denying license to one who had almost 7 months' experience. *M. E. Matheson* v. *Practical Nurses' Examining Board* (D.C. App. 1963, 195 A. 2d 402).

Findings of fact

Where an informal hearing is held and practical nurses' examining board denies application for license, there can be judicial review only if board has made findings of fact and has applied the regulations to such facts and has issued an order based on facts and regulations. *M. E. Matheson* v. *Practical Nurses' Examining Board* (D.C. App. 1963, 195 A. 2d 402).

Timeliness of application

Where petitioner did not at any time file with practical nurses' examining board an application for licensure without written examination, statute specifically providing that application for license without written examination should be made prior to expiration of one year immediately following effective date of statute precluded granting of request made three years beyond time limit for license without examination. *Berry* v. *Kinlein* (D.C. App. 1966, 219 A. 2d 850).

Timeliness of petition

Where petitioner, seeking review of decision of Practical Nurses' Examining Board denying her application to reopen proceeding before Board, did not file her motion to reopen proceedings until approximately 8 months after final decision of Board denying her a practical nurse's license, Court of Appeals lacked jurisdiction to entertain review of Board's decision denying her application to reopen proceedings. *Spencer* v. *Practical Nurses' Examining Board* (D.C. App. 1966, 217 A. 2d 602).

Petition to review practical nurses' examining board's denial of application for license was timely filed within court rule requiring petition for review to be filed within 15 days of formal notice of final order or decision of a board or commission, where petitioner had no formal notice after February 19 informal meeting that her application had been rejected, petitioner's alternative ground for granting license was rejected in board's letter of April 29, and petition for review was filed on May 10. *M. E. Matheson* v. *Practical Nurses' Examining Board* (D.C. App. 1963, 195 A. 2d 402).

§ 2–430. License to be renewed annually—Processing of renewal applications—Reinstatement of lapsed licensees—Nonpracticing list of licensees.

(a) The license of every person licensed under the provisions of this subchapter shall expire on June 30 of each year and be annually renewed. On or before May 31 of each year, the Commissioner

shall mail an application for renewal of license to every person who at the time of such mailing holds a valid license under this subchapter. The applicant shall, before the following July 1, complete and execute such application and return the same to the Commissioners with the required renewal fee. Upon receipt of such application and fee, the Commissioners shall verify the accuracy of the application and issue to the applicant a certificate of renewal for the year beginning on such July 1 and expire the following June 30. Any licensee who allows her license to lapse by failing to renew the license as provided above, may be reinstated by the Commissioners by showing cause satisfactory to the Commissioners for such failure and on payment of the required fee.

(b) Any person licensed under the provisions of this subchapter but not so practicing in the District of Columbia shall give written notice of such fact to the Commissioners. Upon receipt of such notice, the Commissioners shall place the name of such person upon the nonpracticing list. While remaining on such list, the person shall not be subject to the payment of any renewal fee and shall not hold herself out as a licensed practical nurse in the District of Columbia. Application for renewal of license and payment of renewal fee for the current year shall be made to the Commissioners by any such person desiring to resume practice as a licensed practical nurse. (Sept. 6, 1960, 74 Stat. 805, Pub. L. 86–708, § 11.)

§ 2–431. Applications to operate a school of practical nursing—Commissioners to pass on qualifications of applicants—Survey of approved schools for maintenance of standards—Removal procedure of schools from accredited list.

(a) Any person conducting or desiring to conduct a school of practical nursing may apply to the Commissioners and submit evidence that such person is prepared to give a course of study of not less than twelve months, including clinical experience, and is prepared to meet the standards prescribed by the Commissioners. Each such person shall pay the required fees at the time such application is made. A survey of such school shall be made by the Commissioners. If, in the opinion of the Commissioners, the requirements for an accredited school of practical nursing are met, they shall approve such school as an accredited school for the training of practical nurses.

(b) The Commissioners may, whenever they deem it necessary, survey any accredited school of practical nursing in the District of Columbia. If the Commissioners determine that any accredited school of practical nursing does not meet the standards required by this subchapter and by the Commissioners, notice thereof in writing specifying the defect or defects shall be given to such school. If the defects are not corrected within a reasonable time, such school shall, after hearing, be removed from the list of accredited schools of practical nursing. (Sept. 6, 1960, 74 Stat. 805, Pub. L. 86–708, § 12.)

§ 2–432. Fixation of miscellaneous fees—Payment into the Treasury.

(a) The Commissioners are authorized and empowered after public hearing, to determine and from time to time to increase or decrease fees for all services rendered under authority of any provision of this subchapter, including fees for the following services: (1) For licenses and renewals thereof; (2) for repeat examinations; (3) for the evaluation of each school record of a candidate for admission to a school of practical nursing; (4) for verification of records; (5) for a duplicate license to practice as a licensed practical nurse upon proof acceptable to the Commissioners that the original license has been lost or destroyed; (6) for duplicate certificates of renewal of licenses; (7) for mailing a certificate a second time if no timely notification of change of address has been made; (8) for the proctoring of out-of-State applicants when the examination is held at a time other than the regular examination of the District of Columbia. The Commissioners shall fix such fees in such amounts, as will, in the judgment of the Commissioners, approximate the cost to the District of Columbia of such services.

(b) All moneys collected for fees and charges under this subchapter shall be paid into the Treasury to the credit of the District of Columbia. (Sept. 6, 1960, 74 Stat. 806, Pub. L. 86–708, § 13.)

§ 2–433. Denial, revocation, or suspension of licenses—Procedure—Lists of persons denied licenses may be furnished upon written request to boards of examiners of States, Territories, or foreign countries.

The Commissioners are authorized and empowered to deny, revoke, or suspend any license, or certificate of renewal of license, issued by the Commissioners or applied for in accordance with the provisions of this subchapter if the applicant or holder thereof—

(1) has been guilty of fraud or deceit in procuring or attempting to procure any license, or renewal thereof provided for in this subchapter;

(2) has been convicted of a crime involving moral turpitude;

(3) is an intemperate consumer of intoxicating liquors or is addicted to the use of habit-forming drugs;

(4) has been guilty of unprofessional conduct;

(5) has willfully or repeatedly violated any of the provisions of this subchapter or rules or regulations promulgated by the Commissioners pursuant to authority contained in this subchapter; or

(6) is mentally incompetent:

Provided, That said denial, revocation, or suspension shall be made only upon specific charges in writing. A certified copy of any such charge and at least five days' notice of the hearing of the same shall be served upon the holder of or applicant for such license. The Commissioners are hereby authorized to furnish a list of names and addresses of persons to whom licenses, or renewal of licenses, have been denied, revoked, or suspended under this section to the board of examiners of a State, territory, or possession of the United States, the Commonwealth of Puerto Rico, or a foreign country, upon written request of such board. (Sept. 6, 1960, 74 Stat. 806, Pub. L. 86–708, § 14.)

§ 2–434. Review of orders and decisions of Commissioners.

Any person aggrieved by any final decision or final order of the Commissioners denying, suspending, or revoking any license, or renewal of license, issued or applied for under this subchapter may obtain a review thereof in the District of Columbia Court of Appeals, and may seek a review by the United States Court of Appeals for the District of Columbia Circuit of any judgment of the District of Columbia Court of Appeals entered pursuant to its review of any such decision or order, all in accordance with subsection (f) of section 11–772. (Sept. 6, 1960, 74 Stat. 806, Pub. L. 86–708, § 15; July 8, 1963, 77 Stat. 78, Pub. L. 88–60, § 6.)

REFERENCES IN TEXT

Section 11–772, referred to in text is now covered by sections 11–321, 11–741, 11–742, 17–101, 17–102, 17–103, 17–104, 17–301, 17–302, 17–303, 17–304, 17–305, 17–306, 17–307.

CHANGE OF NAME

Act July 8, 1963, § 6, substituted "District of Columbia Court of Appeals" for "Municipal Court of Appeals for the District of Columbia". Provisions identical with those of said section 6 were contained in act Oct. 23, 1962, 76 Stat. 1172, Pub. L. 88–873, § 6, which was repealed by act Dec. 23, 1963, 77 Stat. 620, Pub. L. 88–241, § 21(a).

NOTES TO DECISIONS

Reviewable orders

Generally, an order denying motion for rehearing, or motion to reopen, or motion for new trial, and similar motions, is not final and not appealable. *Spencer* v. *Practical Nurses' Examining Board* (D.C. App. 1966, 217 A. 2d 602).

Review in Court of Appeals is limited to final orders and decisions of the Practical Nurses' Examining Board. *Id.*

§ 2–435. Selling, aiding, or abetting in the sale of fraudulent licenses or diplomas—Practicing as a licensed practical nurse under false licenses or diplomas—Use of false designation tending to imply that a person is a licensed practical nurse—Practicing under a suspended or revoked license.

It shall be unlawful for any person in the District of Columbia to (a) sell or fraudulently obtain or furnish any diploma, license, or record required by this subchapter, or required by the Commissioners under authority of this subchapter, or aid or abet in the selling, fraudulently obtaining or furnishing thereof; (b) practice nursing as a licensed practical nurse under cover of any diploma, license, or record required by this subchapter or required by the Commissioners under authority of this subchapter, illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation; (c) use in connection with his or her name any designation tending to imply that he or she is a licensed practical nurse unless licensed so to practice under the provisions of this subchapter; or (d) practice nursing as a licensed practical nurse during the time his or her license issued under the provisions of this subchapter shall be suspended or revoked. (Sept. 6, 1960, 74 Stat. 806, Pub. L. 86–708, § 16.)

§ 2–436. Penalty for violations of sections 2–424 and 2–435.

Any person who shall violate any of the provisions of section 2–424 or 2–435 shall be guilty of a misdemeanor and shall be punished by a fine not exceeding $300 or by imprisonment for not more than ninety days. (Sept. 6, 1960, 74 Stat. 807, Pub. L. 86–708, § 17.)

§ 2–437. Prosecutions for violations of sections 2–424 and 2–435 to be conducted in the Court of General Sessions by corporation counsel—Proof.

(a) Prosecutions for violations of any provision of section 2–424 or 2–435 shall be conducted in the name of the District of Columbia in the District of Columbia Court of General Sessions by the Corporation Counsel or any of his assistants.

(b) It shall be necessary to prove in any prosecution or hearing under this subchapter only a single act prohibited by law or a single holding out or an attempt without proving a general course of conduct in order to constitute a violation. (Sept. 6, 1960, 74 Stat. 807, Pub. L. 86–708, § 18; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 2–438. Separability of provisions.

If any provision of this subchapter, or the application thereof to any person or circumstance is held invalid, the remainder of the subchapter, and the application of such provision to other persons and circumstances, shall not be affected thereby. (Sept. 6, 1960, 74 Stat. 807, Pub. L. 86–708, § 19.)

§ 2–439. Appropriations authorized.

There is hereby authorized to be appropriated out of the revenues of the District of Columbia such sums as may be necessary to pay the expenses of administering and carrying out the purposes of this subchapter. (Sept. 6, 1960, 74 Stat. 807, Pub. L. 86–708, § 20.)

§ 2–440. Effective date.

This subchapter shall take effect one hundred and twenty days after funds are appropriated for the purpose of administering the provisions of this subchapter. (Sept. 6, 1960, 74 Stat. 807, Pub. L. 86–708, § 21.)

SUBCHAPTER III.—PHYSICAL THERAPISTS

§ 2–451. Definitions.

As used in this subchapter—

(a) The term "Commissioners" means the Commissioners of the District of Columbia sitting as a board, or their authorized agent or agents.

(b) The word "she" and the derivatives thereof shall be construed to include the word "he" and the derivatives thereof.

(c) The term "physical therapy" means the treatment of human disability, injury, or disease by supervised therapeutic procedures embracing the specific scientific application of physical measures to secure the functional rehabilitation of the human body. Nothing in this subchapter shall be construed as authorizing a physical therapist, whether registered or not, to practice medicine, osteopathy, chiropractic, naturopathy, or any other form or method of healing.

(d) The term "physical therapist" means a person who practices physical therapy under the prescription, supervision, and direction of a person licensed to practice under the Healing Arts Practice Act of the District of Columbia, approved February 27, 1929 (45 Stat. 1326), as amended.

(e) The word "State" or "States" shall be deemed to include any territory of the United States and the Commonwealth of Puerto Rico. (Sept. 22, 1961, 75 Stat. 578, Pub. L. 87–280, § 2.)

REFERENCES IN TEXT

The Healing Arts Practice Act of the District of Columbia, referred to in the text, is set out in title 2, ch. 1, of the D.C. Code.

EFFECTIVE DATE

Subchapter effective 120 days after funds are appropriated for the purpose of administering this subchapter, see section 2–472.

SHORT TITLE

Section 1 of act Sept. 22, 1961, provided that: "This Act [this subchapter] may be cited as the 'Physical Therapists Practice Act' ".

§ 2–452. Exemption from registration.

This subchapter shall not apply to any person employed in the District of Columbia by the Federal Government or any agency thereof while such person is acting in the discharge of her official duties. (Sept. 22, 1961, 75 Stat. 578, Pub. L. 87–280, § 3.)

EFFECTIVE DATE

See section 2–472.

§ 2–453. Registration.

(a) No person shall practice physical therapy in the District of Columbia unless (1) she is duly registered in accordance with the provisions of this subchapter, or (2) is exempted from such registration by the terms of this subchapter.

(b) No person not registered in accordance with the provisions of this subchapter, unless exempted from registration by the terms of this subchapter, shall, directly or indirectly, (1) represent herself to be so registered or (2) represent herself to be certified, licensed, or authorized to practice physical therapy.

(c) No person shall use in connection with her name the words "physical therapist", "physiotherapist", "physical therapy technician", or use the initials "P.T.", "P.T.T.", "R.P.T.", or any other letters, words, abbreviations, or insignia indicating or implying that she is a registered physical therapist, unless such person is a holder of a valid registration under this subchapter.

(d) Nothing in this section shall prohibit any person duly licensed or registered in the District of Columbia under any other Act from engaging in the practice for which she is duly registered or licensed.

(e) Nothing in this subchapter shall apply to any person licensed under the Healing Arts Practice Act of the District of Columbia, nor to any employee of any such person working under his immediate supervision and direction in his private office, provided no such employee shall hold herself out, or otherwise represent herself to be a physical therapist. (Sept. 22, 1961, 75 Stat. 578, Pub. L. 87–280, § 4.)

REFERENCES IN TEXT

The Healing Arts Practice Act of the District of Columbia is set out in title 2, ch. 1, of the D.C. Code.

EFFECTIVE DATE

See section 2–472.

§ 2–454. Powers of Commissioners.

The Commissioners are hereby vested with full power and authority to delegate, from time to time, to their designated agent or agents, any of the functions vested in them by this subchapter. (Sept. 22, 1961, 75 Stat. 579, Pub. L. 87–280, § 5.)

EFFECTIVE DATE

See section 2–472.

§ 2–455. Establishment of board.

The Commissioners may establish a physical therapists examining board to perform any of the functions vested in the Commissioners by this subchapter, and, if so established, such board shall be composed of such persons possessing such qualifications as the Commissioners shall determine. The Commissioners are authorized to prescribe the terms of office of members of such board and to fix the compensation of such members. The Commissioners may appoint as members of such board, Federal and District government employees, and such members shall not be entitled to receive compensation as board members, and any such member shall not be debarred by such membership from employment in the Federal or District governments not inconsistent with her duties as a board member. Any board member may receive her compensation as a board member as well as any retirement pay, retirement compensation, or annuity to which she may be entitled on account of previous service rendered to the United States or the District of Columbia governments. (Sept. 22, 1961, 75 Stat. 579, Pub. L. 87–280, § 6.)

EFFECTIVE DATE

See section 2–472.

§ 2–456. Powers and duties—Register of physical therapists and approved schools—Studies and investigations.

(a) The Commissioners are authorized to adopt from time to time and prescribe such rules and regulations as may be necessary to enable them to carry into effect the provisions of this subchapter. The Commissioners shall maintain a register of all persons registered as physical therapists. The Commissioners shall maintain a register of approved schools which they deem afford adequate training in physical therapy.

(b) The Commissioners may make such studies and investigations, and obtain or require the furnishing of such information under oath or affirmation or otherwise, as they deem necessary or proper to assist them in prescribing any regulation or order under this subchapter, or in the administration and enforcement of this subchapter, and regulations and orders thereunder. For such purposes, the Commissioners may administer oaths and affirmations, may require by subpena or otherwise the attendance and testimony of witnesses and the production of documents at any designated place. In the event of contumacy or refusal to obey any such subpena or requirement under this section, the Commissioners may make application to the District of Columbia Court of General Sessions for an order re-

quiring obedience thereto. Thereupon the court, with or without notice and hearing, as it in its discretion may decide, shall make such order as is proper and may punish as a contempt any failure to comply with such order in accordance with the provisions of section 11–756(c). (Sept. 22, 1961, 75 Stat. 579, Pub. L. 87–280, § 7; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

REFERENCES IN TEXT

Section 11–756, referred to in subsec. (b) of this section was repealed by act Dec. 23, 1963, 77 Stat. 620, Pub. L. 88–241, § 21(a), and subsec. (c) thereof is now covered by section 11–982.

CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

EFFECTIVE DATE

See section 2–472.

NOTES TO DECISIONS

Board's inquiry of applicant

Questions asked of applicant for registration as physical therapist by members of Physical Therapists Examining Board that were concerned with either clarifying applicant's testimony or eliciting further information as to her training and experience were proper. *Schramm* v. *Physical Therapists Examining Board* (D.C. App. 1966, 219 A. 2d 846).

Procedure of board

Although physical therapists examining board has statutory authority to prescribe rules and regulations, it may proceed by general rule or by individual ad hoc litigation within its informed discretion. *R. W. Hicks* v. *Physical Therapists Examining Board etc.* (D.C. App. 1966, 221 A. 2d 712).

§ 2–457. Registration of qualified applicants—Issuance of certificates.

The Commissioners shall register as physical therapists all applicants who prove to the satisfaction of the Commissioners their fitness for registration under the terms of this subchapter. The Commissioners shall issue to each person registered a certificate of registration, which shall be prima facie evidence of the right of the person to whom it is issued to represent herself as a registered physical therapist, and authorized to practice as such under this subchapter. (Sept. 22, 1961, 75 Stat. 580, Pub. L. 87–280, § 8.)

EFFECTIVE DATE

See section 2–472.

§ 2–458. Registration without examination.

The Commissioners shall register as a physical therapist, without examination, any physical therapist who is at least twenty years of age and of good moral character and who presents evidence satisfactory to the Commissioners that she was, prior to the effective date of this subchapter, practicing physical therapy in the District of Columbia for a period of two years immediately preceding the effective date of this subchapter, and that she (1) has graduated from an approved school of physical therapy listed in the register of approved schools or (2) received comparable training or experience in the practice of physical therapy as determined by the Commissioners. Application for registration under this section shall be made on or before the expiration of one year from the effective date of this subchapter. (Sept. 22, 1961, 75 Stat. 580, Pub. L. 87–280, § 9.)

EFFECTIVE DATE

See section 2–472.

NOTES TO DECISIONS

Abuse of discretion

Physical therapists examining board did not abuse its discretion in denying applicant's application for registration, without examination, as physical therapist where applicant presented only self-serving declarations as evidence of experience and training comparable to that received in approved schools. *C. M. Hlebanja* v. *Physical Therapists Examining Board etc.* (D.C. App. 1966, 219 A. 2d 848).

Board's finding of fact

Conclusions expressed in document which resulted from Examining Board's detailed study of physical therapist registration applicant's answers and an ex parte evaluation of those answers could not be used to sustain a finding of fact based thereon, where there had been no right of cross-examination or opportunity to meet conclusions by answering evidence. *R. F. Sherman* v. *Physical Therapists Examination Board etc.* (D.C. App. 1965, 208 A. 2d 728).

Board's right to question applicant

Members of Physical Therapists Examining Board had right to question applicant for registration as physical therapist after she had been cross-examined by counsel, but questions of board members should not take form of examination. *Schramm* v. *Physical Therapists Examining Board* (D.C. App. 1966, 219 A. 2d 846).

Burden of proof

Applicant for registration as physical therapist without examination who had not graduated from approved physical therapist school had burden of proof to satisfy Physical Therapist Examining Board that she had received comparable training or experience sufficient to qualify her as physical therapist. *Schramm* v. *Physical Therapists Examining Board* (D.C. App. 1966, 219 A. 2d 846).

Applicant for registration as physical therapist without examination who had not graduated from approved physical therapy school did not meet her burden of proving that her experience and training were comparable to that obtained in school where sole evidence in hearing held by Physical Therapists Examining Board was applicant's self-serving declarations. *Id.*

In absence of proof that her experience and training as physical therapist were comparable to that received in approved school, applicant was not entitled to registration, without examination, as physical therapist under "grandfather clause" of registration statute, even though she had practiced physical therapy for required period prior to effective date of registration statute. *Id.*

Applicant for registration, without examination, as physical therapist had burden to present evidence satisfactory to examining board to establish, in absence of any showing that she had graduated from approved school of physical therapy, that she had received comparable training or experience in practice of physical therapy. *C. M. Hlebanja* v. *Physical Therapists Examining Board* (D.C. App. 1966, 219 A. 2d 848).

Applicant for registration without examination, as physical therapist did not furnish evidence satisfactory to board to prove that she had received training or experience in practice of physical therapy comparable to that received in approved school where only evidence before board was her own testimony. *Id.*

Comparable training

Training or experience offered to meet statutory requirement for registration as physical therapist in absence of graduation from approved school must establish that applicant's competence to assist his patients without endangering their health and safety is "comparable" to that of therapist who has graduated from approved approved school of physical therapy, though applicant need not possess all of fine skills and specialized knowledge presumably possessed by graduate of approved

school. *R. W. Hicks* v. *Physical Therapists Examining Board etc.* (D.C. App. 1966, 221 A. 2d 712).

It was error, but not reversible error, for physical therapists examining board to consider petitioner's education, including his study and clinical experience at school of naturopathy, only, in reaching its determination that petitioner had not complied with educational requirements to be registered as physical therapist, where petitioner offered his schooling, study and training as proof of comparable training or experience, the statutory alternative to graduation from an approved school of physical therapy. *Id.*

Experience

Although applicant is not entitled to registration as physical therapist simply because he has practiced, his practice is a compensatory circumstance to be considered in weighing his possible shortcomings in refinement of skills and specialization of knowledge. *R. W. Hicks* v. *Physical Therapists Examining Board etc.* (D.C. App. 1966, 221 A. 2d 712).

Standard

Physical therapists examining board was not required to create and publish a standard for comparable training and experience needed by applicant, who sought to be registered without having graduated from approved school. *R. W. Hicks* v. *Physical Therapists Examining Board etc.* (D.C. App. 1966, 221 A. 2d 712).

Findings of the board

Where record showed any relation of former employment of applicant seeking registration as physical therapist to physical therapy was effectively contradicted, physical therapists examining board did not err in finding that applicant did not meet statutory standard to be registered as physical therapist without having graduated from approved school. *R. W. Hicks* v. *Physical Therapists Examining Board etc.* (D.C. App. 1966, 221 A. 2d 712).

In determining whether petitioner for registration as physical therapist possessed training and experience comparable with one graduating from approved school of physical therapy, reviewing court was bound to recognize the expertise of the physical therapists examining board. *Id.*

Relevancy of education of applicant seeking registration as physical therapist was for the physical therapists examining board. *Id.*

Prior denial without hearing—prejudicial

Physical Therapists Examining Board's prior denial, without a hearing, of applicant's application for registration, without examination, as physical therapist was not per se prejudicial to applicant in hearing on application. *Schramm* v. *Physical Therapists Examining Board* (D.C. App. 1966, 219 A. 2d 848).

Registration without examination

District of Columbia statute on physical therapist registration after examination of applicants who are graduates of approved school or possess comparable educational qualifications should not have been applied to applicant who was entitled to registration under grandfather clause requiring registration without examination of one who has received comparable training or experience in the practice of physical therapy. *R. F. Sherman* v. *Physical Therapists Examination Board etc.* (D.C. App. 1965, 208 A. 2d 728).

Under grandfather clause of District of Columbia physical therapist registration statute an applicant who meets test as to age, character, etc., and who has actually practiced profession for prescribed period shall be registered without examination, and for applicants in this status law creates a clear exception. *Id.*

Questioning which amounted to knowledge test of applicant for registration as a physical therapist was not proper where applicant was entitled to registration without examination on basis of comparable training or experience. *Id.*

Applicant who had had more than 27 years of varied and extensive training and experience in physical therapy was entitled to registration as a physical therapist without examination under grandfather clause of District of Columbia physical therapy statue providing for registration of those receiving comparable training or experience. *Id.*

Protection of grandfather clause of District of Columbia physical therapist registration statute is not limited to exceptionally able persons but is designed to include those who, though of less than the highest competence, still possess basic qualifications and meet other legal requirements. *Id.*

Uncontradicted testimony

Generally, uncontradicted testimony, even of interested party, may not be disregarded and may, in some instances, be sufficient to prove case. *Schramm* v. *Physical Therapists Examining Board* (D.C. App. 1966, 219 A. 2d 846).

§ 2–459. Registration after examination.

The Commissioners shall pass upon the qualifications of applicants for registration, provide for and conduct all examinations, determine which applicants have successfully passed the examination and duly register such applicants. To be eligible to be examined for registration as a physical therapist, an applicant must meet the following requirements:

(a) Be at least twenty years old.

(b) Be of good moral character.

(c) Be in good physical and mental health, as certified by a physician licensed to practice in the District of Columbia.

(d) Be a graduate of an approved school of physical therapy listed in the register of approved schools; or possess comparable educational qualifications as determined by the Commissioners.

The examinations specified in this section shall be conducted at such times and places as the Commissioners may determine, and notice of time and place of such examination shall be published not less than thirty days before the first day of each examination in one or more newspapers of local circulation.

The examination shall embrace such coverage of the following subjects to determine the applicant's qualification: The applied sciences of anatomy, neuroanatomy, kinesiology, physiology, pathology, physics; "physical therapy" as defined in this subchapter, applied to medicine, neurology, orthopedics, pediatrics, psychiatry, surgery; medical ethics; technical procedures in the practice of "physical therapy" as defined in this subchapter. (Sept. 22, 1961, 75 Stat. 580, Pub. L. 87–280, § 10.)

EFFECTIVE DATE

See section 2–472.

§ 2–460. Reciprocity.

Any applicant who has practiced physical therapy and has been registered, certified, or licensed as such in any State may, upon proof of good moral character, be registered without examination, provided the applicant has graduated from a school of physical therapy approved by the Commissioners, or has received competent comparable training as determined by the Commissioners. It is intended that the standards of education and training required for registration under this section shall be substantially equivalent to those required for registration pursuant to section 2–459. This section shall be construed to apply only to candidates from States which admit registered physical therapists of the District of Columbia without examination. (Sept. 22, 1961, 75 Stat. 580, Pub. L. 87–280, § 11.)

EFFECTIVE DATE

See section 2–472.

§ 2–461. Renewal of registration—Nonpracticing therapists.

(a) Every registered physical therapist engaged in or who proposes to engage in the practice of physical therapy in the District of Columbia is hereby required to register with the Commissioners annually. Any registrant who allows her registration to lapse by failing to renew the registration annually may be reinstated by the Commissioners by showing cause satisfactory to the Commissioners for such failure and upon payment of all required fees. The Commissioners are authorized, after public hearing, to change from time to time the period for which registration or renewal thereof may be issued.

(b) Any person registered under the provisions of this subchapter but not so practicing in the District of Columbia shall give written notice of such fact to the Commissioners. Upon receipt of such notice, the Commissioners shall place the name of such person upon the nonpracticing list. While remaining on such list, such person shall not be subject to the payment of any renewal fee and shall not hold herself out as a registered physical therapist nor practice as such in the District of Columbia. Application for renewal of registration and payment of renewal fee for the current year shall be made to the Commissioners by any such person desiring to resume practice as a registered physical therapist. (Sept. 22, 1961, 75 Stat. 581, Pub. L. 87–280, § 12.)

EFFECTIVE DATE

See section 2–472.

§ 2–462. Denial, revocation, and suspension of registration.

The Commissioners are authorized and empowered to deny, revoke, or suspend any registration or certificate of renewal of registration issued by the Commissioners or applied for in accordance with the provisions of this subchapter if the applicant or holder thereof—

(1) has been guilty of fraud or deceit in procuring or attempting to procure any registration or renewal thereof provided for in this subchapter;

(2) has been convicted of a crime involving moral turpitude;

(3) is an intemperate consumer of intoxicating liquors or is addicted to the use of habit-forming drugs;

(4) has been guilty of unprofessional conduct;

(5) has willfully violated any of the provisions of this subchapter, or rules or regulations promulgated by the Commissioners pursuant to authority contained in this subchapter;

(6) is mentally incompetent;

(7) is guilty of undertaking to treat ailments of human beings other than by physical therapy as authorized by this subchapter, or the undertaking to practice physical therapy independent of the prescription and direction of a person appropriately licensed to practice under the Healing Arts Practice Act of the District of Columbia; or

(8) is otherwise professionally incapacitated.

Provided, That such denial, revocation, or suspension shall be made only upon specific charges in writing. A copy of any such charges and at least ten days' notice of the hearing of the same shall be mailed to the holder of or applicant for such registration, addressed to her at her last known address. (Sept. 22, 1961, 75 Stat. 581, Pub. L. 87–280, § 13.)

REFERENCES IN TEXT

The Healing Arts Practice Act of the District of Columbia referred to in text is set out in title 2, ch. 1, of the D.C. Code.

EFFECTIVE DATE

See section 2–472.

§ 2–463. Court review.

Any person aggrieved by any final decision or final order of the Commissioners denying, suspending, or revoking any registration, or renewal of registration, issued or applied for under this subchapter may obtain a review thereof in the District of Columbia Court of Appeals, and may seek a review by the United States Court of Appeals for the District of Columbia Circuit of any judgment of the District of Columbia Court of Appeals entered pursuant to its review of any such decision or order, all in accordance with subsection (f) of section 11–772. (Sept. 22, 1961, 75 Stat. 582, Pub. L. 87–280, § 14; July 8, 1963, 77 Stat. 78, Pub. L. 88–60, § 6.)

REFERENCES IN TEXT

Section 11–772, referred to in text is now covered by sections 11–321, 11–741, 11–742, 17–101, 17–102, 17–103, 17–104, 17–301, 17–302, 17–303, 17–304, 17–305, 17–306, 17–307.

CHANGE OF NAME

Act July 8, 1963, § 6, substituted "District of Columbia Court of Appeals" for "Municipal Court of Appeals for the District of Columbia". Provisions identical with those of said section 6 were contained in act Oct. 23, 1962, 76 Stat. 1172, Pub. L. 88–873, § 6, which was repealed by act Dec. 23, 1963, 77 Stat. 620, Pub. L. 88–241, § 21(a).

EFFECTIVE DATE

See section 2–472.

§ 2–464. Unauthorized practice of physical therapy.

It shall be unlawful for any person in the District of Columbia to—

(a) sell or fraudulently obtain or furnish any diploma, license, certificate of registration, or record required by this subchapter, or required by the Commissioners under authority of this subchapter, or aid or abet in the selling, fraudulently obtaining, or furnishing thereof;

(b) practice physical therapy under cover of any diploma, certificate of registration, or record required by this subchapter or required by the Commissioners under authority of this subchapter, illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent registration;

(c) use in connection with her name any designation tending to imply that she is a registered physical therapist unless duly registered under provisions of this subchapter;

(d) practice physical therapy during the time her registration shall be suspended or revoked.

(Sept. 22, 1961, 75 Stat. 582, Pub. L. 87–280, § 15.)

EFFECTIVE DATE

See section 2–472.

§ 2–465. Practice of registered physical therapists.

A person registered under this subchapter as a physical therapist shall not treat human ailments by physical therapy or otherwise except under the prescription and direction of a person duly licensed or registered under the Healing Arts Practice Act of the District of Columbia. (Sept. 22, 1961, 75 Stat. 582, Pub. L. 87–280, § 16.)

REFERENCES IN TEXT

The Healing Arts Practice Act of the District of Columbia, is set out in title 2, ch. 1, of the D.C. Code.

EFFECTIVE DATE

See section 2–472.

§ 2–466. Enforcement—Penalties.

Any person who shall violate the provisions of section 2–453, 2–464, or 2–465 of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not exceeding $500 or by imprisonment for not more than one year, or both. (Sept. 22, 1961, 75 Stat. 582, Pub. L. 87–280, § 17.)

EFFECTIVE DATE

See section 472.

§ 2–467. Conduct of prosecutions.

(a) Prosecutions for violations of any provisions of section 2–453, 2–464, or 2–465 of this subchapter shall be conducted in the name of the District of Columbia in the District of Columbia Court of General Sessions, by the Corporation Counsel or any of his assistants.

(b) It shall be necessary to prove in any prosecution or hearing under this subchapter only a single act prohibited by law or a single holding out or an attempt without proving a general course of conduct in order to constitute a violation. (Sept. 22, 1961, 75 Stat. 582, Pub. L. 87–280, § 18; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

EFFECTIVE DATE

See section 2–472.

§ 2–468. Fees and charges—Public hearings to change fees.

(a) The Commissioners are authorized and empowered, after a public hearing, to fix and, from time to time increase or decrease, fees for any services rendered under this subchapter. The Commissioners shall, pursuant to this section, increase, decrease, or fix fees in such amounts as will, in the judgment of the Commissioners, approximate the costs to the District of Columbia of administering this subsection: *Provided,* That no fee shall be increased, decreased, or fixed except after a public hearing.

(b) Upon the change of a registration period as authorized by subsection (a) of section 2–461 the fee for registration or renewal of registration shall be prorated on the basis of the time covered.

(c) All moneys collected for fees and charges made pursuant to authority contained in this subchapter shall be paid into the Treasury to the credit of the District of Columbia. (Sept. 22, 1961, 75 Stat. 583, Pub. L. 87–280, § 19.)

EFFECTIVE DATE

See section 2–472.

§ 2–469. Severability.

If any provision of this subchapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the subchapter, and the application of such provision to other persons and circumstances, shall not be affected thereby. (Sept. 22, 1961, 75 Stat. 583, Pub. L. 87–280, § 20.)

EFFECTIVE DATE

See section 2–472.

§ 2–470. Appropriations.

There is hereby authorized to be appropriated out of the revenues of the District of Columbia such sums as may be necessary to pay the expenses of administering and carrying out the purposes of this subchapter. (Sept. 22, 1961, 75 Stat. 583, Pub. L. 87–280, § 21.)

EFFECTIVE DATE

See section 2–472.

§ 2–471. Reorganization.

Nothing in this subchapter shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this subchapter in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan. (Sept. 22, 1961, 75 Stat. 583, Pub. L. 87–280, § 22.)

EFFECTIVE DATE

See section 2–472.

§ 2–472. Effective date.

This subchapter shall take effect one hundred and twenty days after funds are appropriated for the purpose of administering the provisions of this subchapter. (Sept. 22, 1961, 75 Stat. 583, Pub. L. 87–280, § 23.)

Chapter 5.—OPTOMETRISTS

Sec.

2–501. "Optometry" defined.
2–502. Practice of optometry without license prohibited—Misrepresentation—False impersonation—Penalties.
2–503. Board of Optometry — Qualifications — Tenure — Oath—Removal.
2–504. Organization—Meetings—Quorum.
2–505. By-laws and regulations.
2–506. Secretary-treasurer to give bond.
2–507. Secretary-treasurer to receive compensation and pay expenses out of funds in custody of board.
2–508. Official seal—Records—Reports.
2–509. Examination to practice optometry required.
2–510. Limited examination for those already practicing.
2–511. Standard examination—Qualifications of applicants.
2–512. Changes in educational standards authorized.
2–513. Application for license—Examinations—Issuance—Re-examinations—Display of license.

Sec.
2–514. Fees for examination, registration, and renewals—Revocation of license—Reinstatement—Effect of temporary retirement.
2–515. Board to have office in District of Columbia—Seal—Design of license.
2–516. Licenses—Cancellation, revocation, suspension, and refusal to grant—Causes.
2–517. Notice to licensee—Hearing.
2–518. Reciprocity with other States.
2–519. Holder of license not entitled to use any title or degree by virtue of such license.
2–520. Physicians, surgeons, persons selling spectacles or eyeglasses not to be governed by this chapter.
2–521. Construction—Singular number to include plural—Masculine gender to include feminine.
2–522. Separability of provisions.

§ 2–501. "Optometry" defined.

The practice of optometry is defined to be the application of optical principles through technical methods and devices in the examination of the human eye for the purpose of determining visual defects, and the adaptation of lenses for the aid and relief thereof. (May 28, 1924, 43 Stat. 177, ch. 202, § 1.)

CROSS REFERENCE

Exempted from operation of Healing Arts Practice Act, see § 2–101.

NOTES TO DECISIONS

Action for negligence

In action for negligence in treatment of eye condition brought against licensed optometrist and unlicensed optometrist, who referred plaintiff to licensed optometrist, who tested his eyes and reported results of test to unlicensed optometrist and informed him of existence of a "possible pathology" and suggested that unlicensed optometrist recommend him to private doctor or hospital, which unlicensed optometrist failed to do, issues were raised which precluded entry of summary judgment. *Evers* v. *Buxbaum etc.* (1958, 253 F. 2d 356, 102 U.S. App. D.C. 334).

§ 2–502. Practice of optometry without license prohibited—Misrepresentation—False impersonation—Penalties.

It shall be unlawful for any person in the District of Columbia to engage in the practice of optometry or represent himself to be a practitioner of optometry, or attempt to determine by an examination of the eyes the kind of eyeglasses required by any person, or represent himself to be a licensed optometrist when not so licensed, or to represent himself as capable of examining the eyes of any person for the purpose of fitting glasses, excepting those hereinafter exempted, unless he shall have fulfilled the requirements and complied with the conditions of this chapter and shall have obtained a license from the District of Columbia Board of Optometry, created by this chapter; nor shall it be lawful for any person in the District of Columbia to represent that he is a lawful holder of a license as provided by this chapter when in fact he is not such lawful holder, or to impersonate any licensed practitioner of optometry, or shall fail to register the certificate as provided in section 2–513.

Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction for the first offense shall be fined not more than $500, and upon conviction for any subsequent offense shall be fined not less than $500 nor more than $1,000, or be imprisoned in the District jail not less than three months nor more than one year, or both, in the discretion of the court. Prosecutions for violations of this chapter shall be conducted in the name of the District of Columbia by the Corporation Counsel. (May 28, 1924, 43 Stat. 177, ch. 202, § 2; Nov. 8, 1965, 79 Stat. 1308, Pub. L. 89–347, § 7.)

CODIFICATION

Provisions of section 2 of act May 28, 1924, which made section effective six months after May 28, 1924, are omitted as obsolete.

AMENDMENT

1965—Section 7 of act Nov. 8, 1965, amended section by adding the last sentence.

EFFECTIVE DATE OF 1965 AMENDMENTS

The first sentence of section 11, act Nov. 8, 1965, provided: "Sections 5 through 8, inclusive [secs. 2–137, 2–407, 2–502 and 2–909] and section 10 [sec. 20–2301 note] shall take effect thirty days from the approval of this Act, but shall not in any case apply to proceedings instituted prior to the approval of this Act."

CROSS REFERENCES

Construction of terms, see § 2–521.
Persons exempted, see § 2–520.

NOTES TO DECISIONS

Action for negligence

In action for negligence in treatment of eye condition brought against licensed optometrist and unlicensed optometrist, who referred plaintiff to licensed optometrist, who tested his eyes and reported results of test to unlicensed optometrist and informed him of existence of a "possible pathology" and suggested that unlicensed optometrist recommend him to private doctor or hospital, which unlicensed optometrist failed to do, issues were raised which precluded entry of summary judgment. *Evers* v. *Buxbaum etc.* (1958, 253 F. 2d 356, 102 U.S. App. D.C. 334).

Application

The licensing statute for optometrists does not prevent a corporation from furnishing to its customers or clients the services of a licensed optometrist, since the profession of optometry is not a "learned profession" but relates to the measurement of the powers of vision and the adaptation of lenses thereto. *Silver* v. *Lansburgh & Bro.* (1940, 111 F. 2d 518, 72 App. D.C. 77).

Indictment and information

In prosecution for practicing optometry without a license, information, which followed statutory phraseology, was sufficient. *Blohm* v. *District of Columbia* (D.C. Mun. App. 1955, 113 A. 2d 111).

Evidence sustained conviction for practicing optometry without a license. *Id.*

§ 2–503. Board of Optometry — Qualifications — Tenure—Oath—Removal.

The Commissioners of the District of Columbia shall appoint a Board of Optometry consisting of five persons to be selected from a list of ten optometrists submitted by a majority vote at some regular meeting of the District of Columbia Optometric Society, each of whom shall be a citizen of the United States, over the age of twenty-one years, actually engaged in the practice of optometry as defined in section 2–501, and who shall have been engaged in the actual and continuous practice of the same in the District of Columbia for at least three years next preceding his appointment. The said Board of Optometry shall be so appointed within thirty days after May 28, 1924, and of the first appointees the said Commissioners shall designate two, who shall serve for a term of one year, two for a term of two years, and one for a term of three years from the date of said appointment, and each

year thereafter the commissioners shall appoint successors to those whose terms expire as members of said board to serve for a term of three years; and in case of death, resignation, or removal of any member, the vacancy for the unexpired term shall be filled by the said commissioners in the same manner as other appointments.

Each appointee to the Board of Optometry as hereinbefore provided for shall, within fifteen days from the date of his appointment, qualify by subscribing to the following oath of office before any officer authorized to administer oaths in the District of Columbia: "I do solemnly swear that I will faithfully, impartially, with fidelity and according to law, perform the duties of a member of the Board of Optometry of the District of Columbia, to the best of my ability, so help me God."

Upon such oath being filed with the Commissioners, they shall issue to said member a certificate of his appointment.

The Commissioners are herewith vested with authority to remove from office at any time any member of said Board for neglect of duty, incompetency, improper conduct, or when the license to practice optometry of any member of said Board shall have been suspended or revoked. (May 28, 1924, 43 Stat. 178, ch. 202, § 3.)

Cross References

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47–2344, 47–2345.

Honorariums to various board members and commissioners, see §§ 1–254 to 1–259.

§ 2–504. Organization—Meetings—Quorum.

At each annual meeting of the Board of Optometry the members shall organize by electing a president, vice president, and a secretary-treasurer, who shall hold office for one year or until their respective successors have been appointed and have qualified. Said Board shall hold its meetings at the end of every six months at such hour and place as it may designate for the examination of applicants for license to practice optometry in the District of Columbia, and for the transaction of such other business as may legally come before it; and may hold such additional meetings upon the call of the president of the said Board, or upon a call of a majority of the members of the Board as the same become necessary for the examination of applicants for licenses or for carrying into effect the provisions of this chapter. If the date of any of said meetings shall fall upon a Sunday or a legal holiday, said meeting shall be held on the first business day thereafter.

Three members of the Board shall constitute a quorum for the transaction of business, and should a quorum not be present on the day appointed for any meeting those present may adjourn from day to day until a quorum be present. (May 28, 1924, 43 Stat. 178, ch. 202, § 4.)

§ 2–505. By-laws and regulations.

The Board shall have authority and it shall be its duty to make all by-laws and necessary regulations for the proper discharge of its duties, and submit same to the Commissioners of the District of Columbia for approval. (May 28, 1924, 43 Stat. 179, ch. 202, § 5.)

Cross References

Power to change educational standards, see § 2–512.

Rules and regulations in general, see § 1–226 and notes.

§ 2–506. Secretary-treasurer to give bond.

Before entering upon the discharge of the duties of his office the secretary-treasurer of the Board shall give such bond for the performance of his duties as the Commissioners of the District of Columbia shall require, the premium of such bond to be paid from the funds in the possession of the board. (May 28, 1924, 43 Stat. 179, ch. 202, § 6.)

§ 2–507. Secretary-treasurer to receive compensation and pay expenses out of funds in custody of board.

The secretary-treasurer shall receive as compensation for his services an annual salary to be determined by the Board, which salary and all other expenses of the Board necessary in carrying out the provisions of this chapter shall be paid from the funds in the custody of the secretary-treasurer for the use of the Board upon requisition signed by the secretary-treasurer and countersigned by the president of the Board; and on the 30th day of June of each year if any surplus remains, the members of the Board shall be paid such reasonable compensation out of the funds in the custody of the board as the Commissioners of the District of Columbia may determine: *Provided, however,* That said compensation and expenses shall not exceed the amount received by the Board under the provisions of this chapter. (May 28, 1924, 43 Stat. 179, ch. 202, § 7.)

§ 2–508. Official seal—Records—Reports.

The District Board of Optometry shall have an official seal and shall keep a record of its proceedings, a record of registered optometrists and of licenses by it revoked. Its records shall be open to public inspection between the hours of nine and three o'clock of any business day, and it shall keep on file all examination papers for a period of one year after each examination. A transcript of an entry in such records, certified by the secretary-treasurer, under the seal of the board, shall be prima facie evidence of the facts therein stated. The Board shall on or before the 10th day of July in each year make a report to the Commissioners of the District of Columbia of its official acts during the preceding twelve months ending June 30, and of its receipts and disbursements, and a full and complete report of the conditions pertaining to optometry in the District of Columbia. (May 28, 1924, 43 Stat. 179, ch. 202, § 8.)

§ 2–509. Examination to practice optometry required.

Every person desiring to practice optometry or, if in practice on May 28, 1924, to continue the practice thereof except as herein otherwise provided, shall take an examination as provided in this chapter and shall fulfill the other requirements as in this chapter provided. (May 28, 1924, 43 Stat. 179, ch. 242, § 9.)

§ 2–510. Limited examination for those already practicing.

Any person who has been engaged in the practice of optometry for at least two full years (one of which must have been in the District of Columbia), immediately prior to May 28, 1924, who is more than twenty-one years of age and of good moral character, shall be entitled to take the limited examination covering the following only:

(a) The limitations of the sphere of optometry.

(b) The essential scientific instruments used in optometry.

(c) The form and power of lenses used in optometry.

(d) A correct method of measuring hypermetropia, myopia, astigmatism, and presbyopia.

(e) The writing of formulas or prescriptions for the adaptation of lenses in aid of vision.

Any person who has previously taken the limited examination and received certificate of the same as herein provided may also, if he so desires, take the standard examination at any time, any provisions in section 2–511 hereof to the contrary notwithstanding: *Provided, however,* That failure to pass the standard examination after having qualified under the limited examination as in this paragraph set forth shall not disqualify him as a lawful practitioner. (May 28, 1924, 43 Stat. 179, ch. 202, § 10.)

§ 2–511. Standard examination—Qualifications of applicants.

Any person over the age of twenty-one years, of good moral character, who has had a preliminary education equivalent to a two years' course in a first-grade high-school (which shall be determined either by examination or by certificate acceptable to the Board as to work done in such approved institution), and who is a graduate of a school of optometry in good standing (as determined by the Board and which maintains a course in optometry of not less than one thousand hours), shall be entitled to take the standard examination. Such standard examination shall consist of tests in—

(a) Practical optics.

(b) Theoretic optometry.

(c) Anatomy and physiology and such pathology as may be applied to optometry.

(d) Practical optometry.

(e) Theoretic and physiologic optics. (May 28, 1924, 43 Stat. 180, ch. 202, § 11.)

ADDITIONAL REQUISITES

The order of the Board of Commissioners dated Sept. 26, 1930, No. 317712, provided as follows:

Under the provisions of Section 12 (§ 2–512) of the act of Congress approved May 28, 1924, entitled "An Act to regulate the practice of Optometry in the District of Columbia", the Commissioners approved the request of the Board of Optometry provided for in said act, that Section 11 (§ 2–511) of the act be amended so as to increase the educational qualifications of applicants for license by said Board, the new section 11 (§ 2–511) to read as follows:

"Section 11. That any person over the age of twenty-one years, of good moral character, who has had a preliminary education equivalent to a four years course in a first-grade high school (which shall be determined either by examination or by certificate acceptable to the board as to work done in such approved institution), and who has attended and graduated from a school or college of Optometry in good standing (as determined by the board and which maintains a course in Optometry of not less than one thousand hours), shall be entitled to take the standard examination. Such standard examination shall consist of tests in (a) Practical optics, (b) Theoretic optometry, (c) Anatomy and physiology and such pathology as may be applied to optometry, (d) Practical optometry, (e) Theoretic and physiologic optics."

The order of the Board of Commissioners, dated Aug. 20, 1951, further provided as follows:

Ordered: Whereas, the Board of Optometry of the District of Columbia has proposed that the educational standards prescribed by Section 11 (§ 2–511) of the Act entitled "An Act to regulate the practice of optometry in the District of Columbia," approved May 28, 1924 (43 Stat. 177, ch. 202; title 2, ch. 5, D. C. Code, 1940 edition) be further amended or changed by requiring of each applicant for a license to practice optometry compliance with the following additional prerequisites:

1. Graduation from a school of optometry which maintains a course in optometry of not less than five years; and

2. Examination in the subjects of the "theory and practice of orthoptics and visual training" and the "theory and practice of contact lens fitting", it is

Ordered: That, pursuant to the provisions of section 12 (§ 2–512) of such Act, the proposed amendments or changes aforesaid be and are hereby approved, effective on and after September 30, 1951.

§ 2–512. Changes in educational standards authorized.

The Board, with the approval of the Commissioners of the District of Columbia, is authorized and empowered to alter, amend, and otherwise change the educational standards at any time, but in altering, amending, or changing said standards the board shall not be permitted to lower the same below the standards herein set forth. (May 28, 1924, 43 Stat. 180, ch. 202, § 12.)

§ 2–513. Application for license—Examinations—Issuance—Re-examinations—Display of license.

Every person desiring to be licensed as in this chapter provided shall file with the secretary-treasurer of the Board upon appropriate blank to be furnished by said secretary-treasurer an application accompanied by the recommendation of two reputable citizens, verified by oath, setting forth the facts which entitle the applicant to examination and license under the provisions of this chapter. The said Board shall hold at least two examinations each year. In case of failure at any standard examination the applicant, after the expiration of six months and within two years, shall have the privilege of taking a second examination by the Board without the payment of an additional fee. In case of failure at the limited examination hereinbefore provided for the applicant shall, after the expiration of six months and within two years, have the privilege of taking a second examination without the payment of an additional fee.

Every applicant who shall pass the standard examination or the limited examination, as the case may be, and who shall otherwise comply with the provisions of this chapter, shall receive from the said Board under its seal a license entitling him to practice optometry in the District of Columbia, which license shall be duly registered in a record book to be properly kept by the secretary-treasurer of the Board for that purpose which shall be open to public inspection. Each person to whom a certificate of license shall be issued by said Board shall keep same displayed in a conspicuous place in

his principal office or place of business wherein said person shall practice optometry, and shall, whenever required, exhibit the said certificate to any member or agent of the Board. (May 28, 1924, 43 Stat. 180, ch. 202, § 13; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 263, Pub. L. 89–243, § 5.)

AMENDMENT

1966—Act July 5, 1966, in first sentence of second paragraph, struck out requirement that a certified copy of the record be recorded in clerk's office of U. S. District Court, the requirement that such clerk keep a special book for purpose of recording said licenses, and the requirement that such clerk, upon application and payment of a fee of 50 cents, deliver a certificate of recordation to any person applying therefor.

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act July 5, 1966, as effective on first day of first month which is at least ninety days after July 5, 1966, see § 21 of such act, set out in note under § 1–504.

APPROPRIATIONS

Appropriations authorized to carry out purposes of act July 5, 1966, which amended this section, see § 20 of such act, set out in note under § 1–504.

§ 2–514. Fees for examination, registration, and renewals—Revocation of license—Reinstatement—Effect of temporary retirement.

The said Board shall charge the following fees for examinations, registrations, and renewals of certificates: The sum of $25 for a standard or a limited examination. Every registered optometrist who desires to continue the practice of optometry shall annually, on or before the 10th day of January of each year, pay to the secretary-treasurer of the Board a renewal registration fee to be fixed annually by the board, not to exceed $10, for which he shall receive a renewal of his certificate. In case of neglect to pay the renewal registration fee as herein provided the Board shall have authority to revoke such license and the holder thereof may be reinstated by complying with the conditions specified in this section, but no license or permit may be revoked without giving sixty days' notice to the delinquent, but the Board shall only have the right to renew such license on the payment of the renewal fee with penalty of $5: *Provided,* That retirement from practice for a period of not exceeding five years shall not deprive the holder of said license of the right to renew the same upon the payment of the fee herein required. (May 28, 1924, 43 Stat. 181, ch. 202, § 14.)

AUTHORITY TO CHANGE FEES

Commissioners authorized and empowered to increase or decrease, from time to time, the fees specified in this section, see §§ 1–252, 1–253.

CROSS REFERENCE

Refund of fees where license is refused, see § 47–1017.

§ 2–515. Board to have office in District of Columbia—Seal—Design of license.

The Board shall adopt a seal and license of suitable design and shall have an office in the District of Columbia where examinations shall be held and where all of the permanent records shall be kept. (May 28, 1924, 43 Stat. 181, ch. 202, § 15.)

§ 2–516. Licenses—Cancellation, revocation, suspension, and refusal to grant—Causes.

The Board may in its discretion refuse to grant a license to any applicant and may cancel, revoke, or suspend the operation of any license by it granted for any of the following reasons: The conviction of crime involving moral turpitude, habitual use of narcotics, or any other substance which impairs the intellect and judgment to such an extent as to incapacitate anyone for the duties of optometry, or for a conviction as provided in section 2–502. (May 28, 1924, 43 Stat. 181, ch. 202, § 16.)

CROSS REFERENCE

Revocation or suspension of license for violation of Uniform Narcotic Drug Act, see § 33–418.

§ 2–517. Notice to licensee—Hearing.

Any person who is the holder of a license or who is an applicant for a license against whom any charges are preferred shall be furnished by the Board with a copy of the complaint and shall have a hearing before the Board at which hearing he may be represented by counsel. At such hearing witnesses may be examined for and against the accused respecting such charges; the Board shall thereupon pass upon said charges. (May 28, 1924, 43 Stat. 181, ch. 202, § 17.)

§ 2–518. Reciprocity with other States.

Any applicant for a license who has been examined by the Board of Optometry in any of the states of the United States which through reciprocity similarly accredits the holder of a license issued by the Board of Optometry of the District of Columbia to the full privileges of practice within such state may on the payment of a fee of $25 to the said Board and on filing in the office of the board a true and attested copy of said license, certified by the president and secretary-treasurer of the said Board, showing the same and also showing that the standard of requirements adopted and enforced by said Board is equal to that provided by this chapter, shall without further examination receive the license: *Provided,* That such applicant has not previously failed at any examination held by the Board of Optometry of the District of Columbia. (May 28, 1924, 43 Stat. 181, ch. 202, § 18.)

AUTHORITY TO CHANGE FEES

Commissioners authorized and empowered to increase or decrease, from time to time, the fees specified in this section, see §§ 1–252, 1–253.

§ 2–519. Holder of license not entitled to use any title or degree by virtue of such license.

Nothing in this chapter shall be construed as conferring on the holder of any license issued by said board the right to use any title or any word or abbreviation indicating that he is engaged in the practice of medicine, surgery, or the treatment of the eye, of the diagnosis of diseases of or injuries to the

human eye, or the writing or issuing of prescriptions for the obtaining of drugs or medicine in any form for the treatment or examination of the human eye. (May 28, 1924, 43 Stat. 182, ch. 202, § 19.)

NOTES TO DECISIONS

Action for negligence

In action for negligence in treatment of eye condition brought against licensed optometrist and unlicensed optometrist, who referred plaintiff to licensed optometrist, who tested his eyes and reported results of test to unlicensed optometrist and informed him of existence of a "possible pathology" and suggested that unlicensed optometrist recommend him to private doctor or hospital, which unlicensed optometrist failed to do, issues were raised which precluded entry of summary judgment. *Evers* v. *Buxbaum etc.* (1958, 253 F. 2d 356, 102 U.S. App. D.C. 334).

§ 2-520. Physicians, surgeons, persons selling spectacles or eyeglasses not to be governed by this chapter.

The provisions of this chapter shall not apply—

(a) To physicians and surgeons practicing under authority or license issued under the laws of the District of Columbia for the practice of medicine and surgery.

(b) To persons selling spectacles and (or) eyeglasses and who do not attempt either directly or indirectly to adapt them to the eye, and who do not practice or profess the practice of optometry. (May 28, 1924, 43 Stat. 182, ch. 202, § 20.)

NOTES TO DECISIONS

Action for negligence

In action for negligence in treatment of eye condition brought against licensed optometrist and unlicensed optometrist, who referred plaintiff to licensed optometrist, who tested his eyes and reported results of test to unlicensed optometrist and informed him of existence of a "possible pathology" and suggested that unlicensed optometrist recommend him to private doctor or hospital, which unlicensed optometrist failed to do, issues were raised which precluded entry of summary judgment. *Evers* v. *Buxbaum etc.* (1958, 253 F. 2d 356, 102 U.S. App. D.C. 334).

§ 2-521. Construction—Singular number to include plural—Masculine gender to include feminine.

Wherever in this chapter the singular number is used it shall be interpreted as meaning either singular or plural if compatible with the sense of the language used, and when in this chapter the masculine gender is used it shall be construed as meaning also the feminine gender if not inconsistent with such use. (May 28, 1924, 43 Stat. 182, ch. 202, § 21.)

§ 2-522. Separability of provisions.

If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder thereof, and the application of such provisions to other persons or circumstances, shall not be affected thereby. (May 28, 1924, 43 Stat. 182, ch. 202, § 22.)

Chapter 6.—PHARMACY

Sec.

2-601. Pharmacy regulations—Sale of drugs restricted—Licensed pharmacists in drug stores—Physicians, dentists, and veterinarians exempt—Sale of poisons—Permits to sell—Sales by minors—Sale of household drugs—Patent medicine.

Sec.

2-602. Application for licenses—Sworn statement of qualifications—Examination—Minimum age and experience—College graduation—Recognition of any school of pharmacy.
2-603. Issuance of license.
2-604. Registered pharmacists from other jurisdictions.
2-605. Revocation of license—Grounds—Procedure.
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2-612. Restrictions on sale or delivery of poisonous compounds — Records of sales — Use of "poison labels"—"Poison bottles"—Exceptions.
2-613. Fraudulent representations to procure drugs.
2-614. Preservation of prescriptions — Copies — Inspection—Directions for use on label.
2-615. Peddling or leaving on streets or property of drugs, prohibited.
2-616. Use of title of pharmacists or description of like import permitted to licensed persons only.
2-617. Penalties—Enforcement.

§ 2-601. Pharmacy regulations—Sale of drugs restricted—Licensed pharmacists in drug stores—Physicians, dentists, and veterinarians exempt—Sale of poisons—Permits to sell—Sales by minors—Sale of household drugs—Patent medicine.

It shall be unlawful for any person not licensed as a pharmacist within the meaning of this chapter to conduct or manage any pharmacy, drug or chemical store, apothecary shop, or other place of business for the retailing, compounding, or dispensing of any drugs, chemicals, or poisons, or for the compounding of physicians' prescriptions, or to keep exposed for sale, at retail, any drugs, chemicals, or poisons, except as hereinafter provided; or, except as hereinafter provided, for any person not licensed as a pharmacist within the meaning of this chapter to compound, dispense, or sell, at retail, any drug, chemical, poison, or pharmaceutical preparation upon the prescription of a physician, or otherwise, or to compound physicians' prescriptions, except as an aid to and under the proper supervision of a pharmacist licensed under this chapter. And it shall be unlawful for any owner or manager of a pharmacy, drug store, or other place of business to cause or permit any person other than a licensed pharmacist to compound, dispense, or sell, at retail, any drug, medicine, or poison, except as an aid to and under the proper supervision of a licensed pharmacist: *Provided,* That nothing in this section shall be construed to interfere with any legally registered practitioner of medicine, dentistry, or veterinary surgery in the compounding of his own prescriptions, or to prevent him from supplying to his patients such medicines as he may deem proper; nor with the exclusively wholesale business of any dealer who

shall be licensed as a pharmacist, or who shall keep in his employ at least one person who is so licensed, except as hereinafter provided; nor with the sale by others than pharmacists of poisonous substances sold exclusively for use in the arts, or as insecticides, when such substances are sold in unbroken packages bearing labels having plainly printed upon them the name of the contents, the word "poison," when practicable the name of at least one suitable antidote, and the name and address of the vendor: *Provided further,* That such person, firm, or corporation has obtained a permit from the Board of Pharmacy, which grants the right and privilege to make such sales, such permit to be issued for a period of three years, and that each sale of such substance be registered as required of a licensed pharmacist, and it shall be unlawful for any person under the age of twenty-one years to sell such substances, and in no case shall the sale be made to a person under eighteen years of age except upon the written order of a person known or believed to be an adult: *And provided further,* That persons other than registered pharmacists may sell household ammonia and concentrated lye, in sealed containers plainly labeled, so as to indicate the nature of the contents with the word "poison," and with a statement of two or more antidotes to be used in case of poisoning, and may sell bicarbonate of soda, borax, cream of tartar, olive oil, sal ammoniac, and sal soda; and persons other than registered pharmacists may, furthermore sell in original sealed containers, properly labeled, such compounds as are commonly known as "patent" or "proprietary" medicines, except those the sale of which is regulated by the provisions of sections 2–610 and 2–612. (May 7, 1906, 34 Stat. 175, ch. 2084, § 1.)

CROSS REFERENCES

Business licenses required, see §§ 47–2301 to 47–2350.

Exempted from operation of Healing Arts Practice Act, see § 2–101.

Uniform Narcotic Drug Act, see § 33–401 et seq.

NOTES TO DECISIONS

Character Evidence in drug prosecution

In prosecution of defendant who was not licensed pharmacist for dispensing drugs, question put to police officer on cross-examination by defense counsel as to whether defendant had a record for narcotics was not the proper way to elicit character evidence and should have been stricken as irrelevant but once admitted, the question placed defendant's character in issue, and answer to effect that defendant had no previous narcotics record tended to establish defendant's good character and prosecution had the right to rebut such testimony. *Adams* v. *District of Columbia and United States* (D. C. Mun. App. 1957, 134 A. 2d 645).

Evidence

In prosecution of defendant who was not licensed pharmacist for dispensing drugs, evidence was sufficient to establish continuous custody of the drugs up until the time of trial, even though inspector for Food and Drug Administration who received evidence in Washington and delivered it to Food and Drug Administration located in Baltimore did not testify. *Adams* v. *District of Columbia and United States* (D. C. Mun. App. 1957, 134 A. 2d 645).

Instructions to jury

In prosecution of defendant who was not licensed pharmacist for dispensing drugs, where evidence was admitted that defendant had been previously convicted for unauthorized use of an automobile, carrying a deadly weapon, and robbery, trial court's failure in not immediately correcting mistaken testimony about robbery conviction to show that actual conviction was for assault was not prejudicial error in view of trial judge's corrective instruction to jury at close of prosecution's case. *Adams* v. *District of Columbia and United States* (D. C. Mun. App. 1957, 134 A. 2d 645).

Practicing pharmacy without a license

The Municipal Court for the District of Columbia has inherent power to entertain a motion to vacate a sentence partially or totally void even after expiration of the term at which it was entered. *Ingols* v. *District of Columbia* (D. C. Mun. App. 1954, 103 A. 2d 879).

Prejudicial error

In prosecution of defendant who was not licensed pharmacist for dispensing drugs, defense counsel's eliciting of testimony on cross-examination that defendant had no record of narcotics violations placed defendant's character in issue only to extent of character trait involved and admission of prosecution's evidence that defendant had prior convictions unrelated to narcotics was error but such error was not prejudicial in view of defendant's prior intent to testify and his testimony where his record was admitted for purpose of affecting his credibility. *Adams* v. *District of Columbia and United States* (D. C. Mun. App. 1957, 134 A. 2d 645).

§ 2–602. Application for licenses—Sworn statement of qualifications—Examination—Minimum age and experience—College graduation—Recognition of any school of pharmacy.

Every person not registered under an act to regulate the practice of pharmacy in the District of Columbia, approved June 15, 1878 (20 Stat. 137), who shall desire to be licensed as a pharmacist shall file with the Board of Pharmacy an application, duly verified under oath, setting forth the name and age of the applicant, the experience which the applicant has had in compounding physicians' prescriptions under the direction of a licensed pharmacist, and the name and location of the school or college of pharmacy of which he is a graduate and shall submit evidence sufficient to show to the satisfaction of said board that he is of good moral character and not addicted to the use of alcoholic liquors or narcotic drugs so as to render him unfit to practice pharmacy; and said applicant shall appear at a time and place designated by the Board of Pharmacy aforesaid and submit to an examination as to his qualifications for license as a pharmacist: *Provided,* That applicants shall be not less than twenty-one years of age, and in order to be entitled to an examination for the determination of his fitness to be licensed as a pharmacist in the District of Columbia, must have had not less than three years' experience in the practice of pharmacy under the instruction of a regular licensed pharmacist; and must be a graduate of an accredited school or college of pharmacy: *Provided, however,* That the Board of Pharmacy, in its discretion, may establish, by general rules, conditions upon compliance with which by any school or college of pharmacy, and under the submission by said school or college of evidence sufficient to prove such compliance to the satisfaction of said Board, applicants who have been graduated by such school or college during any specified year or years may be allowed credit for experience in the practice of pharmacy by reason of attendance at and graduation by said school or college. (May 7, 1906, 34 Stat. 176, ch. 2084, § 3; Feb. 27, 1907, 34 Stat. 1006, ch. 2085, § 3; Mar. 4, 1927, 44 Stat. 1413, ch. 497, § 2.)

CODIFICATION

Section 2 of act May 7, 1906, is omitted as obsolete. It provided as follows: "Every person registered on May 7, 1906, as a pharmacist in the District of Columbia, under an Act to regulate the practice of pharmacy in the District of Columbia, approved June fifteenth, eighteen hundred and seventy-eight (20 Stat. 137), shall be entitled to be licensed under this Act without examination or payment of fee, provided that he make application therefor on or before the thirty-first day of December, 1906. Any person registered as aforesaid shall, until said date, by virtue of such registration be entitled to all the rights, privileges, and immunities to which pharmacists licensed under this Act are entitled, and be subject to all the obligations and duties of such licentiates."

AMENDMENTS

1927—Act Mar. 4, 1927, added first proviso.

1907—Act Feb. 27, 1907, changed the name "Board of Pharmaceutical Examiners" to "Board of Pharmacy," deleted provisions which related to licensing of pharmacists intending to limit their practice to compounding and dispensing homeopathic remedies and prescriptions, and added second proviso.

§ 2–603. Issuance of license.

If the applicant for license as a pharmacist has complied with the requirements of either of the two preceding sections, the Board of Pharmacy shall issue to him a license which shall entitle him to practice pharmacy in the District of Columbia, subject to the provision of this chapter. (May 7, 1906, 34 Stat. 176, ch. 2084, § 4; Feb. 27, 1907, 34 Stat. 1005, ch. 2085, § 1.)

REFERENCES IN TEXT

The words "two preceding sections", referred to in the text, mean sections 2 and 3 of act May 7, 1906, and are contained in this code as follows: § 2 appears in the Codification Note to § 2–602; § 3, as now amended, appears as § 2–602.

AMENDMENT

1907—Act Feb. 27, 1907, changed the name "Board of Pharmaceutical Examiners" to "Board of Pharmacy." The section as originally enacted reads as follows: "That the Board of Pharmaceutical Examiners of the District of Columbia, created under the provisions of an act to regulate the practice of pharmacy and the sale of poisons, and for other purposes, approved May 7, 1906, be, and is hereby, vested with each and every power, right, duty, and function with respect to the issue of licenses to practice pharmacy and to the revocation of such licenses and with respect to the issue of permits for the sale of poisons as are by said Act now vested in the Board of Supervisors in Medicine and Pharmacy of said District; and the name and title of said Board of Pharmaceutical Examiners is hereby changed to the Board of Pharmacy of the District of Columbia, and the Board of Supervisors aforesaid is hereby divested of every power, right, duty, and function aforesaid, and the name and title of said board is hereby changed to the Board of Medical Supervisors of the District of Columbia. From and after the taking effect of this act, the membership of the president of the Board of Pharmaceutical Examiners on the Board of Supervisors aforesaid shall cease and determine."

CROSS REFERENCE

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47–2344, 47–2345.

§ 2–604. Registered pharmacists from other jurisdictions.

The Board of Pharmacy shall issue licenses to practice pharmacy in the District of Columbia without examination, or after limited examination, as said board may determine, to such persons as have been legally registered or licensed as pharmacists in states, territories, or foreign countries: *Provided,* That the applicant for such license present satisfactory evidence of qualifications equal to those required of licentiates examined under this chapter, and that he was registered or licensed after examination in such state, territory, or foreign country not less than one year prior to the date of application; that the standard of competence required in such state, territory, or foreign country is not lower than that required in the District of Columbia, and that such state, territory, or foreign country accords similar recognition to licentiates of the District of Columbia, all of which shall be determinable by the Board of Pharmacy aforesaid. Applicants for license under this section shall forward with their application a fee of ten dollars. (May 7, 1906, 34 Stat. 177, ch. 2084, § 5; Feb. 27. 1907, 34 Stat. 1005, ch. 2085, § 1.)

AMENDMENT

1907—Act Feb. 27, 1907, changed the name "Board of Pharmaceutical Examiners" to "Board of Pharmacy."

AUTHORITY TO CHANGE FEES

Commissioners authorized and empowered to increase or decrease, from time to time, the fees specified in this section, see §§ 1–252, 1–253.

§ 2–605. Revocation of license—Grounds—Procedure.

The license of any person to practice pharmacy in the District of Columbia may be revoked if such person be found to have obtained such license by fraud; or to be addicted to the use of any narcotic or stimulant, or to be suffering from physical or mental disease, in such manner and to such an extent as to render it expedient that in the interests of the public his license be canceled; or to be of an immoral character; or if such person be convicted in any court of competent jurisdiction of any offense involving moral turpitude. It shall be the duty of the major and superintendent of police of said District to investigate any case in which it is discovered by him, or made to appear to his satisfaction, that any license issued under the provision of this chapter is revocable and to report the result of such investigation to the Board of Pharmacy, which board shall, after full hearing, if in their judgment the facts warrant it, revoke such license. (May 7, 1906, 34 Stat. 177, ch. 2084, § 6; Feb. 27, 1907, 34 Stat. 1006, ch. 2085, § 3.)

AMENDMENT

1907—Act Feb. 27, 1907, changed the name "Board of Pharmaceutical Examiners" to "Board of Pharmacy."

TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under section 4–103.

CROSS REFERENCE

Revocation or suspension of license for violation of Uniform Narcotic Act, see § 33–418.

§ 2–606. Renewal of licenses or permits to sell poisons—Renewal obtained by fraud—Failure of board to renew—Hearings—Attendance of witnesses—Report of findings—Revocation of license—Review in District of Columbia Court of Appeals—Public display of license.

In the month of November of each year every licensed pharmacist and every licensed dealer in poisons for use in the arts or as insecticides, whose license or permit has been issued not less than three years prior to the first day of such month, shall apply to the Board of Pharmacy for the renewal of

such license or permit. And said Board is hereby authorized, upon the payment of such fees as are hereinafter provided, to renew such license or permit in the month of November for a period of three years from the 31st day of October immediately preceding the date thereof. And every license or permit not renewed within the month of November as aforesaid shall be void and of no effect unless and until renewed. Any license, permit, or renewal obtained through fraud or by any false or fraudulent representation shall be void and of no effect. No person shall make any false or fraudulent representation for the purpose of procuring a license, permit, or renewal thereof either for himself or for another.

In the event the board shall fail or refuse to renew any license or permit within the month of November, for which application has been made, it shall make written record of the reasons for such nonrenewal. Upon request of the person seeking renewal of his license or permit, the Board shall grant a hearing, and the applicant shall have the right to be represented by counsel, introduce evidence, and examine and cross-examine witnesses. The secretary of the Board is hereby empowered to administer oaths.

The said Board shall have power to require the attendance of persons and the production of books and papers and to require such persons to testify in any and all matters within its jurisdiction. The chairman and the secretary of the Board shall have power to issue subpoenas, and upon the failure of any person to attend as a witness when duly subpoenaed or to produce documents when duly directed by said Board, the board shall have power to refer the said matter to any judge of the United States District Court for the District of Columbia, who may order the attendance of such witness or the production of such books and papers or require the said witness to testify, as the case may be; and upon the failure of the witness to attend, to testify, or to produce such books or papers, as the case may be, such witness may be punished for contempt of court as for failure to obey a subpoena issued or to testify in a case pending before said court.

The board shall make a written report of its findings after such hearing, which report, with a transcript of the entire record of the proceedings, shall be filed with the Commissioners of the District of Columbia, and, if the board's finding is adverse to the person seeking reissuance of his license or permit, the license or permit shall stand revoked and annulled at the expiration of thirty days from the filing of the report, unless a petition for review is filed in the District of Columbia Court of Appeals, and a stay is granted, in the manner provided by sections 11–742, 17–303, 17–304, 17–305(b), 17–306 and 17–307 of the District of Columbia Code.

Every license to practice pharmacy and every permit to sell poisons for use in the arts or as insecticides and every current renewal of such permit shall be conspicuously displayed by the person to whom the same has been issued in the pharmacy, drug store, or place of business, if any, of which the said person is the owner or manager. (May 7, 1906, 34 Stat. 177, ch. 2084, § 7; Mar. 4, 1927, 44 Stat. 1414, ch. 497, § 3; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 31, 1954, 68 Stat. 1048, ch. 1173, § 1; July 8, 1963, 77 Stat. 78, Pub. L. 88–60, § 6; Dec. 23, 1963, 77 Stat. 616, Pub. L. 88–241, § 4.)

AMENDMENTS

1963—Section 4 of act Dec. 23, 1963, amended the fourth paragraph of the section generally. It also struck out the fifth paragraph of the section.

1927—Act Mar. 4, 1927, added the second, third, fourth, and fifth paragraphs.

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "any judge of the United States District Court for the District of Columbia" for "any justice of the District Court of the United States for the District of Columbia."

"Municipal Court of Appeals for the District of Columbia" and "Municipal Court of Appeals" were substituted for United States Court of Appeals for the District of Columbia" and "Court of Appeals," respectively, in view of act Aug. 31, 1954, which vested exclusive jurisdiction to review orders of the Board in the Municipal Court of Appeals.

Act July 8, 1963, § 6, substituted "District of Columbia Court of Appeals" for "Municipal Court of Appeals for the District of Columbia". Provisions identical with those of said section 6 were contained in act Oct. 23, 1962, 76 Stat. 1172, Pub. L. 88–873, § 6, which was repealed by act Dec. 23, 1963, 77 Stat. 620, Pub. L. 88–241, § 21(a).

CROSS REFERENCE

Regulation of sale of narcotic drugs, Uniform Narcotic Drug Act, see § 33–418.

NOTES TO DECISIONS

Hearing requirements

The prescribed hearing following Board of Pharmacy's denial of pharmacist's application for a three-year renewal of his license, although only an administrative proceeding and not surrounded by the same formality as a court trial, must not lack rudimentary requirements of fair play. *Feldman* v. *Board of Pharmacy of Dist. of Columbia* (D.C. Mun. App. 1960, 160 A. 2d 100).

The hearing which pharmacist may request following Board of Pharmacy's denial of pharmacist's application for a three-year renewal of his license is provided to comply with the requirements of due process. *Id.*

Where decision of Board of Pharmacy was not rendered until four years after the hearing on denial of pharmacist's application for a renewal of his license, and four of the five board members present at the hearing had been replaced by the time the decision was rendered, decision of the board, relying heavily as it did on the credibility of witnesses and based upon a reading of the record only, could not be sustained. *Id.*

Illegal practice

District of Columbia Board of Pharmacy should not have permitted person, who had practiced pharmacy illegally for more than five years, to apply for renewal of his pharmacist's license which had, for such period, been void. *Hendelberg* v. *Goldstein et al.* (1954, 211 F. 2d 428, 93 U.S. App. D.C. 395).

Renewal

Failure of District of Columbia Board of Pharmacy to act on pharmacist's license renewal application in the November in which such license could be renewed does not deprive Board of authority later to grant a timely filed application, but, to preserve such authority, Board must record in such month of November reason for failing or refusing to act in such month. *Hendelberg* v. *Goldstein et al.* (1954, 211 F. 2d 428, 93 U.S. App. D.C. 395).

Under District of Columbia law, if District Board of Pharmacy refuses to grant, during month following expiration of pharmacist's license, application for renewal filed in such month, Board must record reason for such failure or refusal and may thereafter grant renewal upon such application. *Id.*

§ 2–607. Board of Pharmacy—Creation—Appointment—Tenure—Removal—Oath—Meetings—Seal — Bond of treasurer—Duty to examine applicants.

There shall be in and for the District of Columbia a Board of Pharmacy, consisting of five licensed pharmacists, appointed by the Commissioners of said District, each of whom shall have been for the five years immediately preceding, and shall be during the term of his appointment, actively engaged in the practice of pharmacy in said District. All appointments shall be made in such manner that the term of office of one member of the Board shall expire on the thirtieth day of June of each year, but every member shall hold office after the expiration of the term for which he has been formally appointed until his successor has been appointed and qualified. No appointee shall enter upon the discharge of his duties until he has taken oath fairly and impartially to perform the same. Said Commissioners may remove, after full hearing, any member of said Board for neglect of duty or other just cause.

Annually the Board shall organize by the election of a president, a secretary, and a treasurer who shall be members of said Board, who shall hold office for one year and until their successors shall have been elected and qualified. Said Board shall have a common seal; and said treasurer shall give such bond for the faithful performance of his duties as the Commissioners of the District of Columbia deem necessary. Said Bcard shall hold meetings for the examination of candidates and for the discharge of such other business as may come before it, commencing on the second Thursdays in January, April, July, and October of each year and at such other times as the Board of Pharmacy shall direct; and said Board of Pharmacy shall examine all applicants for license to practice pharmacy. (May 7, 1906, 34 Stat. 177, ch. 2084, § 8; Feb. 27, 1907, 34 Stat. 1005, ch. 2085, §§ 1, 2.)

AMENDMENT

1907—Act Feb. 27, 1907, changed the name of the "Board of Pharmaceutical Examiners" to "Board of Pharmacy", added the words "and a treasurer" in the second line of the second paragraph and the second sentence of the second paragraph, and deleted words providing for procedure for reports to the prior-existing Board of Supervisors in Medicine and Pharmacy.

CROSS REFERENCE

Honararіums to various board members and commissioners, see §§ 1–254 to 1–259.

§ 2–608. Board of Pharmacy to have same powers as Commission on Licensure to Practice the Healing Art—Accounting—Records—Reports.

Said Board of Pharmacy shall have all such rights, powers, and duties with respect to the examination of applicants for license as pharmacists and with reference to the issue of licenses to practice pharmacy and of permits to sell poisons for use in the arts or as insecticides as the said board (Commission on Licensure to Practice the Healing Arts in the District of Columbia) has with reference to the examination of applicants for license to practice medicine, surgery, and midwifery, and with reference to the issue of licenses to such persons, except in so far as may be inconsistent with the provisions of this chapter. The treasurer of said Board shall render to said commissioners accounts of his receipts and disbursements from time to time as said Commissioners shall direct. Said Board shall keep records of its proceedings, and such records shall be prima facie evidence of all matters contained therein in all courts in the District of Columbia. Said Board shall in the month of July of each year, make to the Commissioners of the District of Columbia a written report of its proceedings, of its receipts and disbursements, and of all licenses and permits issued. (May 7, 1906, 34 Stat. 178, ch. 2084, § 9; Feb. 27, 1907, 34 Stat. 1005, ch. 2085, § 1)

CODIFICATION

The words "said board" which are followed by the words in parentheses are contained in act May 7, 1906, and, in that act, refer to the Board of Medical Supervisors as it existed prior to act May 7, 1906. The act of June 3, 1896, 29 Stat. 198, ch. 313, created this Board and defined its powers, but, presumably, this Board has been superseded and its duties and powers transferred to the Commission on Licensure by act Feb. 27, 1929, 45 Stat. 1329, ch. 352, § 12 (§ 2–109).

AMENDMENT

1907—Act Feb. 27, 1907, changed the name "Board of Pharmaceutical Examiners" to "Board of Pharmacy" and vested in the new Board all the powers, rights, duties, and functions with respect to the issuance and revocation of licenses to practice pharmacy and permits to sell poisons vested by act May 7, 1906, in the Board of Supervisors in Medicine and Pharmacy. Provisions concerning the election of a secretary and a treasurer and the treasurer's bond were superseded and similar provisions are now contained in § 2–607.

CROSS REFERENCE

Commission on Licensure to Practice the Healing Art in the District of Columbia, see § 2–101 et seq.

§ 2–609. Fees—Expenses—Compensation of Board.

Applicants for license to practice pharmacy and for permits to sell poisons for use in the arts or as insecticides shall pay the following fee: For examination for license as pharmacist, $15, and for each renewal thereof $3; for a permit for the sale of poisons for use in the arts or as insecticides, $1. and for each renewal thereof, 50 cents.

All fees for licenses to practice pharmacy and all fees aforesaid shall be paid to the treasurer of the Board of Pharmacy of the District of Columbia before any applicant may be admitted to examination and before any license or permit, or any renewal thereof, may be issued by the said Board. And all expenses of said Board incident to the execution of the provisions of this chapter shall be paid from the fees collected by the Board of Pharmacy aforesaid. If any balance remains on hand on the 30th day of June of any year the members of said board appointed as such shall be paid therefrom such reasonable amounts as the Commissioners of the District of Columbia may determine. (May 7, 1906, 34 Stat. 179, ch. 2084, § 10; Feb. 27, 1907, 34 Stat. 1005, ch. 2085, § 1; Mar. 4, 1927, 44 Stat. 1415, ch. 497, § 4.)

AMENDMENTS

1927—Act Mar. 4, 1927, raised the application fee for examination for license from $10 to $15, deleted parts concerning the former Board of Supervisors in Medicine and Pharmacy, and deleted the last sentence which provided for the disposition of any balance of funds.

1907—Act Feb. 27, 1907, changed the name "Board of Pharmaceutical Examiners" to "Board of Pharmacy."

AUTHORITY TO CHANGE FEES

Commissioners authorized and empowered to increase or decrease, from time to time, the fees specified in this section, see §§ 1–252, 1–253.

CROSS REFERENCE

Refund of fees where license is refused, see § 47–1017.

§ 2–610. Sale of cocaine, morphine, opium, chloral hydrate, or compounds thereof, restricted—Prescription—Filling and refilling prescription—Exceptions—Wholesale trade.

It shall be unlawful for any person, by himself, or by his servant or agent, or as the servant or agent of any other person, or of any firm or corporation, to sell, furnish, or give away any cocaine, salts of cocaine, or preparation containing cocaine or salts of cocaine; morphine, salts of morphine, or preparation containing morphine or salts of morphine; or any opium, or preparation containing opium; or any chloral hydrate, or preparation containing chloral hydrate, except upon the original written order or prescription of a lawfully authorized practitioner of medicine, dentistry, or veterinary medicine, which order or prescription shall be dated and shall contain the name of the person for whom prescribed, or, if ordered by a practitioner of veterinary medicine, shall state the kind of animal for which ordered, and shall be signed by the person giving the order or prescription. Such order or prescription shall be, for a period of three years, retained on file by the person, firm, or corporation who compounds or dispenses the article ordered or prescribed, and it shall not be compounded or dispensed after the first time, except upon the written order of the original prescriber: *Provided,* That the above provisions shall not apply to preparations containing not more than two grains of opium, or not more than one-quarter grain of morphine, or not more than one-quarter grain of cocaine, or not more than two grains of chloral hydrate in the fluid ounce, or, if a solid preparation, in one avoirdupois ounce. The above provisions shall not apply to preparations sold in good faith for diarrhea and cholera, each bottle or package of which is accompanied by specific directions for use and caution against habitual use, nor to liniments or ointments sold in good faith as such when plainly labeled, "for external use only," nor to powder of ipecac and opium, commonly known as Dover's powder, when sold in quantities not exceeding twenty grains: *Provided further,* That the above provisions shall not apply to sales at wholesale by jobbers, manufacturers, and retail druggists to retail druggists, hospitals, colleges, and scientific or public institutions. (May 7, 1906, 34 Stat. 179, ch. 2084, § 11.)

CROSS REFERENCE

Uniform Narcotic Drug Act, see §§ 33–401 to 33–427.

§ 2–611. Physicians, dentists, and veterinarians restricted in prescribing cocaine, morphine, opium, chloral hydrate, or compounds thereof.

No physician in the District of Columbia, knowing or when he might by reasonable inquiry know, that any person is addicted to the use of cocaine, morphine, opium, or chloral hydrate, shall furnish to or for the use of such person, or prescribe for such person, the drug aforesaid, to the use of which such person is addicted, or any compound thereof, or any preparation containing the same, except as it may be necessary to furnish or prescribe such drug, compound, or preparation aforesaid for the cure of drug addiction aforesaid, or for the treatment of disease, injury, or deformity: *Provided,* That no physician shall be convicted under the provisions of this section who shows to the satisfaction of the court before which he is tried that, having exercised due diligence and acting in good faith, he furnished or prescribed such drug, compound, or preparation aforesaid believing the same to be necessary for the cure of drug addiction aforesaid, or for the treatment of disease, injury, or deformity, and for no other purpose whatsoever. No dentist shall furnish or prescribe any drug, compound, or preparation aforesaid to, or for the use of, any person not under his treatment in the regular course of his professional work, nor in any case otherwise than may be required by such work. No practitioner of veterinary medicine shall furnish or prescribe any drug, compound, or preparation aforesaid for the use of any human being, or when he has reasonable ground for believing that the drug, compound, or preparation aforesaid is desired or intended for the use of any human being: *Provided further,* That nothing in this section contained shall be construed to give to dentists or to practitioners of veterinary medicine the right to furnish or prescribe any drug, compound, or preparation whatsoever otherwise than as is usual and customary in the practice of dentistry and veterinary medicine, respectively. (May 7, 1906, 34 Stat. 180, ch. 2084, § 12.)

CROSS REFERENCE

Uniform Narcotic Drug Act, see §§ 33–401 to 33–427.

§ 2–612. Restrictions on sale or delivery of poisonous compounds—Records of sales—Use of "poison labels"—"Poison bottles"—Exceptions.

It shall be unlawful for any person to sell or deliver to any other person any of the following described substances, or any poisonous compound, combination, or preparation thereof, to wit: The compounds of and salts of antimony, arsenic, barium, chromium, copper, gold, lead, mercury, silver, and zinc; the caustic hydrates of sodium and potassium, solution or water of ammonia, methyl alcohol, paregoric, the concentrated mineral acids, oxalic and hydrocyanic acids and their salts, yellow phosphorus, Paris green, carbolic acid, the essential oils of almonds, pennyroyal, tansy, rue, and savin; croton oil, creosote, chloroform, cantharides, or aconite, belladonna, bitter almonds, colchicum, cotton root, cocculus indicus, conium, cannabis indica, digitalis, ergot, hyoscyamus, ignatia, lobelia, nux vomica, physostigma, phytolacca, strophanthus, stramonium, veratrum viride, or any of the poisonous alkaloids or alkaloidal salts derived from the foregoing, or any other poisonous alkaloids or their salts, or any other virulent poison, except in the manner following, and, moreover, if the applicant be less than eighteen years of age, except upon the written order of a person known or believed to be an adult.

It shall first be learned, by due inquiry, that the person to whom delivery is about to be made is aware of the poisonous character of the substance, and that it is desired for a lawful purpose, and the box, bottle, or other package shall be plainly labeled with the name of the substance, the word "poison,"

the name of at least one suitable antidote when practicable, and the name and address of the person, firm, or corporation dispensing the substance. And before delivery be made of any of the foregoing substances, excepting solution or water of ammonia, and sulphate of copper, there shall be recorded in a book kept for that purpose the name of the article, the quantity delivered, the purpose for which it is to be used, the date of delivery, the name and address of the person for whom it is procured, and the name of the individual personally dispensing the same; and said book shall be preserved by the owner thereof for at least three years after the date of the last entry therein. The foregoing provisions shall not apply to articles dispensed upon the order of persons believed by the dispenser to be lawfully authorized practitioners of medicine, dentistry, or veterinary surgery: *Provided,* That when a physician writes upon his prescription a request that it be marked or labeled "poison," the pharmacist shall, in the case of liquids, place the same in a colored glass, roughened bottle, of the kind commonly known in trade as a "poison bottle," and, in the case of dry substances, he shall place a poison label upon the container. The record of sale and delivery above mentioned shall not be required of manufacturers and wholesalers who shall sell any of the foregoing substances at wholesale to licensed pharmacists, but the box, bottle, or other package containing such substance, when sold at wholesale, shall be properly labeled with the name of the substance, the word "poison," and the name and address of the manufacturer or wholesaler: *Provided further,* That it shall not be necessary, in sales either at wholesale or at retail, to place a poison label upon, nor to record the delivery of, the sulphide of antimony, or the oxide or carbonate of zinc, or of colors ground in oil and intended for use as paints, or calomel, or of paregoric when sold in quantities not over two fluid ounces; nor, in the case of preparations containing any of the substances named in this section, when a single box, bottle, or other package, or when the bulk of one-half fluid ounce, or the weight of one-half avoirdupois ounce, does not contain more than an adult medicinal dose of such substance; nor in the case of liniments or ointments, sold in good faith as such, when plainly labeled "for external use only;" nor in the case of preparations put up and sold in the form of pills, tablets, or lozenges, containing any of the substances enumerated in this section and intended for internal use, when the dose recommended does not contain more than one-fourth of an adult medicinal dose of such substance.

For the purpose of this and of every other section of this chapter no box, bottle, or other package shall be regarded as having been labeled "poison" unless the word "poison" appears conspicuously thereon, printed in plain, uncondensed gothic letters in red ink. (May 7, 1906, 34 Stat. 180, ch. 2084, § 13.)

CROSS REFERENCE

Uniform Narcotic Drug Act, see §§ 33–401 to 33–427.

§ 2–613. Fraudulent representations to procure drugs.

No person seeking to procure in the District of Columbia any substance the sale of which is regulated by the provisions of this chapter shall make any fraudulent representations so as to evade or defeat the restrictions herein imposed. (May 7, 1906, 34 Stat. 181, ch. 2084, § 14.)

§ 2–614. Preservation of prescriptions—Copies—Inspection—Directions for use on label.

Every proprietor or manager of a drug store or pharmacy shall keep in his place of business a suitable book or file, in which shall be preserved, for a period of not less than three years, the original of every prescription compounded or dispensed at such store or pharmacy, or a copy of such prescription, except when the preservation of the original is required by section 2–610. Upon request, the proprietor or manager of such store shall furnish to the prescribing physician, or to the person for whom such prescription was compounded or dispensed, a true and correct copy thereof. Any prescription required by section 2–610, and any prescription for, or register of sales of substances mentioned in section 2–612 shall at all times be open to inspection by duly authorized officers of the law. No person shall, in the District of Columbia, compound or dispense any drug or drugs, or deliver the same to any other person, without marking on the container thereof the name of the drug or drugs contained therein, or directions for using the same. (May 7, 1906, 34 Stat. 181, ch. 2084, § 15.)

CROSS REFERENCE

Uniform Narcotic Drug Act, see §§ 33–401 to 33–427.

§ 2–615. Peddling or leaving on streets or property of drugs, prohibited.

It shall be unlawful for any person to sell or offer for sale by peddling, or to offer for sale from house to house, or to offer for sale by public outcry, or by vending in the street, any drug, medicine, or chemical, or any compound or combination thereof, or any implement, appliance, or other agency for the treatment of disease, injury, or deformity. That except as may be otherwise authorized by law, no person shall throw, cast, deposit, drop, scatter, or leave, or cause to be thrown, cast, deposited, dropped, scattered, or left, any drug, medicine, or chemical, or any compound or combination thereof, upon any public highway or place, or, without the consent of the owner or occupant thereof, upon any premises in the District of Columbia. (May 7, 1906, 34 Stat. 181, ch. 2084, § 16.)

CROSS REFERENCE

Uniform Narcotic Drug Act, see §§ 33–401 to 33–427.

§ 2–616. Use of title of pharmacists or description of like import permitted to licensed persons only.

It shall be unlawful for any person not legally licensed as a pharmacist to take, use, or exhibit the title of pharmacist, or licensed or registered pharmacist, or the title of druggist or apothecary, or any other title or description of like import. (May 7, 1906, 34 Stat. 182, ch. 2084, § 17.)

§ 2–617. Penalties—Enforcement.

Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding two hundred dollars or by

imprisonment not exceeding six months, or by both such fine and imprisonment, in the discretion of the court, and if the offense be continuing in its character, each week or part of a week during which it continues shall constitute a separate and distinct offense. And it shall be the duty of the major and superintendent of police of the District of Columbia and of the Corporation Counsel of said District to enforce the provisions of this chapter. (May 7, 1906, 34 Stat. 182, ch. 2084, § 19.)

TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under section 4–103.

NOTES TO DECISIONS

Information

Informations charging defendant with sales, on two consecutive days, of certain drugs which could not legally be sold except by a licensed pharmacist, did not charge defendant with practicing pharmacy without a license, and therefore the sales could be considered separate offenses rather than part of a single continuing offense. *Ingols* v. *District of Columbia* (D. C. Mun. App. 1954, 103 A. 2d 879).

Chapter 7.—PODIATRY

Sec.

2–701. Board of Podiatry Examiners—Appointment—Term of office—Eligibility—Qualifications.
2–702. Officers—Bond—Rules and regulations for admission to practice—Seal—Record of proceedings—Register of credentials and of licenses issued or revoked—Certified copy as evidence—Quorum—Annual report of finances and official acts.
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2–704. Duty of secretary-treasurer to enforce law—Jurisdiction of court—Services of corporation counsel—Investigation by police, board, or its assistants.
2–705. Application for license—Form and requirements—Citizenship—Verification—Fees—Scope of examination—Application for license without examination—Reciprocity with States or Territories.
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2–716. Postgraduate classes in podiatry—Approval of board—Penalty for violation.
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§ 2–701. Board of Podiatry Examiners—Appointment—Term of office—Eligibility—Qualifications.

There is hereby established a Board of Podiatry Examiners, which shall consist of the director of public health of the District of Columbia ex officio and three members, to be appointed by the Board of Commissioners of the District of Columbia.

Said members shall be appointed within thirty days after this chapter has taken effect, and they shall be so classified by the Board of Commissioners that the term of one member shall expire in one year, one in two years, and one in three years from the date of appointment, and annually thereafter the Board of Commissioners shall appoint one member who shall serve for a period of three years, or until his successor is appointed and qualified. Vacancies in said board shall be filled by the Board of Commissioners for the unexpired term.

No person shall be eligible for appointment upon the Board who is not a citizen of the United States and who has not been for five years next preceding his appointment a resident of and in the active and reputable practice of podiatry in the District of Columbia. Appointments shall be made from a list of three to five eligibles submitted by the Podiatry Society of the District of Columbia. In case of failure of said Podiatry Society to submit said list, the Board of Commissioners shall appoint members in good standing of said Podiatry Society without restriction, who are qualified as aforesaid. (May 23, 1918, 40 Stat. 560, ch. 82; June 29, 1940, 54 Stat. 696, ch. 457, § 1; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CODIFICATION

Act May 23, 1918, provided that it shall be unlawful to practice podiatry for compensation without having passed an examination, provided that a fee of $10 shall be paid by applicant for examination, defined podiatry (or chiropody) and provided penalties for violations.

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

CROSS REFERENCES

Definitions, see § 2–718.

Exempted from operation of Healing Arts Practice Act, see § 2–101.

Persons exempted, see § 2–712.

§ 2–702. Officers—Bond—Rules and regulations for admission to practice—Seal—Record of proceedings—Register of credentials and of licenses issued or revoked—Certified copy as evidence—Quorum—Annual report of finances and official acts.

The Board of Podiatry Examiners shall organize by electing from its members a president, and a secretary-treasurer who shall give bond to the United States in the sum of $1,000. The Board shall adopt such rules and regulations not inconsistent herewith as it deems necessary respecting the eligibility of candidates, and the scope of examinations. The Board shall adopt an official seal, and shall keep a record of its proceedings, a complete record of the credentials of each licensee, and a register of persons licensed as podiatrists and of licenses revoked. A transcript of an entry in such records, certified by the secretary-treasurer under seal of the Board, shall be evidence of the facts therein stated. A quorum of the Board shall consist of not less than two members. The Board shall make annual reports to the District commissioners, containing a statement of moneys received and disbursed and a summary of its official acts during the preceding year. (June 29, 1940, 54 Stat. 697, ch. 457, § 2.)

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47–2344, 47–2345.

Promulgation, publication, and notice of rules and regulations, see § 2–719.

Rules and regulations in general, see § 1–226 and notes.

§ 2–703. Attendance of witnesses — Production of books and papers.

The said Board shall have power to require the attendance of persons and the production of books and papers and to require such persons to testify in any and all matters within its jurisdiction. The president and secretary-treasurer shall have power to issue subpenas and each shall have authority to administer oaths. Upon the failure of any person to attend as a witness, when duly subpenaed, or to produce books and papers when duly directed by the said Board, the Board shall have power to refer the said matter to any judge of the United States District Court for the District of Columbia, who may order the attendance of such witness, or the production of such books and papers, or require the said witness to testify, as the case may be, and upon the failure of the witness to attend, to testify, or to produce such books or papers, as the case may be, such witness may be punished for contempt of court as for failure to obey a subpena issued or to testify in a case pending before said court. (June 29, 1940, 54 Stat. 697, ch. 457, § 3; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, § 32(b), eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1948, § 32(a), eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "judge" for "justice."

§ 2–704. Duty of secretary-treasurer to enforce law—Jurisdiction of court—Services of corporation counsel—Investigation by police, board, or its assistants.

It shall be the duty of the secretary-treasurer of the Board to enforce the provisions of all laws relating to the practice of podiatry in the District of Columbia, and all violations of said laws shall be prosecuted in the District of Columbia Court of General Sessions by the Corporation Counsel or one of his assistants; and the Corporation Counsel and his assistants shall render such other legal services as may from time to time be required by the Board.

The major and superintendent of the Metropolitan Police Department shall detail such members of his force as may be necessary to assist the Board in the investigation and prosecutions incident to the enforcement of this chapter. The board is authorized to employ such other persons as it deems necessary to assist in the investigation and prosecutions incident to the enforcement of this chapter. (June 29, 1940, 54 Stat. 697, ch. 457, § 4; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See § 11–901.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

TRANSFER OF FUNCTIONS

See note under section 4–103 concerning the transfer of functions from the Major and Superintendent of Police to the Chief of Police.

§ 2–705. Application for license—Form and requirements—Citizenship—Verification—F e e s—Scope of examination—Application for license without examination—Reciprocity with States or Territories.

Any person who desires to begin the practice of podiatry within the District of Columbia shall file with the secretary-treasurer of the Board a written application for a license, and furnish satisfactory proof that he is a citizen of the United States or has duly declared his intention to become a citizen of the United States, not less than twenty-one years of age, of good moral character, and is a graduate of a podiatry college recognized by the National Association of Chiropodists and approved by the Board. Any license issued to a person who is a citizen of a foreign country and who has duly declared his intention to become a citizen of the United States shall automatically terminate and the registration of the candidate be annulled in the event such candidate shall fail to submit to the Board satisfactory evidence within six years from the date of such license that he has become a citizen of the United States. Such application must be upon the form prescribed by the Board, verified by oath, and accompanied by the required fee and a recent unmounted autographed photograph of the applicant. The Board shall hold in January and July of each year, in such place as it may designate, examinations to determine the fitness of applicants for licenses under this chapter.

(a) If such application be for a license after examination, the applicant shall appear before the Board at its first meeting after the filing of his application, and pass a satisfactory examination, consisting of practical demonstrations and written and oral test, in the following subjects as the same shall be taught in the recognized podiatry colleges: Anatomy, physiology, pathology, bacteriology, chemistry, materia medica, surgery, therapeutics, diagnosis and treatment, clinical and orthopedic podiatry, and any other of such subjects as the Board may determine.

(b) If such application be for a license without examination by virtue of a license issued by a state, territory, or other jurisdiction forming a part of the United States, or by a foreign country, the applicant shall furnish proof satisfactory to the Board that he holds a valid license from a similar podiatry board, with requirements equal to those of the District of Columbia, and that he has been in the lawful and reputable practice of podiatry in the state or territory or foreign country from which he applies for five consecutive years next prior to filing his application: *Provided,* That the laws of such state or territory or foreign country accord equal rights

to a podiatrist of the District of Columbia who desires to practice his profession in such state or territory or foreign country. (June 29, 1940, 54 Stat. 697, ch. 457, § 5.)

§ 2–706. License—Form and execution—Registration with director of public health—Duplicate—Fees.

If such applicant passes the examination, or furnishes the information required of applicants for license without examination, he shall receive a license from the Board, attested by its seal, signed by the members of the Board, which after being registered with the director of public health shall be conclusive evidence of his right to practice podiatry in the District of Columbia. If the loss of a license is satisfactorily shown, a duplicate thereof shall be issued by the board upon payment of the required fee. (June 29, 1940, 54 Stat. 698, ch. 457, § 6; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

§ 2–707. Revocation or suspension of license—Jurisdiction of court—Grounds.

The United States District Court for the District of Columbia may revoke or suspend the license of any podiatrist in the District of Columbia upon proof satisfactory to said court—

(a) That said license or registration was procured through fraud or misrepresentation.

(b) That the holder thereof has been convicted of a felony.

(c) That the holder thereof is guilty of chronic or persistent inebriety, or addiction to drugs.

(d) That the holder thereof is guilty of advertising professional superiority or the performance of professional services in a superior manner; advertising prices for professional service; advertising by means of a large display, glaring light signs, or containing as a part thereof the representation of the human foot or leg or any part thereof; employing or making use of solicitors or free publicity press agents, directly or indirectly; or advertising any free podiatry work, or free examination; or advertising to guarantee podiatry service.

(e) That such holder is guilty of hiring, supervising, permitting, or aiding unlicensed persons to practice podiatry.

(f) That such holder is guilty of unprofessional conduct.

The following acts on the part of a podiatrist are hereby declared to constitute unprofessional conduct:

(1) Practicing while his license is suspended.

(2) Wilfully deceiving or attempting to deceive the board or their agents with reference to any matter under investigation by the board.

(3) Advertising by any medium other than the personal carrying of a modest professional card or the display of a modest window or street sign at the licensee's office, which professional card or window or street sign shall display only the name, address, profession, office hours, and telephone connections of the licensee; except in the case of announcement of change of address or the starting of practice, when the usual size card of announcement may be used. The size of said cards or signs shall be designated by the board.

(4) Practicing podiatry under a false or assumed name or corporate name other than a partnership name containing the names of the partners, or any name except his full proper name which shall be the name used in his license granted by the board.

(5) Violating this chapter or aiding any person to violate this chapter or to knowingly violate the pidiatry act of any state or territory.

(6) Practicing in the employment of, or in association with, any person who is practicing in an unlawful or unprofessional manner.

The foregoing specifications of acts constituting unprofessional conduct shall not be construed as a complete definition of unprofessional conduct nor as authorizing or permitting the performance of other or similar acts not denounced, or as limiting or restricting the said court from holding that other or similar acts also constitute unprofessional conduct. (June 29, 1940, 54 Stat. 698, ch. 457, § 7; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

CROSS REFERENCES

General penalties, see § 2–717.

Revocation or suspension of license for violation of Uniform Narcotic Drug Act, see § 33–418.

§ 2–708. Revocation or suspension of license—Procedure—Petition—Appeal—Terms of suspension.

The United States District Court for the District of Columbia may suspend or revoke any license issued and any registration upon evidence showing to the satisfaction of the court that the licentiate or registrant, as the case may be, has been guilty of misconduct or is professionally incapacitated.

Proceedings looking toward the suspension or revocation of a license or registration shall be begun by petition filed in the United States District Court for the District of Columbia in the name of the Board of Podiatry Examiners and shall be verified by oath. Proceedings shall be conducted according to the ordinary rules of equity practice and such supplementary rules as said court may deem expedient to carry into effect the purposes and intent of this chapter; and said court is hereby authorized to make such supplementary rules. An appeal may be taken from the decision of the United States District Court for the District of Columbia to the United States Court of Appeals of said District. Any such appeal on behalf of the Board of Podiatry Examiners may be filed without bond. The United States District Court for the District of Columbia may determine whether a license or registration shall be suspended or revoked, and if such license is to be suspended said court may determine the duration of such suspension and the conditions under which such suspension shall terminate. (June 29, 1940, 54 Stat. 699, ch. 457, § 8; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

§ 2–709. Fees—Expenses of board—Compensation of members.

That in addition to the fees fixed herein each applicant for a license as podiatrist shall deposit with his application a fee of $25 if for a license after examination, and $50 if for a license by reciprocity; with each application for a duplicate license a fee of $5 shall be paid to said Board and for each certificate issued by said board a fee of $1 shall be paid. That out of the fees paid to said board, as provided by this chapter, there shall be defrayed all expenses incurred in carrying out the provisions of this chapter, including the detection and prosecution of violations thereof, together with a fee of $10 per diem for each member of said Board, other than the director of public health of the District of Columbia, when actually engaging upon business pertaining to his official duties as such board member: *Provided,* That such expense shall in no event exceed the total of receipts. (June 29, 1940, 54 Stat. 699, ch. 457, § 9; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

AUTHORITY TO CHANGE FEES

Commissioners authorized and empowered to increase or decrease, from time to time, the fees specified in this section, see §§ 1–252, 1–253.

CROSS REFERENCES

Honorariums to various board members and commissioners, see §§ 1–254 to 1–259.

Refund of fees when license is refused, see § 47–1017.

§ 2–710. Annual registration of podiatrist—Fees—Penalty for failure to register—Reinstatement—Copy of register to each podiatrist.

During the month of December of each year, every licensed podiatrist shall register with the secretary-treasurer of the Board his name and office address and such other information as the Board may deem necessary upon blanks obtainable from said secretary-treasurer, and thereupon pay a registration fee of $5. On or before the 1st day of November of each year it shall be the duty of the secretary-treasurer of the Board to mail to each podiatrist licensed in the District of Columbia, at his last-known address, a blank form for registration. In the event of failure to register on or before the 31st day of December a fine of $5 and the registration fee of $5 shall be imposed, and should the practitioner fail to register and pay the fine imposed and continues to practice his profession in the District of Columbia he shall at the end of ten days from said date be considered as practicing illegally and penalized as otherwise provided for in this chapter. If he suspends his practice he may, in the discretion of the board, upon furnishing satisfactory evidence as to his moral character and professional standing, be reinstated at any time upon registering and paying a prescribed fee of $25. On or before the 1st day of February, annually, said Board shall issue a printed register of the names and addresses so received, together with other information deemed interesting to the profession, a copy of which shall be mailed or otherwise sent to each registrant thereon. (June 29, 1940, 54 Stat. 700, ch. 457, § 10; July 30, 1951, 65 Stat. 127, ch. 249, § 1.)

AMENDMENT

1951—Act July 30, 1951, substituted "$5" for "$2" wherever appearing.

AUTHORITY TO CHANGE FEES

Commissioners authorized and empowered to increase or decrease, from time to time, the fees specified in this section, see §§ 1–252, 1–253.

§ 2–711. "Practice of podiatry" defined.

Any person shall be regarded as practicing podiatry who, gratuitously or for a salary, fee, money, or other compensation paid either himself or to any other person, directly or indirectly, furnishes or advertises to furnish, or performs or causes to be performed, by himself or by any other person, agent, or employee, podiatry service; or who uses the words "podiatrist," "chiropodist," or any letters or title in connection with his name which in any way represents him as being engaged in the practice of podiatry; or who is a manager, proprietor, operator, or conductor of a place where podiatry service is performed; or who shall state, advertise, or permit to be advertised by sign, card, circular, handbill, newspaper, radio, or otherwise that he can, or will attempt to, perform podiatry service or render a diagnosis in connection therewith; "podiatry" and "podiatry service," within the meaning of this section and this chapter, are hereby defined to be the surgical, medical, or mechanical treatment of any ailment of the human foot, except the amputation of the foot or any of the toes; and, also, except the use of an anesthetic other than a local one. (June 29, 1940, 54 Stat. 700, ch. 457, § 11.)

NOTES TO DECISIONS

Decisions under former law

One who has practiced osteopathy since 1909 was not guilty of violation of the prior act in treating a sprained foot by massage or manipulation, such treatment being a usual incident of the practice of osteopathy. *Howerton* v. *District of Columbia* (1923, 289 F. 628, 53 App. D.C. 230).

§ 2–712. Exemptions.

Nothing in this chapter shall apply to a bona fide student of podiatry in the clinic rooms of a reputable podiatry college; to a licensed and legally qualified practitioner of the healing arts; to a podiatrist of the United States Army, Navy, Public Health Service, or Veterans' Administration, in the discharge of his official duties, nor to a lawful practitioner of podiatry in another state or territory making a clinical demonstration before a bona fide society, convention, association of podiatrists, or podiatry college, or performing his duties in connection with a specific case on which he may have been called to the District of Columbia. (June 29, 1940, 54 Stat. 700, ch. 457, § 12.)

§ 2–713. Display of license and annual registration card—Penalty for violation.

Whoever engages in the practice of podiatry and fails to keep displayed in a conspicuous place in the

operating room in which he practices, and in such manner as to be easily seen and read, the license and annual registration card granted him pursuant to the laws of the District of Columbia, shall be fined not more than $50. (June 29, 1940, 54 Stat. 700, ch. 457, § 13.)

§ 2–714. Sale of podiatry degree, certificate, or license—Alteration—Penalty.

Whoever sells or offers to sell a diploma conferring a podiatry degree or a certificate granted for postgraduate work, or a license granted pursuant to this chapter, or whoever procures such diploma, certificate, or license with intent to use the same as evidence of the right to practice podiatry as defined by law, by a person other than the one upon whom such diploma was conferred, or to whom such license was granted, or any person who with fraudulent intent alters such diploma, certificate, or license, or uses or attempts to use the same, shall be fined not more than $1,000. (June 29, 1940, 54 Stat. 701, ch. 457, § 14.)

§ 2–715. Practice of podiatry under false name—False representations concerning degree, application for license, or examination—Penalty.

Whoever practices podiatry under a false name, or assumes a title, or appends or prefixes to his name letters which falsely represent him as having a degree from a chartered podiatry college, or makes use of the words "podiatry college" or "school" or equivalent words when not lawfully authorized so to do, or impersonates another at an examination held by the board, or knowingly makes a false application or a false representation in connection with such examination, shall be fined not more than $1,000. (June 29, 1940, 54 Stat. 701, ch. 457, § 15.)

§ 2–716. Postgraduate classes in podiatry—Approval of board—Penalty for violation.

No person or persons, corporation, or educational institution shall conduct classes or a school for postgraduate podiatry in the District of Columbia unless with the approval of the Board, and whoever violates this provision shall, upon conviction, be fined not more than $500. (June 29, 1940, 54 Stat. 701, ch. 457, § 16.)

§ 2–717. Practicing without a license—Violations of law—Penalties.

Whoever engages in the practice of podiatry without a license so to do, or whoever violates any provision of law relating to the practice of podiatry, or the application for examination and licensing of podiatrists for which no specific penalty has been prescribed shall be fined not more than $1,000. (June 29, 1940, 54 Stat. 701, ch. 457, § 17.)

CROSS REFERENCES

Conducting postgraduate course in podiatry without approval of board, see § 2–716.

Failure to display license or annual registration card, see § 2–713.

Practicing under false name or false representations in application or examination, see § 2–715.

Revocation or suspension of license, see §§ 2–707, 2–708.

Sale of diploma, podiatry degree, or certificate or fraudulent use thereof, see § 2–714.

NOTES TO DECISIONS

Judicial involvement

Court's lengthy interrogation of defendant charged with practicing podiatry without license did not exceed permissible limits of judicial involvement. *T. DeW. Baldwin* v. *District of Columbia* (D.C. Mun. App. 1962, 183 A. 2d 566).

Purpose of statute

Podiatry statute was enacted to protect public by assuring that those who hold themselves out as podiatrists have attained specified level of professional competence and one who fails to submit himself to scrutiny of Board of Podiatry Examiners must be considered unfit to practice podiatry, regardless of his claimed qualifications. *T. DeW. Baldwin* v. *District of Columbia* (D.C. Mun. App. 1962, 183 A. 2d 566).

Separate prosecutions

District of Columbia's healing arts practice statute permits separate prosecution of isolated acts of treatment. *T. DeW. Baldwin* v. *District of Columbia* (D.C. Mun. App. 1962, 183 A. 2d 566).

Each act of treatment by one practicing podiatry without license may be prosecuted as separate offense. *Id.*

§ 2–718. Definitions.

When used in sections 2–701 to 2–719—

(1) Personal pronouns include all genders.

(2) The term "Board" means the Board of Podiatry Examiners.

(3) Advertising shall be deemed to include those in public print, by radio or any other form of public announcement.

(June 29, 1940, 54 Stat. 701, ch. 457, § 18.)

§ 2–719. Rules and regulations—Promulgation—Notice.

Rules and regulations adopted by the board shall become effective thirty days after promulgation: *Provided,* That notice of such rules and regulations is published once a week for three consecutive weeks during that period in a newspaper of general circulation in the District of Columbia, and that notice be mailed to each registered podiatrist in the District of Columbia. (June 29, 1940, 54 Stat. 701, ch. 457, § 19.)

REPEAL

Section 21 of act June 29, 1940, provided as follows: "All Acts or parts thereof heretofore enacted into law and inconsistent herewith are hereby repealed."

SEPARABILITY OF PROVISIONS

Section 20 of act June 29, 1940, provided as follows: "Should any section or provision of this Act be decided by the courts to be unconstitutional or invalid, the validity of the Act as a whole or of any part thereof other than the part decided to be unconstitutional shall not be affected. The right to alter, amend, or repeal this Act is hereby expressly reserved."

CROSS REFERENCES

Power of board to make rules and regulations, see § 2–702.

Promulgation of regulations by commissioners, see § 47–2345.

Chapter 8.—VETERINARIANS

Sec.

2–801. Board of Examiners in Veterinary Medicine—Creation—Appointment, tenure, and removal.
2–802. Election of officers—Rules and regulations—Register of applicants—Bond—Reports.
2–803. Applications for license—Qualifications—Fees—Expenses—Examinations—Applications preserved.
2–804. Reciprocal relations with similar boards.
2–805. Practitioners exempt from examination.

Sec.
2-806. Appeal from board—Board of review—Fees and compensation.
2-807. Display of license—Inspection of place of business.
2-808. Persons regarded as practitioners.
2-809. Persons exempt.
2-810. Revocation of licenses—Causes—Procedure—Appeals—Costs.
2-811. Penalties.
2-812. Prosecutions by corporation counsel.

§ 2-801. Board of Examiners in Veterinary Medicine—Creation—Appointment, tenure, and removal.

There is hereby created a Board of Examiners in Veterinary Medicine, to be appointed by the Commissioners of the District of Columbia, which shall consist of five reputable practitioners of veterinary medicine, who shall have graduated from some college authorized by law to confer degrees, each of whom shall have been actively engaged in the practice of his profession in said District for a period of three years immediately prior to such appointment. The appointments first made shall be one for one year, one for two years, one for three years, one for four years, and one for five years, and thereafter appointments shall be for a period of five years, except such as are occasioned by death, resignation, or removal, in which cases the appointments shall be for the remainders of the unexpired terms: *Provided,* That the said Commissioners may, in their judgment, remove any member of said board for neglect of duty or other sufficient cause, after due notice and hearing. (Feb. 1, 1907, 34 Stat. 870, ch. 442, § 1; July 25, 1956, 70 Stat. 650, ch. 728, § 1.)

CODIFICATION

Section 2 of act July 25, 1956, provides that where the office or agency referred to was abolished by Reorganization Plan No. 5, of 1952, such reference shall be deemed to be to the office, agency, or officer exercising the functions of the office or agency so abolished.

AMENDMENT

1956—Act July 25, 1956, eliminated from the first sentence the words "shall have been a bona fide resident of said District for three years last past before appointment, and each, during said period" and inserted before the period at the end of the first sentence the words beginning with "for" and ending with "appointment."

CROSS REFERENCES

Exemption from provisions of Alcoholic Beverage Control Act, see § 25-109.

Honorariums to various board members and commissioners, see §§ 1-254 to 1-259.

Persons exempted, see § 2-809.

§ 2-802. Election of officers—Rules and regulations—Register of applicants—Bond—Reports.

The said Board of Examiners in Veterinary Medicine shall elect a president, vice-president, secretary, and such other officers as shall be necessary. The secretary of said Board shall have power to administer oaths or affirmations upon such matters as pertain to the business of said Board, and any person wilfully making any false oath or affirmation shall be deemed guilty of perjury; and said Board shall make, alter, or amend, subject to the approval of the Commissioners of the District of Columbia, such rules and regulations as may be necessary to carry into effect the provisions of this chapter, and shall hold such meetings as shall be necessary for the transaction of business, and shall issue all licenses to practice veterinary medicine in the District of Columbia. Said Board shall keep an official record of its meetings, and also an official register of all applicants for licenses, which register shall show the name, age, place, and duration of residence of each applicant, the time spent in the study of veterinary medicine, in and out of medical schools, and the names and locations of all medical schools which have granted said applicant any degree or certificate of attendance upon lectures, and it shall also show whether said applicant was rejected or licensed under this chapter, and said register shall be prima facie evidence of all matters contained therein. The Commissioners of the District of Columbia shall have power to require any or all officers of said Board to give bond to the District of Columbia in such form and penalty as they may deem proper. The said Board shall in the month of July in each year submit to said Commissioners a full report of its transactions during the twelve months immediately preceding. (Feb. 1, 1907, 34 Stat. 870, ch. 442, § 2.)

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2344, 47-2345.

Rules and regulations in general, see § 1-226 and notes.

§ 2-803. Applications for license—Qualifications—Fees — Expenses — Examinations — Applications preserved.

From and after February 1, 1907, all persons desiring to practice veterinary medicine or any branch thereof in the District of Columbia, or who shall desire to hold themselves out to the public as practicing veterinary medicine or any branch thereof in the District of Columbia, shall make application to said Board of Examiners in Veterinary Medicine for a license so to do. Application for this purpose shall be upon a form furnished by said Board, and shall be accompanied by satisfactory evidence of good moral character, and by a diploma from a veterinary college having a curriculum equivalent to that required by the American Veterinary Medical Association Council on Education for approved schools and authorized by law to confer said diploma, which college shall require at least four sessions of study of veterinary medicine of not less than nine months each prior to the issue of such diploma, and by a fee of twenty-five dollars, except as herein otherwise directed, and from the fund thus created, the Board shall pay such necessary expenses as it may incur. Such expenses shall not exceed in any one fiscal year the amount of fees collected during that period, but if any balance remain after paying all such expenses the Commissioners of said District shall authorize the payment therefrom to the members of said Board for their services of such amounts as said Commissioners deem proper. Said Board shall, by means of examinations, ascertain the professional qualifications of all applicants for license to practice veterinary medicine in said District, and shall issue such licenses to all who are found by such examinations to be, in the judgment of said Board, competent to so practice; and no such license shall be issued to any person who has not demonstrated his competence, except as hereinafter otherwise provided. Such examinations shall be held at least once a year and shall include all such subjects

as are ordinarily included in the curricula of veterinary colleges in good standing, but examinations may be held at such other times and include such other subjects as said Board shall authorize and direct. Said Board shall number consecutively all applications received, note upon each the disposition made of it, and preserve the same for reference, and shall number consecutively all licenses issued. (Feb. 1, 1907, 34 Stat. 871, ch. 442, § 3; July 25, 1956, 70 Stat. 650, ch. 728, § 3.)

CODIFICATION

Section 2 of act July 25, 1956, provides that where the office or agency referred to was abolished by Reorganization Plan No. 5 of 1952, such reference shall be deemed to be to the office, agency, or officer exercising the functions of the office or agency so abolished.

AMENDMENT

1956—Act July 25, 1956, amended section generally.

AUTHORITY TO CHANGE FEES

Commissioners authorized and empowered to increase or decrease, from time to time, the fees specified in this section, see §§ 1–252, 1–253.

Commissioner's Order No. 54–614 of March 16, 1954, fixed the examination fee at $25. The examination was previously fixed at $10.

CROSS REFERENCE

Refund of fees when license is refused, see § 47–1017.

§ 2–804. Reciprocal relations with similar boards.

Said Board of Examiners, so far as may be possible, shall make arrangements with analogous boards of the several states and territories whereby due credit for state and territorial licenses will be allowed in the District of Columbia to such licentiates of said boards as desire to secure licenses to practice veterinary medicine in this District, and whereby licentiates of the Board of Examiners in Veterinary Medicine in the District of Columbia will secure due credit for licenses issued by said Board whenever such licentiates desire to secure licenses to practice veterinary medicine in any state or territory; but no arrangement shall be made under the provisions of this section which will be liable to lower the standard of practice of veterinary medicine in the District of Columbia, and no arrangement for the mutual recognition of licenses shall be valid until it has been approved by the Commissioners of the District of Columbia. (Feb. 1, 1907, 34 Stat. 871, ch. 442, § 4.)

§ 2–805. Practitioners exempt from examination.

Any person who received a diploma from a veterinary college lawfully authorized to confer the same and who maintained an office for the practice of veterinary medicine in the District of Columbia on or before February 1, 1907, upon submission of proof of such facts to the Board of Examiners in Veterinary Medicine and the payment of a fee of one dollar, shall be licensed by said Board to practice veterinary medicine in the District of Columbia without examination. Any person, not a graduate of a college lawfully authorized to confer a degree in veterinary medicine, who was continuously engaged in the practice of veterinary medicine in the District of Columbia for five years previous to February 1, 1907, and maintained an office in said District for that purpose shall be permitted to present himself for examination before the Board of Veterinary Examiners without fee, and upon proof of satisfactory knowledge of veterinary medicine shall be registered and licensed as a practitioner of veterinary medicine. (Feb. 1, 1907, 34 Stat. 872, ch. 442, § 5.)

§ 2–806. Appeal from board—Board of review—Fees and compensation.

Any person having been examined by said Board of Examiners in Veterinary Medicine and having been refused a license as the result of such examination may, within thirty days after formal notification of such refusal appeal from the decision of said board. Such appeal must be in writing, addressed to the Commissioners of the District, setting forth the ground upon which it is based, and accompanied by a deposit of thirty dollars. If, after examination of said appeal, said Commissioners deem it proper, they shall appoint a board of review, consisting of three practitioners of veterinary medicine having qualifications similar to those required of members of the regular Board of Examiners in Veterinary Medicine, which Board shall review the examination of appellant, and if they deem necessary re-examine him and report their finding to said Commissioners; and such finding shall be final and binding upon all parties concerned, and if favorable to the appellant the Board of Examiners in Veterinary Medicine shall issue to him a license to practice veterinary medicine in said District. Each member of said board of review shall be paid a fee of not more than ten dollars for each candidate examined, payment to be made from the deposit of the appellant if the finding is adverse to him, but otherwise from the funds of the Board of Examiners. If favorable the amount deposited shall be returned to the appellant. (Feb. 1, 1907, 34 Stat. 872, ch. 442, § 6.)

AUTHORITY TO CHANGE FEES

Commissioners authorized and empowered to increase or decrease, from time to time, the fees specified in this section, see §§ 1–252, 1–253.

§ 2–807. Display of license—Inspection of place of business.

Every person practicing veterinary medicine in the District of Columbia, or representing himself or permitting himself to be represented as so practicing, shall display or cause to be displayed conspicuously in his usual place of business his license to practice in said District. Said place of business shall, during all reasonable hours, be open to inspection by any representative of the police department or of the Board of Examiners in Veterinary Medicine of said District, so far as may be necessary to examine such licenses, and it shall be unlawful for any person to interfere with any inspection made or intended to be made for this purpose. (Feb. 1, 1907, 34 Stat. 872, ch. 442, § 7.)

§ 2–808. Persons regarded as practitioners.

Any person shall be regarded as practicing veterinary medicine in the District of Columbia who shall, in said District, append or cause to be appended to his name the letters V. S., D. V. M., V. M. D., M. D. V., M. D. C., D. V. S., or M. R. C. V. S., or the words "veterinary," "veterinarian," "veterinary surgeon," or "veterinary dentist," "veterinary farrier," "veterinary horseshoer," "horse dentist," or "horse doctor,"

or who shall prescribe, advise, or apply any drug or medicine or other agency, or who shall publicly profess to do any of these things, and shall charge or receive therefor money or other compensation, directly or indirectly: *Provided*, That any person may without compensation apply any medicine or remedy and perform any operation for the treatment, relief, or cure of any sick, diseased, or injured animal. (Feb. 1, 1907, 34 Stat. 872, ch. 442, § 8.)

CROSS REFERENCE

Veterinarian not to prescribe drugs or medicines for human beings, see § 2–611.

§ 2–809. Persons exempt.

This chapter shall not apply to veterinary surgeons in the Army or in the employ of the Agricultural Department who are graduates of regular veterinary colleges, nor to regularly licensed veterinarians in actual consultation from other states, nor to regularly licensed veterinarians actually called from other states to attend cases in the District of Columbia, but who do not open an office or appoint a place to do business within said District. (Feb. 1, 1907, 34 Stat. 873, ch. 442, § 9.)

§ 2–810. Revocation of licenses—Causes—Procedure—Appeals—Costs.

The Board of Examiners in Veterinary Medicine may, by a vote of four members, revoke or suspend for a time certain the license of any person to practice veterinary medicine or any branch thereof in the District of Columbia after notice and hearing, for any of the following causes, namely: The employment of fraud or deception in passing the examinations or in obtaining a license, chronic inebriety, or conviction of crime involving moral turpitude. The method of complaint, form, and length of notice, and time of hearing charges against any licensee for any of the above causes shall be according to the rules and regulations to be made, subject to the approval of said Commissioners, as hereinbefore provided. Appeal from the decision of the board may be taken to the District of Columbia Court of Appeals, as provided by section 11–742, 17–303, 17–304, 17–305 (b), 17–306 and 17–307 of the District of Columbia Code. The Commissioners of the District of Columbia, the board of review, and the board of examiners in veterinary medicine shall not, nor shall any of them, be required to pay costs, or give bond or security on appeal, or other proceeding in any court of the District of Columbia growing out of any official duty imposed on them, or any of them, by this chapter. (Feb. 1, 1907, 34 Stat. 873, ch. 442, § 10; Aug. 31, 1954, 68 Stat. 1048, ch. 1173, § 1; July 8, 1963, 77 Stat. 78, Pub. L. 88–60, § 6; Dec. 23, 1963, 77 Stat. 616, Pub. L. 88–241, § 5.)

AMENDMENTS

1963—Section 5 of act Dec. 23, 1963, amended the third sentence of the section to read: "Appeal from the decision of the board may be taken to the District of Columbia Court of Appeals, as provided by section 11–742, 17–303, 17–304, 17–305(b), 17–306 and 17–307 of the District of Columbia Code", omitted the provision that the decision of such court should be final, and omitted words "or error", which followed "appeal", and preceded "or other proceeding in any court".

"Municipal Court of Appeals for the District of Columbia" was substituted for "United States Court of Appeals for the District of Columbia" in view of act Aug. 31, 1954, which vested exclusive jurisdiction to review decisions of the Board in the Municipal Court of Appeals.

CHANGE OF NAME

Act July 8, 1963, § 6, substituted "District of Columbia Court of Appeals" for "Municipal Court of Appeals for the District of Columbia". Provisions identical with those of said section 6 were contained in act Oct. 23, 1962, 76 Stat. 1172, Pub. L. 88–873, § 6, which was repealed by act Dec. 23, 1963, 77 Stat. 620, Pub. L. 88–241, § 21(a).

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 23, 1963, was made effective on Jan. 1, 1964. See note preceding ch. 1, Title 11.

CROSS REFERENCES

General penalties, see § 2–811.

Revocation or suspension of license for violation of Uniform Narcotic Drug Act, see § 33–418.

§ 2–811. Penalties.

Any person who shall violate or aid or abet in violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than $200, or by imprisonment in the workhouse of the District of Columbia for not more than six months, or by both such fine and imprisonment. (Feb. 1, 1907, 34 Stat. 873, ch. 442, § 11.)

CROSS REFERENCES

Display of license, see § 2–807.

Revocation or suspension of license, see § 2–810.

NOTES TO DECISIONS

Practicing without license

One who practices veterinary medicine without a license is subject to the penalty imposed by this section even though the Veterinarian's Law does not expressly prohibit such practice. *District of Columbia* v. *Dewalt* (1908, 31 App. D. C. 326).

§ 2–812. Prosecutions by corporation counsel.

It shall be the duty of the Corporation Counsel or one of his assistants to prosecute all violations of the provisions of this chapter. (Feb. 1, 1907, 34 Stat. 873, ch. 442, § 12.)

Chapter 9.—ACCOUNTANTS

Sec.

2–901 to 2–909. Repealed.
2–911. Definitions.
2–912. Certified public accountancy—Certificate required for use of titles or practice—Partnerships and corporations.
2–913. Board of Accounting—Corporation, qualifications, tenure, compensation, and removal.
2–914. Rules and regulations.
2–915. Certified public accountants—Issuance of certificate—Qualifications—Prior applications and certificates.
2–916. Education and experience required.
2–917. Waiver of examination and endorsement of C.P.A. certificate—Rights of holder of endorsed certificate.
2–918. Registration of certified public accountants—Failure to register.
2–919. Registration of partnerships practicing public accountancy—Requirements—Use of titles.
2–920. Hearings, and revocation, suspension, or denial of certificate, etc.—Censure—Procedure.
2–921. Witnesses and records at hearings—Nature of hearings.
2–922. Revocations or suspension of partnership registrations—Censure.
2–923. Administrative procedure for public hearings.
2–924. Issuance of new certificate, etc. after revocation—Permitting registration after registration revoked.

Sec.
2–925. Noncertified public accountants as employees or assistants—Temporary practice in District by nonresident certified public accountants.
2–926. Penalty for violations—Prosecutions by Corporation Counsel—Jurisdiction.
2–927. Prima facie evidence of violation.
2–928. Title to statements and other records—Transfer.
2–929. Severability of provisions.
2–930. Fees for costs of administration—Disposition of funds.
2–931. Appropriations.

§§ 2–901 to 2–909. Repealed. Sept. 16, 1966, 80 Stat. 793, Pub. L. 89–578, § 23.

Sections, act Feb. 17, 1923, 42 Stat. 1261–1263, ch. 94, §§ 1–9; June 16, 1952, 66 Stat. 137, ch. 438, § 1; Nov. 8, 1965, 79 Stat. 1309, Pub. L. 89–347, § 8, which related to public accountancy, are now covered by § 2–911 et seq.

For effective date of repeal of these sections, see § 24 of act Sept. 16, 1966, Pub. L. 89–578, set out in note under § 2–911.

§ 2–911. Definitions.

As used in sections 2–911 to 2–931—

(a) The term "certified public accountant" means a person who is the holder in good standing of a certificate of certified public accountant issued under the laws of any State or territory of the United States authorizing him to practice as a certified public accountant in such State or territory. A "certified pubiic accountant of the District of Columbia" is a person who is the holder in good standing of a certificate of certified public accountant issued under the Act of Congress approved February 17, 1923, as amended (42 Stat. 1261, ch. 94), or who is the holder in good standing of a certificate of certified public accountant or of an endorsement of certificate of certified public accountant issued pursuant to section 2–915 or 2–917, respectively, of this Act authorizing him to practice as a certified public accountant in the District of Columbia.

(b) The term "Commissioners" means the Commissioners of the District of Columbia sitting as a board or their authorized agent or agents.

(c) The term "Board" means the Board of Accountancy.

(d) The term "person" includes partnerships, corporations and associations as well as natural persons.

(e) The term "he" and the derivatives thereof shall be construed to include the word "she" and the derivatives thereof. (Sept. 16, 1966, 80 Stat. 785, Pub. L. 89–578, § 2.)

REFERENCES IN TEXT

The act of Congress approved February 17, 1923, as amended (42 Stat. 1261, ch. 94), referred to in subsec. (a) of this section, was formerly classified to §§ 2–901 to 2–909. It was repealed by § 23 of act Sept. 16, 1966, Pub. L. 89–578, cited above.

EFFECTIVE DATE

Section 24 of act of Sept. 16, 1966, 80 Stat. 793, Pub. L. 89–578, provided: "This Act [enacting §§ 2–911 to 2–931 and repealing §§ 2–901 to 2–909] shall take effect ninety days after the date of its enactment [Sept. 16, 1966]."

SHORT TITLE

Section 1 of act of Sept. 16, 1966, 80 Stat. 785, Pub. L. 89–578, provided: "That this Act [enacting §§ 2–911 to 2–931, and repealing §§ 2–901 to 2–909] shall be known and may be cited as the 'District of Columbia Certified Public Accountancy Act of 1966'."

PRIOR LAW

Prior provisions on the subject covered in §§ 2–911 to 2–931 were contained in acts Feb. 17, 1923, 42 Stat. 1261–1263, ch. 94, §§ 1–9; June 16, 1952, 66 Stat. 137, ch. 438, § 1; Nov. 8, 1965, 79 Stat. 1309, Pub. L. 89–347, § 8, which were classified to §§ 2–901 to 2–909, and which were repealed by § 23 of act Sept. 16, 1966, enacting §§ 2–911 to 2–931.

§ 2–912. Certified public accountancy—Certificate required for use of titles or practice—Partnerships and corporations.

(a) No natural person shall assume or use the title or designation "certified public accountant" or the abbreviations "C.P.A.", or any other title, designation, words, letters, or abbreviations tending to indicate that such person is a certified public accountant, or is likely to be confused with "certified public accountant" or "C.P.A.", unless such person is a holder of a certificate of certified public accountant. No natural person shall engage or hold himself out to the public as being engaged in the practice of public accountancy as a certified public accountant in the District of Columbia, unless such natural person is the holder of a certificate of certified public accountant of the District of Columbia or an endorsement of certificate of certified public accountant as provided in sections 2–915 and 2–918.

(b) No partnership shall assume or use the title or designation "certified public accountants" or the abbreviation "C.P.A.'s" or any other title, designation, words, letters, abbreviations, sign, or device tending to indicate that such partnership is composed of certified public accountants, unless such partnership is registered as a partnership of certified public accountants under section 2–919.

(c) No corporation shall assume or use the title or designation "certified public accountant" or the abbreviation "C.P.A." or any other title, designation, words, letters, abbreviations, sign, card, or device tending to indicate that such corporation is licensed as a certified public accountant or likely to be confused with "certified public accountant" or "C.P.A."

(d) Nothing in sections 2–911 to 2–931 shall be construed to prohibit any person, partnership, or corporation from practicing public accountancy either gratuitously or for hire: *Provided,* That such person, partnership, or corporation does not assume the title of "certified public accountant", or the abbreviation "C.P.A." or any other title, designation, or abbreviations likely to be confused with "certified public accountant" or "C.P.A." (Sept. 16, 1966, 80 Stat. 786, Pub. L. 89–578, § 3.)

EFFECTIVE DATE

Section as effective ninety days after Sept. 16, 1966, see § 24 of act Sept. 16, 1966, Pub. L. 89–578, set out in note under § 2–911.

§ 2–913. Board of Accounting—Corporation, qualifications, tenure, compensation, and removal.

(a) [1] The Commissioners are hereby authorized and empowered to establish a Board of Accountancy, composed of three certified public accountants of the District of Columbia, to serve as their agent and to delegate to such Board of Accountancy any of the technical and professional functions vested in the Commissioners by this Act. Each of the members of the Board of Accountancy shall be registered in accordance with the provisions of section 2–918 and, at

[1] So in original. There are no provisions of this section designated subsec. "(b)".

the time of appointment to the Board, shall have been engaged in the practice of public accountancy as a certified public accountant for a period of not less than ten years, at least five years of which shall have been in the District of Columbia. The requirements of the preceding sentence shall not apply to those persons who are members of the Board of Accountancy on the date of enactment of this Act. The length of terms for Board members shall be three years and no person shall be appointed to the Board for more than two terms. The Commissioners shall have the authority to determine from time to time the amount of compensation to be paid to Board members.

The Commissioners may remove any member of the Board of Accountancy for neglect of duty or for other sufficient cause. (Sept. 16, 1966, 80 Stat. 786, Pub. L. 89–578, § 4.)

REFERENCES IN TEXT

Word "Act" in the phrase "the date of enactment of this Act", as used in this section, refers to act Sept. 16, 1966, Pub. L. 89–578, which repealed §§ 2–901 to 2–909 and enacted §§ 2–911 to 2–931. For effective date of such act, see § 24 thereof set out in note under § 2–911.

EFFECTIVE DATE

Section as effective ninety days after Sept. 16, 1966, see § 24 of act Sept. 16, 1966, Pub. L. 89–578, set out in note under § 2–911.

§ 2–914. Rules and regulations.

The Commissioners are authorized to adopt from time to time such rules and regulations as may be necessary to carry out the purposes of sections 2–911 to 2–931 including, but not limited to, rules of professional conduct and grounds for denial, suspension, or revocation of any certificate, endorsement, or registration applied for or issued under said sections. The Board of Accountancy shall make recommendations to the Commissioners concerning the adoption of such rules and regulations. No such rules or regulations shall be adopted until after the Commissioners shall have held a public hearing thereon. (Sept. 16, 1966, 80 Stat. 787, Pub. L. 89–578, § 5.)

EFFECTIVE DATE

Section as effective ninety days after Sept. 16, 1966, see § 24 of act Sept. 16, 1966, Pub. L. 89–578, set out in note under § 2–911.

§ 2–915. Certified public accountants—Issuance of certificate—Qualifications—Prior applications and certificates.

(a) The Commissioners are authorized to issue a certificate of certified public accountant of the District of Columbia to any applicant furnishing to the Commissioners satisfactory proof that he has the following qualifications:

(1) Is at least twenty-one years of age;

(2) Is a citizen of the United States, or has declared his intention of becoming such citizen;

(3) Has actually and continuously resided in or has been domiciled in the District of Columbia or has been regularly employed in the District of Columbia on a continuous full-time basis for a period of not less than one year immediately prior to the date of filing an application, or, in the case of an employee of a certified public accountant or firm of certified public accountants registered to practice in the District of Columbia, has been a bona fide resident of a foreign country for a period of not less than eighteen months immediately preceding the date of filing an application and is not qualified to be examined and to receive a certificate of certified public accountant in the State of last residence solely because of the aforesaid residence abroad;

(4) Has had the education and experience specified in section 2–916;

(5) Has successfully completed an examination in accounting and such related subjects as prescribed by the Commissioners;

(6) Is of good moral character; and

(7) Has paid all required fees.

(b) Applications for certificate of certified public accountant by examination approved prior to the effective date of this Act by the Commissioners of the District of Columbia, created under prior law, shall be regarded as applications filed under sections 2–911 to 2–931, and the terms and conditions governing carryover credits for having passed a part of the examination in effect at the effective date of this Act, shall control with respect to such applications.

(c) A person who holds a certificate of certified public accountant issued under the laws of the District of Columbia on the effective date of this Act shall not be required to obtain an additional certificate under sections 2–911 to 2–931, but shall otherwise be subject to all the provisions of said sections and such certificate shall, for all purposes, be considered a certificate issued under this Act and subject to the provisions thereof. The holder of a certificate of certified public accountant which is in full force and effect, shall be styled and known as a certified public accountant and may also use the abbreviation "C.P.A.". (Sept. 16, 1966, 80 Stat. 787, Pub. L. 89–578, § 6.)

REFERENCES IN TEXT

Word "Act" in the phrase "the effective date of this Act", as used in subsecs. (b) and (c) of this section, refer to act Sept. 16, 1966, Pub. L. 89–578, which repealed §§ 2–901 to 2–909 and enacted §§ 2–911 to 2–931. For effective date of such act, see § 24 thereof set out in note under § 2–911.

For "prior law" on the subject of public accounting, and for "the laws of the District of Columbia on the effective date of this Act", referred to in subsecs. (b) and (c), respectively, of this section, see acts cited in note under former §§ 2–901 to 2–909. Prior to the repeal, said former § 2–909 had been amended by act Nov. 8, 1965, 79 Stat. 1309, Pub. L. 89–347, § 8.

EFFECTIVE DATE

Section as effective ninety days after Sept. 16, 1966, see § 24 of act Sept. 16, 1966, Pub. L. 89–578, set out in note under § 2–911.

§ 2–916. Education and experience required.

(a) Commencing on the effective date of this Act and for one year thereafter the educational and experience requirements shall be:

(1) Completion of a four-year course of study at an approved high school, or the equivalent of such a course of study, and

(2) Completion of a resident course of study satisfactory to the Commissioners at an institution, junior college, or school of accountancy, or

combination thereof, of not less than sixty semester hours of which a minimum of thirty semester hours shall have been in accounting theory and practice, in auditing, and in commercial law as affecting accountancy, and the remainder of the semester hours shall have been in subjects satisfactory to the Commissioners, and

(3) Not less than one year's experience satisfactory to the Commissioners in the full-time employment of a certified public accountant of the District of Columbia or of any State or territory of the United States, regularly engaged in the full-time public practice of his profession as a certified public accountant, or in the full-time employment of a firm of certified public accountants all the partners of which are certified public accountants of the District of Columbia or of some other State or territory of the United States, and said firm is regularly engaged in the full-time public practice as certified public accountants.

(b) Commencing one year from the date of enactment of this Act, the educational and experience requirements shall be:

(1)(A) Completion of a four-year course of study at an approved high school, or the equivalent of such course of study, and

(B) Completion of a resident course of study satisfactory to the Commissioners at an institution, junior college, or school of accountancy, or combination thereof, of not less than sixty semester hours of which a minimum of thirty semester hours shall have been in accounting theory and practice, in auditing, and in commercial law as affecting accountancy and the remainder of the semester hours shall have been in subjects satisfactory to the Commissioners, and

(C) Not less than four years' experience satisfactory to the Commissioners in the full-time employment of a certified public accountant of the District of Columbia or of some other State or territory of the United States regularly engaged in the full-time public practice of his profession as a certified public accountant or in the full-time employment of a firm of certified public accountants, all the partners of which are certified public accountants of the District of Columbia or of some other State or territory of the United States, and said firm is regularly engaged in the full-time public practice as certified public accountants, or

(2)(A) Completion of a four-year course of study at an approved high school or the equivalent of such a course of study, and

(B) Completion of a resident course of study satisfactory to the Commissioners at an institution, junior college, or school of accountancy, or combination thereof, of not less than ninety semester hours of which a minimum of thirty semester hours shall have been in accounting theory and practice, in auditing, and in commercial law as affecting accountancy, and the remainder of the semester hours shall have been in subjects satisfactory to the Commissioners, and

(C) Not less than three years' experience satisfactory to the Commissioners in the full-time employment of a certified public accountant of the District of Columbia or of some other State or territory of the United States regularly engaged in the full-time public practice of his profession as a certified public or in the full-time employment of a firm of certified public accountants, all the partners of which are certified public accountants of the District of Columbia or of any State or territory of the United States, and said firm is regularly engaged in the full-time public practice as certified public accountants, or

(3)(A) Completion of a four-year course of study at an approved high school or the equivalent of such a course of study; and

(B) Completion of a resident course of study satisfactory to the Commissioners at an institution, junior college, or school of accountancy, or combination thereof, of not less than one hundred and twenty semester hours with a major in accountancy satisfactory to the Board, or what the Board determines to be substantially the equivalent thereof, and

(C) Not less than two years' experience satisfactory to the Commissioners in the full-time employment of a certified public accountant of the District of Columbia or of some other State or territory of the United States regularly engaged in the full-time public practice of his profession as a certified public accountant or in the full-time employment of a firm of certified public accountants all the partners of which are certified public accountants of the District of Columbia or of some other State or territory of the United States and said firm is regularly engaged in the full-time public practice as certified public accountants.

(c) Commencing with the effective date of this Act, the Commissioners may, upon recommendation of the Board of Accountancy, except for any required year of certified public accountant employment as set forth in subsections (b)(1)(C), (b)(2)(C), and (b)(3)(C) of this section, one and one-half years of actual and continuous experience of any person (1) in auditing the books and accounts of other persons in three or more distinct lines of commercial business in accordance with generally accepted auditing standards, or (2) in a combination satisfactory to the Board of the experience described in (1) above together with auditing the books and accounts or activities of three or more governmental agencies or distinct organizational units in accordance with generally accepted auditing standards and reporting on their operations to a third party, to the Congress, or to a State legislature, or (3) in reviewing financial statements and supporting material covering the financial condition and operations of private business entities to determine the reliability and fairness of the financial reporting and compliance with generally accepted accounting principles and applicable Government regulations for the protection of investors and consumers. Nothing in this subsection shall be interpreted as precluding consideration of Government experience for recognition under this subsection.

(d) In general, the educational and experience requirements specified in this section shall be those in effect on the final date for accepting applications for the examination for which the applicant first sits, but the Commissioners may permit exceptions

to the general rule in order to prevent what they determine to be undue hardship to applicants resulting from changes in the educational and experience requirements made by sections 2–911 to 2–931.

(e) The Commissioners are authorized and empowered to alter, amend, and otherwise change the educational and experience requirements specified in this section at any time, but in altering, amending, or changing said standards the Commissioners shall not be permitted to lower the same below the standards herein set forth. (Sept. 16, 1966, 80 Stat. 788, Pub. L. 89–578, § 7.)

REFERENCES IN TEXT

Word "Act" in the phrase "the effective date of this Act", as used near beginning of subsecs. (a), (b), and (c) of this section, refers to act Sept. 16, 1966, Pub. L. 88–578, which repealed §§ 2–901 to 2–909 and enacted §§ 2–911 to 2–931. For effective date of such act, see § 24 thereof set out in note under § 2–911.

EFFECTIVE DATE

Section as effective ninety days after Sept. 16, 1966, see § 24 of act Sept. 16, 1966, Pub. L. 89–578, set out in note under § 2–911.

§ 2–917. Waiver of examination and endorsement of C.P.A. certificate—Rights of holder of endorsed certificate.

(a) The Commissioners may, in their discretion, waive the examination specified in section 2–915 and may issue an endorsement of certificate of certified public accountant, renewable periodically but no more frequently than annually to an applicant who—

(1) is a certified public accountant of a State or territory of the United States, or who is the holder of a certificate of certified public accountant, or the equivalent thereof, issued in any foreign country, provided the requirements for such certificate are, in the opinion of the Commissioners, equivalent to those herein required; and

(2) meets the qualifications specified in clauses (1), (2), (4), (6), and (7) in subsection (a) of section 2–915: *Provided, however,* That an applicant who is a certified public accountant in good standing of a State or territory shall not be required to meet more extensive educational and experience qualifications than those required by the District of Columbia at the time when such applicant was granted his certificate of certified public accountant by such State or territory; and

(3) declares his intention under oath of opening and maintaining or being employed in an office in the District of Columbia for the purpose of engaging in the full-time public practice of his profession as a certified public accountant of the District of Columbia.

(b) The holder of endorsement of certificate of certified public accountant, in full force and effect, shall have all of the privileges of the holder of a certificate of certified public accountant issued under section 2–915 and shall be subject to all of the provisions of sections 2–911 to 2–931. (Sept. 16, 1966, 80 Stat. 790, Pub. L. 89–578, § 8.)

EFFECTIVE DATE

Section as effective ninety days after Sept. 16, 1966, see § 24 of act Sept. 16, 1966, Pub. L. 89–578, set out in note under § 2–911.

§ 2–918. Registration of certified public accountants—Failure to register.

Every certified public accountant engaged in or who proposes to engage in the public practice of his profession as a certified public accountant in the District of Columbia is hereby required to register periodically but no more frequently than annually with the Commissioners. A certified public accountant of the District of Columbia employed in the District of Columbia by another certified public accountant registered under this section or by a partnership of certified public accountants registered under section 2–919, shall also be required to register. Failure of a certified public accountant or registrant to apply for such original or renewal registration shall deprive him of the right to engage in or continue to engage in the public practice of his profession as a certified public accountant unless and until he subsequently applies for and obtains such registration. (Sept. 16, 1966, 80 Stat. 790, Pub. L. 89–578, § 9.)

EFFECTIVE DATE

Section as effective ninety days after Sept. 16, 1966, see § 24 of act Sept. 16, 1966, Pub. L. 89–578, set out in note under § 2–911.

§ 2–919. Registration of partnerships practicing public accountancy—Requirements—Use of titles.

(a) A partnership which maintains an office within and engages in the full-time practice of public accountancy or a partnership which may hereafter wish to practice as such in the District of Columbia, may apply for registration, renewable periodically but no more frequently than annually, with the Commissioners as a partnership of certified public accountants, provided it meets all of the following requirements:

(1) Each partner thereof is a certified public accountant in good standing of the District of Columbia or of some State or territory.

(2) At least one partner or the resident manager thereof is a certified public accountant of the District of Columbia engaged in the full-time practice of public accountancy in the District of Columbia.

(3) Each partner thereof engaged in public practice as a certified public accountant in the District of Columbia is a certified public accountant of the District of Columbia.

(b) A registered partnership of certified public accountants, and only such partnership may use the title "Certified Public Accountants" and the abbreviation "C.P.A.s" in connection with the partnership name in the District of Columbia. (Sept. 16, 1966, 80 Stat. 791, Pub. L. 89–578, § 10.)

EFFECTIVE DATE

Section as effective ninety days after Sept. 16, 1966, see § 24 of act Sept. 16, 1966, Pub. L. 89–578, set out in note under § 2–911.

§ 2–920. Hearings, and revocation, suspension, or denial of certificate, etc.—Censure—Procedure.

After notice by registered or certified mail and reasonable opportunity for a hearing, the Commissioners are authorized and empowered to revoke, or suspend for not more than three years, any certificate, endorsement, or registration issued by the Commissioners in accordance with the provisions

of sections 2–911 to 2–931, or to refuse to grant or renew, any certificate, endorsement, or registration applied for in accordance with the provisions of said sections, or may censure the holder thereof if the applicant or holder thereof violates the rules of professional conduct or other rules and regulations adopted pursuant to said sections, or for other sufficient cause: *Provided*, That said denial, suspension, or revocation shall be made only upon specific charges in writing. A certified copy of any such charge and at least twenty days' notice of the hearing of the same, shall be served upon the holder of or applicant for such certificate, endorsement, or registration. (Sept. 16, 1966, 80 Stat. 791, Pub. L. 89–578, § 11.)

EFFECTIVE DATE

Section as effective ninety days after Sept. 16, 1966, see § 24 of act Sept. 16, 1966, Pub. L. 89–578, set out in note under § 2–911.

§ 2–921. Witnesses and records at hearings—Nature of hearings.

The Commissioners are hereby authorized and empowered in connection with any hearing conducted pursuant to authority contained in section 2–920, to subpena any necessary witnesses, books, papers, records, and documents. Any such hearing shall be considered an investigation of a municipal matter within the meaning of section 1–237. (Sept. 16, 1966, 80 Stat. 791, Pub. L. 89–578, § 12.)

EFFECTIVE DATE

Section as effective ninety days after Sept. 16, 1966, see § 24 of act Sept. 16, 1966, Pub. L. 89–578, set out in note under § 2–911.

§ 2–922. Revocation or suspension of partnership registrations—Censure.

After notice and hearing are given as provided for in section 2–920, the Commissioners may revoke or suspend the registration of a partnership or may censure a registered partnership for any of the causes described in section 2–920, or for any of the following additional causes:

(1) failure to maintain the qualifications prescribed by section 2–919;

(2) the revocation or suspension by the Commissioners of the certificate or endorsement of a certificate of certified public accountant of any partner; or

(3) the cancellation, revocation, suspension or refusal to renew the authority of the partnership or any partner thereof to practice public accountancy in any State or territory.

(Sept. 16, 1966, 80 Stat. 791, Pub. L. 89–578, § 13.)

EFFECTIVE DATE

Section as effective ninety days after Sept. 16, 1966, see § 24 of act Sept. 16, 1966, Pub. L. 89–578, set out in note under § 2–911.

§ 2–923. Administrative procedure for public hearings.

The Commissioners shall adopt and prescribe administrative procedures for public hearings for the purpose of denial, suspension, or revocation of a certificate, endorsement, or registration. (Sept. 16, 1966, 80 Stat. 791, Pub. L. 89–578, § 14.)

EFFECTIVE DATE

Section as effective ninety days after Sept. 16, 1966, see § 24 of act Sept. 16, 1966, Pub. L. 89–578, set out in note under § 2–911.

§ 2–924. Issuance of new certificate, etc. after revocation—Permitting registration after registration revoked.

Upon application in writing and after hearing pursuant to notice, the Commissioners may issue a new certificate or endorsement of certificate of certified public accountant to a person whose certificate or endorsement of certificate shall have been revoked, or may permit the registration of a partnership or of a practicing certified public accountant whose registration has been revoked. (Sept. 16, 1966, 80 Stat. 791, Pub. L. 89–578, § 15.)

EFFECTIVE DATE

Section as effective ninety days after Sept. 16, 1966, see § 24 of act Sept. 16, 1966, Pub. L. 89–578, set out in note under § 2–911.

§ 2–925. Noncertified public accountants as employees or assistants—Temporary practice in District by nonresident certified public accountants.

Nothing contained in sections 2–911 to 2–931 shall prohibit any natural person not a certified public accountant from serving as an employee of or an assistant to a certified public accountant or a partnership of certified public accountants.

Nothing contained in sections 2–911 to 2–931 shall prohibit a certified public accountant or a partnership of certified public accountants of another State from temporarily performing specific accounting engagements in the District of Columbia on professional business incident to regular practice outside the District of Columbia: *Provided*, That such temporary practice is conducted in conformity with the rules of professional conduct promulgated by the Commissioners. (Sept. 16, 1966, 80 Stat. 792, Pub. L. 89–578, §16.)

EFFECTIVE DATE

Section as effective ninety days after Sept. 16, 1966, see § 24 of act Sept. 16, 1966, Pub. L. 89–578, set out in note under § 2–911.

§ 2–926. Penalty for violations—Prosecutions by Corporation Counsel—Jurisdiction.

Any person who violates any provision of section 2–912 shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $500 or to imprisonment for not more than one year, or both such fine and imprisonment. Whenever the Commissioners have reason to believe that any person is liable to punishment under this section, they may refer the facts to the Corporation Counsel of the District of Columbia, who may cause the proper proceedings to be brought, if, in his judgment, such is warranted. Prosecutions for violations of any provision of section 2–912 shall be conducted in the District of Columbia Court of General Sessions in the name of the District of Columbia by the Corporation Counsel or any of his assistants. (Sept. 16, 1966, 80 Stat. 792, Pub. L. 89–578, § 17.)

EFFECTIVE DATE

Section as effective ninety days after Sept. 16, 1966, see § 24 of act Sept. 16, 1966, Pub. L. 89–578, set out in note under § 2–911.

§ 2–927. Prima facie evidence of violation.

The use, display, or uttering by a person of a letterhead, listing, card, sign, advertisement, directory classification, or other printed, engraved, or written

instrument or device, bearing a person's name in conjunction with the words "certified public accountant" or "certified public accountants" or any abbreviation thereof, shall be prima facie evidence in any action brought under section 2–926 that the person whose name is so displayed caused or procured the display or uttering of such letterhead, listing, card, sign, advertisement, directory classification, or other printed, engraved, or written instrument or device, and that such person is holding himself out to be a certified public accountant or partnership of certified public accountants. (Sept. 16, 1966, 80 Stat. 792, Pub. L. 89–578, § 18.)

EFFECTIVE DATE

Section as effective ninety days after Sept. 16, 1966, see § 24 of act Sept. 16, 1966, Pub. L. 89–578, set out in note under § 2–911.

§ 2–928. Title to statements and other records—Transfer.

All statements, records, schedules, working papers, and memorandums made by a certified public accountant or by a partnership of certified public accountants incident to or in the course of professional service to clients, except reports submitted to clients, shall be and remain the property of such certified public accountant or partnership in the absence of an express agreement between such persons and the client to the contrary. No such statement, record, schedule, working paper, or memorandum shall be sold, transferred, or bequeathed, without the consent of the client or his personal representative or assignee, to anyone other than one or more surviving partners or new partners of such persons. (Sept. 16, 1966, 80 Stat. 792, Pub. L. 89–578, § 19.)

EFFECTIVE DATE

Section as effective ninety days after Sept. 16, 1966, see § 24 of act Sept. 16, 1966, Pub. L. 89–578, set out in note under § 2–911.

§ 2–929. Severability of provisions.

If any provision of sections 2–911 to 2–931 or the application thereof to any person or to any circumstance is held invalid, such invalidity shall not affect other provisions or applications of said sections which can be given effect without the invalid provision or application, and to this end the provisions of said sections are declared to be severable. (Sept. 16, 1966, 80 Stat. 792, Pub. L. 89–578, § 20.)

EFFECTIVE DATE

Section as effective ninety days after Sept. 16, 1966, see § 24 of act Sept. 16, 1966, Pub. L. 89–578, set out in note under § 2–911.

§ 2–930. Fees for costs of administration—Disposition of funds.

The Commissioners are authorized and empowered, after public hearing, to establish, abolish, increase, or decrease, from time to time, fees and charges necessary to defray the approximate cost of administering the provisions of sections 2–911 to 2–931. All funds derived from fees and charges collected relevant to the administration of said sections shall be paid into the Treasury of the United States to the credit of the District of Columbia. (Sept. 16, 1966, 80 Stat. 792, Pub. L. 89–578, § 21.)

EFFECTIVE DATE

Section as effective ninety days after September 16, 1966, see § 24 of act Sept. 16, 1966, Pub. L. 89–578, set out in note under § 2–911.

§ 2–931. Appropriations.

There is hereby authorized to be appropriated out of revenues of the District of Columbia such funds as may be necessary to pay the expenses of administering and carrying out the purpose of sections 2–911 to 2–931. (Sept. 16, 1966, 80 Stat. 793, Pub. L. 89–578, § 22.)

EFFECTIVE DATE

Section as effective ninety days after Sept. 16, 1966, see § 24 of act Sept. 16, 1966, Pub. L. 89–578, set out in note under § 2–911.

Chapter 10.—ARCHITECTS

Sec.

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§ 2–1001. Board of Examiners—Creation.

There is hereby created a Board of Examiners and Registrars of Architects, the members of which and their successors shall be appointed by the Commissioners of the District of Columbia, and said Board, subject to the approval of said Commissioners, shall make rules for the examination and registration of applicants for the certificates provided for by this chapter. (Dec. 13, 1924, 43 Stat. 713, ch. 9, § 1.)

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47–2344, 47–2345.

Honorariums to various board members and commissioners, see §§ 1–254 to 1–259.

Other provisions concerning rules and regulations, see § 2–1006.

Rules and regulations in general, see § 1–226 and notes.

NOTES TO DECISIONS

Practice of engineering

The preparation by duly licensed master electricians of plans, diagrams and computations for proposed installations in which carrying capacity will exceed 200 amperes or electrical potential will exceed 240 volts does not constitute "practice of engineering" as contemplated in the Professional Engineers' Registration Act, and order of Board of Commissioners of District of Columbia providing that plans and specifications for proposed electrical installations in excess of 240 amperes or 240 volts should be prepared by registered professional electrical engineer was not required under the legislation regulating the practice of engineering. *Electrical Contractors Association of the District of Columbia et al.* v. *Robert E. McLaughlin et al.* (D.C.D.C. 1957, 153 F. Supp. 653).

Prior law

The Architect's Registration Act, prior to 1950 amendment, in no way restricted actual practice of architecture, but merely prohibited use of title of architect by one not licensed, and wrongful use of title of architect by one not so licensed did not invalidate his contract and did not deprive him of right to recover for services which were legally rendered under the contract. *Dunn* v. *Finlayson* (D. C. Mun. App. 1954, 104 A. 2d 830).

Regulations

Order of District of Columbia Board of Commissioners requiring that application for any proposed electrical installation in which current carrying capacity exceeds 200 amperes or electrical potential exceeds 240 volts shall be accompanied by plans and computations prepared and signed by professional electrical engineer bears no relationship to the factors of public health, safety or general welfare, results in discrimination against the electrical trade or business and inevitably increases cost to the consuming public, for no lawful reason, and such order is illogical, unreasonable, arbitrary and capricious. *Electrical Contractors Association of the District of Columbia et al.* v. *Robert E. McLaughlin et al.* (D.C.D.C. 1957, 153 F. Supp. 653).

Repeal by implication

Where section of Electrical Code providing for plans and specifications to be submitted by licensed electricians as part of permits for proposed electrical installation was in effect at time Congress enacted legislation regulating architects and engineers without repealing the Electrical Code sections, no repeal of Electrical Code sections was intended by implication, and District of Columbia Board of Commissioner's orders amending Electrical Code section to provide that plans and specifications for installations in excess of 240 amperes or 240 volts should be prepared by a registered professional electrical engineer was without basis in law. *Electrical Contractors Association of the District of Columbia et al.* v. *Robert E. McLaughlin et al.* (D.C.D.C. 1957, 153 F. Supp. 653).

§ 2–1002. Appointment—Qualifications.

The Board shall be composed of five architects who have been in active practice in the District of Columbia for not less than ten years previous to their appointment. (Dec. 13, 1924, 43 Stat. 713, ch. 9, § 2.)

§ 2–1003. Tenure—Filling vacancies.

All appointments shall be for a period of five years. In case a successor is not appointed at the expiration of the term of any member, such member shall hold office until the successor has been duly appointed and has qualified. In the event of any vacancy occurring in the membership of said Board in any manner other than by expiration of time, the said Commissioners shall fill said vacancy by an appointment for the unexpired term. (Dec. 13, 1924, 43 Stat. 713, ch. 9, § 3.)

§ 2–1004. Oath of office.

The members of said Board of Examiners shall, before entering upon the discharge of their duties, subscribe to and file with the secretary of the Board of Commissioners of the District of Columbia the constitutional oath of office. (Dec. 13, 1924, 43 Stat. 714, ch. 9, § 4.)

§ 2–1005. First meeting and election of officers.

The Board of Examiners and Registrars of Architects shall meet and elect from its membership a president, secretary, and a treasurer. (Dec. 13, 1924 43 Stat. 714, ch. 9, § 5.)

§ 2–1006. Organization—Meetings.

The said Board shall adopt all necessary rules, regulations, and by-laws, not inconsistent with this chapter, to govern its times and places of meeting for organization and reorganization and the holding of examinations, the length of the terms of its officers and all other matters requisite to the exercise of its powers, the performance of its duties, and the transaction of its business under the provisions of this chapter. At least two meetings shall be held each year for the purpose of examination for registration. (Dec. 13, 1924, 43 Stat. 714, ch. 9, § 6.)

CROSS REFERENCE

Approval of rules and regulations by Commissioners, see § 2–1001.

§ 2–1007. Quorum—Votes.

Three members of the said Board shall constitute a quorum, but no action at the meeting can be taken without at least three votes in accord. (Dec. 13, 1924, 43 Stat. 714, ch. 9, § 7.)

§ 2–1008. Minutes—Clerical assistance.

The secretary of the said Board shall keep a true record of all proceedings of the said Board and may employ such clerical assistance as the said Board may deem necessary. (Dec. 13, 1924, 43 Stat. 714, ch. 9, § 8.)

§ 2–1009. Duty to enforce law—Payment of expenses.

The said Board shall be charged with the duty of enforcing the provisions of this chapter and may incur such expenses as shall be necessary, all of which expenses shall be paid only out of the revenue arising from this chapter in the manner hereinafter mentioned and provided. (Dec. 13, 1924, 43 Stat. 714, ch. 9, § 9.)

§ 2–1010. Roster of architects—Report.

A roster showing the names and places of business and residences of all architects shall be prepared by the secretary of the Board during the month of June of each year; such roster shall be printed out of the funds of the Board as provided in section 2–1011. On or before the 1st day of August each year the Board shall submit to the Commissioners of the District of Columbia a report of its transactions for the preceding fiscal year, together with a complete statement of the receipts and expenditures of the Board, certified by the chairman and the secretary, and a copy of the said roster of architects. (Dec. 13, 1924, 43 Stat. 714, ch. 9, § 10; Sept. 7, 1950, 64 Stat. 780, ch. 908, § 1.)

AMENDMENT

1950—Act Sept. 7, 1950, struck out the word "registered" preceding "architects" in the first and second sentences.

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment of section by act Sept. 7, 1950, effective 90 days after Sept. 7, 1950, see section 8 of act Sept. 7, 1950, set out as a note under section 2–1031.

§ 2–1011. Fees to be paid to treasurer—Payment of expenses.

All fees provided for by this chapter shall be paid to and receipted for by the treasurer of the Board of Examiners and Registrars of Architects for the District of Columbia and shall not be used for any purpose other than the purposes of this chapter. The expenses of said Board, subject to the approval of said Board, shall be paid by him upon written order and warrant of the president and secretary of said Board. (Dec. 13, 1924, 43 Stat. 714, ch. 9, § 11.)

§ 2–1012. Compensation of members.

Each member of the said Board shall be entitled to such reasonable compensation for his services as may be approved by said Board: *Provided,* That said compensation shall not exceed $10 per diem: *And provided,* That the total amount of such compensation shall not exceed the unobligated balance remaining with the treasurer of the Board on the 30th of June of each year. (Dec. 13, 1924, 43 Stat. 714, ch. 9, § 12.)

§ 2–1013. Reimbursement for expenses.

The members of the said Board shall be reimbursed the amount of actual expenses incurred in the performance of their duties under this chapter, subject to the approval of said Board. (Dec. 13, 1924, 43 Stat. 715, ch. 9, § 13.)

§ 2–1014. Practice of architecture limited—Practice of architecture and architect defined.

(a) Except as otherwise provided in this chapter, no person shall practice architecture in the District of Columbia or use the title "architect" or "registered architect", or any words, letters, figures, or other device indicating or intending to imply that he or she is an architect, without having qualified as required by this chapter.

(b) The practice of architecture within the meaning and intent of this chapter consists of rendering or offering to render services by consultations, preliminary studies, drawings, specifications, or any other service in connection with the design of any building or addition or structural alteration thereto, whether one or all of these services are performed either in person or as the directing head of an organization.

(c) An architect within the meaning of this chapter is an individual technically and legally qualified to practice architecture and who is authorized under this chapter to practice architecture. (Dec. 13, 1924, 43 Stat. 715, ch. 9, § 14; May 29, 1928, 45 Stat. 950, ch. 861; Sept. 7, 1950, 64 Stat. 780, ch. 908, § 2.)

CODIFICATION

Section consolidates act Dec. 13, 1924, and act May 29, 1928.

AMENDMENT

1950—Act Sept. 7, 1950, amended the section generally. Section previously read: "Except as otherwise provided in this chapter, any person wishing to practice architecture in the District of Columbia under the title of architect shall, before being entitled to be or be known as an architect, secure from such Board a certificate of qualifications to practice under the title of architect, as provided in this chapter."

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment of section by act Sept. 7, 1950, effective 90 days after Sept. 7, 1950, see section 8 of act Sept. 7, 1950, set out as a note under section 2–1031.

CROSS REFERENCE

Persons exempted, see § 2–1026.

NOTES TO DECISIONS

Architectural services

Where person, designated as architect and supervising engineer in construction contract, had drawn plans and prepared specifications prior to effective date of 1950 amendment to Architect's Registration Act, which amendment, as a regulatory measure, prohibited practice of architecture without certificate from Board of Examiners and Registrars of Architects, and building was under actual construction before such date, although not completed for some months thereafter, services rendered by such person after such date were not architectural services. *Dunn* v. *Finlayson* (D. C. Mun. App. 1954, 104 A. 2d 830).

Construction

Within Architect's Registration Act, subsequent to 1950 amendment, the practice of architecture is restricted to acts done in connection with design of any building or addition or structural alteration thereto, and does not extend to the actual construction or superintendence of construction of a building. *Dunn* v. *Finlayson* (D. C. Mun. App. 1954, 104 A. 2d 830).

The Architect's Registration Act, subsequent to 1950 amended is a regulatory act designed for public welfare, and one who engages in practice of architecture in violation of the act cannot recover for his services. *Id.*

§ 2–1015. Holder of certificate may use title of architect.

Any person having a certificate pursuant to the requirements of this chapter may be styled or known as an architect or registered architect. (Dec. 13, 1924, 43 Stat. 715, ch. 9, § 15.)

§ 2–1016. Registration as architect limited to individuals.

No firm, company, partnership, association, corporation or other similar organization shall be registered as an architect. Only individuals shall be registered as architects but a number of architects constituting a firm may use the collective title "architects" or "registered architects." (Dec. 13, 1924, 43 Stat. 715, ch. 9, § 16; May 29, 1928, 45 Stat. 950, ch. 861; Sept. 7, 1950, 64 Stat. 781, ch. 908, § 3.)

AMENDMENTS

1950—Act Sept. 7, 1950, amended section generally. Section previously read: "No person who was engaged in the practice of architecture in the District of Columbia on December 13, 1924, shall use or assume any title indicating that he or she is an architect, or any words, letters, or figures to indicate that the person using them is an architect, unless he or she shall have qualified and obtained a certificate of registration as an architect, or unless he or she has, within six months after May 29, 1928, filed with said Board an affidavit establishing to the satisfaction of said Board the fact that he or she was in practice as an architect in said District on and prior to December 13, 1924. Nothing herein contained shall be construed to prevent any person who was engaged in the practice of architecture in said District on and prior to December 13, 1924, from applying to said Board at any time for examination under this chapter. No firm shall be entitled to the style or designation 'architect' or 'registered architect' unless and until every member thereof shall be entitled to such designation. A corporation whose principal business, as shown by its charter,

is the practice of architecture, may apply for and obtain a certificate of registration, provided all its executive officers and directors are registered architects. The same exemptions shall apply to partnerships and corporations as apply to individuals under this chapter."

1928—Act May 29, 1928, amended the section generally. Section previously read: "That no person presumed to have the right to secure such certificate because of his or her use of the title architect prior to the time this Act goes into effect shall assume any title indicating that he or she is an architect, or any words, letters, or figures to indicate that the person using them is an architect, unless he or she shall have qualified and obtained a certificate of registration as an architect, or unless he or she shall have filed an affidavit establishing the fact that he or she was in practice as an architect previous to the passage of this act and has a legal right to practice without a certificate. Each member of a firm or corporation practicing architecture shall be registered before being entitled to be known as or to style themselves architects or registered architects."

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment of section by act Sept. 7, 1950, effective 90 days after Sept. 7, 1950, see section 8 of act Sept. 7, 1950, set out as a note under section 2–1031.

§ 2–1017. Employees of architects entitled to practice under supervision—Exceptions.

Nothing contained in this chapter shall prevent the draftsmen, students, clerks of work, superintendents, and other employees of those lawfully practicing as architects under the provisions of this chapter from acting under the instruction, control, or supervision of their employers, or to prevent the employment of superintendents of the construction, enlargement, or structural alteration of buildings or any appurtenance thereto. Nor shall anything contained in this chapter be construed to apply to alterations to any building which do not involve changes affecting the structural safety thereof or the public health; nor to prevent the preparation of details and shop drawings by persons, other than architects, for use in connection with the execution of their work; nor to prevent the preparation of drawings or details for fixtures, cabinet work, furniture, or other interior appliances or equipment, or for any work necessary to provide for their installation unless the same involves public health or safety; nor apply to the construction or alteration of a building that does not cover over one thousand square feet of ground area, and does not have a height of over twenty feet to the uppermost ceiling, or two habitable floors above a basement. (Dec. 13, 1924, 43 Stat. 715, ch. 9, § 17; Sept. 7, 1950, 64 Stat. 781, ch. 908, § 3.)

AMENDMENT

1950—Act Sept. 7, 1950, amended the section generally. Section previously read: "Nothing contained in this chapter shall prevent the draftsmen, students, clerks of work, superintendents, and other employees of those lawfully practicing as registered architects under the provisions of this chapter from acting under the instruction, control, or supervision of their employers, or to prevent the employment of superintendents of the construction, enlargement, or alteration of buildings or any appurtenance thereto, or prevent such superintendent from acting under the immediate personal supervision of the registered architect by whom the plans and specifications of any such buildings, enlargement, or alteration were prepared. Nor shall anything contained in this chapter prevent persons, engineers, mechanics, or builders from making plans, specifications for, or supervising the erection, enlargement, or alteration of buildings or any appurtenance thereto: *Provided*, That the plans and specifications for such construction are signed by the authors thereof with their true appellation, without the use in any form of the title 'architect' or 'architects.'"

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment of section by act Sept. 7, 1950, effective 90 days after Sept. 7, 1950, see section 8 of act Sept. 7, 1950, set out as a note under section 2–1031.

§ 2–1018. "Building" defined—Drawings and specifications to be signed.

A building, for the purposes of this chapter, is any structure consisting of foundation, floors, walls, columns, girders, and roof, or a combination of any number of these parts, with or without other parts or appurtenances. All drawings and specifications prepared for such structures, or enlargements or structural alterations to such structures, in accordance with this chapter, shall be signed by the architect responsible for their production. (Dec. 13, 1924, 43 Stat. 715, ch. 9, § 18; Sept. 7, 1950, 64 Stat. 781 ch. 908, § 3.)

AMENDMENT

1950—Act Sept. 7, 1950, added the last sentence.

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment of section by act Sept. 7, 1950, effective 90 days after Sept. 7, 1950, see section 8 of act Sept. 7, 1950, set out as a note under section 2–1031.

§ 2–1019. Registration without examination.

(a) Nothing in this chapter shall prevent any person who actually engaged in the practice of architecture under the title of architect prior to December 13, 1924, from continuing the practice of architecture without a certificate of registration if such person has filed with the Board of Examiners and Registrars of Architects an affidavit establishing to the satisfaction of said Board the fact that he or she was in practice as an architect in the District of Columbia on and prior to December 13, 1924: *Provided*, That registration shall not be granted under this subsection unless the application therefor is filed with the Board of Examiners and Registrars of Architects within one year after December 7, 1950.

(b) Any properly qualified person may be granted registration without examination who submits an affidavit establishing to the satisfaction of the Board of Examiners and Registrars of Architects that he or she was regularly engaged in the practice of architecture in the District of Columbia for five years immediately preceding December 7, 1950: *Provided*, That registration shall not be granted under this subsection unless the application therefor is filed with the Board of Examiners and Registrars of Architects within one year after December 7, 1950.

(c) Any properly qualified person who was on active duty in the Armed Forces of the United States at any time after October 16, 1940, may be granted registration without examination who submits an affidavit establishing to the satisfaction of the Board of Examiners and Registrars of Architects that prior to December 7, 1950 he or she was for an aggregate period of five years regularly engaged in the practice of architecture in the District of Columbia: *Provided*, That registration shall not be granted under this subsection unless the application therefor is filed with the Board of Examiners and Registrars of

Architects within one year after December 7, 1950. (Dec. 13, 1924, 43 Stat. 715, ch. 9, § 19; May 29, 1928, 24 Stat. 950, ch. 861; Sept. 7, 1950, 64 Stat. 781, 784, ch. 908, §§ 3, 7, 8.)

AMENDMENTS

1950—Act Sept. 7, 1950, amended the section generally. Section previously read: "Any properly qualified person who shall have been actually engaged in the practice of architecture in the District of Columbia on December 13, 1924, may be granted a certificate of registration without examination on condition that the applicant shall submit satisfactory evidence to the said board that he is qualified to practice architecture and by payment to the board of the fee required for certificate of registration as prescribed in section 2–1023: *Provided,* That nothing in this chapter shall prevent any person who was actually engaged in the practice of architecture under the title of architect prior to December 13, 1924, from continuing the practice of said profession without a certificate of registration and without the use in any form of the title 'registered architect' upon filing the affidavit required by section 2–1016."

1928—Act May 29, 1928, amended the section generally. Section previously read: "That any properly qualified person who shall have been actually engaged in the practice of architecture in the District of Columbia at the time this Act takes effect may be granted a certificate of registration without examination on condition that the applicant shall submit satisfactory evidence to the said board that he is qualified to practice architecture and by payment to the board of fee for certificate of registration as prescribed in section 24 of this Act: *Provided,* That nothing in this Act shall prevent any person who was actually engaged in the practice of architecture under the title of architect prior to the time this Act takes effect from continuing the practice of said profession without a certificate of registration and without the use in any form of the title 'registered architect'."

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment of section by act Sept. 7, 1950, effective 90 days after Sept. 7, 1950, see section 8 of act Sept. 7, 1950, set out as a note under section 2–1031.

NOTES TO DECISIONS

False statement in application

Renewal is largely a ministerial act and in no way establishes validity of original registration, and Board of Examiners and Registrars of Architects could not have refused to renew on sole ground that charges were pending against registrar or that it had received information adverse to him; and, therefore, Board could not be held to have waived its right to revoke by annually renewing registration. *Stone* v. *Board of Examiners and Registrars of Architects* (D. C. Mun. App. 1956, 126 A. 2d 157).

Three-year statute of limitations, if applicable to proceeding to revoke architect's certificate of registration as obtained through fraud or misrepresentation, would not begin to run until discovery of facts. *Id.*

Findings of board

Board of Examiners and Registrars of Architects was not bound to accept registrant's testimony that he did not know his Maryland registration had been revoked when he gave negative response to question as to whether any of his registration certificates had ever been revoked; and, on record presented, Board could reasonably find that his response had been false. *Stone* v. *Board of Examiners and Registrars of Architects* (D. C. Mun. App. 1956, 126 A. 2d 157).

Even if Board of Examiners and Registrars of Architects would not have been authorized to refuse registration merely on basis of revocation in another jurisdiction, false answer to question seeking to elicit such information would be ground for revocation. *Id.*

§ 2–1020. Qualifications of applicants.

Any citizen of the United States or any person who has declared his (or her) intention of becoming a citizen, being at least twenty-one years of age, of good moral character, and who has had at least three years of practical architectural experience in offices engaged in the practice of architecture as defined by this chapter, may apply for registration or for such examination as shall be requisite for registration under this chapter. (Dec. 13, 1924, 43 Stat. 715, ch. 9, § 20; Sept. 7, 1950, 64 Stat. 781, ch. 908, § 3.)

AMENDMENT

1950—Act Sept. 7, 1950, raised minimum age of applicants from twenty to twenty-one years, and added further qualification of "at least three years of practical architectural experience in offices engaged in the practice of architecture as defined by this chapter."

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment of section by act Sept. 7, 1950, effective 90 days after Sept. 7, 1950, see section 8 of act Sept. 7, 1950, set out as a note under section 2–1031.

§ 2–1021. Examination of applicants—Registration in another jurisdiction.

The applicant shall satisfactorily pass an examination in such technical and professional subjects as shall be prescribed by the said Board. The Board may in lieu of examination accept registration or certification as an architect in another State, Territory, or country where the qualifications prescribed at the time of such registration or certification were equal to those prescribed in the District of Columbia at the date of application; and where such State, Territory, or country accepts in like manner the registration of architects of the District of Columbia. (Dec. 13, 1924, 43 Stat. 716, ch. 9, § 21; Sept. 7, 1950, 64 Stat. 781, ch. 908, § 3.)

AMENDMENT

1950—Act Sept. 7, 1950, amended section generally. Section previously read:

"The applicant shall satisfactorily pass an examination in such technical and professional subjects as shall be prescribed by the Board of Examiners and Registrars of Architects. The Board may, in lieu of examination, accept satisfactory evidence of any one of the qualifications set forth under subdivisions (a) and (b) of this section.

"(a) A diploma of graduation or satisfactory certificate from an architectural college or school that he or she has completed a technical course approved by the board, together with and subsequent thereto of at least three (3) years satisfactory experience in the office or offices of a reputable architect or architects.

"The Board may require applicants under this subdivision to furnish satisfactory evidence of knowledge of professional practice.

"(b) Registration or certification as an architect in another state or country, where the qualifications prescribed at the time of such registration or certification were equal to those prescribed in this District at date of application, and where such state, territory, or foreign country accepts in like manner the registration of architects in the District of Columbia."

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment of section by act Sept. 7, 1950, effective 90 days after Sept. 7, 1950, see section 8 of act Sept. 7, 1950, set out as a note under section 2–1031.

§ 2–1022. Practical examination only required of those with ten years' experience.

An architect who has lawfully practiced architecture for a period of more than ten years outside of the District of Columbia shall, except as otherwise provided in section 2–1021, be required to take only a practical examination, the nature of which shall be prescribed by the Board of Examiners and Registrars

of Architects. (Dec. 13, 1924, 43 Stat. 716, ch. 9, § 22; May 29, 1928, 45 Stat. 951, ch. 861; Sept. 7, 1950, 64 Stat. 781, ch. 908, § 3.)

CODIFICATION

Section consolidates act Dec. 13, 1924, and act May 29, 1928.

AMENDMENT

1950—Act Sept. 7, 1950, eliminated reference to subdivision (b) of section 2–1021.

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment of section by act Sept. 7, 1950, effective 90 days after Sept. 7, 1950, see section 8 of act Sept. 7, 1950, set out as a note under section 2–1031.

§ 2–1023. Fees.

(a) The fees to be paid to the treasurer of the Board of Examiners and Registrars of Architects shall be fixed by said Board from time to time and shall not exceed in amount the several fees provided for in this section.

(b) The fee to be paid by an applicant for registration as an architect shall be $25.

(c) The fee to be paid by an applicant who has been granted a certificate of registration as an architect by the Board shall be not in excess of $12, such fee to be prorated on a monthly basis from time of granting of application to the 30th day of the following April.

(d) The fee to be paid upon renewal of a certificate of registration shall be not in excess of $15.

(e) The fee to be paid for the restoration of an expired certificate of registration shall be not in excess of $20. (Dec. 13, 1924, 43 Stat. 716, ch. 9, § 23; Sept. 7, 1950, 64 Stat. 781, ch. 908, § 3.)

AMENDMENT

1950—Act Sept. 7, 1950, inserted the subsection designations and increased the fee specified in subsection (b) from $10 to $25.

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment of section by act Sept. 7, 1950, effective 90 days after Sept. 7, 1950, see section 8 of act Sept. 7, 1950, set out as a note under section 2–1031.

AUTHORITY TO CHANGE FEES

Commissioners authorized and empowered to increase or decrease, from time to time, the fees specified in this section, see §§ 1–252, 1–253.

CROSS REFERENCE

Refund of fees where license is refused, see § 47–1017.

§ 2–1024. Examination papers and other evidence of qualification to be filed with Board—Record.

(a) All examination papers and other evidences of qualification submitted by each applicant shall be filed with the Board of Examiners and Registrars of Architects, and said Board shall keep a record of its proceedings relating to the issuance, refusal, renewal, suspension, and revocation of certificates of registration.

(b) The record shall also contain the name, known place of business and residence, and the date and number of the certificate of registration of every architect entitled to practice his profession in the District of Columbia. (Dec. 13, 1924, 43 Stat. 716, ch. 9, § 24; May 29, 1928, 45 Stat. 951, ch. 861; Sept. 7, 1950, 64 Stat. 781, ch. 908, § 3.)

CODIFICATION

Section consolidates act Dec. 13, 1924, and act May 29, 1928.

AMENDMENT

1950—Act Sept. 7, 1950, inserted the subsection designations and struck out the word "registered" preceding "architect" in subsection (b).

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment of section by act Sept. 7, 1950, effective 90 days after Sept. 7, 1950, see section 8 of act Sept. 7, 1950, set out as a note under section 2–1031.

§ 2–1025. Certificate—Annual renewal.

(a) Every architect registered in the District of Columbia shall annually, during the month of May, renew his certificate of registration and pay the renewal fee required by section 2–1023. It shall be unlawful for any architect who fails to renew his or her registration to continue the practice of architecture, subject to restoration upon paying the fee therefor prescribed in accordance with section 2–1023.

(b) A person who fails to renew his certificate of registration during the month of May in each year may not thereafter renew his certificate except upon payment of the fee required by section 2–1023 for the restoration of an expired certificate of registration.

(c) Every renewal certificate shall expire on the 30th day of April following the issuance. (Dec. 13, 1924, 43 Stat. 716, ch. 9, § 25; May 29, 1928, 45 Stat. 951, ch. 861; Sept. 7, 1950, 64 Stat. 781, ch. 908, § 3.)

AMENDMENTS

1950—Act Sept. 7, 1950, inserted the subsection designations, and amended subsection (a) by striking out "registered" before "architects"; by inserting "registered" after "architect"; and by substituting the present language of the second sentence in place of the following: "Any such architect who fails to pay the said renewal fee shall cease to be a registered architect, subject to restoration upon paying the fee therefor prescribed in accordance with section 2–1023."

1928—Act May 29, 1928, added the second sentence to the first paragraph.

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment of section by act Sept. 7, 1950, effective 90 days after Sept. 7, 1950, see section 8 of act Sept. 7, 1950, set out as a note under section 2–1031.

NOTES TO DECISIONS

Judgment

Where mathematical computation indicated that trial court erroneously allowed plaintiff to recover on two contracts, whereas recovery on one contract was barred by violation of architects' licensing statute, but evidence supported award in part, judgment would be affirmed on condition of remittitur. *Holiday Homes, Inc.* v. *William K. Briley* (D. C. Mun. App. 1956, 122 A. 2d 229).

Where architect's license was erroneously renewed in 1953, since fee forwarded was insufficient, and architect did not renew registration until October 1955, his rendition of designs while registration was lapsed was violative of statute, but such violation extended only to November, 1954 agreement under which he consented to use of existing plans, and agreed to design new house, and did not preclude recovery for separable agreement to render designs in plans for additional salary, under which he rendered designs after renewal of license. *Id.*

Practice of architecture

The statute prohibiting practice of "architecture" without license does not preclude all supervision of performance of one having a knowledge of architecture, especially when supervision is primarily concerned with analyzing and correcting inefficiencies in a business apparently being operated at a loss. *Holiday Homes, Inc.* v. *William K. Briley* (D. C. Mun. App. 1956, 122 A. 2d 229).

Discharge of general supervisory duties in construction business did not constitute practice of "architecture" within licensing statute. *Id.*

Validity of original registration

Renewal is largely a ministerial act and in no way establishes validity of original registration, and Board of Examiners and Registrars of Architects could not have refused to renew on sole ground that charges were pending against registrar or that it had received information adverse to him; and, therefore, Board could not be held to have waived its right to revoke by annually renewing registration. *Stone* v. *Board of Examiners and Registrars of Architects* (D. C. Mun. App. 1956, 126 A. 2d 157).

§ 2–1026. Exemptions.

Nothing in this chapter shall be construed to affect or prevent the following, provided that no words, letters, figures, or other device shall be used in such manner as to tend to convey the impression that the person rendering such service is an architect duly registered under this chapter:

(a) Consultants, officers, and employees of the United States or of the District of Columbia Governments while engaged solely in the practice of architecture for said Governments.

(b) Landscape architects, landscape engineers, city and regional planners from the preparation of drawings for, and the supervision of, planting, grading, walks, paving, and such minor structural features as fences, steps, walls, pools, and garden structures, normally included as a part of their work, where such features could not constitute a possible menace to life, health, or public welfare.

(c) Professional structural engineers, heating engineers, plumbing engineers, air conditioning and ventilation engineers, electrical engineers, elevator engineers and civil engineers from performing architectural services which are purely incidental to their engineering practice. (Dec. 13, 1924, 43 Stat. 717, ch. 9, § 26; May 29, 1928, 45 Stat. 951, ch. 861; Sept. 7, 1950, 64 Stat. 781, ch. 908, § 3.)

AMENDMENTS

1950—Act Sept. 7, 1950, amended the section generally. Section previously read:

"The following shall be exempted from the requirements of this chapter: (1) Any person practicing or desiring to practice architecture in the District of Columbia who shall have made application to the Board of Registration as an architect and who shall have paid the fee provided for in section 2–1023, such exemption to continue only until the board shall have denied such application; (2) any officer or employee of the United States or the District of Columbia practicing architecture in that capacity alone."

1928—Act May 29, 1928, amended the section generally. Section previously read: "That the following shall be exempted from the provisions of this act:

"(1) Practice as an architect in the District of Columbia by any person not a resident of and having no established place of business in the District of Columbia, but whose arrival in the District of Columbia is recent: *Provided, however,* That such person shall have filed an application for registration as an architect and shall have paid the fee provided for in section 24 of this act. Such exemption shall continue for only such reasonable time as the Board requires in which to consider and grant or deny the said application for registration.

"(2) Engaging in architectural work as an employee of a registered architect, or as an employee of an architect, or an engineer authorized by paragraphs 1 and 2 of this section: *Provided,* That said work may not include responsible charge of design or supervision.

"(3) Practice of architecture by any person not a resident of and having no established place of business in the District of Columbia as a consulting associate of an architect registered under the provisions of this act: *Provided,* That the nonresident is qualified for such professional service in his own state or country.

"(4) Practice of architecture solely as an employee of the United States.

"(5) Practice of architecture solely as an officer or as an employee of the District of Columbia at the time this act becomes effective and thereafter only until the expiration of the then existing term of office of such employee."

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment of section by act Sept. 7, 1950, effective 90 days after Sept. 7, 1950, see section 8 of act Sept. 7, 1950, set out as a note under section 2–1031.

NOTES TO DECISIONS

Practice of engineering

The preparation by duly licensed master electricians of plans, diagrams and computations for proposed installations in which carrying capacity will exceed 200 amperes or electrical potential will exceed 240 volts does not constitute "practice of engineering" as contemplated in the Professional Engineers' Registration Act, and order of Board of Commissioners of District of Columbia providing that plans and specifications for proposed electrical installations in excess of 240 amperes or 240 volts should be prepared by registered professional electrical engineer was not required under the legislation regulating the practice of engineering. *Electrical Contractors Association of the District of Columbia et al.* v. *Robert E. McLaughlin et al.* (D.C.D.C. 1957, 153 F. Supp. 653).

Regulations

Order of District of Columbia Board of Commissioners requiring that application for any proposed electrical installation in which current carrying capacity exceeds 200 amperes or electrical potential exceeds 240 volts shall be accompanied by plans and computations prepared and signed by professional electrical engineer bears no relationship to the factors of public health, safety or general welfare, results in discrimination against the electrical trade or business and inevitably increases cost to the consuming public, for no lawful reason, and such order is illogical, unreasonable, arbitrary and capricious. *Electrical Contractors Association of the District of Columbia et al.* v. *Robert E. McLaughlin et al.* (D.C.D.C. 1957, 153 F. Supp. 653).

Repeal by implication

Where section of Electrical Code providing for plans and specifications to be submitted by licensed electricians as part of permits for proposed electrical installation was in effect at time Congress enacted legislation regulating architects and engineers without repealing the Electrical Code sections, no repeal of Elctrical Code sections was intended by implication, and District of Columbia Board of Commissioner's orders amending Electrical Code section to provide that plans and specifications for installations in excess of 240 amperes or 240 volts should be prepared by a registered professional electrical engineer was without basis in law. *Electrical Contractors Association of the District of Columbia et al.* v. *Robert E. McLaughlin et al.* (D.C.D.C. 1957, 153 F. Supp. 653).

§ 2–1027. Revocation of certificate—Notice—Causes.

The Board of Examiners and Registrars of Architects may revoke any certificate after thirty days' notice with grant of hearings to the holder thereof if proof satisfactory to the board be presented in the following cases:

(a) In case it is shown that the certificate was obtained through fraud or misrepresentation.

(b) In case the holder of the certificate has been found guilty by said board or by a court of justice of any fraud or deceit in his professional practice or has been convicted of a felony by a court of justice.

(c) In case the holder of the certificate has been found guilty by said board of gross incompetency or

of recklessness in the planning or construction of buildings. (Dec. 13, 1924, 43 Stat. 717, ch. 9, § 27; May 29, 1928, 45 Stat. 951, ch. 861; Sept. 7, 1950, 64 Stat. 781, ch. 908, § 3.)

AMENDMENTS

1950—Act Sept. 7, 1950, struck out subsection (d) which provided: "In case a corporation holding a certificate of registration shall have as one of its executive officers or directors a person not a registered architect."

1928—Act May 29, 1928, added subsection (d).

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment of section by act Sept. 7, 1950, effective 90 days after Sept. 7, 1950, see section 8 of act Sept. 7, 1950, set out as a note under section 2–1031.

CROSS REFERENCE

Revocation or suspension of license for violation of the Uniform Narcotic Drug Act, see § 33–418.

NOTES TO DECISIONS

Findings by Board

Even though the sole conclusion of Board of Examiners and Registrars of Architects was that registrant violated District of Columbia statute permitting revocation of certificate of registration obtained through fraud or misrepresentation, the Board must also find from the evidence of record that the actual obtaining of the certificate was due to fraud or misrepresentation in order to revoke the certificate. *Stone* v. *Board of Examiners and Registrars of Architects etc.* (1957, 249 F. 2d 104, 101 U.S. App. D.C. 348).

Fraud or misrepresentation

Even if Board of Examiners and Registrars of Architects would not have been authorized to refuse registration merely on basis of revocation in another jurisdiction, false answer to question seeking to elicit such information would be ground for revocation. *Stone* v. *Board of Examiners and Registrars of Architects* (D. C. Mun. App. 1956, 126 A. 2d 157).

Three-year statute of limitations, if applicable to proceeding to revoke architect's certificate of registration as obtained through fraud or misrepresentation, would not begin to run until discovery of facts. *Id.*

§ 2–1028. Procedure for revocation—Appeal.

The proceedings for the annulment of registration, that is, the revocation of a certificate, shall be begun by filing written charges against the accused with the Board of Examiners and Registrars of Architects by the Board itself or by a complainant. A copy of the charges, together with a notice of the time and place of hearing, shall be served on the accused at least thirty calendar days in advance of the hearing, which shall be postponed if necessary to give the requisite notice. Where personal services can not be made within the District of Columbia, service may be made by publication or personal service in accordance with such rules as the Board adopts, following generally and in principle the provisions of sections 13–336 to 13–338 and 13–340 of the District of Columbia Code. At the hearing, the accused may be represented by counsel, may introduced evidence, and may examine and cross-examine witnesses. The secretary of the Board may administer oaths. The Board shall make a written report of its findings, which report, with a transcript of the entire record of the proceedings, shall be filed with the Commissioners of the District of Columbia, and, if the Board's finding is adverse to the accused, his certificate of registration shall stand revoked and annulled at the expiration of thirty days from the filing of the report, unless a petition for review is filed in the District of Columbia Court of Appeals, and a stay is granted, in the manner provided by sections 11–742, 17–303, 17–304, 17–305(b), 17–306 and 17–307 of the District of Columbia Code. (Dec. 13, 1924, 43 Stat. 717, ch. 9, § 28; May 29, 1928, 45 Stat. 951, ch. 861; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Dec. 23, 1963, 77 Stat. 616, Pub. L. 88–241, § 6.)

AMENDMENTS

1963—Act Dec. 23, 1963, corrected a reference to certain sections in Title 13, in view of the enactment of revised Part II of this Code, and substituted "unless a petition for review is filed in the District of Columbia Court of Appeals, and a stay is granted, in the manner provided by sections 11–742, 17–303, 17–304, 17–305(b), 17–306 and 17–307" for the following provisions: "unless within said period of thirty days a writ of error shall be issued as hereinafter provided, in which event said certificate shall stand suspended until the final determination of the Court of Appeals upon such writ of error. If an exception is taken to any ruling of the Board on matter of law, the exception shall be reduced to writing and stated in the bill of exceptions with so much of the evidence as may be material to the question or questions raised, and such bill of exceptions shall be settled by the Board and signed by the secretary within such time as the rules of the Board may prescribe. Any party aggrieved by the decision of the said Board may seek a review thereof in the United States Court of Appeals for the District of Columbia by petition under oath setting forth concisely but clearly and distinctly the nature of the proceeding before said Board, the trial and determination thereof, and the particular ruling upon matter of law to which exception has been taken, said petition to be presented to any judge of the Court of Appeals within thirty days after the filing of the report of said Board with the Commissioners, with such notice to the Board as may be required by the rules of the Court of Appeals. If the judges shall be of the opinion that the action of the Board ought to be reviewed, a writ of error shall be issued from the Court of Appeals, within such time as may be prescribed by that court, a transcript of the record in the case sought to be reviewed, and the Court of Appeals shall review said record and affirm, reverse, or modify the judgment in accordance with law".

1948—Act June 25, 1948, as amended by act May 24 1949, substituted "judge" and "judges" for "justice" and "justices", respectively.

1928—Act May 29, 1928, amended section generally. Section previously read: "That proceedings for the annulment of registration (that is, the revocation of a certificate) shall be begun by filing written charges against the accused with the Board of Examiners and Registrars of Architects. A time and place for the hearing of the charges shall be fixed by the Board. Where personal service or services through counsel cannot be effected, service may be made by publication. At the hearing the accused shall have the right to be represented by counsel, to introduce evidence, and to examine and cross-examine witnesses. The secretary of the Board is hereby empowered to administer oaths and the Board shall make a written report of its findings, which report shall be filed with the Commissioners of the District of Columbia, and which shall be conclusive."

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 23, 1963, was made effective on Jan. 1, 1964. See note preceding ch. 1, Title II.

§ 2–1029. Attendance of witnesses and production of documents.

The said Board shall have power to require the attendance of persons and the production of books and papers and to require such persons to testify in any and all matters within its jurisdiction. The chairman and the secretary of the Board shall have power to issue subpœnas, and upon the failure of any person to attend as a witness when duly sub-

pœnaed or to produce documents when duly directed by said Board, the Board shall have power to refer the said matter to any judge of the United States District Court for the District of Columbia, who may order the attendance of such witness or the production of such books and papers or require the said witness to testify, as the case may be; and upon the failure of the witness to attend, to testify, or to produce such books or papers, as the case may be, such witness may be punished for contempt of court as for failure to obey a subpœna issued or to testify in a case pending before said court. (Dec. 13, 1924, 43 Stat. 717, ch. 9, § 29; May 29, 1928, 45 Stat. 952, ch. 861; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENT

1928—Act May 29, 1928, amended section generally.

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia", and "judge" for "justice."

§ 2–1030. Penalty for illegal practice or misuse of title.

Any person who shall practice or offer to practice architecture or who shall use the title "architect" or "registered architect" or any other words, letters, figures, or other device indicating or intending to imply that the person using the same is an architect, without having complied with the provisions of this chapter, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding $200, or by imprisonment for not more than one year, or both, prosecution therefor to be made in the name of the District of Columbia by the corporation counsel. (Dec. 13, 1924, 43 Stat. 718, ch. 9, § 30; May 29, 1928, 45 Stat. 953, ch. 861; Sept. 7, 1950, 64 Stat. 781, ch. 908, § 3.)

AMENDMENTS

1950—Act Sept. 7, 1950, inserted the words "practice or offer to practice architecture or who shall" after the words "Any person who shall", "or other device" after "figures."

1928—Act May 29, 1928, added the provision that "prosecution therefore to be made in the name of the District of Columbia by the corporation counsel."

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment of section by act Sept. 7, 1950, effective 90 days after Sept. 7, 1950, see section 8 of act Sept. 7, 1950, set out as a note under section 2–1031.

§ 2–1031. Construction—Validity of actions of Board prior to December 7, 1950—Short title.

Nothing contained in sections 2–1014, 2–1016 to 2–1030 shall be construed to affect the force and validity of any act of the Board of Examiners and Registrars of Architects performed prior to December 7, 1950. This chapter may be cited and known as the Architects' Registration Act. (May 29, 1928, 45 Stat. 953, ch. 861, § 2; Sept. 7, 1950, 64 Stat. 784, ch. 908, §§ 5, 6.)

CODIFICATION

Section consolidates section 2 of act May 29, 1928, and sections 5 and 6 of act Sept. 7, 1950.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 8 of act Sept. 7, 1950, provided that: "This Act [adding this section and amending sections 2–1010, 2–1014, 2–1016 to 2–1027 and 2–1030] shall take effect ninety days after its enactment [Sept. 7, 1950]."

SEPARABILITY OF PROVISIONS

Section 31 of act Dec. 13, 1924, ch. 9, as added by act Sept. 7, 1950, provided:

"If any section or sections, clause or clauses, of this Act, or any regulations promulgated thereunder, be declared unconstitutional or invalid, that shall not invalidate any other sections or clauses of this Act, or any other regulations promulgated thereunder."

REPEAL OF CONFLICTING LEGISLATION

Section 32 of act Dec. 13, 1924, ch. 9, as renumbered and amended by act Sept. 7, 1950, provided:

"All laws or parts of laws and regulations promulgated thereunder in conflict with the provisions of this Act shall be, and the same are hereby, repealed."

Chapter 11.—BARBERS

Sec.
2–1101. Regulation of barbers—Short title.
2–1102. Definitions.
2–1103. Board of Barber Examiners—Qualifications—Tenure—Removal—Register—Power to make rules and regulations.
2–1104. Certificates of registration—Prerequisites.
2–1105. Registered apprentices—Prerequisites.
2–1106. Examinations.
2–1107. Exceptions to examination requirements.
2–1108. Certificates to be displayed.
2–1109. Renewal of certificates.
2–1110. Refusal to issue, renew, or restore certificate—Revocation—Appeal.
2–1111. Fees—Refunds.
2–1112. Conduct of examinations—Expenses and compensation—Appointment of clerk and inspectors—Qualifications.
2–1113. Requirements for certificate of registration of barber school or college.
2–1114. Unlawful practice—Penalty.
2–1114a. Authority to prescribe regulations for posting prices of services—Authority to impose fine—Limitation of fine.
2–1115. Exemptions.
2–1116. Separability of provisions.
2–1117. Repeal of inconsistent laws.
2–1118. Purpose of chapter.

§ 2–1101. Regulation of barbers—Short title.

This chapter may be cited as the District of Columbia Barber Act. (June 7, 1938, 52 Stat. 620, ch. 322, § 1.)

§ 2–1102. Definitions.

When used in this chapter—

(a) The term "Board" means the Board of Barber Examiners for the District of Columbia.

(b) The term "certificate" means a certificate of registration issued by the Board.

(c) The term "Commissioners" means the Commissioners of the District of Columbia.

(d) The term "barber instructor" means the teaching of the barber profession as provided for in this chapter.

(e) The term "barbering" means any one of any combination of the following practices when done upon the head and neck for cosmetic purposes and not for the treatment of disease or physical or mental ailments and when done for payment either directly or indirectly or without payment for the public generally constitutes the practice of barbering within the meaning of this chapter.

To shave, trim the beard, cut or bob the hair of any person of either sex for compensation or other reward, received by the person performing such service or any other person, to give facial and scalp massages or treatments with oils, creams, lotions, or other preparations either by hand or mechanical appliances; to singe, shampoo the hair, or apply hair tonics; or to apply cosmetic preparations, antiseptics, powders, oils, clays, or lotions to scalp, face, or neck. (June 7, 1938, 52 Stat. 620, ch. 321, § 2.)

CROSS REFERENCES

Exempted from operation of law governing cosmetologists, see § 2–1324.

Persons exempted from operation of this chapter, see § 2–1115.

§ 2–1103. Board of Barber Examiners—Qualifications—Tenure—Removal—Register—Power to make rules and regulations.

There is hereby created a Board of Barber Examiners for the District of Columbia. The Board shall consist of three members, two of whom shall be practical barbers who have followed the practice of barbering in the District of Columbia for at least five years immediately prior to his appointment. One of said members shall be recommended by the Journeymen Barbers' Union, one of said members be recommended by the Associated Master Barbers of the District of Columbia. The members of the Board shall be appointed by the Commissioners of the District of Columbia, one for the term of one year, one for the term of two years, and one for the term of three years. Thereafter one member of said Board shall be appointed each year for the term of three years and shall hold office until his successor is appointed and qualified.

The Commissioners of the District of Columbia shall have the power to remove any member of said Board for incompetency, gross immorality, disability, for any abuse of his official power, or for other good cause, and shall fill any vacancy thus occasioned by appointment within thirty days after such vacancy occurs. Members appointed to fill vacancies caused by death, resignation, or removal shall serve only for the unexpired term of their predecessors. The Commissioners shall appoint a president, a vice-president, and a secretary-treasurer from the members of the Board.

The secretary of the Board shall keep a record of its proceedings, a register showing the name and business and residence addresses of persons to whom it has issued certificates, and the number and date of the certificate of each such person. Subject to the approval of the Commissioners, the Board shall adopt such rules and sanitary regulations as prescribed by the health department of the District of Columbia and as are necessary to carry out the provisions of this chapter. The Board shall report annually to the Commissioners all of its official acts during the preceding year and shall make such recommendations as it deems expedient. (June 7, 1938, 52 Stat. 620, ch. 322, § 3.)

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47–2344, 47–2345.

Health and sanitary regulations not affected, see § 2–1117.

Honorariums to various board members and commissioners, see §§ 1–254 to 1–259.

Rules and regulations in general, see § 1–226 and notes.

§ 2–1104. Certificates of registration—Prerequisites.

The Board shall issue a certificate of registration as a registered barber to any person of good moral character and temperate habits who has practiced as a registered barber apprentice for two years under the immediate personal supervision of a registered barber, and who passes an examination, conducted by the Board to determine his fitness to practice barbering, accompanied by a health certificate showing that he is free from contagious and infectious diseases and issued by a registered licensed physician of the District of Columbia under oath. (June 7, 1938, 52 Stat. 621, ch. 322, § 4.)

§ 2–1105. Registered apprentices—Prerequisites.

The Board shall issue a certificate of registration as a registered barber apprentice to any person who is at least sixteen years of age and is of good moral character and temperate habits who passes an examination conducted by the Board to determine his fitness to practice as a barber apprentice, accompanied by a health certificate showing that he is free from contagious and infectious diseases and issued by a registered licensed physician of the District of Columbia under oath. (June 7, 1938, 52 Stat. 621, ch. 322, § 5.)

§ 2–1106. Examinations.

The Board shall conduct examinations of applicants for certificates of registration as registered barbers or registered barber apprentices on the third Tuesdays in January, April, July, and October, at such hours as the Board shall prescribe. Such examinations shall include both a practical demonstration and a written examination. (June 7, 1938, 52 Stat. 621, ch. 322, § 6.)

§ 2–1107. Exceptions to examination requirements.

Any person who has engaged in the practice of barbering in the District of Columbia for one year immediately preceding June 7, 1938 shall be granted a certificate as a registered barber without practical examination by making application, accompanied by a health certificate showing that he is free from contagious and infectious diseases and issued by a registered licensed physician of the District of Columbia under oath, and paying the required fee within ninety days of June 7, 1938; failing to do so, he must take an examination according to the law; and any other person engaged in the practice of barbering in the District of Columbia on June 7, 1938 shall be granted a certificate as a registered barber apprentice without examination by making application and paying the required fee, and the time spent engaged in the practice of barbering shall be credited to him as a part of the time required to be spent as a registered barber apprentice for the purpose of qualifying as a registered barber, but must be accompanied by a health certificate showing that he is free from contagious and infectious diseases and issued by a registered licensed physician of the District of Columbia under oath. (June 7, 1938, 52 Stat. 621, ch. 322, § 7.)

§ 2–1108. Certificates to be displayed.

The certificate of a registered barber or a registered barber apprentice shall be displayed in a conspicuous place near the work chair of the holder when he is engaged in the practice of barbering. (June 7, 1938, 52 Stat. 622, ch. 322, § 8.)

§ 2–1109. Renewal of certificates.

Certificates issued by the Board shall be renewed annually upon application to the Board by the holder of the certificate. The Board shall renew or restore certificates which have expired upon application and payment of the required fee, accompanied by a health certificate annually, showing that applicant is free from contagious and infectious diseases. (June 7, 1938, 52 Stat. 622, ch. 322, § 9.)

§ 2–1110. Refusal to issue, renew, or restore certificate—Revocation—Appeal.

The Board may refuse to issue, renew, restore, or may revoke a certificate for habitual drunkenness or habitual addiction to the use of morphine, cocaine, or any other habit-forming drug or for the violation of any of the provisions of this chapter, but such action may be taken by the Board only after notice, and an opportunity for a full hearing is given to the person affected thereby.

An appeal may be taken from the action of the Board to the District of Columbia Court of Appeals in the manner provided by sections 11–742, 17–303, 17–304, 17–305(b), 17–306 and 17–307 of the District of Columbia Code. (June 7, 1938, 52 Stat. 622, ch. 322, § 10; Aug. 31, 1954, 68 Stat. 1048, ch. 1173, § 1; July 8, 1963, 77 Stat. 78, Pub. L. 88–60, § 6; Dec. 23, 1963, 77 Stat. 617, Pub. L. 88–241, § 7.)

AMENDMENT

1963—Act Dec. 23, 1963, in second par., added "in the manner provided by sections 11–742, 17–303, 17–304, 17–305(b), 17–306 and 17–307" to the sentence remaining, and omitted a sentence which had provided for a further review by the United States Court of Appeals for the District of Columbia.

CHANGE OF NAME

"Municipal Court of Appeals for the District of Columbia" was substituted for "District Court of the United States for the District of Columbia" to conform to the provisions of act Aug. 31, 1954, which gave the Municipal Court of Appeals for the District of Columbia exclusive jurisdiction to review decisions of the Board under this section.

Act July 8, 1963, § 6, substituted "District of Columbia Court of Appeals" for "Municipal Court of Appeals for the District of Columbia". Provisions identical with those of said section 6 were contained in act Oct. 23, 1962, 76 Stat. 1172, Pub. L. 88–873, § 6, which was repealed by act Dec. 23, 1963, 77 Stat. 620, Pub. L. 88–241, § 21(a).

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 23, 1963, was made effective on Jan. 1, 1964. See note preceding ch. 1, Title II.

CROSS REFERENCE

Revocation or suspension of license for violation of the Uniform Narcotic Drug Act, see § 33–418.

§ 2–1111. Fees—Refunds.

All fees and charges payable under the provisions of this section shall be paid to the secretary-treasurer of the Board. The Board is hereby authorized to collect the following fees and charges and to refund any such fee or charge or portion thereof erroneously paid or collected under this section:

(a) For the examination of an applicant for a certificate as a registered barber, $20.

(b) For the issuance of a certificate as a registered barber, $5.

(c) For the issuance of a renewal of a certificate as a registered barber, $10.

(d) For the restoration of an expired certificate as a registered barber, $15.

(e) For the examination of an applicant for a certificate as a registered barber apprentice, $15.

(f) For the issuance of a certificate as a registered barber apprentice, $5.

(g) For the issuance of a renewal of a certificate as a registered barber apprentice, $5.

(h) For the restoration of an expired certificate as a registered barber apprentice, $10.

(i) For registration of a private barber school or college, $50.

(j) For annual renewal of registration of a private barber school or college, $25.

(k) All students in a private barber school or college shall register with the Board and shall pay a fee of $2 for a certificate of registration as a student.

(*l*) Any registered barber or apprentice whose certificate has been lost or destroyed shall, upon satisfying the Board of such loss or destruction and upon payment of a fee of $2, be given a duplicate certificate. (June 7, 1938, 52 Stat. 622, ch. 322, § 11; June 28, 1948, 62 Stat. 1067, ch. 692, § 1.)

AMENDMENT

1948—Act June 28, 1948, increased rates in subsections (a), (c), (d), (e), and (h) and added subsections (k) and (*l*).

EFFECTIVE DATE OF 1948 AMENDMENT

Section 2 of act June 28, 1948, provided:

"This Act [amending this section] shall take effect thirty days after the date of its enactment [June 28, 1948]."

AUTHORITY TO CHANGE FEES

Commissioners authorized and empowered to increase or decrease, from time to time, the fees specified in this section, see §§ 1–252, 1–253.

CROSS REFERENCE

Refund of fees when license is refused, see § 47–1017.

§ 2–1112. Conduct of examinations—Expenses and compensation—Appointment of clerk and inspectors—Qualifications.

The Commissioners are authorized and directed to provide suitable quarters for the Board. The compensation of each member of the Board, other than the secretary-treasurer, shall be fixed by the Commissioners at not to exceed $20 for each day actually and necessarily spent in their duties as such members: *Provided,* That the total compensation payable to each such member shall not exceed $600 per annum. The Commissioners are also authorized and directed to appoint such clerks, inspectors, and other personnel as they deem to be necessary to assist the Board in carrying out the provisions of this chapter: *Provided,* That such inspectors shall be qualified barbers, each of whom shall have been engaged in the practice of barbering in the District of Columbia for a period of five years immediately prior to their appointment and shall be appointed

after a competitive examination held for said positions by the Board. Compensation of such clerks, inspectors, and other personnel, including the secretary-treasurer of the Board, shall be fixed by the Commissioners. Payments for expenses of the Board, including those authorized by this section, shall not exceed the amount received from the fees provided for in this chapter; and if at the close of any fiscal year there be any funds unexpended in excess of the sum of $1,000 such excess shall be paid into the Treasury of the United States to the credit of the District of Columbia: *Provided further,* That no expense incurred under this chapter shall be a charge against the funds of the United States or the District of Columbia. (June 7, 1938, 52 Stat. 622, ch. 322, § 12; July 30, 1951, 65 Stat. 128, ch. 251, § 1.)

AMENDMENT

1951—Act July 30, 1951, increased compensation from $9 per day to not to exceed $20 per day, added the provision that such compensation should not exceed $600 per annum, authorized the appointment of additional clerks and inspectors, and added the provision for appointment of "other personnel including the secretary-treasurer of the Board".

EFFECTIVE DATE OF 1951 AMENDMENT

Sec. 4 of act July 30, 1951, provided: "This Act [amending this section and section 2–1114 and adding section 2–1114a] shall take effect on the first day of the second month following its enactment [July 30, 1951]."

CROSS REFERENCE

Honorariums to various board members and commissioners, see §§ 1–254 to 1–259.

§ 2–1113. Requirements for certificate of registration of barber school or college.

No barber school or college shall be granted a certificate of registration unless it shall attach to its staff, as a consultant, a person licensed by the District of Columbia to practice medicine, and employ and maintain a sufficient number of competent barber instructors registered as such, and shall possess apparatus and equipment sufficient for the proper and full teaching of all subjects of its curriculum, shall keep a daily record of the attendance of each student, shall maintain regular class and instruction hours, shall establish grades and hold examinations before issuance of diplomas, and shall require a school term of training of not less than one thousand hours within a period of not more than eight hours a working day, two years as apprentice for a complete course of barbering, comprising all or a majority of the practices of cosmetology, as provided by this chapter, and to include sanitation, sterilization, and the use of antiseptics, cosmetics, and electrical appliances consistent with the practical and theoretical requirements as applicable to barbering or any practice thereof. In no case shall there be less than one registered barber instructor to every ten students. All barber school instructors must be qualified registered barbers, excepting licensed physicians. (June 7, 1938, 52 Stat. 622, ch. 322, § 13.)

§ 2–1114. Unlawful practice—Penalty.

(a) It shall be unlawful—

(1) To engage in the practice of barbering in the District of Columbia without a valid certificate as a registered barber, except that a registered barber apprentice may engage in the practice of barbering under the immediate personal supervision of a registered barber.

(2) To engage in the practice of barbering while knowingly afflicted with an infectious or communicable disease.

(3) To employ any person to engage in the practice of barbering except registered barbers and apprentices.

(4) To operate a barber shop unless it is at all times under the personal supervision of a registered barber.

(5) To obtain or attempt to obtain a certificate from the board for money other than the required fee, or for any other thing of value or by fraudulent misrepresentations. Certificates are not transferable to another person.

(6) After June 7, 1938 in the District of Columbia it shall be unlawful for a person to maintain seven days consecutively any establishment wherein the occupation or trade of barbering, hair dressing, or beauty culture is pursued. All such establishments shall be required to remain closed one day in every seven beginning at midnight or at sunset and no person shall maintain his establishment open to serve the public on the day he has selected it to be closed and has so registered the closing day at the health department.

(7) To own, manage, operate, or control any barber school or college, part or portion thereof, whether connected therewith or in a separate building, wherein the practice of barbering, as hereinbefore defined, is engaged in or carried on unless all entrances to the place wherein the practice of barbering is so engaged in or carried on shall display a sign indicating that the work therein is done by students exclusively.

(b) Any person violating any of the provisions of this chapter shall upon conviction be fined not more than $200. (June 7, 1938, 52 Stat. 623, ch. 322, § 14; July 30, 1951, 65 Stat. 128, ch. 251, § 2.)

AMENDMENT

1951—Act July 30, 1951, substituted the words "not more than $200" for the words "not less than $25".

EFFECTIVE DATE OF 1951 AMENDMENT

Amendment of section by act July 30, 1951, effective on the first day of the second month following July 30, 1951, see note under section 2–1112.

EFFECTIVE DATE

Section 15 of act June 7, 1938, provided, "This subchapter [this chapter] shall take effect ninety days after the date of its enactment [June 7, 1938]."

CROSS REFERENCE

Business license, see §§ 47–2301 to 47–2350.

§ 2–1114a. Authority to prescribe regulations for posting prices of services—Authority to impose fine—Limitation of fine.

The Commissioners of the District of Columbia are authorized by regulation to require the owner or the manager of every barber shop in the District of Columbia to post on a sign or signs the prices of services rendered to the public and they may specify in such regulations the sizes of the sign or signs, the lettering thereon, and the location thereof upon

which prices are required to be posted. The Commissioners are further authorized to prescribe in such regulations that for each violation thereof there may be imposed a fine not exceeding $200. (July 30, 1951, 65 Stat. 128, ch. 251, § 3.)

EFFECTIVE DATE

Section effective on the first day of the second month following July 30, 1951, see note under section 2–1112.

§ 2–1115. Exemptions.

The provisions of this chapter shall not be construed to apply to—

(a) Persons authorized by law of the District of Columbia to practice medicine and surgery, osteopathy, or chiropractic, or persons holding a drugless-practitioner certificate under the law of the District of Columbia;

(b) Commissioned medical or surgical officers of the United States Army, Navy, or Marine hospital service;

(c) Registered nurses;

(d) Persons employed in beauty parlors; however, the provisions of this section shall not be construed to authorize any of the persons exempted to shave or trim the beard, or cut the hair of any person for cosmetic purposes, except that person included in the subdivision (d) hereof shall be allowed to cut the hair; or

(e) Undertakers and embalmers.

(f) Persons engaged in the practice of physiotherapy or massaging, stimulating, or exercising of the head, neck, arms, bust, or upper part of the body, when done for purposes of health and hygiene. (June 7, 1938, 52 Stat. 623, ch. 322, § 16.)

TRANSFER OF FUNCTIONS

Name of Marine Hospital Service changed to Public Health Service by act Aug. 14, 1912, 37 Stat. 309, ch. 288, § 1. This last-mentioned service was transferred from the Treasury Department to the Federal Security Agency by 1953 Reorg. Plan No. I, § 201, 4 F.R. 2727, 53 Stat. 1423. Under § 205 thereof the Surgeon General of the Public Health Service was to administer the Public Health Service under the supervision and direction of the Federal Security Administrator.

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg. Plan No. 1, 18 F.R. 2053, 67 Stat. 631.

§ 2–1116. Separability of provisions.

Each section, subsection, sentence, clause, and phrase of this chapter is declared to be an independent section, subsection, sentence, clause, and phrase; and the finding or holding of any section, subsection, sentence, phrase, or clause to be unconstitutional, void, or ineffective for any cause shall not affect any other section, subsection, sentence, or part thereof. (June 7, 1938, 52 Stat. 624, ch. 322, § 17.)

§ 2–1117. Repeal of inconsistent laws.

The Act of Congress of December 19, 1932 (47 Stat. 754, ch. 6), and all laws or portions of laws inconsistent with this chapter are hereby repealed: *Provided,* That nothing in this chapter contained shall be construed to limit or repeal any existing rules, regulations, or laws relating to health or sanitation. (June 7, 1938, 52 Stat. 624, ch. 322, § 18.)

§ 2–1118. Purpose of chapter.

The purpose of this chapter shall be to prevent the spreading of diseases and promote the general health of the public by promoting sanitary conditions in barber shops and barber schools or colleges in the practice of barbering. (June 7, 1938, 52 Stat. 624, ch. 322, § 19.)

Chapter 12.—BOXING COMMISSION

Sec.

2–1201 to 2–1209. Repealed.
2–1210. Abolition of Boxing Commission—Creation of District Boxing Commission—Composition—Eligibility requirements—Compensation and term of office—Removal—Annual report to Commissioners.
2–1211. Employment of secretary, clerical and administrative personnel, inspectors and physicians—Compensation—Payment of salaries and expenses from trust fund.
2–1212. Powers and duties—Supervision and regulation of professional boxing—Cooperation in promotion of amateur and collegiate boxing—Donation of equipment—Definitions.
2–1213. Permit—Duration, revocation—Examination of accounts and records.
2–1214. License—Duration, revocation.
2–1215. Conformity to rules governing contests.
2–1216. Fees for licenses and renewals and permits.
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2–1218. Payment to Commission of percentage of gross receipts from admissions, radio, television and motion-picture rights—Report—Contents of admission tickets.
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2–1220. Quarterly audit of accounts.
2–1221. Administration of oaths—Examination of witnesses—Issuance of subpenas—False swearing and disobedience to subpena punishable.
2–1222. Personal liability of Boxing Commissioners.
2–1223. Penalties for violations.
2–1224. Prosecution on information.
2–1225. Definition of "person".
2–1226. Compensation of Commissioners not affected by other income.

§§ 2–1201 to 2–1209. Repealed. Dec. 20, 1944, 58 Stat. 826, ch. 612, § 17.

Sections 2–1201 to 2–1208, act Apr. 24, 1934, 48 Stat. 608, ch. 161, related to former Boxing Commission.

§ 2–1201 related to eligibility, appointment, term and service of members.

§ 2–1202 related to powers and duties.

§ 2–1203 related to permits for boxing exhibitions.

§ 2–1204 related to licenses.

§ 2–1205 related to regulations governing boxing exhibitions.

§ 2–1206 related to fees for permits and licenses.

§ 2–1207 related to penalties for violations.

§ 2–1208 related to definition of "person".

§ 2–1209, act June 15, 1938, 52 Stat. 691, ch. 395, related to application of provisions to schools.

§ 2–1210. Abolition of Boxing Commission—Creation of District Boxing Commission—Composition—Eligibility requirements—Compensation and term of office—Removal—Annual report to Commissioners.

The Boxing Commission for the District of Columbia created by the Act of April 24, 1934 (48 Stat. 608), is hereby abolished and there is hereby created for the District of Columbia the District Boxing Commission, hereinafter referred to as the Commission, to be composed of three members (one of whom

shall be a member of the Metropolitan Police Force of the District of Columbia) appointed by the Commissioners of the District of Columbia. No person shall be eligible for appointment to membership on the Commission unless such person at the time of appointment is, and for at least three years prior thereto has been, a resident of the District of Columbia: *Provided,* That one member may, at the time of appointment, be a resident of the metropolitan area of the city of Washington, comprised within the areas of Maryland and Virginia adjacent to the District of Columbia. The Commission first taking office under the terms of this chapter shall be composed of the same members who immediately prior to December 20, 1944, constituted the Boxing Commission and who shall hold office as and constitute the Commission created by this chapter for the unexpired terms of their respective appointments as members of the Boxing Commission. A successor to a member of the Commission shall be appointed for a term of office expiring three years from the date of the expiration of the term for which his predecessor was appointed, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. The Commissioners may remove any member for cause appointed pursuant to this chapter. The members of the Commission shall be paid compensation at the rate of $2,400 each per annum effective July 1, 1944. Section 58 of title 5, U.S. Code, shall apply to members and employees of the Commission. The Commissioners of the District of Columbia shall furnish to the Commission such office space as may be necessary. The property, books, and records of the Boxing Commission shall be transferred to and become the property, books, and records of the Commission created by this chapter. The rules, regulations, and orders of the Boxing Commission not in conflict with this chapter heretofore promulgated shall remain in force and effect as the rules, regulations, and orders of the Commission, unless and until the same shall be repealed or modified in accordance with the provisions of this chapter. The Commission shall report annually to the Commissioners of the District of Columbia its official acts during the preceding year and shall make such recommendations as it deems expedient. (Dec. 20, 1944, 58 Stat. 823, ch. 612, § 1; Aug. 19, 1950, 64 Stat. 466, ch. 762, § 1.)

REFERENCES IN TEXT

Act of April 24, 1934 (48 Stat. 608), referred to in text, was formerly classified to §§ 2–1201 to 2–1208, and was repealed by section 17 of act Dec. 20, 1944.

AMENDMENT

1950—Act Aug. 19, 1950, added the proviso at the end of the second sentence.

CROSS REFERENCE

Honorariums to various board members and commissioners, see §§ 1–254 to 1–259.

§ 2–1211. Employment of secretary, clerical and administrative personnel, inspectors and physicians—Compensation—Payment of salaries and expenses from trust fund.

Subject to the approval of the Commissioners of the District of Columbia, the Commission may appoint a secretary and may employ such clerical and administrative personnel, in accordance with rates fixed by section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters], and such inspectors, examining physicians, and other personnel, whose compensation shall be fixed by the Commission, as may be necessary to administer this Chapter. Compensation of members of the Commission and its employees and all expenses of the Commission shall be paid from the trust fund created by section 2–1219. (Dec. 20, 1944, 58 Stat 823, ch. 612, § 2; Oct. 28, 1949, 63 Stat. 972, ch. 782 title XI, § 1106(a).)

CODIFICATION

The reference in this section to "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

AMENDMENT

1949—Act Oct. 28, 1949, § 1106(a), which was a part of the Classification Act of 1949" for "Classification Act of 1923". See codification note above.

§ 2–1212. Powers and duties—Supervision and regulation of professional boxing—Cooperation in promotion of amateur and collegiate boxing—Donation of equipment—Definitions.

The Commission shall have power (1) to supervise and regulate boxing contests and training exhibitions in connection therewith, for prizes or purses, or where an admission fee is charged or received, within the District of Columbia; (2) subject to approval of the Commissioners of the District of Columbia, to make and amend such rules and regulations as may be necessary to carry out the purposes of this chapter; and (3) to cooperate with organizations engaged in the promotion and control of amateur and collegiate boxing. The said funds shall be available to pay for boxing equipment, such as gloves, head guards, mouthpieces, trunks, boxing shoes, boxing rings and mats therefor, timekeepers' bells and hammers, and trophies for members of organizations engaged in the promotion and control of amateur and collegiate boxing; and when deemed necessary by the Commission, it may furnish personnel to conduct instruction and boxing contests for such organizations, and pay for same from such funds. In the event that the authorities in charge shall notify the Commission that they do not desire its supervision, then the provisions of this chapter shall not apply in any way to any amateur boxing contest conducted by or participated in exclusively by any school, college, or university, as defined in this chapter, or by any association or organization composed exclusively of such schools, colleges, or universities when each contestant in any such contest is a student regularly enrolled for not less than one-half time in a school, college, or university as herein defined. As used in this chapter, "school, college, or university" includes every school, college,

or university supported in whole or in part from public funds and every other school, college, or university supported in whole or in part by a religious, charitable, scientific, literary, educational or fraternal organization which is not operated for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual. (Dec. 20, 1944, 58 Stat. 823, ch. 612, § 3.)

§ 2–1213. Permit—Duration, revocation—Examination of accounts and records.

No person shall hold or conduct a boxing contest or training exhibition in connection therewith in the District of Columbia without a permit from the commission. The commission is authorized in its sole judgment and discretion to assign to licensed professional promoters dates on which boxing contests may be held, and no licensed professional promoter shall hold any boxing contest on any date unless specifically authorized so to do by the commission. When two or more promoters make application to hold separate boxing contests on an identical date not at the time of such application assigned to either or any of the promoters making such applications, the commission shall, at a meeting open to the public, make its determination as to whether either or any of such applications will be granted, and if so, which, and in connection with such determination shall take into consideration the public interest, local demand, and the relative ranking of the boxers engaging in the proposed contests. Each such permit shall be limited to a period of one day, except that in case of any interscholastic or intercollegiate meet a permit may be issued for the duration of such meet, and for training exhibitions in connection with boxing contests where an admission fee is charged or received, a permit may be issued for the duration of the training period. No permit as described in this section shall be issued to any person unless such person agrees to accord to the Commission the right to examine the books of accounts and other records of such person relating to the boxing contest or exhibition for which such permit is issued, and such permit shall so state on its face. A permit may be revoked at any time in the discretion of the Commission. (Dec. 20, 1944, 58 Stat. 824, ch. 612, § 4; July 5, 1952, 66 Stat. 392, ch. 577, § 1.)

AMENDMENT

1952—Act July 5, 1952, inserted the second and third sentences.

§ 2–1214. License—Duration, revocation.

No person shall participate as contestant, second, manager or professional contestant, matchmaker, promoter, referee, judge, timekeeper, or announcer, in any boxing contest, or training exhibition in connection therewith, in the District of Columbia without a license from the Commission. Such license shall entitle the licensee to participate or engage in boxing contests, or training exhibitions in connection therewith, in the District of Columbia in the capacity named in the license for the period specified therein, and the Commission may suspend or revoke any such license at any time for violation by the licensee of any order, rule, or regulation of the Commission, or for other cause. (Dec. 20, 1944, 58 Stat. 824, ch. 612, § 5.)

§ 2–1215. Conformity to rules governing contests.

Any permit or license issued by the Commission shall not be valid for the purpose of holding or engaging in any boxing contest, or training exhibition in connection therewith, which does not conform to the rules established by the Commission. (Dec. 20, 1944, 58 Stat. 824, ch. 612, § 6.)

§ 2–1216. Fees for licenses and renewals and permits.

The Commission is authorized to issue licenses and renewals thereof and permits, and to fix and collect fees therefor, as follows:

For professional contestants and seconds, not to exceed $5 per annum.

For managers of professional contestants, not to exceed $15 per annum.

For promoters, not to exceed $25 per annum, and, in addition, not to exceed $10 for each show.

For amateur contestants, not to exceed $1 per annum.

For referees, not to exceed $10 per annum, and for such other occupations as the Commission may by regulation prescribe, not to exceed $10 per annum. (Dec. 20, 1944, 58 Stat. 824, ch. 612, § 7.)

AUTHORITY TO CHANGE FEES

Commissioners authorized and empowered to increase or decrease, from time to time, the fees specified in this section, see §§ 1–252, 1–253.

§ 2–1217. Application for license—Fee payable in advance—Posting of bond—Recovery on bond.

Applications for licenses shall be accompanied by the required license fee, payable in advance, and shall be made on such forms and contain such information as may be required by the Commission. Licenses shall expire one year from date of issue unless sooner revoked and may be renewed annually. Before a license shall be granted to a promoter, he shall execute and file with the Commission a bond in the sum of $2,000 or 10 per centum of the estimated receipts, whichever is the larger, to be approved as to form and sufficiency of sureties by the Commissioners of the District of Columbia, or by such official as they may designate, or in lieu thereof cash or certified check in equal amount, conditioned for the faithful performance by said promoter of the provisions of this chapter and the rules and regulations promulgated thereunder, the fulfillment of his contracts with contestants or their managers, and the payment of license and permit fees and taxes on gross receipts. In case of default in such performance, recovery may be had on such bond in the same manner as other penalties are recovered by law. (Dec. 20, 1944, 58 Stat. 825, ch. 612, § 8.)

§ 2–1218. Payment to Commission of percentage of gross receipts from admissions, radio, television and motion-picture rights—Report—Contents of admission tickets.

Every person holding or conducting any boxing contest for which an admission fee is charged or received, or for which revenue is received from the sale, lease, or other exploitation of radio, television, or motion-picture rights, or from other public presentations of such contest, or for which such fee is charged or received and such revenue is received, shall pay to the Commission a sum equal to the larger of the following: (a) An amount equal to

10 per centum of the gross receipts realized by such person as a result of holding or conducting such contest, including receipts derived from the sale of admissions to the contest, and receipts derived from the sale, leasing, or other exploitation of radio, television, or motion-picture rights and from other public presentation of such boxing contest, or (b) an amount equal to the total actual cost of compensation of personnel assigned by the Commission to supervise such contest: *Provided,* That no person holding or conducting any amateur boxing contest under the jurisdiction and with the sanction of the District of Columbia Association of the Amateur Athletic Union of the United States shall be required to pay to the Commission any such sum which includes receipts derived from the sale, lease, or other exploitation of radio, televison, or motion-picture rights relating to any such amateur boxing contest. Payments of money required by this section shall be accompanied by reports in such form as shall be prescribed by the Commission. Each ticket of admission to any such boxing contest shall bear clearly upon the face thereof the purchase price of the said ticket. (Dec. 20, 1944, 58 Stat. 825, ch. 612, § 9; July 5, 1952, 66 Stat. 392, ch. 577, § 2.)

AMENDMENT

1952—Act July 5, 1952, amended section generally, and among other changes, added provisions concerning proceeds from radio, television or motion picture rights.

AUTHORITY TO CHANGE FEES

Commissioners authorized and empowered to increase or decrease, from time to time, the fees specified in this section, see §§ 1–252, 1–253.

§ 2–1219. Covering of receipts into trust fund—Payment of salaries and expenses from fund—Limitation—Disposition of excess moneys—Advances for expenses and compensation—Sale or redemption of bonds owned by Commission.

(a) All funds, whether in cash or other form derived from license fees, permit fees, taxes on gross receipts, penalties, and receipts of whatever nature collected or due under the Act of April 24, 1934, remaining unexpended or unobligated on December 20, 1944, or provided for by this chapter, shall be paid to the Collector of Taxes of the District of Columbia and deposited into the Treasury of the United States to the credit of the account "Miscellaneous trust-fund deposits, District of Columbia Boxing Commission", and shall be disbursed in the same manner as other trust funds are disbursed by the District of Columbia. The said trust fund shall be available to pay compensation of members and employees of the Commission and reasonable and necessary expenses, including office supplies, furniture and fixtures, postage, official badges, ring equipment, trophies, and actual and necessary traveling expenses of members of the Commission or employees thereof incurred in the performance of their official duties. The said fund shall not be available to pay compensation to members of the Commission unless the same is sufficient to pay the secretary and other employees of the Commission their accrued compensation. If, on the last day of any fiscal year—that is to say, June 30—after the payment, or provision made for payment, of all lawful obligations and of all then accrued compensation of members and employees of the Commission, the said trust fund shall exceed the sum of $25,000, such excess shall be deposited to the credit of the District of Columbia as miscellaneous revenues. The disbursing officer of the District of Columbia is authorized to advance to the Commission, upon requisitions previously approved by the auditor of the District of Columbia, sums of money not to exceed $500 at any one time, to be used for office and sundry expenses of the Commission and for payment of compensation of inspectors, referees, judges, timekeepers, and examining physicians.

(b) Notwithstanding the provisions of subsection (a) of this section, any interest-bearing bonds owned by the Boxing Commission of the District of Columbia prior to December 20, 1944, may be retained by the District of Columbia Boxing Commission, and the said Commission is authorized, when sufficient funds to defray its expenses are not otherwise available, to sell or redeem one or more of the said bonds, to reinvest the proceeds from any sale or redemption of the said bonds, and to use for the purpose of defraying the expenses of the said Commission the proceeds from the sale or redemption of the said bonds, together with the interest from the said bonds, any interest from any bonds or other securities in which such proceeds from such sale or redemption were reinvested, and the proceeds from the sale or redemption of any bonds or other securities purchased by the said Commission for reinvestment purposes, pursuant to the authority herein contained. (Dec. 20, 1944, 58 Stat. 825, ch. 612, § 10; July 5, 1952, 66 Stat. 393, ch. 577, § 3.)

REFERENCES IN TEXT

Act of April 24, 1934, referred to in text, was formerly classified to §§ 2–1201 to 2–1208, and was repealed by section 17 of act Dec. 20, 1944.

AMENDMENT

1952—Act July 5, 1952, substituted "25,000" for "15,000" in subsection (a) and added subsection (b).

TRANSFER OF FUNCTIONS

Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952 and effective Sept. 2, 1952, established under the direction and control of the Board of Commissioners a Department of General Administration headed by a Director. The order transferred to the Director of General Administration all of the functions of the Office of Auditor. Reorganization Order No. 20 established the Finance Office in the Department of General Administration. Included in the Finance Office were an Office of the Assessor, the Office of the Collector of Taxes, the Disbursing Office, and the Accounting Office headed by an Accounting Officer. The function of approving requisitions described in section 2–1219 was transferred from the Auditor of the District to the Accounting Officer by Order No. 20. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to Title 1.

§ 2–1220. Quarterly audit of accounts.

It shall be the duty of the auditor of the District of Columbia to audit the accounts of the Commission quarterly and make reports thereof to the Commissioners of the District of Columbia. The auditor shall have free access to all books of accounts, records, and papers of the said Commission. (Dec. 20, 1944, 58 Stat. 826, ch. 612, § 11.)

TRANSFER OF FUNCTIONS

Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952 and effective Sept. 2, 1952, established, under the direction and control of the

Board of Commissioners a Department of General Adistration headed by a Director. The order transferred to the Director of General Administration all of the functions of the Office of Auditor. Reorganization Order No. 19 established the Internal Audit Office headed by an Internal Audit Officer in the Department of General Administration. The function of the quarterly audit of the accounts of the Boxing Commission was transferred from the Auditor of the District to the Internal Audit Officer. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to Title 1.

§ 2–1221. Administration of oaths—Examination of witnesses—Issuance of subpenas—False swearing and disobedience to subpena punishable.

Each member of the Commission shall have the power to administer oaths and affirmations and examine witnesses concerning any matters within the jurisdiction of the Commission. The Commission shall be vested with the same powers to issue subpenas as to matters within its jurisdiction as are vested in trial boards of the Metropolitan Police and Fire Departments; false swearing on the part of any witness before said Commission shall be punishable in the same manner as false swearing before said trial boards, and obedience to any subpena issued by the Commission may be compelled in the same manner as obedience is compelled to subpenas issued by said trial boards, as set forth in sections 4–601 to 4–604. (Dec. 20, 1944, 58 Stat. 826, ch. 612, § 12.)

§ 2–1222. Personal liability of Boxing Commissioners.

The members of the Boxing Commission of the District of Columbia shall not be personally liable in damages or for court costs for any official action of the said Commission performed in good faith in which the said members participate. (Dec. 20, 1944, 58 Stat. 826, ch. 612, § 13.)

§ 2–1223. Penalties for violations.

Any person who (1) holds any boxing contest in the District of Columbia without a permit valid and effective at the time or (2) engages or participates in any boxing contest in the District of Columbia without a license valid and effective at the time, or (3) violates any lawful order, rule, or regulation of the Commission shall, upon conviction thereof, be fined not more than $1,000 or imprisoned not more than one year, or both. (Dec. 20, 1944, 58 Stat. 826, ch. 612, § 14.)

§ 2–1224. Prosecution on information.

Prosecutions for violations of the provisions of this chapter, or of any rule or regulation made under the authority thereof, shall be on information in the District of Columbia Court of General Sessions by the corporation counsel of the District of Columbia or any of his assistants. (Dec. 20, 1944, 58 Stat. 826, ch. 612, § 15; July 8, 1963, 77 Stat. 77, Pub. L. 88–60 § 1.)

CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 2–1225. Definition of "person".

The term "person", as used in this chapter, includes individuals, partnerships, corporations, and associations. (Dec. 20, 1944, 58 Stat. 826, ch. 612, § 16.)

§ 2–1226. Compensation of Commissioners not affected by other income.

Notwithstanding the limitation of any other law or regulation to the contrary, any person heretofore or hereafter appointed as a member of the Commission may receive the compensation authorized by this chapter to be paid to such member, as well as any retired pay, retirement compensation, or annuity to which such member may be entitled on account of previous service rendered to the United States or District of Columbia governments, subject to section 5532 of title 5, U.S. Code. (Aug. 19, 1950, 64 Stat. 466, ch. 762, § 2; Aug. 19, 1964, 78 Stat. 489, Pub. L. 88–448, title IV, § 401(a).).

CODIFICATION

The reference in this section to "section 5532 of title 5, U.S. Code" was substituted for "section 201 of the Dual Compensation Act" (see 1964 amendment note below) on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. Section 201 (a—e) of the Dual Compensation Act (Aug. 19, 1964, 78 Stat. 484, 485, Pub. L. 88–448, title II) was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554 (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by 5 U.S.C. § 5532. Section 201(f—h) of the Dual Compensation Act was not repealed by the 1966 act, but was excluded from the revision of title 5, U.S.C., as not permanent and general.

AMENDMENT

1964—Section 401(a) of act Aug. 19, 1964, amended section by inserting at the end thereof the words "subject to section 201 of the Dual Compensation Act."

EFFECTIVE DATE OF AMENDMENT

Section 403 of the act of Aug. 19, 1964, provides as follows: "(a) Except as provided in subsection (b) of this section, this Act shall becom effective on the first day of the first month which begins later than the ninetieth day following the date of enactment of this Act [Aug. 19, 1964].

"(b) This section and sections 201(g) and 201(h) shall become effective on the date of enactment of this Act."

The above-quoted § 403 of the act of Aug. 19, 1964, was repealed as executed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a).

Chapter 13.—COSMETOLOGISTS

Sec.
2–1301. Examination and licensing of those engaged in cosmetology—Definitions.
2–1302. Board of Cosmetology—Qualifications—Tenure—Removal—Officers—Compensation—Bond—Meetings—Quorum—Records.
2–1303. Regulations by the board.
2–1304. Powers and duties of the board—Suspension, revocation of license—Procedure.
2–1305. Appeal from action of the board.
2–1306. Practice of cosmetology without registration prohibited.
2–1307. Requirements to practice.
2–1308. Eligibility requirements for examination—Permit on proof of service.
2–1309. Limited certificates.
2–1310. Requirements of a school of cosmetology.
2–1311. Student practice upon the public for pay prohibited.
2–1312. Practice in beauty shops only.
2–1313. Exceptions to examination requirements—Health certificate—Temporary permits.
2–1314. Apprentices in beauty shops.
2–1315. Demonstrators.
2–1316. Reciprocity.
2–1317. Certificates or licenses—Requirements—Display.
2–1318. Examinations.
2–1319. Fees—Disposition of surplus.

Sec.
2–1320. Persons called to aid of board—Qualifications—Compensation—Expenses.
2–1321. Sanitary rules.
2–1322. Hearing may be held by any member.
2–1323. Temporary licenses.
2–1324. Exemptions from provisions.
2–1325. Termination and renewal of certificates.
2–1326. Penalties.
2–1327. Prosecution by corporation counsel.
2–1328. Separability of provisions.

§ 2–1301. Examination and licensing of those engaged in cosmetology—Definitions.

The following words or phrases, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section:

(a) The word "cosmetology," as used in this chapter, shall be defined and construed to mean any one or any combination of practices generally and usually, heretofore and hereafter, performed by, and known as the occupation of, beauty culturists, or cosmeticians, or cosmetologists, or hairdressers, or of any other person holding him or herself out as practicing cosmetology by whatever designation and within the meaning of this chapter and in and upon whatever place or premises; and in particular "cosmetology" shall be defined and shall include, but otherwise not be limited thereby, the following or any one or a combination of practices, to wit: Arranging, dressing, styling, curling, waving, cleansing, cutting, removing, singeing, bleaching, coloring, or similar work, upon the hair of any person by any means, and with hands or mechanical or electrical apparatus or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions, or creams, massaging, cleansing, stimulating, exercising, beautifying, or similar work, the scalp, face, neck, arms, bust, or upper part of the body, or manicuring the nails of any person, exclusive of such of the foregoing practices as come within the scope of sections 2–101 to 2–140 in force in the District of Columbia at the time of the passage of this chapter.

(b) Any place or premises, or part thereof, wherein or whereupon cosmetology or any of its practices are followed or taught, or any person therein or thereabouts practicing cosmetology, whether such place is known or designated as a cosmetician, cosmetological or beauty shop, establishment, or school or whether the person is known or holds him or herself out as a cosmetician, cosmetologist, or beauty culturist, or by any other name or designation indicating that cosmetology is practiced or taught, shall be subject to the provision and within the meaning of this chapter. For the purpose of this chapter such place shall hereinafter be considered and referred to as a beauty shop or school of cosmetology, as the case may be, and the person practicing cosmetology therein, as a cosmetologist: *Provided, however,* That any appropriate name herein mentioned may be used, but shall be displayed upon or over the entrance door or doors of such place designating it as a beauty shop or school of cosmetology within the meaning of this chapter.

(c) A person who is engaged in learning or acquiring any or all practices of cosmetology, and while so learning, performs or assists in any of the practices of cosmetology, under the immediate supervision of a registered or licensed practitioner or instructor of cosmetology, shall be known as an apprentice or student of cosmetology and hereinafter referred to as a student.

(d) Any person, not an apprentice or a student, following or practicing cosmetology, not owning or managing a beauty shop or school of cosmetology, shall be known as an operator cosmetologist and hereinafter referred to as an operator.

(e) Any person, being an operator, and managing, conducting, or owning a beauty shop or school of cosmetology, shall be known as a manager or managing cosmetologist and hereinafter referred to as a manager.

(f) Any person being an operator and teaching cosmetology or any practices thereof in a school of cosmetology shall be known as an instructor of cosmetology and hereinafter referred to as an instructor.

(g) Any person who engages only in the practice of manicuring the nails of any person shall be known as and hereafter referred to as a manicurist.

(h) The agent or employee of any manufacturer of beauty shop and cosmetological products and equipment employed by the said manufacturer for the purpose of conducting sales demonstrations, lectures, or expositions shall be known as a demonstrator and hereinafter referred to as such.

(i) Whenever the word "board" shall appear or be used, it shall mean and refer to the Board of Cosmetology as hereinafter provided. (June 7, 1938, 52 Stat. 611, ch. 321, § 1.)

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47–2344, 47–2345.

Conventions of national associations of hairdressers or cosmetologists, exempted, see § 47–2310a.

General penalties, see § 2–1326.

§ 2–1302. Board of Cosmetology—Qualifications—Tenture — Removal — Officers — Compensation — Bond—Meetings—Quorum—Records.

(a) There is hereby created the District of Columbia Board of Cosmetology, consisting of three members to be appointed by the Commissioners of the District of Columbia within thirty days after this chapter becomes effective. Each member of the Board shall be at least twenty-five years of age, shall have had at least five years' practical experience in the practices of cosmetology, shall be a citizen of the United States, and a resident of the District of Columbia. No member of the Board shall be a member of nor affiliated with any school of cosmetology while in office, nor shall any two members of said board be graduates of the same school.

(b) Each member of the board shall serve a term of three years, and until his or her successor is appointed and qualified, except in the case of the first board whose members shall serve one, two, and three years, respectively. The members of the Board shall take the oath provided for public officers. Vacancies shall be filled by the Commissioners of the District of Columbia for the unexpired portion of the term of a member caused by death, resignation, or otherwise. The said Commissioners are hereby empowered to remove, after full hearing, any member of the board for neglect of duty or any other just cause.

(c) The members of the Board shall, annually, elect from among their number a president and also a treasurer, and shall annually appoint a secretary, who shall not be a member of the Board. The compensation of the secretary, to be fixed by the Board, shall not exceed the sum of $3,000 per year, and shall be paid out of the funds received by it, and no part of such compensation shall be paid otherwise by the District of Columbia. Said Board shall have a common seal, and the said treasurer shall give such bond for the faithful performance of his duties as the Commissioners of the District of Columbia may deem necessary. Two members of the Board shall constitute a quorum.

(d) The Board shall meet in the District of Columbia not less than four times during the year and at such other times as the Board may deem advisable.

(e) The Board shall keep a record of its proceedings. It shall keep a register of applicants for certificates or licenses showing the name of the applicant, the name and location of his place of occupation or business, and whether the applicant was granted or refused a certificate or license. The books and records of the Board shall be prima-facie evidence of matters therein contained, shall constitute public records, and shall at all reasonable times be open for public inspection. (June 7, 1938, 52 Stat. 612, ch. 321, § 2.)

Cross References

Hearings by single member, see § 2–1322.

Honorariums to various board members and commissioners, see §§ 1–254 to 1–259.

§ 2–1303. Regulations by the board.

The Board is hereby empowered to make and enforce such rules and regulations, subject to the approval of the Commissioners of the District of Columbia, as it deems necessary to carry out the provisions of this chapter. (June 7, 1938, 52 Stat. 613, ch. 321, § 3.)

Cross References

Rules and regulations in general, see § 1–226 and note.

Sanitary regulations by Health Department, see § 2–1321.

§ 2–1304. Powers and duties of the board—Suspension, revocation of license—Procedure.

The Board shall have the power to refuse, revoke, or suspend licenses or certificates, after full hearing, on proof of violation of any provisions of this chapter or the rules and regulations established by the Board under this chapter, and shall have the power to require the production of such books, records, and papers as it may desire. Before any certificate shall be suspended or revoked for any of the reasons contained in this section, the holder thereof shall have notice, in writing, of the charge or charges against him or her, and shall, at a day specified in said notice, which shall be at least five days after the service thereof, be given a public hearing with a full opportunity to produce testimony in his or her behalf. Any person whose certificate of registration has been so suspended or revoked may, after the expiration of ninety days, on application to the Board have the same reissued to him or her upon satisfactory proof that the disqualification has ceased. (June 7, 1938, 52 Stat. 613, ch. 321, § 4.)

Cross References

General penalties, see § 2–1326.

Hearings by single member, see § 2–1322.

Suspension or revocation of licenses for violation of Uniform Narcotic Drug Act, see § 33–418.

§ 2–1305. Appeal from action of the board.

An appeal may be taken from any action of the Board to the Commissioners of the District of Columbia and the decision of the said Commissioners shall be final. (June 7, 1938, 52 Stat. 613, ch. 321, § 5.)

§ 2–1306. Practice of cosmetology without registration prohibited.

It shall be unlawful for any person in the District of Columbia to practice or teach cosmetology or manage a beauty shop, or to use or maintain any place for the practice or teaching of cosmetology for compensation, unless he or she shall have first obtained from the Board a certificate of registration as provided in this chapter. Nothing contained in this chapter, however, shall apply to or affect any person who is now actually engaged in any such occupation, except as hereinafter provided. (June 7, 1938, 52 Stat. 613, ch. 321, § 6.)

Cross References

General penalties, see § 2–1326.

Persons exempted from operation of chapter, see § 2–1324.

§ 2–1307. Requirements to practice.

Before any person may practice or teach cosmetology or manage a beauty shop, such person shall file with the Board a written application for registration, accompanied by a health certificate issued by a registered licensed physician of the District of Columbia, under oath, on a form which shall be prescribed and supplied by the Board, and such applicant shall submit satisfactory proof of the required age, educational qualifications, and be of good moral character, shall deposit with the said Board the registration fee, and pass an examination as to fitness to practice or teach cosmetology or manage a beauty shop, as hereinafter provided in this chapter. (June 7, 1938, 52 Stat. 614, ch. 321, § 7.)

§ 2–1308. Eligibility requirements for examination—Permit on proof of service.

No person shall be permitted by the Board to take an examination to receive a certificate as an operator unless such person shall be at least sixteen years of age, of good moral character, has received an education equivalent to the completion of the eighth grade of elementary school, and either has been registered as a student and has had training, as hereinafter provided in this chapter, in a school of cosmetology duly registered by the Board or has been registered and served as an apprentice at least eight months as hereinafter provided in this chapter: *Provided, however,* That the Board may permit a person to take an examination without the prior studentship or apprenticeship herein required if such person shall establish, to the satisfaction of the Board, that he or she has been an operator in the active practice of cosmetology

for at least twenty-four months within the five years next preceding the effective date of this chapter. No person shall be permitted to take an examination for a certificate to teach cosmetology or act as manager of a beauty shop unless such person shall be at least eighteen years of age, of good moral character, has received an education equivalent to the completion of the eighth grade of elementary school, and either has had at least three years' experience as an operator in a beauty shop or has served as such operator in a registered beauty shop for a period of not less than six months and shall have a training in a registered school of cosmetology of not less than two thousand hours, including the hours of study necessary to become an operator. The sufficiency of the qualifications of applicants for admission to the examination or for registration shall be determined by the Board, but the Board may delegate the authority to determine the sufficiency of such requirements to the secretary of the board, subject to such provisions as the Board shall make for appeal to the Board. (June 7, 1938, 52 Stat. 614, ch. 321, § 8.)

§ 2–1309. Limited certificates.

A limited certificate of registration to manicure the nails only may be applied for and granted under all of the terms and conditions of this chapter except that the examination therefor may be limited to such practice only and the required schooling shall be not less than one hundred hours. A limited certificate of registration for any one or a combination of practices as license is applied for may be granted under all of the terms and conditions of this chapter, except that the examination therefor shall be limited to the subjects in question, and a proportionate number of hours of training as determined by the Board shall be required. (June 7, 1938, 52 Stat. 614, ch. 321, § 9.)

§ 2–1310. Requirements of a school of cosmetology.

No school of cosmetology shall be granted a certificate of registration unless it shall attach to its staff as a consultant a person licensed by the District of Columbia to practice medicine and surgery or osteopathy and surgery and employ and maintain a sufficient number of competent instructors, registered as such, and shall possess apparatus and equipment sufficient for the proper and full teaching of all subjects of its curriculum which shall be as prescribed by the Board; shall keep a daily record of the attendance of each student, maintain regular class and instruction hours, establish grades, and hold examinations before issuance of diplomas; and shall require a school term of training of not less than one thousand five hundred hours within a period of not less than eight months for a complete course comprising all or the majority of the practices of cosmetology as provided in this chapter; and to include practical demonstrations and theoretical studies and study in sanitation, sterilization, and the use of antiseptics, cosmetics, and electrical appliances consistent with the practical and theoretical requirements as applicable to cosmetology or any practice thereof, as provided in this chapter. In no case shall there be less than one instructor to each twenty-five pupils. Any person, firm, or corporation teaching any or all practices of cosmetology shall be required to comply with all provisions applying to schools of cosmetology within the meaning of this chapter. (June 7, 1938, 52 Stat. 614, ch. 321, § 10.)

Cross Reference

General penalties, see § 2–1326.

§ 2–1311. Student practice upon the public for pay prohibited.

It shall be unlawful for any school of cosmetology to permit its students to practice cosmetology upon the public under any circumstances except by way of clinical work upon persons willing to submit themselves to such practice after having first been properly informed that operator is a student. No school of cosmetology shall, directly or indirectly, charge any money whatsoever for treatment by its students or for materials used in such treatment, until such student shall have at least five hundred hours of training. (June 7, 1938, 52 Stat. 615, ch. 321, § 11.)

Cross Reference

General penalties, see § 2–1326.

§ 2–1312. Practice in beauty shops only.

It shall be unlawful for any person to practice cosmetology for pay in any place other than a registered beauty shop: *Provided,* That a registered operator may in an emergency furnish cosmetological treatments to persons in the permanent or temporary residences of such persons by appointment. Every beauty shop shall have a manager, who shall have immediate charge and supervision over the operators practicing cosmetology. (June 7, 1938, 52 Stat. 615, ch. 321, § 12.)

Cross Reference

General penalties, see § 2–1326.

§ 2–1313. Exceptions to examination requirements—Health certificate—Temporary permits.

The Board may issue the certificate of registration required by this chapter without an examination or compliance with the other requirements as to age or education to any person who has practiced or taught cosmetology or acted as a manager of a beauty shop or school of cosmetology in the District of Columbia for at least six months immediately prior to the passage of this chapter: *Provided,* That such person shall make application to the board for a certificate of registration within ninety days after June 7, 1938. Such application shall be accompanied by an affidavit of a registered licensed physician that the applicant was examined and is free from all contagious and infectious diseases and the registration fee required by this chapter. Any person studying cosmetology in a school of cosmetology or as an apprentice in a beauty shop in the District of Columbia at any time this chapter goes into effect shall receive credit for such time and studies without complying with the requirements of this chapter as to age and preliminary education: *Provided,* That such person shall make application to the Board for registration as a student or apprentice within three months after this chapter goes into effect. Students, upon graduating from registered schools of cosmetology, may apply for and receive from the board a tempo-

rary permit to practice as an operator until the next regular examination held by the board under the provisions of this chapter. (June 7, 1938, 52 Stat. 615, ch. 321, § 13.)

§ 2–1314. Apprentices in beauty shops.

Any cosmetologist who is a beauty-shop owner and who is a holder of a teacher's certificate may instruct apprentices: *Provided,* That there shall be no less than three licensed operators for each apprentice in any shop and there shall be no more than two apprentices in any shop and provided such shop is not held out as a school of cosmetology. Such apprentices may apply for examination at the end of their apprenticeship at the next regular examination held by the Board and, if successful therein, shall be registered as operators. Registered apprentices, upon completion of their required term of apprenticeship, may apply for and receive from the board a temporary permit to practice as an operator until the next regular examination. (June 7, 1938, 52 Stat. 616, ch. 321, § 14.)

§ 2–1315. Demonstrators.

The agents or employees of manufacturers of beauty-shop and cosmetological products and equipment employed by the said manufacturers for the purpose of conducting sales demonstrations, lectures, or expositions shall be required to register with the Board within three days after such employment. The Board shall issue permits to such agents or employees for the purpose of permitting such persons to conduct sales demonstrations, lectures, and expositions of beauty-shop and cosmetological products and equipment upon the payment of the required fee: *Provided, however,* That no charge of any kind, whether for materials used or services rendered, shall be made by the manufacturer, his agent or employee, for said services rendered or said materials used in connection with or incidental to the conduct of such sales demonstration, lecture, or exposition. In the event of the termination of the employment of such agent or employee referred to in this section, the said employer herein referred to shall immediately report such fact to the Board, and the permit of such person shall thereupon be canceled and voided. No person canvassing the residents of the District of Columbia, in connection with the advertisement or sale or both of cosmetological products or equipment, shall be permitted to give practical demonstration of such products or equipment unless each such person or his agent shall first have procured from the Board a certificate of registration and a license so to demonstrate upon the payment of the required fee as hereinafter provided. (June 7, 1938, 52 Stat. 616, ch. 321, § 15.)

§ 2–1316. Reciprocity.

The Board may dispense with examinations of applicants as provided in this chapter and may grant a certificate of registration as provided in this chapter in all cases where such applicants have complied with the requirements of another state, territory or foreign country, state, or province, wherein the requirements for registration are substantially equal to those in force in the District of Columbia at the time of filing application for such certificate, or upon due proof that such applicant has continuously engaged in the practices or occupation for which a license is applied for at least five years immediately prior to such application and upon the payment of the required fee. (June 7, 1938, 52 Stat. 616, ch. 321, § 16.)

§ 2–1317. Certificates or licenses—Requirements—Display.

If an applicant for examination to practice cosmetology passes such examination to the satisfaction of the Board, and has paid the required fee, and otherwise complies with the requirements provided in this chapter, or an applicant otherwise for registration, has paid the required fee and complies with the requirements for registration as provided in this chapter, the Board shall issue a certificate or license, as the case may be, to that effect, signed by the president and secretary of the Board and attested by its seal. Such certificate or license shall be evidence that the person to whom it is issued is entitled to follow the practices, occupation, or occupations as an operator, manager, or instructor, or own and maintain a beauty shop or school of cosmetology as stipulated therein and as prescribed in this chapter. Such certificate or license shall be conspicuously displayed in his or her principal office, place of business, or employment. (June 7, 1938, 52 Stat. 617, ch. 321, § 17.)

CROSS REFERENCE

Business license, see §§ 47–2301 to 47–2350.

§ 2–1318. Examinations.

The examination of applicants for a license to practice under this chapter shall be conducted under the rules prescribed by the Board, and shall include both practical demonstrations and written or oral tests in reference to the practices for which a license is applied for and such related studies or subjects as the Board may determine necessary for the proper and efficient performance of such practices; and shall not be confined to any specific system or method; and such examination shall be consistent with a prescribed curriculum for a beauty school or school of cosmetology and the practical and theoretical requirements of the occupation of cosmetology as provided by this chapter. The Board shall hold public examinations on the second Tuesdays in January, April, July, and October in the District of Columbia, at such hours as the Board shall prescribe. The Commissioners of the District of Columbia are hereby authorized and directed to provide suitable quarters for such examinations. (June 7, 1938, 52 Stat. 617, ch. 321, § 18.)

§ 2–1319. Fees—Disposition of surplus.

The initial registration fee for the issuance of a license, with or without examination, shall be as follows: $10.00 for owners, managers, and instructors; $5.00 for operators; $3.00 for manicurists; and $100.00 for schools of cosmetology. Annual renewal fees shall be $5.00 for owners, managers, and instructors; $3.00 for operators; $2.00 for manicurists; and $50.00 for schools of cosmetology. The fee for a temporary certificate for a student or an apprentice shall be $2.00. For the issuance of a certificate

to a sales demonstrator or lecturer or to an itinerant demonstrator, canvassing the residents of the District of Columbia, the fee shall be $5.00. For the issuance of a certificate without examination to operators or instructors licensed in jurisdictions meeting the requirements of the District of Columbia, or to those who furnish satisfactory proof that they have been engaged elsewhere in the occupation of cosmetology for a period of five years, the initial fee for a certificate of registration shall be $15.00. On failure to pass an examination the fees shall not be returned to the applicant but within the year after such failure he or she may present himself or herself and be again examined without the payment of an additional fee. Out of the fees paid the Board there shall be defrayed all expenses incurred in carrying out the provisions of this chapter, together with a fee of $10.00 per day for each member of the Board and the actual and necessary expenses incurred for each day he may be actually engaged upon business pertaining to his official duties as such Board member: *Provided,* That such expenses shall in no event exceed the total of receipts: *Provided further,* That at the close of each fiscal year any funds unexpended in excess of the sum of $1,000 shall be paid into the treasury of the United States to the credit of the District of Columbia. (June 7, 1938, 52 Stat. 617, ch. 321, § 19.)

AUTHORITY TO CHANGE FEES

Commissioners authorized and empowered to increase or decrease, from time to time, the fees specified in this section, see §§ 1–252 and 1–253.

CROSS REFERENCE

Refund of fees when license is refused, see § 47–1017.

§ 2–1320. Persons called to aid of board—Qualifications—Compensation—Expenses.

The Board may call to its aid any person or persons of established reputation and known ability in the practices as provided in this chapter for the purpose of conducting examinations, inspections, and investigations of any or all persons, firms, or corporations affected by this chapter. Such aid or aids shall not be connected with any school teaching cosmetology. Any person called by the Board to its aid as provided herein shall receive for his or her services not more than $10.00 for each day employed in the actual discharge of his or her official duties, and his or her actual and necessary expenses incurred, to be paid in the same manner as herein provided for the payment of compensation and expenses of members of the Board (June 7, 1938, 52 Stat. 618, ch. 321, § 20.)

§ 2–1321. Sanitary rules.

The sanitary regulations for the control of beauty shops and manicuring establishments in the District of Columbia shall be such as are now in force or which may from time to time be promulgated by the Health Department of the District of Columbia, which said department shall have full and complete charge of the enforcement of said sanitary regulations. It shall be unlawful for the owner or manager of any beauty shop or school of cosmetology to permit any person to sleep in or use for residential purposes any room used wholly or in part as a beauty shop or school of cosmetology. It shall be unlawful for any person, firm, or corporation to practice cosmetology except in a bona-fide established beauty shop or school of cosmetology, wherein the requirements of the Board as to proper, sanitary, and exclusive practices of cosmetology are complied with: *Provided, however,* That a person may practice outside of such establishment under the direction and control of an owner or manager thereof under such regulations as the Board may provide: *Provided further,* That nothing in this chapter contained shall be construed to limit or repeal any existing rules, regulations, or laws relating to health or sanitation. (June 7, 1938, 52 Stat. 618, ch. 321, § 21.)

CROSS REFERENCE

Rules and regulations by cosmetology board, see § 2–1303.

§ 2–1322. Hearing may be held by any member.

Any investigation, inquiry, or hearing which the Board is empowered by law to hold or undertake may be held or undertaken by or before any member or members of said Board and shall be deemed to be the finding or order of said Board when approved and confirmed by it. (June 7, 1938, 52 Stat. 618, ch. 321, § 22.)

§ 2–1323. Temporary licenses.

The Board may issue a temporary license to any person who otherwise is subject to examination, as provided in this chapter, upon documentary or other satisfactory evidence that the applicant therefor has the necessary qualifications to practice any one or any combination of practices of cosmetology for which a temporary license is applied for: *Provided, however,* That such application for a temporary license is accompanied by an application for an examination as provided in this chapter and the necessary fee therefor and a fee of $2.00 for such temporary license. Such temporary license shall remain in force until the next regular meeting of the Board at which examinations are held and no longer. Two such temporary licenses may not be issued to the same person. Each temporary license shall state the date of expiration and the temporary license shall after such date be void and of no effect. (June 7, 1938, 52 Stat. 618, ch. 321, § 23.)

§ 2–1324. Exemptions from provisions.

Nothing in this chapter shall prohibit service in case of emergency, or domestic administration, without compensation, nor services by persons authorized under the laws of the District of Columbia to practice medicine, surgery, dentistry, chiropody, osteopathy, or chiropractic, nor services by barbers, insofar as their usual and ordinary vocation and profession is concerned, when engaged in any of the following practices, namely: Arranging, cleansing, cutting, or singeing the hair of any person; nor in massaging, cleansing, stimulating, exercising, or similar work, the scalp, face, or neck of any person, with the hands, or with mechanical or electrical apparatus or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions, or creams; nor shall anything in this chapter apply to the practice of physiotherapy or massaging, stimulating or exercising of the head, neck, arms,

bust or upper part of the body, when done for purposes of health and hygiene rather than for cosmetic purposes. (June 7, 1938, 52 Stat. 619, ch. 321, § 24.)

§ 2–1325. Termination and renewal of certificates.

The certificates of registration issued in the year in which this chapter goes into effect shall expire as of April 15, 1938. Thereafter certificates shall be issued for no longer than one year. All certificates shall expire on the 15th day of April next succeeding unless renewed for the next year. Certificates may be renewed by application made prior to the 15th day of April of each year accompanied by a health certificate in the manner prescribed in section 2–1307 and the payment of the renewal fees provided in this chapter. The holder of an expired certificate or license may have within three years of the date of expiration the certificate restored upon the payment of the required renewal fee and satisfactory proof of his or her qualifications to assume practice or occupation. (June 7, 1938, 52 Stat. 619, ch. 321, § 25.)

§ 2–1326. Penalties.

(a) Any person who shall violate or aid or abet in violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $300 or imprisonment in the workhouse of the District of Columbia for not more than six months, or by both such fine and imprisonment.

(b) Any operator, manager, instructor, student, or apprentice who shall practice the occupation of cosmetology while knowingly suffering from contagious or infectious disease, or who shall knowingly serve any person afflicted with such disease, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $300 or imprisonment in the workhouse of the District of Columbia for not more than six months, or by both such fine and imprisonment. (June 7, 1938, 52 Stat. 619, ch. 321, § 26.)

Cross References

Operation of school without certificate, see § 2–1310.
Practice outside of shop, see § 2–1312.
Practice without registration, see § 2–1306.
Revocation or suspension of licenses, see § 2–1304.
Student practicing on public, see § 2–1311.

§ 2–1327. Prosecution by corporation counsel.

It shall be the duty of the Corporation Counsel, or one of his assistants, to prosecute in the name of the District of Columbia all violations of the provisions of this chapter. (June 7, 1938, 52 Stat. 619, ch. 321, § 27.)

§ 2–1328. Separability of provisions.

Each section of this chapter, and every part of each section, is hereby declared to be independent of every other, and the holding of any section or part thereof to be void or ineffective for any cause shall not be deemed to affect any other section or part thereof. (June 7, 1938, 52 Stat. 620, ch. 321, § 28.)

Repeal

Section 29 of act June 7, 1938, provided as follows: "All acts or parts of acts inconsistent with this Act [this chapter] are hereby repealed."

Chapter 14.—PLUMBERS

Sec.
2–1401. Plumbing board—Appointment.
2–1402. Licenses—Examination of applicants—Issuance.
2–1403. Applicants—Qualifications.
2–1404. Bond.
2–1405. License—Renewal, fee, revocation.
2–1406. License required.
2–1407. Employment of unlicensed plumber by owner or lessee prohibited.
2–1408. Penalties.

§ 2–1401. Plumbing board—Appointment.

The Commissioners of the District of Columbia are authorized to appoint a plumbing board to be composed of one master plumber, one journeyman plumber competent to be licensed as master plumber, and one employee of the District of Columbia having a knowledge of plumbing and gas-fitting and sanitary work. A majority of the board shall be deemed competent for action. (June 18, 1898, 30 Stat. 477, ch. 467, § 1; June 27, 1906, 34 Stat. 483, ch. 3553.)

Codification

Act June 27, 1906, appropriated a salary of $2,000 for the inspector of plumbing and for seven assistant inspectors, one at $1,200 and six at $1,000 each.

The salary paid is now governed by various provisions in Title 5, U.S. Code. See, particularly, 5 U.S.C. ch. 51, ch. 53, subch. III.

Cross References

Honorariums to various board members and commissioners, see §§ 1–254 to 1–259.

Plumbing inspection, see §§ 1–724 to 1–727.

§ 2–1402. Licenses—Examination of applicants—Issuance.

In addition to such advisory duties as said Commissioners shall assign them, it shall be the duty of said plumbing board to examine all applicants for license as master plumbers or gas fitters, and to report to said Commissioners, who, if satisfied from such report that the applicant is a fit person to engage in the business of plumbing or gas fitting, shall issue a license to such person to engage in such business. (June 18, 1898, 30 Stat. 477, ch. 467, § 2.)

Cross Reference

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47–2344, 47–2345.

§ 2–1403. Applicants—Qualifications.

Applicants for licenses as master plumbers and gas fitters or master gas fitters, who are citizens of the United States, must be twenty-one years of age, must make application in their own handwriting, and must accompany such application with a certificate as to good character signed by at least three reputable residents of the District of Columbia, two of whom shall certify that the applicants have had at least four years' experience in the plumbing and gas-fitting business. (June 18, 1898, 30 Stat. 477, ch. 467, § 3; July 14, 1932, 47 Stat. 659, ch. 476, § 3.)

Amendment

1932—Act July 14, 1932, extended this section to master gas fitters, required that all applicants be citizens of the United States, and added the clause following the words "District of Columbia."

§ 2–1404. Bond.

The said Commissioners and their successors are authorized and empowered to require every person licensed to practice the business of plumbing and gas fitting in the District of Columbia, before engaging in the said business, to file a bond in such amount not exceeding the sum of two thousand dollars and with such number of sureties as the said commissioners shall determine, conditioned upon the faithful performance of all work in compliance with the plumbing regulations, and that the District of Columbia shall be kept harmless from the consequence of any and all acts of the said licensee during the period covered by the said bond. (Apr. 23, 1892, 27 Stat. 21, ch. 53, § 2; Mar. 3, 1893, 27 Stat. 543, ch. 199.)

CODIFICATION

Act March 3, 1893, extended the provisions and penalties of act April 23, 1892, to include the practice of the business of gas fitting in the District of Columbia.

NOTES TO DECISIONS

Action on bond

Where District of Columbia Commissioners had never exercised their enlarged authority under Additional Powers Act and as a consequence prior code section providing that District of Columbia shall be kept harmless from consequences of any and all acts of said licensee plumber during period covered by plumber's indemnity bond was still in effect, purchasers of property upon which sewer pipe was allegedly negligently installed by plumber could not bring action against plumber's surety on indemnity bond which named only District of Columbia as obligee therein. *Bolten* v. *Clarke and Aetna Casualty & Surety Co.* (D.C. Mun. App. 1956, 125 A. 2d 60).

§ 2–1405. License—Renewal, fee, revocation.

All renewals of existing licenses and all new licenses as a master plumber and gas fitter or master gas fitter shall be for a period of not more than one year and the fee for such license shall be not less than $10.00 nor more than $25.00 per annum, to be fixed by the commissioners of the District of Columbia, for a license year beginning January 1 and ending December 31. Such special license fee shall be separate from, or in addition to any contractors' or business license tax, hereafter fixed for this and similar occupations by the Commissioners of the District of Columbia according to law. Licenses issued at any time after the beginning of the year shall date from the first day of the month in which the license is issued and end on the last day of the license year, and payment shall be made of a proportional amount of the annual license fee. Any licensee may apply for and receive a license for or on behalf of any firm, copartnership, or corporation that he is a bona fide member of, or a substantial stockholder in, but all plumbing or gas fitting done pursuant to such license shall be done under the immediate personal supervision of the licensed man.

The Commissioners of the District of Columbia or their duly authorized agent shall have the power to suspend or revoke any plumber's or gas fitter's license for a violation of the plumbing or gas-fitting regulations after a public hearing granted the licensee or after conviction in court for such violation or for conduct involving moral turpitude. (June 18, 1898, 30 Stat. 477, ch. 467, § 4; July 14, 1932, 47 Stat. 659, ch. 476 § 4.)

AMENDMENT

1932—Act July 14, 1932, amended section generally. Prior to such amendment, section read as follows: "The fee for a license as master plumber or gas fitter shall be three dollars."

AUTHORITY TO CHANGE FEES

Commissioners authorized and empowered to increase or decrease, from time to time, the fees specified in this section, see §§ 1–252, 1–253.

CROSS REFERENCES

Other provisions concerning penalties for violation of regulations, see § 1–725.

Refund of fees when license is refused, see § 47–1017.

Revocation or suspension of license for violation of Uniform Narcotic Drug Act, see § 33–418.

NOTES TO DECISIONS

Action on bond

Where District of Columbia Commissioners had never exercised their enlarged authority under Additional Powers Act and as a consequence prior code section providing that District of Columbia shall be kept harmless from consequences of any and all acts of said licensee plumber during period covered by plumber's indemnity bond was still in effect, purchasers of property upon which sewer pipe was allegedly negligently installed by plumber could not bring action against plumber's surety on indemnity bond which named only District of Columbia as obligee therein. *Bolten* v. *Clarke and Aetna Casualty & Surety Co.* (D.C. Mun. App. 1956, 125 A. 2d 60).

Immediate personal supervision

Administrative interpretation, by District of Columbia plumbing board secretary, that code provision requiring that plumbing work be done under a licensed plumber's immediate personal supervision did not necessitate his physical presence on the site was not clearly wrong and would be entitled to due respect of court interpreting the provision. *G. A. Cook* v. *James E. Griffith, Inc.* (D.C. App. 1963, 193 A. 2d 427).

Alleged failure of duly licensed corporation engaged in plumbing business to perform plumbing work in accordance with code provision requiring that all work by unlicensed persons be done under the immediate supervision of a licensed plumber did not relieve the contractor, which had engaged the corporation, from liability for the plumbing job which was otherwise properly performed. *Id.*

§ 2–1406. License required.

It shall be unlawful for any person to engage in the work of plumbing or gas-fitting in the District of Columbia unless he is licensed as provided in this chapter, or is an employee of a licensed master plumber (June 18, 1898, 30 Stat. 477, ch. 467, § 5.)

§ 2–1407. Employment of unlicensed plumber by owner or lessee prohibited.

It shall be unlawful for the owner or lessee of any building in the District of Columbia, or the agent or representative of such owner or lessee, to knowingly employ an unlicensed person to do plumbing or gas fitting in or about such building (June 18, 1898 30 Stat. 477, ch. 467, § 6.)

§ 2–1408. Penalties.

Any person violating any of the provisions of this chapter shall, on conviction thereof in the District of Columbia Court of General Sessions, be punished by a fine of not less than $5.00 nor more than $100; and in default of payment of such fine such person shall be confined in the workhouse of the District of Columbia for a period not exceeding six months; and all prosecutions under this chapter shall be in the District of Columbia Court of

General Sessions, in the name of the District of Columbia. (June 18, 1898, 30 Stat. 477, ch. 467, § 8; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court" and for "police court of said district" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

CROSS REFERENCE

Other provisions concerning penalties for violation of regulations, see § 1–725.

Chapter 15.—STEAM AND OTHER OPERATING ENGINEERS

Sec.
2–1501 Steam and other operating engineers—License required.
2–1502 Board of examiners—Constitution—Examination of applicants—Compensation of Board members—Inspection of engines and boilers
2–1503. Qualification of applicants
2–1504 License fee.
2–1505. Revocation of license for intoxication
2–1506. Penalty for employing unlicensed operator—Boilers exempt.
2–1507 Engineers employed by United States Government or licensed by States exempt.

§ 2–1501. Steam and other operating engineers—License required.

It shall be unlawful for any person to act as steam or other operating engineer in the District of Columbia who shall not have been regularly licensed to do so by the Commissioners thereof. (Feb. 28, 1887, 24 Stat. 427, ch. 272, § 1; Mar. 4, 1925, 43 Stat. 1284, ch. 545.)

CODIFICATION

The Boiler Inspection Act of the District of Columbia, §§ 1–701 to 1–718, does not affect this chapter. See § 1–716.

AMENDMENT

1925—Act Mar. 4, 1925, inserted the words "or other operating" after the word "steam."

CROSS REFERENCE

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47–2344, 47–2345.

§ 2–1502. Board of examiners—Constitution—Examination of applicants—Compensation of Board members—Inspection of engines and boilers.

All persons applying for such license shall be examined by a board of examiners composed as follows: Two practical engineers, neither of whom shall be in the employ of the United States or the District of Columbia, to be appointed by the commissioners of the District of Columbia, and the boiler inspector for the District of Columbia. Each appointed member shall receive compensation at the rate of $10 per day when actually engaged in the work of the board, such compensation not to exceed $300 per annum. One of the appointed engineers shall be appointed for a term of one year and the others for a term of two years. On the expiration of such appointments, all appointments shall be made for the term of two years except such appointments as may be made for the remainder of unexpired terms. Vacancies caused by death, resignation, or otherwise shall be filled by the Commissioners only for the unexpired terms. Members shall be eligible for reappointment. The Commissioners of the District of Columbia may remove any member of the board for misconduct, incompetency, neglect of duty, or for any other sufficient cause. Said examination shall be conducted in all respects under such rules and regulations as the Commissioners of the District of Columbia shall from time to time provide; and all engines and steam boilers shall be subjected to such tests as the said Commissioners may prescribe. (Feb. 28, 1887, 24 Stat. 427, ch. 272, § 2; Mar. 4, 1925, 43 Stat. 1284, ch. 545; June 29, 1940, 54 Stat. 702, ch. 458.)

AMENDMENT

1940—Act June 29, 1940, added the clause "neither of whom shall be in the employ of the United States or the District of Columbia" in the first sentence, and the second through seventh sentences.

CROSS REFERENCES

Honorariums to various board members and commissioners, see §§ 1–254 to 1–259.

Rules and regulations in general, see § 1–226 and note.

§ 2–1503. Qualification of applicants.

Applicants for license as steam or other operating engineers must be twenty-one years of age and of temperate habits; must make application in writing, to which application must be attached a certificate as to character and moral habits signed by at least three citizens of the District of Columbia. themselves of moral standing. (Feb. 28, 1887, 24 Stat. 427, ch. 272, § 3; Mar. 4, 1925, 43 Stat. 1284, ch. 545.)

AMENDMENT

1925—Act Mar. 4, 1925, inserted the words "or other operating" after the word "steam."

§ 2–1504. License fee.

The fee for a license as steam or other operating engineer shall be $3.00. (Feb. 28, 1887, 24 Stat. 427, ch. 272, § 4; Mar. 4, 1925, 43 Stat. 1284, ch. 545.)

AMENDMENT

1925—Act. Mar. 4, 1925, inserted the words "or other operating" after the word "steam."

AUTHORITY TO CHANGE FEES

Commissioners authorized and empowered to increase or decrease, from time to time, the fees specified in this section, see §§ 1–252, 1–253.

CROSS REFERENCE

Refund of fees when license is refused, see § 47–1017.

§ 2–1505. Revocation of license for intoxication.

Any person employed as a licensed steam or other operating engineer in the District of Columbia who is found under the influence of intoxicating liquor while on duty, shall, for the first offense, have his license revoked for six months; for the second offense, twelve months; and for the third offense, shall have his license revoked and be debarred from following the occupation of licensed steam or other operating engineer in the District of Columbia for the period of five years. (Feb. 28, 1887, 24 Stat. 427, ch. 272, § 5; Mar. 4, 1925, 43 Stat. 1284, ch. 545.)

AMENDMENT

1925—Act Mar. 4, 1925, inserted the words "or other operating" after the word "steam."

CROSS REFERENCE

Revocation or suspension of license for violation of Uniform Narcotic Drug Act, see § 33–418.

§ 2–1506. Penalty for employing unlicensed operator—Boilers exempt.

Any owner or lessee of any engine or steam boiler, or the secretary of any corporation, who shall employ a steam or other operating engineer as such who has not been regularly licensed to act as such, or any person operating without a license or in violation of the provisions of this chapter, shall, on conviction thereof by the District of Columbia Court of General Sessions, be fined $40.00: *Provided,* That boilers used for steamheating, where the water returns to the boiler by gravity without the use of a pump and injector or inspirator, shall be exempt from the provisions of this section. (Feb. 28, 1887, 24 Stat. 427, ch. 272, § 6; Mar. 4, 1925, 43 Stat. 1284, ch. 545; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

AMENDMENT

1925—Act Mar. 4, 1925, substituted "any engine or steam boiler" for "steam boiler or engine", and struck out the work "knowingly" where it appeared between the words "shall" and "employ" in second line.

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 2–1507. Engineers employed by United States Government or licensed by States exempt.

Sections 2–1501 to 2–1506 shall not apply to engineers employed by the United States government or licensed by the laws of any state having reciprocity with the District of Columbia. (Feb. 28, 1887, 24 Stat. 427, ch. 272, § 7; Mar. 4, 1925, 43 Stat. 1284, ch. 545; July 31, 1939, 53 Stat. 1143, ch. 398.)

AMENDMENTS

1939—Act July 31, 1939, substituted the word "employed" for the word "licensed."

1925—Act Mar. 4, 1925, added the words "having reciprocity with the District of Columbia" at the end of the section.

Chapter 16.—WASHINGTON NATIONAL AIRPORT

§§ 2–1601 to 2–1603. Transferred.

CODIFICATION

Act June 29, 1940, 54 Stat. 686, ch. 444, formerly classified to this chapter, is transferred to chapter 13 of Title 7, Highways, Streets, Bridges.

Chapter 17.—ARMORY BOARD

SUBCHAPTER I.—GENERAL PROVISIONS

Sec.

2–1701. Declaration of policy.
2–1702. Membership of board—Term—Appointment of alternates—Delegation of authority—Compensation—Election of chairman.
2–1703. Control and jurisdiction over District of Columbia National Guard Armory—Maintenace and repair.
2–1704. Motor vehicle parking areas—Provision for.
2–1705. Use of armory by the militia of the District of Columbia.
2–1706. Secondary purposes—Authorization.
2–1707. Canteen—Authorization for—Proceeds.
2–1708. Provision for working capital as revolving fund—Transfer of rental revenues to revolving fund — Expenditures — Revenues — Deficiency appropriations.
2–1709. Employment of manager and personnel—Compensation—Managerial powers.
2–1710. Yearly financial statement and report of activities—Recommendations.

SUBCHAPTER II.—DISTRICT OF COLUMBIA STADIUM

2–1720. Purpose—Authorization of Armory Board to construct Stadium—Plans.
2–1721. Acquisition of site by Secretary of the Interior—Construction, maintenance and operation by Board.
2–1722. Bonds—Issuance of by Board to pay cost of stadium—Registration of bonds — Redemption—Sale of bonds—Exemption of bonds from taxation.
2–1723. Authority of Board outlined.
2–1724. Deposit of receipts into operating fund—Use of fund—Record of cost and maintenance to be kept—Board may advance moneys for operation and maintenance—Reimbursement—Surplus moneys to be placed in sinking fund—Statement to be filed with Congress.
2–1725. Title to stadium to vest in United States—Date.
2–1726. Employment of personnel and fixing of compensation—Delegation of authority.
2–1727. Limitation on indebtedness—Limitation on liability of Board members—Deficits to be included in budget estimates—Commissioners may borrow from Secretary of Treasury—Repayment—Bonds guaranteed by the United States.
2–1728. Filing of annual reports with Congress.
2–1729. "Stadium" defined.

SUBCHAPTER I.—GENERAL PROVISIONS

§ 2–1701. Declaration of policy.

It is hereby declared to be the policy of the Congress that the District of Columbia National Guard Armory shall be maintained and operated primarily to provide facilities for the quartering and training of the Militia of the District of Columbia, and, secondarily, to provide suitable facilities for major athletic events, conventions, concerts, and such other activities as may be in the interest of the District of Columbia, and that such armory shall be operated as nearly as practicable on a self-supporting basis. (June 4, 1948, 62 Stat. 339, ch. 418, §1.)

§ 2–1702. Membership of board—Term—Appointment of alternates—Delegation of authority—Compensation—Election of chairman.

There is hereby established an Armory Board, to be composed of the President of the Board of Commissioners of the District of Columbia, the Commanding General of the District of Columbia Militia, and a third person not employed by the Federal or District Governments who shall be appointed by the Chairmen of the District of Columbia Committees of the United States Senate and the United States House of Representatives for a term of three years. Each member of the Armory Board is authorized to appoint, and in his discretion to withdraw the appointment of, an alternate and to delegate to such alternate authority to act in his place and stead in respect of the powers granted by this subchapter. The members of said Board and their alternates

shall serve without additional compensation. Said Armory Board shall elect a chairman from among its members. (June 4, 1948, 62 Stat. 339, ch. 418, § 2.)

§ 2–1703. Control and jurisdiction over District of Columbia National Guard Armory—Maintenance and repair.

For the purposes of this subchapter, said Armory Board is vested with the control of and jurisdiction over the District of Columbia National Guard Armory. For the purposes of maintenance and repair the armory shall be under the control and jurisdiction of the Commissioners of the District of Columbia. (June 4, 1948, 62 Stat. 339, ch. 418, § 3.)

§ 2–1704. Motor vehicle parking areas—Provision for.

Upon the request of the Armory Board the Secretary of the Interior shall provide for the use of said Board, under such arrangements for improvement, lighting and maintenance as may be agreed upon between the Secretary of the Interior and said Board, such areas of land adjacent to the Armory and under the control of the Secretary of the Interior as said Board deems adequate for motor vehicle parking purposes. (June 4, 1948, 62 Stat. 339, ch. 418, § 4.)

§ 2–1705. Use of armory by the militia of the District of Columbia.

The Armory Board shall set aside for the exclusive use of the militia of the District of Columbia such parts of the headquarters and regimental buildings and basement of the drill hall, and such of the storage rooms contiguous to the drill hall as shown upon drawing A–3, first-floor plan, approved by the Commissioners April 19, 1940, as said Armory Board may from time to time find are necessary for the use of the militia. The parts of the armory so set aside for the use of the militia shall be under the control and jurisdiction of the commanding general of the militia for all purposes except maintenance and repair of the armory. The drill hall and those parts of the armory not set aside for the exclusive use of the militia shall be available to the militia under schedules for joint use made by the Armory Board so as to carry out the purposes and intent of this subchapter. (June 4, 1948, 62 Stat. 339, ch. 418, § 5.)

§ 2–1706. Secondary purposes—Authorization.

In order to carry out the secondary purposes of this subchapter the Armory Board is hereby authorized, without regard to any other provisions of law—

(a) to determine all questions concerning the use of said armory for the secondary purposes of this subchapter;

(b) to enter into contracts and agreements with District of Columbia and Federal departments, bureaus, establishments, and offices and the provisions of section 686 of title 31, U. S. Code, are hereby made applicable to such contracts;

(c) to acquire by purchase or lease equipment, appliances, facilities, and property of any kind necessary or desirable to carry out the secondary purposes of this subchapter, and to sell or dispose of any such property so acquired by said Board when in its judgment it shall be advantageous to do so: *Provided,* That no contract for more than $3,000 shall be entered into for this purpose without competitive bidding;

(d) to erect structures or installations in all of such parts of the armory as are not required exclusively for military purposes, and to make such structural and other changes in any such structures as it may deem necessary or desirable for carrying out the secondary purposes of this subchapter: *Provided,* That nothing in this subchapter shall authorize or permit the erection of any structure which in the opinion of the Commanding General of the District of Columbia Militia will lessen the availability of the armory for military purposes;

(e) to prepare, maintain, light, and operate motor-vehicle parking lots on such land as is provided for that purpose by the Secretary of the Interior under the terms of section 2–1704;

(f) to operate or contract for the operation of, such concessions, including the checking of clothing and the sale of nonalcoholic beverages and food, as the said Board may deem appropriate to the purposes for which the armory may be leased: *Provided,* That the said Board may at its discretion, and with the approval of the Commanding General of the District of Columbia Militia, grant the concession for nonalcoholic beverages and food to the canteen of the District of Columbia Militia, whenever in the opinion of said Board such action shall be for the public interest;

(g) to furnish such services to renters, lessees, and other occupants of the armory as in its judgment are necessary or suitable for carrying out the secondary purposes of this subchapter;

(h) to rent or lease from time to time, for any of the secondary purposes of this subchapter, all or any part or parts of the armory not set aside for the exclusive use of the Militia of the District of Columbia in compliance with section 2–1705, including any or all structures, equipment, or facilities of the armory, at such rental values as the Armory Board shall determine to be fair with respect to the interests of the District of Columbia, and for such periods of time as the Armory Board may determine, subject to cancellation when the public interest requires: *Provided,* That every lease or rental agreement which includes therein any period of time not covered by the schedules furnished under the provisions of section 2–1705 shall be binding and effective only when the Commanding General of the District of Columbia Militia has endorsed his approval thereon in writing;

(i) to carry public-liability insurance protecting the interests of the District of Columbia, the Commissioners of the District of Columbia, the District of Columbia Militia, the Commanding General of the District of Columbia Militia, the Armory Board, and the members, officers, and employees thereof; and to require tenants or lessees of the armory to carry public-liability insurance protecting the interests of such tenants or lessees;

(j) to incur obligations not in excess of $50,000 at any one time in furtherance of the secondary purposes of this subchapter, and not in excess of $10,000 above the unobligated excess in the Armory Board Working Capital Fund; and

(k) to accept the gratis services of such persons as may volunteer to aid in the conduct of its activities. (June 4, 1948, 62 Stat. 340, ch. 418, § 6.)

§ 2–1707. Canteen—Authorization for—Proceeds.

Nothing contained in this subchapter shall be construed as a limitation upon the operation of a canteen in the said armory for the use and benefit of the District of Columbia Militia, and any funds derived from the operation of such canteen shall inure to the benefit of the said District of Columbia Militia. (June 4, 1948, 62 Stat. 341, ch. 418, § 7.)

§ 2–1708. Provision for working capital as revolving fund—Transfer of rental revenues to revolving fund — Expenditures — Revenues — Deficiency appropriations.

There is hereby created an Armory Board working capital fund in the amount of $100,000, and there shall be deposited in the Treasury of the United States to the credit of the said Armory Board working capital fund all receipts derived from the exercise by the Armory Board of the powers granted by this subchapter. Said Armory Board working capital fund, including all receipts credited thereto, shall be used as a permanent revolving fund for all expenses incurred by the Armory Board in the exercise of the powers granted by this subchapter, including personal services. There shall also be transferred to said Armory Board working capital fund all revenues derived from rentals of the District of Columbia National Guard Armory under contracts made between July 1, 1947, and June 4, 1948, except revenues resulting from the operation of concessions, and the Secretary of the Treasury is authorized to transfer to the credit of the Armory Board working capital fund authorized by this chapter funds resulting from rental of the District of Columbia National Guard Armory received by him and held in escrow pending enactment of legislation. As soon as practicable after the close of each fiscal year, after provision has been made for payment of all lawful obligations then incurred, all sums in excess of $100,000 in said Armory Board working capital fund shall be transferred to the general revenues of the District of Columbia. Expenditures from such fund may be made only upon vouchers which have been certified by said Armory Board and which have been approved before payment by the Auditor of the District of Columbia, and shall be disbursed in the same manner as other District of Columbia funds are disbursed: *Provided,* That the Disbursing Officer of the District of Columbia is authorized to advance to the Armory Board, upon requisitions previously approved by the Accounting Officer of the District of Columbia, sums of money not to exceed $15,000 at any one time to be used by the Armory Board for its office and sundry expenses and for change-making purposes in connection, and the secondary purposes of this subchapter, and in connection with the operation of the stadium and related motor-vehicle parking areas pursuant to sections 2–1720 to 2–1729: *Provided further,* That an amount not to exceed $10,000 in any fiscal year shall be available for promotional expenses in the furtherance of the secondary purposes of this subchapter, and of the purposes of sections 2–1720 to 2–1729, and the certificate of the Armory Board shall be sufficient voucher for such expenditure. There is hereby authorized to be appropriated annually such sum as may be required to supply any deficiency in the Armory Board working capital fund. Revenues resulting from the operation of concessions within the District of Columbia National Guard Armory under contracts made between July 1, 1947, and June 4, 1948, which have been held by the District of Columbia National Guard pending enactment of legislation are hereby transferred to the canteen fund of the District of Columbia National Guard. (June 4, 1948, 62 Stat. 341, ch. 418, § 8; Aug. 4, 1955, 69 Stat. 498, ch. 562, § 1; July 28, 1958, 72 Stat. 423, Pub. L. 85–561, § 2(a); Sept. 23, 1959, 73 Stat. 702, Pub. L. 86–378, § 2.)

AMENDMENTS

1959—Act Sept. 23, 1959, inserted the phrase "and related motor-vehicle parking areas" following "in connection with the operation of the stadium."

1958—Act July 28, 1958, substituted "$100,000" for "$50,000" wherever appearing, increased the amount available for office and sundry expenses from $11,000 to $15,000 and the amount available for promotional expenses from $3,000 to $10,000, and authorized the use of the funds available for office, sundry and promotional expenses for the purposes of sections 2–1720 to 2–1729.

1955—Act Aug. 4, 1955, substituted "Accounting Officer" for "Auditor" and "$11,000" for "$1,000" in the first proviso in the fifth sentence, and added the second proviso making not more than $3,000 available in any fiscal year for promotional expenses.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 2(b) of act July 28, 1958, provided that: "Subsection (a) of this section [amending this section] shall take effect on the first day of the first month which begins after the date of enactment of this Act [July 28, 1958]."

TRANSFER OF FUNCTIONS

All functions of the Office of Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952.

The functions of approving the vouchers and requisitions described in the above section were transferred from the Auditor of the District of Columbia to the Accounting Officer, Finance Office, Department of General Administration by Reorganization Order No. 20 dated Nov. 10, 1952. This order was issued by the Board of Commissioners of the District of Columbia pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to Title 1, Administration.

See the note under section 2–1219 concerning the Department of General Administration, the Finance Office, and the Accounting Officer.

§ 2–1709. Employment of manager and personnel—Compensation—Managerial powers.

The Armory Board is authorized to employ and fix the compensation and term of a manager and such personnel as may be necessary in connection with the operation of the armory for the secondary purposes of this subchapter without regard to the provisions of the civil-service laws and section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]. Under the direction of the Board and with written authorization signed by the members thereof, said manager may exercise such of the powers vested in the Board by section

2–1706 as the Board shall determine. (June 4, 1948, 60 Stat. 342, ch. 418, § 9; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a); Aug. 19, 1964, 78 Stat. 494, Pub. L. 88–448, title IV, § 402(a)(27).)

REFERENCES IN TEXT

The "civil-service laws", referred to in this section, are set forth in title 5, U.S.C. See, particularly, Parts II and III of that title.

CODIFICATION

The reference in this section to "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

AMENDMENTS

1964—Act Aug. 19, 1964, section 402(a)(27) repealed that portion of the section which reads as follows: "and without regard to any prohibition against double salaries continued in any other law."

1949—Act Oct. 28, 1949, § 1106(a), which was a part of the Classification Act of 1949, and which has since been repealed, substituted "Classification Act of 1949" for "Classification Act of 1923". See codification note above.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 403 of the act of Aug. 19, 1964, provides as follows: "(a) Except as provided in subsection (b) of this section, this Act shall become effective on the first day of the first month which begins later than the ninetieth day following the date of enactment of this Act [Aug. 19, 1964].

"(b) This section and sections 201(g) and 201(b) shall become effective on the date of enactment of this Act."

The above-quoted § 403 of the act of Aug. 19, 1964, was repealed as executed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a).

§ 2–1710. Yearly financial statement and report of activities—Recommendations.

The Armory Board shall file with the Congress in January of each year a financial statement certified as to accuracy by the Auditor of the District of Columbia, a report of the activities and business at the armory during the preceding fiscal year, and recommendations to the Congress as to the future control and use of the armory. (June 4, 1948, 62 Stat. 342, ch. 418, § 10.)

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952. The function of certifying as to the accuracy of the yearly financial statement of the Armory Board was transferred from the Auditor of the District of Columbia to the Internal Audit Officer, Department of General Administration by Reorganization Order No. 19. These orders were issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to Title 1, Administration.

SUBCHAPTER II.—DISTRICT OF COLUMBIA STADIUM

§ 2–1720. Purpose—Authorization of Armory Board to construct Stadium—Plans.

In order to provide the people of the District of Columbia with a stadium suitable for holding athletic events and other activities and events of a nature requiring such a facility, the Armory Board (hereinafter referred to as the "Board"), created by section 2–1702, is hereby authorized to construct, maintain, and operate a stadium with a seating capacity of not to exceed fifty thousand, on a site in the District of Columbia determined in accordance with provisions of section 2–1721. In the event the Board exercises the authority vested in it by this section, such stadium shall be constructed substantially in accordance with the plans for such stadium contained in the Praeger-Kavanagh-Waterbury survey entitled "Engineering and Economic Study, District of Columbia Stadium" dated March 31, 1958. The Board is authorized to provide for the construction of such stadium by such means as it determines will most effectively carry out this subchapter (including, but not limited to, a negotiated contract). (Sept 7, 1957, 71 Stat. 619, Pub. L. 85–300, § 2; July 28, 1958, 72 Stat. 421, Pub. L. 85–561, § 1(1, 2); Sept. 23, 1959, 73 Stat. 702, Pub. L. 86–378, § 1(1).)

AMENDMENTS

1959—Act Sept. 23, 1959, authorized the Board to provide for the construction of the stadium by such means as it determines will most effectively carry out this subchapter, including, but not limited to, a negotiated contract.

1958—Act July 28, 1958, eliminated provisions which empowered the Board to construct, maintain, and operate necessary motor-vehicle parking facilities and which limited the construction cost to not more than $6,000,000, and inserted provisions requiring the stadium to be constructed in accordance with the plans contained in the Praeger-Kavanagh-Waterbury survey.

SHORT TITLE

Section 1 of act Sept. 7, 1957, provided that: "This Act [adding this subchapter] may be cited as the "District of Columbia Stadium Act of 1957."

§ 2–1721. Acquisition of site by Secretary of the Interior—Construction, maintenance and operation by Board.

The Secretary of the Interior is authorized and directed to acquire by gift, purchase, condemnation, or otherwise, all real property within the boundaries of the East Capitol Street site, as established in the first paragraph under the heading "(2) East Capitol Street Site" contained in the National Capital Planning Commission report entitled "Preliminary Report on Sites for National Memorial Stadium" dated November 8, 1956, and thereafter, acting under authority of the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916, as amended (16 U.S.C. § 1 and the following), the Secretary of the Interior shall enter into a contract with the Board for the construction, maintenance, and operation of the stadium (including the operation and maintenance of motor-vehicle parking areas) on such East Capitol Street site, except that such contract may be for a term of not more than thirty years. The Secretary of the Interior is authorized and directed to construct and prepare in areas A, C, D, and E only, on such site, as such areas are indicated on National Capital Parks Map numbered 1.7–146, motor vehicle parking areas, including driveways, walks, lighting, and landscaping, at a total cost not to exceed $2,660,000. (Sept. 7, 1957, 71 Stat. 619, Pub. L. 85–300, § 3; July 28, 1958, 72

Stat. 421, Pub. L. 85–561, § 1 (3); Sept. 23, 1959, 73 Stat. 702, Pub. L. 86–378, § 1(2, 3).)

AMENDMENTS

1959—Act Sept. 23, 1959, authorized the operation and maintenance of motor-vehicle parking areas, and directed the Secretary to construct and prepare in areas A, C, D, and E, motor vehicle parking areas, including driveways, walks, lighting, and landscaping, at a total cost of not more than $2,660,000.

1958—Act July 28, 1958, eliminated provisions which required the Secretary of the Interior to transfer, upon request of the Board, all right, title, and interest of the United States in and to all real property within the boundaries of the East Capital Street site, and inserted provisions directing the Secretary to enter into a contract for the construction, maintenance, and operation of the stadium on the East Capital Street site for a term of not more than 30 years.

§ 2–1722. Bonds—Issuance of by Board to pay cost of stadium—Registration of bonds—Redemption—Sale of bonds—Exemption of bonds from taxation.

(a) The Board is hereby authorized to provide for the payment of the cost of preliminary engineering and economic surveys relating to the stadium, and for the payment of the cost of planning, designing and constructing such stadium, and to provide funds for the operation and maintenance of such stadium, and for the payment of interest on the bonds authorized herein during the period of construction and during the 12-month period following completion of construction of the stadium, by an issue or issues of negotiable bonds of the Board, bearing interest, payable annually or semiannually, as the Board shall determine, at a rate not exceeding such rate as shall be approved by the Secretary of the Treasury. All such bonds may be registered as to principal alone or both principal and interest, shall be payable as to principal within not to exceed thirty years from the date thereof, shall be in such denominations, shall be executed in such manner, and shall be payable in such medium and at such place or places as the Board may determine, and the face amount thereof shall be so calculated as to produce, at the price of their sale, the cost of the stadium constructed pursuant to this subchapter. The Board may reserve the right to redeem any or all of the bonds before maturity in such manner and at such price or prices not exceeding 105 per centum of the face value and accrued interest as may be fixed by the Board prior to the issuance of the bonds. The Board when it deems advisable may issue refunding bonds to refinance any outstanding bonds, and interest thereon, at maturity or before maturity when called for redemption, except that such refunding bonds shall mature within not to exceed thirty years from the date thereof, or not to exceed fifty years from September 7, 1957, whichever shall first occur.

(b) The bonds may be sold at not less than par. If the proceeds of the bonds shall exceed the cost, the excess shall be placed in the fund created by section 2–1724 for the payment of the principal and interest of such bonds. Prior to the preparation of definitive bonds the Board may, under like restrictions, issue temporary bonds, or may, under like restrictions, issue temporary bonds or interim certificates without coupons, of any denomination whatsoever, exchangeable for definitive bonds when such bonds that have been executed are available for delivery.

(c) All bonds, or other securities, issued by the Board under authority of this subchapter, shall be exempt both as to principal and interest, from all taxation (except estate and inheritance taxes) now or hereafter imposed by the District of Columbia. (Sept. 7, 1957, 71 Stat. 619, Pub. L. 85–300, § 4; July 28, 1958, 72 Stat. 421, Pub L. 85–561, § 1 (4—8).)

AMENDMENTS

1958—Subsec. (a) amended by act July 28, 1958, § 1(4—7), which empowered the Board to provide for the payment of the cost of preliminary engineering and economic surveys, and for the cost of planning, designing and constructing the stadium, and eliminated provisions which limited the cost of the stadium to not more than $6,000,000, and which permitted the Board to enter into a trust agreement with any bank or trust company.

Subsec. (c) amended by act July 28, 1958, § 1(8), which substituted "securities" for "obligations" and eliminated words "by the United States, or" which followed "hereafter imposed."

§ 2–1723. Authority of Board outlined.

In order to carry out the purposes of this subchapter, The Board is hereby authorized without regard to any other provision of law, but subject to any contract entered into with the Secretary of the Interior under section 2–1721—

(1) to determine all questions concerning the use of the stadium for the purposes of this subchapter;

(2) to enter into contracts and agreements with the District of Columbia and the Federal departments, bureaus, establishments, and offices, and the Act of March 4, 1915, as amended (31 U. S. C. § 686), is hereby made applicable to such contracts;

(3) to acquire by purchase or lease, equipment, appliances, facilities, and property of any kind necessary or desirable to carry out the purposes of this subchapter, and to sell or dispose of any such property so acquired when in its judgment it shall be advantageous to do so, except that no contract for more than $3,000 shall be entered into for the purpose of this paragraph without competitive bidding;

(4) to make such structural and other changes in the stadium as it may deem necessary or desirable for carrying out the purposes of this subchapter;

(5) to light, operate and maintain motor-vehicle parking lots;

(6) to operate or contract for the operation of such concessions, including the checking of clothing and the sale of beverages and food as the Board may deem appropriate to the purposes for which the stadium may be rented or leased;

(7) to furnish such services to renters, lessees, and other occupants of the stadium as in its judgment are necessary or suitable for carrying out the purposes of this subchapter;

(8) to rent or lease from time to time for any of the purposes of this subchapter, all or any part or parts of the stadium including any or all structures, equipment, or facilities of the stadium, at such rental values and for such periods of time as the Board shall determine;

(9) to carry public-liability insurance protecting the Board, and the members, officers, and employees thereof engaged in operating and maintaining the stadium, and in operating and maintaining the motor-vehicle parking areas in connection therewith; and to require tenants or lessees of the stadium to carry public-liability insurance protecting the interests of such tenants or lessees;

(10) to accept the gratuitous services of such persons as may volunteer to aid in the conduct of its activities.

(11) to enter into contracts, contingent or otherwise, for expert, professional, and other personal services, and for printing, engraving, supplies, or any items or services necessary and incident to the preparation and sale of bonds, to be paid out of the proceeds of the sale of such bonds.

(Sept. 7, 1957, 71 Stat. 620, Pub. L. 85–300, § 5; July 28, 1958, 72 Stat. 421, 422, Pub. L. 85–561, § 1(9—11); Sept. 23, 1959, 73 Stat. 702, Pub. L. 86–378, § 1(4, 5).)

AMENDMENTS

1959—Act Sept. 23, 1959, substituted "to light, operate and maintain motor-vehicle parking lots" for "to prepare, maintain, light, and operate motor-vehicle parking lots" in par. (5), and inserted provisions in par. (9) authorizing the Board to carry public-liability insurance protecting the Board engaged in operating and maintaining the motor-vehicle parking areas.

1958—Act July 28, 1958, inserted words "but subject to any contract entered into with the Secretary of the Interior under section 2–1721" in the opening paragraph, eliminated words "in such land as is provided for that purpose by the Secretary of the Interior under section 2–1721" from par. (5), and added par. (11).

§ 2–1724. Deposit of receipts into operating fund—Use of funds—Record of cost and maintenance to be kept—Board may advance moneys for operation and maintenance—Reimbursement—Surplus moneys to be placed in sinking fund—Statement to be filed with Congress.

(a) The Board shall place into an operating fund all receipts derived from the exercise by the Board of the powers granted by this subchapter. All records and accounts relating to the operations, revenues, expenses, and costs of the stadium and the lighting, operation, and maintenance of motor-vehicle parking areas in connection with such stadium shall be kept separate and distinct from the records and accounts relating to the operations, revenues, expenses, and costs of the District of Columbia National Guard Armory. The Board is authorized, from time to time, to make advances for the operation and maintenance of the stadium and the lightning, operation, and maintenance of motor-vehicle parking areas in connection with such stadium from the armory board working capital fund established in section 2–1708, but not to exceed a total of $25,000 at any one time. Such advances shall be reimbursed from the operating fund created by this subsection. The operating fund shall be used for constructing, operating, maintaining, and repairing the stadium and the lighting, operation, and maintenance of motor-vehicle parking areas in connection with such stadium. After payment or provision for payment from the operating fund of all costs for construction, maintenance, repair, and operation of the stadium and the lighting, operation, and maintenance, of motor-vehicle parking areas in connection with such stadium and the reservation of an amount of money estimated to be sufficient for the maintenance, repair, and operation during the ensuing period of not more than twelve months, the remainder of the receipts derived from the exercise by the Board of the powers granted by this subchapter shall be placed in a sinking fund. Such sinking fund shall be used for the following purposes and in the following order of priority: (1) to pay the interest on and principal of bonds and other securities issued under authority of section 2–1722; (2) to reimburse the District of Columbia for any moneys advanced from its revenues and any amounts borrowed by the Commissioners of the District of Columbia from the Secretary of the Treasury, including interest on such borrowed amounts, to pay interest on or principal of bonds issued by the Board; and (3) to redeem bonds before maturity as provided in section 2–1722, or to repurchase bonds before maturity. All revenues from the operation of the stadium and the lighting, operation, and maintenance of motor-vehicle parking areas in connection with such stadium are hereby pledged to the uses and to the application thereof as heretofore in this section required. An accurate record of the cost of the stadium and the lighting, operation, and maintenance of motor-vehicle parking areas in connection with such stadium, the expenditures for maintenance and operation, and of rentals and lease receipts shall be kept and shall be available for the information of all interested persons.

(b) Within a reasonable time after the construction of the stadium, the Board shall file with Congress and the Board of Commissioners of the District of Columbia a sworn itemized statement showing the cost of constructing the stadium, and the amount of bonds, debentures, or other evidences of indebtedness issued in connection with the construction of such stadium. (Sept. 7, 1957, 71 Stat. 621, Pub. L. 85–300, § 6; July 28, 1958, 72 Stat. 422, Pub. L. 85–561, § 1 (12); Sept. 23, 1959, 73 Stat. 702, Pub. L. 86–378, § 1(6, 7).)

AMENDMENTS

1959—Act Sept. 23, 1959, inserted the phrase "and the lighting, operation, and maintenance of motor-vehicle parking areas in connection with such stadium" in six places in subsection (a), and substituted "maintenance and operation" for "maintaining and operating it".

1958—Subsec. (a) amended by act July 28, 1958, which designated the fund into which receipts are required to be deposited as the operating fund, required records and accounts relating to the operations, revenues, expenses, and costs of the stadium to be kept separate and distinct, empowered the Board to make advances from the armory board working capital fund, and created a sinking fund.

§ 2–1725. Title to stadium to vest in United States—Date.

After payment of the bonds and interest or after a sinking fund sufficient for such purpose shall have been provided and shall be held solely for that purpose, but in any event not later than fifty years from September 7, 1957, all right, title, and interest in and to the stadium constructed under this subchapter shall vest in the United States. (Sept. 7, 1957, 71 Stat. 621, Pub. L. 85–300, § 7; July 28, 1958, 72 Stat. 422, Pub. L. 85–561, § 1 (13).)

AMENDMENT

1958—Act July 28, 1958, substituted "all right, title, and interest in and to the stadium constructed under sections 2–1720 to 2–1729 shall vest in the United States" for "the Board shall deliver deeds or other suitable instruments of conveyance of the interest of the Board in and to the stadium to the Board of Commissioners of the District of Columbia, for the District of Columbia and the stadium shall thereafter be properly operated, maintained, and repaired by the District of Columbia."

§ 2–1726. Employment of personnel and fixing of compensation—Delegation of authority.

(a) The Board is authorized to employ and fix compensation of such personnel as may be necessary to carry out the purposes of this subchapter, without regard to the provisions of the civil-service laws and section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters].

(b) Under the direction of the Board and with the written authorization signed by the members thereof, an employee of the Board may exercise such of the powers vested in the Board by section 2–1723 as the Board shall determine. (Sept. 7, 1957, 71 Stat. 621, Pub. L. 85–300, § 8.)

REFERENCES IN TEXT

The "civil-service laws", referred to in this section, are set forth in title 5, U.S.C. See, particularly, Parts II and III of that title.

CODIFICATION

In subsec. (a), the reference "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

§ 2–1727. Limitation on indebtedness—Limitation on liability of Board members—Deficits to be included in budget estimates—Commissioners may borrow from Secretary of Treasury—Repayment—Bonds guaranteed by the United States.

Nothing contained in this subchapter shall be construed to authorize or permit the Board or any member thereof to create any obligation or incur any liability other than such obligations and liabilities as are dischargeable solely from funds contemplated to be provided by this subchapter. No obligation created or liability incurred pursuant to this subchapter shall be a personal obligation or liability of any member or members of the Board but shall be chargeable solely to the funds contemplated to be provided by this subchapter. Whenever the Board certifies to the Commissioners of the District of Columbia that there will not be a sufficient amount in the sinking fund created by section 2–1724 (a) to pay amounts becoming due and payable during any fiscal year on account of interest on or retirement of the bonds, the Commissioners of the District of Columbia shall include in the budget estimates for the District of Columbia for such fiscal year such amounts out of the revenues of the District of Columbia as may be necessary to insure the payment of such interest or the retirement of such bonds. In the event an appropriation has not been made by the time the amount becomes due and payable on account of interest on or retirement of the bonds, the Commissioners of the District of Columbia are authorized to borrow from the Secretary of the Treasury the amounts required, to bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on current marketable obligations of the United States of comparable maturities as of the last day of the month preceding the month in which the amount is borrowed. The Secretary of the Treasury is authorized and directed to lend to said Commissioners the amounts required hereunder and for such purposes the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under the Second Liberty Bond Act, as amended, are extended to include any loans to said Commissioners hereunder. Amounts borrowed by said Commissioners from the Secretary of the Treasury pursuant to this section and the interest thereon shall be repaid promptly from the funds appropriated pursuant to authority in this section and from any other appropriation available for such purpose. Amounts appropriated for payment of interest on or retirement of bonds and amounts borrowed by the Commissioners for such purpose shall be advanced by the Commissioners to the Board and shall be placed by the Board in such sinking fund. All bonds and other securities issued by the Board under authority of this subchapter are hereby guaranteed as to both principal and interest by the United States. (Sept. 7, 1957, 71 Stat. 621, Pub. L. 85–300, § 9; July 28, 1958, 72 Stat. 422, Pub. L. 85–561, § 1 (14).)

REFERENCES IN TEXT

The Second Liberty Bond Act, as amended, referred to in the text, is classified to 31 U.S.C. §§ 745, 752—754b, 757, 757b—758, 760, 764—766, 769, 771, 773, 774, and 801.

AMENDMENT

1958—Act July 28, 1958, eliminated provisions which stated that no indebtedness created pursuant to this subchapter shall be an indebtedness of the District of Columbia or the United States, and inserted the third through last sentences.

§ 2–1728. Filing of annual reports with Congress.

The Board shall file with the Congress in January of each year a financial statement certified as to accuracy by the Commissioners of the District of Columbia, or their designated agent, a report of the activities and business at the stadium, and of the operation and maintenance of the motor-vehicle parking areas in connection therewith, during the preceding fiscal year and recommendations to Congress as to future control and use of the stadium. (Sept. 7, 1957, 71 Stat. 622, Pub. L. 85–300, § 10; July 28, 1958, 72 Stat. 423, Pub. L. 85–561, § 1(15); Sept. 23, 1959, 73 Stat. 702, Pub. L. 86–378, § 1(8).)

AMENDMENTS

1959—Act Sept. 23, 1959, required a report of the operation and maintenance of the motor-vehicle parking areas.

1958—Act July 28, 1958, required certification as to accuracy by the Commissioners, or their designated agent.

§ 2–1729. "Stadium", defined.

As used in this subchapter the term "stadium" includes all equipment, appliances, facilities, and property of any kind, necessary to carry out the purposes of this subchapter. (Sept. 7, 1957, Pub. L. 85–300, § 11, as added July 28, 1958, 72 Stat. 423, Pub. L. 85–561, § 1(16), and amended Sept. 23, 1959, 73 Stat. 702, Pub. L. 86–378, § 1(9).)

AMENDMENT

1959—Act Sept. 23, 1959, struck out the words "necessary motor vehicle parking areas, and"

Chapter 18.—PROFESSIONAL ENGINEERS

Sec.
2–1801. Short title.
2–1802. Definitions.
2–1803. Practice of engineering declared to be subject to regulation.
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2–1805. Board of registration—Appointment of members — Qualifications — Terms — Removal of members.
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2–1818. Repeal of conflicting legislation.

§ 2–1801. Short title.

This chapter shall be known and may be cited as the Professional Engineers' Registration Act. (Sept. 19, 1950, 64 Stat. 854, ch. 953, § 1.)

EFFECTIVE DATE

Section 19 of act Sept. 19, 1950, provided: "This Act [adding this chapter] shall take effect upon the expiration of the ninetieth day after the date of its enactment [Sept. 19, 1950]."

§ 2–1802. Definitions.

As used in this chapter—

(a) The term "practice of engineering" shall mean the performance of any professional service or creative work requiring engineering education, training and experience, and the application of special knowledge of the mathematical, physical, and engineering sciences to such professional services or creative work as consultation, investigation, evaluation, planning, design, and supervision of construction for the purpose of assuring compliance with specifications and design, in connection with the utilization of the forces, energies, and materials of nature in the development, production, and functioning of engineering processes, apparatus, machines, equipment, facilities, structures, works, or utilities, or any combinations or aggregations thereof employed in or devoted to public or private enterprise or uses. The term "practice of engineering" comprehends the practice of those branches of engineering, the pursuit of any of which affects the safety of life, health or property, or the public welfare. Said practice includes the doing of such architectural work as is incidental to the practice of engineering.

(b) The term "professional engineer" shall mean a person who, by reason of his special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, customarily acquired by a prolonged course of specialized intellectual instruction and study and practical experience, is qualified to engage in the practice of engineering as attested by his certificate of registration as a professional engineer.

(c) The term "engineer-in-training" shall mean a candidate for registration as a professional engineer who has been granted a certificate as an engineer-in-training after successfully passing the first stage of the prescribed examination in fundamental engineering subjects, and who, upon completion of the requisite years of training and experience in engineering under the supervision of a professional engineer or similarly qualified engineer and satisfactory to the Board, shall be eligible for the second stage of the prescribed examination for registration as a professional engineer.

(d) The term "responsible charge" shall mean such degree of competence and accountability gained by education, training, and experience in engineering of a grade and character sufficient to qualify an individual to engage personally and independently in and be entrusted with the work involved in the practice of engineering.

(e) The term "institution" shall mean a school, college, university, department of a university, or other educational institution granting baccalaureate degrees in engineering, reputable, and in good standing in accordance with the rules prescribed by the Board.

(f) The term "board" shall mean the District of Columbia Board of Registration for Professional Engineers.

(g) The term "Commissioners" shall mean the Board of Commissioners of the District of Columbia. (Sept. 19, 1950, 64 Stat. 854, ch. 953, § 2.)

NOTES TO DECISIONS

Corporations may not qualify

District of Columbia statutory requirements for professional engineers can be met by natural persons only, and a corporation cannot be licensed as professional engineer. *Potomac Engineers, Inc.* v. *Walser et al.* (D.C.D.C. 1954, 127 F. Supp. 41, affirmed 223 F. 2d 356, 96 U.S. App. D.C. 64).

Practice of engineering

The preparation by duly licensed master electricians of plans, diagrams and computations for proposed installations in which carrying capacity will exceed 200 amperes or electrical potential will exceed 240 volts does not constitute "practice of engineering" as contemplated in the Professional Engineers' Registration Act, this chapter, and order of Board of Commissioners of District of Columbia providing that plans and specifications for proposed electrical installations in excess of 240 amperes or 240 volts should be prepared by registered professional electrical engineer was not required under the legislation regulating the practice of engineering. *Electrical Contractors Association of the District of Columbia et al.* v. *Robert E. McLaughlin et al.* (D.C.D.C. 1957, 153 F. Supp. 653.)

Regulations

Order of District of Columbia Board of Commissioners requiring that application for any proposed electrical installation in which current carrying capacity exceeds

200 amperes or electrical potential exceeds 240 volts shall be accompanied by plans and computations prepared and signed by professional electrical engineer bears no relationship to the factors of public health, safety or general welfare, results in discrimination against the electrical trade or business and inevitably increases cost to the consuming public, for no lawful reason, and such order is illogical, unreasonable, arbitrary and capricious. *Electrical Contractors Association of the District of Columbia et al.* v. *Robert E. McLaughlin et al.* (D.C.D.C. 1957, 153 F. Supp. 653).

Repeal by implication

Where section of Electrical Code providing for plans and specifications to be submitted by licensed electricians as part of permits for proposed electrical installation was in effect at time Congress enacted legislation regulating architects and engineers without repealing the Electrical Code sections, no repeal of Electrical Code sections was intended by implication, and District of Columbia Board of Commissioner's orders amending Electrical Code section to provide that plans and specifications for installations in excess of 240 amperes or 240 volts should be prepared by a registered professional electrical engineer was without basis in law. *Electrical Contractors Association of the District of Columbia et al.* v. *Robert E. McLaughlin et al.* (D.C.D.C. 1957, 153 F. Supp. 653).

§ 2–1803. Practice of engineering declared to be subject to regulation.

In order to safeguard life, health, and property and promote the public welfare, the practice of engineering in the District of Columbia is hereby declared to be subject to regulation in the public interest. It is further declared to be a matter of public interest and concern that the profession of engineering merit and receive the confidence of the public and that only qualified persons be permitted to engage in the practice of engineering. All provisions of this chapter relating to the practice of engineering shall be construed in accordance with this declaration of policy. (Sept. 19, 1950, 64 Stat. 855, ch. 953, § 3.)

§ 2–1804. Practice of engineering without registration prohibited.

Any person engaged in or offering to engage in the practice of engineering in the District of Columbia shall submit evidence that he is qualified to practice and shall be registered as hereinafter provided; and it shall be unlawful for any person to engage or offer to engage in the practice of engineering in the District of Columbia, or by verbal claim, sign, advertisement, letterhead, card, or in any other way, represent himself to be a professional engineer, or through the use of the title including the word "engineer" or words of like import, or any other title, imply that he is a professional engineer, unless such person is registered under the provisions of this chapter. (Sept. 19, 1950, 64 Stat. 855, ch. 953, § 4.)

§ 2–1805. Board of registration — Appointment of members — Qualifications — Terms — Removal of members.

There is hereby created the District of Columbia Board of Registration for Professional Engineers, whose duty it shall be to administer the provisions of this chapter. The Board shall consist of five members who shall be appointed by the Commissioners. Each appointment to the first Board shall be from a list of three eligibles submitted by the representative organizations of the engineering profession in the District of Columbia. A person to be eligible for appointment to the Board shall be a citizen of the United States, shall have been engaged in the practice of engineering for twelve or more years, of which at least five years shall have been in responsible charge of important engineering work, and at the time of appointment shall have been actively engaged in the practice of engineering in the District of Columbia for a period of at least five years next preceding this appointment. The Board shall at all times include one representative for each of the chemical, civil, electrical, and mechanical branches of engineering. The members of the first Board shall be appointed within three months after the effective date of this chapter to serve for the following terms: One member for one year, one member for two years, one member for three years, one member for four years, and one member for five years from the date of their appointment, or until their successors are duly appointed and qualified. Each member of the Board shall receive a certificate of his appointment from the Commissioners, and before beginning his term of office shall file with the Secretary of the Board of Commissioners his written oath for the faithful discharge of his official duty. Each member of the Board first appointed hereunder shall be registered as a professional engineer under this chapter. On the expiration of the term of any member of the Board, the Commissioners shall appoint for a term of five years a professional engineer to take the place of the member whose term on said Board is about to expire. Each member shall hold office until the expiration of the term for which such member is appointed or until a successor shall have been duly appointed and shall have qualified. The Commissioners may remove any member of the Board for incompetency, misconduct, neglect of duty, or for any sufficient cause. An appointment to fill an unexpired term on the Board shall be made within three months after the vacancy occurs, and shall be for the period of such unexpired term. (Sept. 19, 1950, 64 Stat. 855, ch. 953, § 5.)

EFFECTIVE DATE

Section effective upon the expiration of the ninetieth day after Sept. 19, 1950, see note under § 2–1801.

§ 2–1806. Compensation of members of Board.

Each member of the Board shall be entitled to receive such reasonable compensation for his services as may be determined by the Commissioners not to exceed $25 per day for each day he may be actually engaged upon business pertaining to his official duties as such Board member. (Sept. 19, 1950, 64 Stat. 856, ch. 953, § 6.)

CROSS REFERENCE

Honorariums to various board members and commissioners, see §§ 1–254 to 1–259.

NOTES TO DECISIONS

Rehearing after appeal

Where District Court, on applicant's appeal from action of District of Columbia Board of Registration for Professional Engineers in denying application for registration, remanded case for rehearing, remand should have been without qualification so that Board might, after hearing additional evidence, make initial decision on enlarged factual situation. *Walser* v. *Merle* (1956, 228 F. 2d 465, 97 U.S. App. D.C. 118).

§ 2–1807. Board meetings and organizations.

The Board shall hold a meeting within ten days after its members are first appointed and thereafter shall hold at least two regular meetings each year. The Board shall elect annually from its members at least the following officers: A Chairman and a secretary-treasurer. A quorum of the Board shall consist of not less than three members, and no action shall be taken without three members in accord. (Sept. 19, 1950, 64 Stat. 856, ch. 953, § 7.)

§ 2–1808. General powers of Board.

The Board shall have power:

(a) *Approval of institutions.*—To investigate and to approve those institutions that provide and maintain satisfactory standards for the education of students desiring to engage in the practice of engineering.

(b) *Registration of professional engineers.*—To register as a professional engineer any person of good character and repute who is a citizen of the United States, at least twenty-five years of age, and who speaks and writes the English language, if such person—

(1) holds a license or certificate of registration to engage in the practice of engineering issued to him by proper authority of a State or Territory of the United States in which the requirements and qualifications for obtaining such license or certificate of registration are reasonably equivalent in the opinion of the Board to the standards set forth in this chapter. A person may be registered under this subdivision without examination; or

(2) holds a certificate of qualification issued by the National Bureau of Engineering Registration of the National Council of State Boards of Engineering Examiners: *Provided, however,* That the requirements and qualifications of said body for obtaining such certificate are reasonably equivalent, in the opinion of the Board, to the standards set forth in this chapter. A person may be registered under the provisions of this subdivision without examination; or

(3) has had four or more years' experience in engineering work of a grade or character satisfactory to the Board, and indicating that he is qualified to assume responsible charge of the work involved in the practice of engineering and either holds a certificate as an engineer-in-training issued to him by the Board or by proper authority of a State or Territory in which the requirements and qualifications of said bodies for obtaining such certificate are reasonably equivalent, in the opinion of the Board, to the standards set forth in this chapter, or is a graduate in engineering from an institution having a course in engineering of four or more years, and who, in either event, successfully passes a written, or written and oral, examination prescribed by the Board of engineering subjects. In the case of the examination of an engineer-in-training, his examination shall be directed and limited to those matters which will test the applicant's ability to apply the principles of engineering to the actual practice of engineering. In the case of an applicant who is not an engineer-in-training, the examination shall be for the purpose of testing the applicant's knowledge of fundamental engineering subjects, including mathematics and the physical sciences, and those matters which will test the applicant's ability to apply the principles of engineering to the actual practice of engineering; or

(4) has completed an approved secondary-school course of study or equivalent and has had twelve or more years of combined education and experience in engineering of a grade and character satisfactory to the Board and indicating that he is qualified to assume responsible charge of the work involved in the practice of engineering, and who successfully passes a written, or written and oral, examination prescribed by the Board for the purpose of testing the applicant's knowledge of fundamental engineering subjects, including mathematics and the physical sciences, and those matters which will test the applicant's ability to apply the principles of engineering to the actual practice of engineering; or

(5) submits evidence that he is an engineer of established and recognized standing in the engineering profession and that he has been lawfully engaged in the practice of engineering for twelve or more years, of which at least five years shall have been in responsible charge of important engineering work of a grade and character satisfactory to the Board. A person may be registered under this subdivision without examination; or

(6) submits evidence that he was a resident of the District of Columbia, or that he was engaged in the practice of engineering in the District of Columbia, prior to September 19, 1950, and for one year immediately preceding the date of his application, and submits evidence of experience in engineering, of a grade and character satisfactory to the Board, indicating that he is qualified to assume responsible charge of the work involved in the practice of engineering. Registration shall not be granted under the provisions of this subdivision unless the application therefor is filed with the Board within one year after September 19, 1950. A person may be registered under this subdivision without examination.

The requirement of this subsection of residence or practice of engineering in the District of Columbia for one year immediately preceding the date of application shall not be applied to applicants who were on active duty in the armed forces of the United States during such year, and who entered on such duty after October 16, 1940, but any such applicant for license under this subsection must have been a resident or engaged in the practice of engineering in the District of Columbia for at least one year prior to the effective date of this chapter.

(c) *Certification of engineers-in-training.*—To provide for and to regulate the certification and to certify as an engineer-in-training any person of good character and repute who is a citizen of the United States, at least twenty-one years of age or has graduated from an institution, and who speaks and writes the English language, if such person—

(1) is a graduate in engineering from an institution having a course in engineering of four or

more years and who successfully passes a written, or written and oral, examination prescribed by the Board for the purpose of testing the applicant's knowledge of fundamental engineering subjects, including mathematics and the physical sciences. A person may be certified as an engineer-in-training under this subdivision without a written, or written and oral, examination: *Provided, however,* That the application therefor is filed with the Board within one year after September 19, 1950; or

(2) has completed an approved secondary-school course of study or equivalent, and has had eight or more years of combined education, training, and experience in engineering, of a grade and character satisfactory to the Board, and who successfully passes a written, or written and oral, examination prescribed by the Board for the purpose of testing the applicant's knowledge of fundamental engineering subjects, including mathematics and the physical sciences.

(d) *Registration of noncitizen professional engineers.*—To register as a professional engineer any person who is not a citizen of the United States, who is of good character and repute, at least twenty-five years of age, and speaks and writes the English language, if such person submits evidence, of a grade and character satisfactory to the Board, that he is an engineer of established and recognized standing in the profession of engineering in his own country, and who submits certification as to character and qualifications from at least two professional engineers of the District of Columbia. Such registration shall entitle the holder to engage in the practice of engineering only for the duration of and in connection with a specific project for which it was granted, and shall be subject to annual renewal and to suspension or revocation as registration granted as otherwise provided in this chapter. Engineers to whom such temporary registration has been granted shall be separately listed in the roster.

(e) *Application form.*—To require all candidates for registration as professional engineers to file with the secretary-treasurer of the Board a written application on a prescribed form and accompanied by the required fee. Such application shall contain statements made under oath, showing the applicant's education, detailed summary of his experience in engineering work, and the general field or fields of engineering in which he has his principal activity, and shall contain not less than five references, of whom three or more shall be engineers having personal knowledge of his engineering training and experience.

(f) *Investigation of applications; determination of qualification and competency of applicants.*—To investigate the allegations contained in any application for registration as a professional engineer in order to determine the truth of such allegations, and to determine the competency of any person applying for a registration to assume responsible charge of the work involved in the practice of engineering, such competency to be determined by the grade and character of the engineering work actually performed. Any person having the necessary qualifications prescribed in this chapter to entitle him to registration or certification shall be eligible therefor, although he may not be practicing his profession at the time of making his application. Evaluation of experience in engineering shall be based upon the applicant's knowledge of the fundamental engineering subjects, which shall be broad in scope and of a nature to develop and mature the applicant's engineering knowledge and judgment. In considering the qualifications of an applicant who has graduated in engineering from an approved institution; each year, but not exceeding two years, of successful postgraduate study in engineering, and each scholastic year, in excess of four, of an approved five- or six-year engineering curriculum, and each year of teaching engineering subjects, in an approved institution may be considered as equivalent to one year of experience in engineering. In considering the qualifications of an applicant who is an undergraduate in engineering, or who has graduated in a curriculum other than engineering, from an approved institution; each equivalent year of approved engineering education, as determined by evaluation by the Board of the educational records submitted, may be considered as equivalent to two years of combined education and experience in engineering. Experience in engineering gained under the supervision of a professional engineer or similarly qualified engineer, and experience in engineering gained subsequent to the attaining of an equivalent of the minimum requirements for certification as an engineer-in-training, of a grade and character satisfactory to the Board, shall be given full credit. In any case when the evidence presented in the application does not appear to the Board conclusive nor warranting the issuance of a certificate of registration or a certificate as engineer-in-training without examination, the applicant may be required to present further evidence for the consideration of the Board, and may also be required to pass an oral or written examination, or both, as the Board may determine. Whenever the Board determines otherwise than by examination that an applicant has not produced sufficient evidence to show that he is competent to assume responsible charge of the work involved in the practice of engineering, and shall refuse to examine or to register such applicant, it shall set forth in writing its findings and the reasons for its conclusions, and furnish a copy thereof to the applicant.

(g) *Examinations.*—To prescribe the scope, manner, time, and place for the examination of applicants for registration as professional engineers, to provide for the conduct of and to conduct such examinations, and to make written reports of such examinations. The prescribed examinations shall be written, or written and oral, and designed to permit an applicant for registration as a professional engineer to take the examination in two stages. The first stage of the examination shall be designed to test the applicant's knowledge of fundamental engineering subjects, including mathematics, physical and applied sciences, properties of materials, and the principles of engineering design. Satisfactory passing of this portion of the examination shall constitute a credit for the life of the applicant or until he is registered as a professional engineer. The second stage of the examination

shall be designed to test the applicant's ability to apply the principles of engineering to the actual practice of engineering in the field of engineering in which he has indicated his principal activity. An applicant failing to pass an examination may apply for reexamination at the expiration of six months and will be reexamined upon payment of the prescribed fee.

(h) *Certificate of registration; form and execution; expiration; duplicate certificate; biennial renewal of registration; renewal fee; penalty for delayed renewal.*—To issue a certificate of registration and a pocket registration card to each professional engineer granted registration under the provisions of this chapter. The certificate of registration shall authorize the registrant to practice as a professional engineer, show the full name of the registrant, have a serial number, and be signed by the members of the Board under the seal of the Board. The pocket registration card issued with the certificate shall show the full name and registration number of the registrant, state that the person named therein has been granted registration to practice as a professional engineer for the period ending on the 31st day of October in the second year of the then current biennial registration renewal period, and be signed by the Chairman and secretary-treasurer of the Board; to provide for and regulate the renewal of registration of professional engineers registered under this chapter. On or before the 1st day of August 1952, and biennially thereafter, the secretary-treasurer of the Board shall mail to every professional engineer registered under this chapter a blank application for biennial renewal of registration, addressing such application to the last known post-office address. Upon receipt of such application blank, a registrant shall execute and return the application for his biennial registration renewal card to the Board together with the biennial registration renewal fee of $2. Upon receipt of such application and renewal fee the Board shall issue a pocket registration renewal card which shall show the full name and registration number of the registrant, be signed by the Chairman and secretary-treasurer of the Board, and state that the person named therein has been granted registration to practice as a professional engineer for the period beginning November 1 in the year of issue and expiring on the 31st day of October in the second year following. Application shall be made biennially on or before the 1st day of November and if not so made an additional fee of $1 for each thirty days delay beyond the 1st day of November, and up to the 1st day of March following shall be added to the current biennial registration renewal fee to be paid upon renewal; to issue a duplicate certificate of registration to replace a certificate lost, destroyed, or multilated, subject to the rules of the Board, and upon payment of the prescribed fee. The issuance of a certificate of registration by the Board shall be presumptive evidence in all courts and places that the person named therein is entitled to all the rights and privileges of a registered professional engineer while said certificate remains unsuspended, unrevoked, or unexpired.

(i) *Certificate of registration to a noncitizen; form and execution; expiration; renewal of registration; renewal fee.*—To issue a special certificate of registration and pocket registration card to every noncitizen professional engineer granted registration under the provisions of this chapter. The special certificate of registration shall authorize the registrant to practice as a professional engineer in connection with a specific project, show the full name of the registrant, have a registration number, and be signed by the members of the Board under the seal of the Board. The special pocket registration card issued with such certificate shall show the full name and registration number of the registrant, state that the person named therein has been granted temporary registration to practice as a professional engineer, state the specific project in connection with which the special registration is granted, the period for which it is granted, not to exceed one year from the date of issue, and be signed by the Chairman and secretary-treasurer of the Board. Temporary registration may be renewed at the discretion of the Board for periods not in excess of one year upon application therefor and payment of the annual renewal fee.

(j) *Certificate as engineer-in-training.*—To prescribe and to issue a certificate, attested by its seal and signed by the members of the Board, to any applicant who in the opinion of the Board has satisfactorily met all the requirements of this chapter for certification as an engineer-in-training.

(k) *Roster of registrants.*—To keep a roster of all professional engineers registered under this chapter, showing the registrant's name, place of business or employment, registration number, and the general field or fields of engineering in which registrant qualified to practice, and a roster of engineers-in-training certified under this chapter. These rosters, together with other information deemed to be of interest to the engineering profession, shall be published in booklet form by the Board on the 1st day of March of each even year, beginning with 1952, or as soon thereafter as practicable. The Board shall also, upon the 1st day of March of each odd year, beginning with 1953, or as soon thereafter as practicable, publish a supplemental roster of all registered professional engineers and certified engineers-in-training. Such published rosters shall contain at the beginning thereof the words: "Each professional engineer receiving this roster is requested to report to the Board the names and addresses of any persons known to be engaged in the practice of engineering in the District of Columbia whose names do not appear in this roster. The names of persons giving such information shall not be divulged". Copies of these rosters shall be mailed or otherwise sent to each registered professional engineer and engineer-in-training and be furnished to other persons upon request.

(l) *Official seal; minutes and records.*—To adopt and have an official seal, and to keep minutes and records of all its transactions and proceedings, and a complete record of the credentials of each applicant and registrant. A transcript of an entry in such minutes and records, certified by the secretary-treasurer under the seal of the Board, shall be

prima facie evidence of the original entry in such minutes and records.

(m) *Member of national council of state boards of engineering examiners; dues.*—To become a member of the National Council of State Boards of Engineering Examiners and to pay such dues as said council shall establish, and to send a delegate to the annual meeting of said council and to defray his reasonable and necessary expenses.

(n) *Administrative rules and regulations; employees.*—To adopt, amend, rescind, promulgate, and enforce such administrative rules and regulations not inconsistent with this chapter, as are deemed necessary and proper by the Board to carry into effect the powers conferred by this chapter. To employ such clerical or other assistants as are necessary for the proper performance of its duties. The regular annual employees of the Board shall, for the purpose of laws relating to compensation, classification, retirement, and leave, be employees of the District of Columbia. The Board may at its discretion fix and change from time to time, without reference to the Classification Act of 1949, the compensation of employees of the Board employed on a temporary or part-time basis.

(o) *Enforcement of laws; investigations; attendance of witnesses; production of books and papers; subpena procedure; witness fees.*—To enforce the provisions of this chapter, to investigate for unauthorized and unlawful practice, to employ such persons as it may deem necessary to assist in the investigations and prosecutions incident to enforcement, to require the attendance of witnesses and the production of books and papers, and to require such witnesses to testify as to any and all matters within its jurisdiction. The Chairman and secretary-treasurer of the Board shall have power to issue subpenas, and each shall have authority to administer oaths. Upon the failure of any person to attend as a witness, when duly subpenaed, or to produce documents when duly directed by said Board, the Board shall have power to refer the said matter to any justice of the United States District Court for the District of Columbia, who may order the attendance of such witness, or the production of such documents, or require the said witness to testify, as the case may be, and upon the failure of the witness to attend, to testify, or to produce such documents, as the case may be, such witness may be punished for contempt of court as for failure to obey a subpena issued or to testify in a case pending before said court. Witnesses who have been subpenaed by the Board, and who testify if called upon, shall be paid the same fees that are paid witnesses in the United States District Court for the District of Columbia.

(p) *Refusal, suspension, and revocation of certificates.*—To refuse to issue a certificate to any person, or to suspend or revoke the certificate of registration of any professional engineer or the certification of any engineer-in-training issued hereunder if such person—

(1) has been convicted of a felony;

(2) has been found guilty of deceit, misrepresentation, violation of contract, fraud, or gross incompetency, in his practice;

(3) has been found guilty of fraud or deceit in obtaining his registration or certification;

(4) has aided or abetted any person in the violation of any provision of this chapter;

(5) has violated any provision of this chapter;

(6) has been declared insane by a court of competent jurisdiction and has not thereafter been lawfully declared sane.

(q) *Reissuance of revoked certificates.*—To reconsider the application of any person whose application has been refused or to reissue a certificate of registration to any professional engineer or a certification to any engineer-in-training whose certificate has been revoked for reasons the Board deems sufficient, upon payment of the prescribed fee for such reissuance. (Sept. 19, 1950, 64 Stat. 856, ch. 953, § 8.)

EFFECTIVE DATE

Section effective upon the expiration of the ninetieth day after Sept. 19, 1950, see note under § 2–1801.

NOTES TO DECISIONS

Corporations may not qualify

District of Columbia statutory requirements for professional engineers can be met by natural persons only, and a corporation cannot be licensed as professional engineer. *Potomac Engineers, Inc.* v. *Walser et al.* (D.C.D.C. 1954, 127 F. Supp. 41, affirmed 223 F. 2d, 356, 96 U.S. App. D.C. 64).

Declaratory judgment

District Court did not abuse its discretion in dismissing one action and in granting summary judgment for defendants in another, which actions sought declaratory judgments against officials of District of Columbia government, alleging that such officials threatened criminal actions against plaintiff for its manner of use of word "engineers" in its corporate name and business in claimed violation of Professional Engineers Registration Act, this chapter, and seeking adjudication of dispute as to use of name, declaration that such use was legal, and injunction against criminal prosecution. *T.V. Engineers, Inc.*, v. *Bogan, etc.* (1959, 274 F. 2d 93, 107 U.S. App. D.C. 31).

§ 2–1809. Complaints — Hearings — Proceedings — Appeals.

(a) The Board may upon its own motion, and shall upon the sworn complaint in writing of any person setting forth charges which would constitute grounds for refusal, suspension, or revocation of a certificate, as set forth in section 2–1808 (p), investigate the acts of any person holding or claiming to hold a certificate. All charges, unless dismissed by the Board as unfounded or trivial, shall be heard by the Board within three months after the date on which they shall have been filed.

(b) The Board shall, at least thirty days prior to the date set for the hearing, notify the accused in writing, of any charges made, and shall afford him an opportunity to be heard in person or by counsel in reference thereto. Such notice may be served by its delivery personally to the accused licensee by the United States marshal in the manner prescribed for service of original process in the United States District Court for the District of Columbia, or by mailing it by registered mail or by certified mail with return receipt demanded, to the place of business last theretofore specified by the accused in his last notification to the Board. At the time and place fixed in the notice, the Board shall proceed to hearing of the charges and both the

accused and the complainant shall be accorded ample opportunity to present in person or by counsel, such testimony, evidence, and argument as may be pertinent to the charges or to any defense thereto. The Board may continue such hearing from time to time and shall give notice in writing to all parties in interest of the date and hour to which the hearing has been continued, and the place at which it is to be held.

(c) The Board shall preserve a complete record of all proceedings at the hearing of any case wherein a certificate is refused, revoked, or suspended. The notice of hearing, complaint, and all other documents in the nature of pleadings and written motions filed in the proceedings, the transcript of testimony, and the orders of the Board shall be the record of such proceedings. The Board shall furnish a transcript of such record at cost to any person interested in such hearing.

(d) If, after completion of the hearing, the Board shall be of the opinion that the accused is guilty of the charges, or any of them, the Board shall issue an order refusing, suspending, or revoking the certificate. Such order shall be served upon the accused person either personally or by mailing it by registered mail to the address specified by the accused person in his last notification to the Board.

(e) Any person aggrieved by the action of the Board in refusing, suspending, or revoking a registration or certification or by any other action of the Board, which is alleged to be improper, unreasonable, or unlawful may appeal from such action of the Board to the United States District Court for the District of Columbia.

(f) Appeals from suspension or revocation of registration and certification must be taken within thirty days after such refusal, suspension, or revocation. In the case of appeals from other actions of the Board, the appeal may be taken at any time by the person aggrieved by such action. No such action shall act as supersedeas unless specially allowed by the court.

(g) Proceedings shall be conducted according to the Rules of Civil Procedure for the United States District Courts and the appeal shall be heard by the judge or judges of the court without a jury. The court shall affirm the decision of the Board, unless it shall find the same is in violation of the constitutional rights of the appellant, or is not in accordance with law, or was made upon unlawful procedure, or that any finding of fact made by the Board and necessary to support its adjudication is not supported by substantial evidence. If the adjudication of the Board is not affirmed the court may set aside or modify it in whole or in part, or may remand the proceeding to the Board for further disposition in accordance with the order of the court.

(h) Either party may appeal from the decision of the United States District Court for the District of Columbia to the United States Court of Appeals for the District of Columbia circuit. Any appeal on behalf of the Board may be filed without bond. The decree of the United States Court of Appeals shall be final and conclusive. (Sept. 19, 1950, 64 Stat. 862, ch. 953, § 9; June 11, 1960, 74 Stat. 202, Pub. L. 86–507, § 1(41).)

AMENDMENT

1960—Subsec (b) amended by act June 11, 1960, which inserted words "or by certified mail" following "registered mail."

CROSS REFERENCES

Federal Rules of Civil Procedure, see 28 U.S.C. App.

Use of certified mail receipts as prima-facie evidence of delivery, see § 14–506.

NOTES TO DECISIONS

Rehearing after appeal

Where District Court, on applicant's appeal from action of District of Columbia Board of Registration for Professional Engineers in denying application for registration, remanded case for rehearing, remand should have been without qualification so that Board might, after hearing additional evidence, make initial decision on enlarged factual situation. *Walser* v. *Merle* (1956, 228 F. 2d 465, 97 U. S. App. D. C. 118).

§ 2–1810. Exemptions.

Nothing in this chapter shall be construed to affect or prevent the following:

(a) The practice of engineering by any person who, within one year after September 19, 1950, has filed with the Board an application for registration under this chapter. This exemption shall continue only for such time as the Board may require for consideration of said application.

(b) The practice of engineering for not exceeding thirty days in the aggregate in one calendar year by a nonresident not having a place of business in the District of Columbia, if such person is licensed or registered to engage in the practice of engineering in a State or Territory in which the requirements and qualifications for obtaining a license or registration are reasonably equivalent to those specified in this chapter.

(c) The practice of engineering for more than thirty days by a nonresident not having a place of business in the District of Columbia, or by a person who has recently become a resident of or has recently entered the practice of engineering in the District of Columbia, and who has filed with the Board an application for registration, if such person is registered or licensed to engage in the practice of engineering in a State or Territory in which the requirements and qualifications for obtaining a license or registration are reasonably equivalent to those specified in this chapter. Such practice shall be permitted only for such time as the Board requires for the consideration of the application.

(d) The performance of engineering work by any person who acts under the supervision of a professional engineer, or by an employee of a person lawfully engaged in the practice of engineering, and who, in either event, does not assume responsible charge of design or supervision.

(e) The practice of engineering as a consultant, officer, or employee of the Government of the United States or the government of the District of Columbia while engaged solely in such practice for said governments.

(f) The practice of any other legally recognized profession.

(g) The practice of engineering exclusively as an officer or employee of a public-utility corporation (sections 43–122 and 43–123) by rendering to such corporation such service in connection with its

facilities and property which are subject to supervision with respect to safety and security thereof by the Public Service Commission of the District of Columbia and so long as such person is thus actually and exclusively employed and no longer: *Provided, however,* That each such public-utility corporation shall employ at least one registered professional engineer who shall be in responsible charge of such engineering work.

(h) The practice of architecture by a person authorized to use the title of architect or registered architect under the provisions of this chapter, and his doing such engineering work as is incidental to his architectural work.

(i) The construction or alteration of a building that does not cover over one thousand square feet of ground area and does not have a height of over twenty feet to the uppermost ceiling, or two habitable floors above a basement.

(j) The execution of construction work as a contractor, or the superintendence of such construction work as a foreman or superintendent, or the work performed as a salesman of engineering equipment or apparatus.

(k) The operation or maintenance of boilers, machinery, or equipment when the operators are duly licensed under the provisions of sections 2–1501 to 2–1507.

(*l*) The usual supervision of construction or installation of equipment within a plant under his immediate supervision by a person ordinarily designated as supervising engineer or chief engineer of power. (Sept. 19, 1950, 64 Stat. 863, ch. 953, § 10; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88–503, § 21.)

CHANGE OF NAME

Section 21 of act Aug. 30, 1964, Pub. L. 88–503, changed the name of the Public Utilities Commission of the District of Columbia to "Public Service Commission of the District of Columbia." See § 2–2418.

EFFECTIVE DATE

Section effective upon the expiration of the ninetieth day after Sept. 19, 1950, see note under § 2–1801.

NOTES TO DECISIONS

Burden of proving exception

Fact that Professional Engineers' Registration Act excepts from its provisions practice of any other legally recognized profession did not require that information allege and that prosecution prove that defendant was not within exception, and defendant had burden of proving that it was within exception. *T.V. Engineers, Inc.* v. *District of Columbia* (D.C. Mun. App. 1961, 166 A. 2d 920).

Practice of engineering

The preparation by duly licensed master electricians of plans, diagrams and computations for proposed installations in which carrying capacity will exceed 200 amperes or electrical potential will exceed 240 volts does not constitute "practice of engineering" as contemplated in the Professional Engineers' Registration Act, this chapter, and order of Board of Commissioners of District of Columbia providing that plans and specifications for proposed electrical installations in excess of 240 amperes or 240 volts should be prepared by registered professional electrical engineer was not required under the legislation regulating the practice of engineering. *Electrical Contractors Association of the District of Columbia et al.* v. *Robert E. McLaughlin et al.* (D.C.D.C. 1957, 153 F. Supp. 653).

Corporation could be convicted under provision of Professional Engineers' Registration Act making it misdemeanor for anyone to represent himself to be professional engineer without being registered as provided in the act, though only natural person may be registered under act. *T.V. Engineers, Inc.* v. *District of Columbia* (D.C. Mun. App. 1961, 166 A. 2d 920).

Regulations

Order of District of Columbia Board of Commissioners requiring that application for any proposed electrical installation in which current carrying capacity exceeds 200 amperes or electrical potential exceeds 240 volts shall be accompanied by plans and computations prepared and signed by professional electrical engineer bears no relationship to the factors of public health, safety or general welfare, results in discrimination against the electrical trade or business and inevitably increases cost to the consuming public, for no lawful reason, and such order is illogical, unreasonable, arbitrary and capricious. *Electrical Contractors Association of the District of Columbia et al.* v. *Robert E. McLaughlin et al.* (D.C.D.C. 1957, 153 F. Supp. 653).

Repeal by implication

Where section of Electrical Code providing for plans and specifications to be submitted by licensed electricians as part of permits for proposed electrical installation was in effect at time Congress enacted legislation regulating architects and engineers without repealing the Electrical Code sections, no repeal of Electrical Code sections was intended by implication, and District of Columbia Board of Commissioner's orders amending Electrical Code section to provide that plans and specifications for installations in excess of 240 amperes or 240 volts should be prepared by a registered professional electrical engineer was without basis in law. *Electrical Contractors Association of the District of Columbia et al.* v. *Robert E. McLaughlin et al.* (D.C.D.C. 1957, 153 F. Supp. 653).

§ 2–1811. Seal of registrants.

(a) Each person registered under this chapter may obtain a seal of a design authorized by the Board which shall bear the registrant's name and registration number, the legend "Registered Professional Engineer", and such other words or figures as the Board may deem necessary. Such seal, or a facsimile imprint of same, shall be stamped on all plans, specifications, and reports by the registrant responsible for the accuracy and adequacy of such plans, specifications, and reports, when filed with public authorities.

(b) It shall be unlawful for a registered engineer to affix or permit his seal to be affixed to any plans, specifications, or drawings for which he does not assume full responsibility for the adequacy and accuracy thereof.

(c) It shall be unlawful for any person to use such seal during the period the registration of the holder thereof is expired, suspended, or revoked, or to use a seal of any design not approved by the Board. (Sept. 19, 1950, 64 Stat. 864, ch. 953, § 11.)

§ 2–1812. Display of certificate of registration.

Whoever engages in the practice of engineering shall keep displayed in a conspicuous place in his established place of business the certificate of registration granted him under this chapter, and evidence of current renewal. (Sept. 19, 1950, 64 Stat. 864, ch. 953, § 12.)

§ 2–1813. Fees—Payment of expenses—Audit.

Each application for registration as a professional engineer shall be accompanied by the appropriate prescribed application fee and the registration fee. A person desiring certification as an engineer-in-training shall pay the prescribed application fee for such certification with his application and shall pay

the additional application fee and the registration fee upon filing his application for registration as a professional engineer.

Should the Board deny the issuance of a certificate of registration to any applicant, the registration fee deposited with the application shall be refunded.

The amount of the fees prescribed in this chapter is that fixed by the following schedule:

(a) The application fee for professional engineer with first- and second-stage examination is $20.

(b) The application fee for professional engineer without examination is $10.

(c) The application fee for engineer-in-training with examination is $7.50.

(d) The application fee for engineer-in-training without examination is $5.

(e) The application fee for professional engineer with second-stage examination is $12.50.

(f) The fee for reexamination shall be determined by the Board not to exceed $10.

(g) The registration fee for professional engineer is $5.

(h) The biennial registration renewal fee for professional engineer is $6.

(i) The fee for reissuance of a revoked certificate of engineer-in-training is $7.50.

(j) The fee for reissuance of a revoked registration certificate is $20.

(k) The fee for issuance of a duplicate certificate of registration is $5.

(*l*) The penalty for delinquence is $1 for each month after the date upon which the biennial renewal fee became due: *Provided, however,* That the total shall not exceed $4.

The secretary-treasurer of the Board shall receive and account for all money derived from the provisions of this chapter and shall keep such money in a separate fund to be known as "Professional engineers' fund", such fund to be disbursed only by the secretary-treasurer, upon itemized vouchers approved by the Chairman and attested by the secretary-treasurer of the Board. The secretary-treasurer shall furnish bond for the faithful discharge of his duties, in such form and amount as the Commissioners shall require. The premium on such bond shall be regarded as a proper and necessary expense of the Board. The secretary-treasurer of the Board shall receive such salary as the Commissioners shall determine, in addition to the compensation provided for in section 2–1806. The Board may make expenditures from this fund for any purpose which, in the opinion of the Board, is reasonably necessary for the proper performance of its duties under this chapter: *Provided, however,* That such expenditures shall in no event exceed the total of receipts. It shall be the duty of the Auditor of the District of Columbia to audit annually the accounts of the Board and make a report thereof to the Commissioners. For the purpose of performance of such duty the Auditor shall have free access to the books of account, records, and papers of the Board. (Sept. 19, 1950, 64 Stat. 864, ch. 953, § 13.)

INCREASE OF FEES

Sections 1–252 and 1–253 authorize the Commissioners to increase or decrease, from time to time, the fees specified in this section.

In accordance with this authority the Commissioners increased the fee for renewal registration in par. (h) from $2.00 to $6.00 biennially effective Sept. 14, 1954.

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952 and effective Sept. 2, 1952. The function of the annual audit of accounts of the District of Columbia Board of Registration for Professional Engineers was transferred from the Auditor of the District of Columbia to the Internal Audit Officer, Department of General Administration by Reorganization Order No. 19. These orders were issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to Title 1, Administration.

§ 2–1814. Penalties.

Whoever shall engage or offer to engage in the practice of engineering without being registered, or exempted, as provided in this chapter, or by verbal claim, sign, letterhead, card, or in any other way represent himself to be a professional engineer or through the use of any title including the word "engineer" or words of like import, or any other title, imply that he is a professional engineer without being registered as provided in this chapter, or shall present or attempt to use as his own the registration certificate of another, or shall give any false or forged evidence of any kind to the Board, or to any member thereof, in order to obtain registration as a professional engineer, or shall use any suspended or revoked registration, or shall otherwise violate the laws relating to the practice of engineering shall be guilty of a misdemeanor and shall be punishable by a fine of not more than $500 or imprisonment for not more than one year, or both. (Sept. 19, 1950, 64 Stat. 865, ch. 953, § 14.)

NOTES TO DECISIONS

Burden of proving exception

Fact that Professional Engineers' Registration Act excepts from its provisions practice of any other legally recognized profession did not require that information allege and that prosecution prove that defendant was not within exception, and defendant had burden of proving that it was within exception. *T.V. Engineers, Inc.* v. *District of Columbia* (D.C. Mun. App. 1961, 166 A. 2d 920).

Practice of engineering

Corporation could be convicted under provision of Professional Engineers' Registration Act making it misdemeanor for anyone to represent himself to be professional engineer without being registered as provided in the act, though only natural person may be registered under act. *T.V. Engineers, Inc.*, v. *District of Columbia* (D.C. Mun. App. 1961, 166 A. 2d 920).

Violation question of fact

Question whether use of name "T.V. Engineers Inc.," by corporation which employed no professional engineers, violated provision of Professional Engineers' Registration Act making it misdemeanor for anyone to represent himself to be professional engineer without being registered, was factual determination for trial court. *T.V. Engineers, Inc.* v. *District of Columbia* (D.C. Mun. App. 1961, 166 A. 2d 920).

§ 2–1815. Prosecutions.

(a) All violations of laws relating to the practice of engineering in the District of Columbia shall be

prosecuted in the District of Columbia Court of General Sessions by the corporation counsel. The corporation counsel shall render such other legal services as may from time to time be required by the Board.

(b) The Superintendent of the Metropolitan Police Department shall detail such members of his force as may be necessary to assist the Board in the investigations and prosecutions incident to the enforcement of this chapter.

(c) The corporation counsel is hereby authorized to apply for relief by injunction to restrain a person from the commission of any act which is prohibited by this chapter. In such proceedings it shall not be necessary for the corporation counsel to allege or prove either that an adequate remedy at law does not exist, or that substantial and irreparable damage would result, from the continued violation thereof. (Sept. 19, 1950, 64 Stat. 866, ch. 953, § 15; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

TRANSFER OF FUNCTIONS

Functions of Superintendent of the Metropolitan Police Department transferred to Chief of Police, see transfer of functions note under section 4–103.

§ 2–1816. Annual report.

The Board shall submit an annual report to the Commissioners on the first Monday in August, containing a statement of moneys received and disbursed and a summary of its official acts during the next preceding fiscal year, and recommendations for such further legislation relating to the practice of engineering as may be necessary in the public interest. (Sept. 19, 1950, 64 Stat. 866, ch. 953, § 16.)

§ 2–1817. Separability of provisions

If any section or sections, clause or clauses, of this chapter, or any regulations promulgated thereunder, be declared unconstitutional or invalid, that shall not invalidate any other sections or clauses of this chapter, or any other regulations promulgated thereunder. (Sept. 19, 1950, 64 Stat. 866, ch. 953, § 17.)

§ 2–1818. Repeal of conflicting legislation.

All laws or parts of laws and regulations promulgated thereunder in conflict with the provisions of this chapter shall be, and the same are hereby, repealed. (Sept. 19, 1950, 64 Stat. 866, ch. 953, § 18.)

Chapter 19.—COUNCIL ON LAW ENFORCEMENT

Sec.
2–1901. Council on Law Enforcement in the District of Columbia.

§ 2–1901. Council on Law Enforcement in the District of Columbia.

(a) The Council on Law Enforcement in the District of Columbia (referred to in this section as the "Council") is hereby created.

(b) The Council shall be composed of the following members:

(1) The President of the Board of Commissioners;

(2) The Chief of Police;

(3) The Chief of the United States Park Police;

(4) The United States attorney;

(5) The corporation counsel;

(6) A United States commissioner for the District;

(7) The Director of the Department of Corrections;

(8) The Parole Executive of the Board of Parole of the District;

(9) The United States marshal for the District;

(10) One person appointed by the chief judge of the district court;

(11) One person appointed by the chief judge of the District of Columbia Court of General Sessions;

(12) The judge of the juvenile court of the District of Columbia;

(13) One person appointed by the Bar Association of the District of Columbia;

(14) One person appointed by the Washington Bar Association; and

(15) One person appointed by the Washington Criminal Justice Association.

(c) The Council shall make a continuing study and appraisal of crime and law enforcement in the District, and shall make a report to the Senate and the House of Representatives at the beginning of each regular session of Congress.

(d) The Council shall select a chairman from among its members. The Council shall meet at regular intervals at least four times annually, at times to be fixed by the chairman. A special meeting may be held at any time upon the call of the chairman. The first meeting of the Council shall be called by the President of the Board of Commissioners, who shall preside until a chairman is selected. (June 29, 1953, 67 Stat. 101, ch. 159, § 401; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

REFERENCES IN TEXT

The Juvenile Court of the District of Columbia is now composed of three judges, and the references in laws (see subsec. (b)(12) of this section) to the judge of the juvenile court of the District of Columbia are to be construed as meaning any judge of that court. See § 11–1502, and act Dec. 23, 1963, Pub. L. 22–241, § 17(b)(c), 77 Stat. 619, set out in note under such section.

CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

Chapter 20.—PAWNBROKERS

Sec.
2–2001. Definitions.
2–2002. Licenses required of pawnbrokers.
2–2003. Appointment of attorney and application for licenses.
2–2004. Bond provisions—Annual renewal.
2–2005. Issuance of license.
2–2006. Revocation, suspension, and renewal of licenses.

Sec.
2–2007. Enforcement provisions—Commissioners to investigate licensees—Production of records—Contempt proceedings—Filing of reports—Preservation of records—Review of Commissioners' decisions.
2–2008. Advertising—Statement of rates.
2–2009. Investigation of economic conditions relating to pawnbrokerage business—Fixing of interest rates—Payment of loan.
2–2010. Charging, demanding or receiving interest, discount, fee or other charge, except as authorized by law prohibited—Payment of fees by licensees for performance of prohibited acts—Nonvalidity of instruments for loans made in violation of law—Loans made in violation of chapter against public policy—Loans outside of District.
2–2011. Pawnbroker to keep accurate records of loan transactions—Books open to inspection by Commissioners—Police to be admitted by pawnbroker during business hours—Divulging contents of records—Daily transcripts of loan transactions to be filed with Chief of Police.
2–2012. Pawnbroker to deliver accurate memorandum of loan transaction to borrower.
2–2013. Sale of pledge.
2–2014. Publication of notice of sale.
2–2015. Disposition of surplus moneys.
2–2016. Penalties—Loans in violation of chapter void—Pledged goods to be returned.
2–2017. Rules and regulations.
2–2018. Nonapplicability to certain financial institutions or Federal agencies.
2–2019. Separability of provisions.

§ 2–2001. Definitions.

As used in this chapter—

(a) The term "person" means an individual, firm, voluntary association, joint-stock company, incorporated society, or corporation.

(b) The term "District" means the District of Columbia.

(c) The term "Commissioners" means the Commissioners of the District or the agent or agents designated by them to perform any function vested in the Commissioners by this chapter: *Provided,* That for the purposes of subsection (e) of section 2–2007 no such agent shall, by way of appeal, review his own action, decision, or ruling.

(d) The term "pawnbroker" means any person who shall in any manner lend or advance money or other things for profit on the pledge and possession of personal property or other valuable thing, other than securities or written or printed evidences of indebtedness or who deals in the purchasing of personal property or other valuable thing on condition of selling the same back again at a stipulated price, and shall include all pawnbrokers referred to in sections 4–148, 4–149, and 4–150. (Aug. 6, 1956, 70 Stat. 1036, ch. 970, § 1.)

EFFECTIVE DATE

Section 21 of act Aug. 6, 1956, provided that: "This Act [adding this chapter] shall take effect at the expiration of sixty days after the date of its approval [Aug. 6, 1956]."

LENDING OF MONEY ON THE SECURITY OF THE PLEDGE AND POSSESSION OF TANGIBLE PERSONAL PROPERTY

Sections 26–601 to 26–611 repealed by act Aug. 6, 1956, insofar as they apply to the business of lending money on the security of the pledge and possession of tangible personal property, see section 19 of act Aug. 6, 1956, set out as a note under section 26–601.

CROSS REFERENCE

Applicability of provisions of this chapter to transactions under article 9 of subtitle I, title 28, see § 28:9–203.

§ 2–2002. Licenses required of pawnbrokers.

(a) No person shall engage in business as a pawnbroker except as authorized in this chapter and without first obtaining a license from the Commissioners as hereinafter provided.

(b) No person, other than a licensee under this chapter, shall display any sign or other device in or about any business premises, or in any advertising matter, which in any manner resembles the emblem or sign commonly used by pawnbrokers nor display any sign which is calculated to deceive, nor use the word "pawnbroker" in or about any business premises or in any advertising matter, nor shall any such person hold himself out to the public to be a pawnbroker either by advertising, soliciting, signs, or otherwise. (Aug. 6, 1956, 70 Stat. 1036, ch. 970, § 2.)

EFFECTIVE DATE

Section effective at the expiration of 60 days after Aug. 6, 1956, see note under § 2–2001.

NOTES TO DECISIONS

Entrapment

In prosecution for operating pawnshop without a license in violation of District of Columbia statute, evidence presented question of fact as to whether the two police officers, who had misled defendant as to their identity, had entrapped defendant. *Kronstadt* v. *District of Columbia* (D.C. Mun. App. 1959, 155 A. 2d 76).

§ 2–2003. Appointment of attorney and application for licenses.

(a) No license shall be issued to any person unless and until such person shall, in writing and in the form prescribed by the Commissioners, appoint the Commissioners as his true and lawful attorney upon whom all judicial and other process or legal notice directed to such person may be served. A copy of any such process or notice so served upon the Commissioners shall be forthwith sent by registered mail by the plaintiff or his attorney to the defendant at his residence or his place of business.

(b) Each application for a license under this chapter shall be in writing, under oath or affirmation, to the Commissioners in such form as they may prescribe. Such application shall contain (1) in the case of an individual, his name and the address of his residence and place of business, (2) in the case of a firm or voluntary association, the name and address of every member thereof and the address of the place where such business is to be conducted, (3) in the case of a joint-stock company, incorporated society, or corporation, the names and addresses of the officers and directors thereof and the address of the place where such business is to be conducted, and (4) such additional information as the Commissioners may prescribe.

(c) Each applicant shall prove to the satisfaction of the Commissioners that he has available, for use in the business of making loans authorized by this chapter at the location specified in his application, cash capital of at least $20,000.

(d) Upon the filing of any such application the applicant shall pay to the Commissioners the sum

of $50 as a fee for investigating the application, which sum shall be retained by the District whether such application is approved or disapproved. (Aug. 6, 1956, 70 Stat. 1036, ch. 970, § 3.)

EFFECTIVE DATE

Section effective at the expiration of 60 days after Aug. 6, 1956, see note under § 2–2001.

§ 2–2004. Bond provisions—Annual renewal.

(a) Each applicant shall file with his application a bond running to the District in the sum of $5,000 with two or more sufficient sureties, whose liability as such securities shall not exceed the said sum in the aggregate; except that the execution of any such bond by a fidelity or surety company authorized by the laws of the United States to transact business in the District shall be equivalent to the execution thereof by two sureties, but such company, if excepted to, shall justify in the manner required by law of fidelity and surety companies. Such bond shall be approved by the Commissioners and conditioned upon the compliance by the applicant with all the provisions of this title and all rules and regulations lawfully made pursuant thereto. Any person injured by the noncompliance with any such provision, rule, or regulation by any licensee under this chapter may maintain a suit in his own name in any court of competent jurisdiction and recover on the bond such damages as shall be adjudged by such court together with costs of such suit. Recovery upon any such bond shall not preclude recovery against such licensee for any liability in excess of the amount recovered upon the bond, and such recovery shall not be held to extinguish any remedy under other law.

(b) The bond or bonds which the licensee is required to file hereunder shall be renewed and refiled annually at the time of making payment of the annual license fee. If the Commissioners shall find that any such bond has for any reason become insecure or exhausted, an additional bond in the sum of not more than $5,000 shall be filed by the licensee within ten days after written demand therefor by the Commissioners. (Aug. 6, 1956, 70 Stat. 1037, ch. 970, § 4.)

EFFECTIVE DATE

Section effective at the expiration of 60 days after Aug. 6, 1956, see note under § 2–2001.

§ 2–2005. Issuance of license.

(a) If the Commissioners approve the bond filed by the applicant and the form of the application, and find after investigation (1) that the financial responsibility, experience, character, and general fitness of such applicant, and of the members thereof if the applicant is a firm or voluntary association, and of the officers and directors thereof if the applicant is a joint-stock company, incorporated society, or corporation are such as to command the confidence of the community and to warrant the belief that the business of the applicant will be operated honestly, fairly, and efficiently in accordance with the purposes of this chapter; (2) that permitting such applicant to engage in such business will promote the convenience and advantage of the community; and (3) that the applicant has available for use in such business at the location specified in the application cash capital of at least $20,000, the Commissioners shall, upon payment by the applicant of a license fee of $500, issue to the applicant a license to make such loans in accordance with the provisions of this chapter at the location specified in such application; except that if any such license is issued after the thirtieth day of April of any year the fee for such license shall be $250. If the Commissioners do not so find after investigation they shall notify the applicant thereof and return the bond filed with the application. Within sixty days from the date of filing the application for license, accompanied by the investigation fee and bond required by this chapter the Commissioners shall either issue or refuse to issue such license, but no applicant shall be denied a license until after a due hearing by the Commissioners, at which the applicant shall have a reasonable opportunity to be heard and to produce evidence in support of his application. If the application be denied the Commissioners shall within twenty days thereafter prepare a written decision and findings with respect thereto containing a summary of the evidence and the reasons supporting the denial and forthwith serve upon the applicant a copy thereof.

(b) Each license issued under this chapter shall state fully the name of the licensee and the place at which the business is to be conducted under such license. Such license shall be kept conspicuously posted in such place of business. No such license shall be transferable or assignable. Not more than one place of business shall be maintained under the same license, but the Commissioners may issue more than one license to the same licensee upon compliance for each such license with all the provisions of this title applicable to the original issuance of licenses. Whenever a licensee shall desire to change his place of business to another location within the District he shall immediately give written notice thereof to the Commissioners. Upon receipt of such notice the Commissioners shall attach to the license a statement of the change of location and the date thereof, which shall be authority for the operation of such business under such license at the new location.

(c) No licensee shall transact such business or make any loan provided for by this chapter under any other name or at any other place of business than that named in the license. (Aug. 6, 1956, 70 Stat. 1037, ch. 970, § 5.)

EFFECTIVE DATE

Section effective at the expiration of 60 days after Aug. 6, 1956, see note under § 2–2001.

§ 2–2006. Revocation, suspension, and renewal of licenses.

(a) Each license shall remain in full force and effect until the first day of November following the date of issuance unless sooner surrendered by the licensee or suspended or revoked as hereinafter provided. Application for license for the following year may be made by any licensee within twenty days prior to the first day of November. If the Commissioners are satisfied that no fact or condition then exists which clearly would warrant the Commissioners in refusing to issue a license on an original application the Commissioners are authorized to

issue license for the year commencing on the first day of November following the date of such application, upon payment of license fee of $250.

(b) The Commissioners shall, upon ten days' notice to the licensee stating that they contemplate the revocation or suspension of his license, and, in general, the grounds therefor, revoke or suspend such license, after reasonable opportunity has been afforded to the licensee to be heard, if the Commissioners find (1) that the licensee has failed to maintain in effect the bond or bonds required under this chapter or (2) that the licensee has either knowingly or without the exercise of due care to prevent the same, violated any provision of this chapter or has failed to comply with any rule or regulation lawfully made pursuant thereto, or (3) that any fact or condition then exists which clearly would warrant the Commissioners in refusing to issue a license on an original application. If the license be revoked or suspended the Commissioners shall, within twenty days thereafter, prepare a written decision and findings with respect thereto containing a summary of the evidence and the reasons supporting the revocation or suspension and forthwith serve upon the licensee a copy thereof.

(c) The Commissioners may revoke or suspend only the particular license with respect to which there are grounds for revocation or suspension; but if the Commissioners find that such grounds for revocation or suspension apply or extend to more than one license issued to any person under this chapter, they shall revoke or suspend all the licenses affected thereby.

(d) The licensee may at any time surrender any license issued to him under this chapter upon filing written notice to that effect with the Commissioners.

(e) No revocation, suspension, or surrender of any such license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any borrower, or any bond given by such licensee. (Aug. 6. 1956, 70 Stat. 1038, ch. 970, § 6.)

EFFECTIVE DATE

Section effective at the expiration of 60 days after Aug. 6, 1956, see note under § 2–2001.

§ 2–2007. Enforcement provisions—Commissioners to investigate licensees—Production of records—Contempt proceedings—Filing of reports—Preservation of records—Review of Commissioners' decisions.

(a) The provisions of this chapter shall be enforced by the Commissioners, who are authorized to make such rules and regulations in addition hereto and not inconsistent herewith, as may be necessary for the enforcement of this chapter. The Commissioners shall make such examination and investigations of the affairs, business, office, and records of every licensee, and such further examinations or investigations as they shall deem necessary for the purpose of discovering violations of this chapter or of securing information necessary for its proper enforcement. For the purpose of making such examinations or investigations the Commissioners and their duly designated representatives shall have authority to require by subpena the production of books, papers, and records and the attendance, and examination under oath, of all persons whomsoever whose testimony they may require relative to the loans or business of any such licensee, and shall have free access to the accounts, papers, records, files, safes, vaults, offices, and places of business used in connection with any business conducted under any license issued in accordance with this chapter. In the event of contumacy or refusal to obey any such subpena or requirement under this section, the Commissioners may make application to the District of Columbia Court of General Sessions for an order requiring obedience thereto. Thereupon the court, with or without notice and hearing, as it in its discretion may decide, shall make such order as is proper and may punish as a contempt any failure to comply with such order in accordance with the provisions of section 11–756(c).

(b) Each licensee shall annually on or before the fifteenth day of March file with the Commissioners a report giving such information as the Commissioners may require, relevant to the business and operations during the preceding calendar year, of each licensed place of business conducted by such licensee in the District. Such report shall be made under oath and in the form prescribed by the Commissioners. The Commissioners shall make and publish annually an analysis and recapitulation of such reports.

(c) Each licensee shall keep and use in his business and shall preserve for at least three years after making the final entry on any loan recorded therein, such books, accounts, records, or card systems as will enable the Commissioners to determine whether such licensee is complying with the provisions of this chapter and with the rules and regulations made pursuant thereto.

(d) The Commissioners are authorized to appoint such assistants, clerks, or other employees as may be required for the purpose of carrying out the provisions of this chapter.

(e) Any person aggrieved by any action, decision, or ruling of the Commissioners under this chapter may, within twenty days thereafter, or within twenty days after the service upon such person of any written decision and findings required by this chapter, appeal to the Commissioners for a review thereof. Upon any such review, the Commissioners may affirm, set aside, or modify such action, decision, or ruling. In any such case the Commissioners shall, within ten days thereafter, prepare a written decision and findings with respect thereto, containing a summary of the evidence and the reasons supporting the affirmance, setting aside, or modification, and forthwith serve upon the aggrieved person a copy thereof. (Aug. 6, 1956, 70 Stat. 1039, ch. 970, § 7; July 8, 1963, 77 Stat. 77; Pub. L. 88–60, § 1.)

REFERENCES IN TEXT

Section 11–756, referred to in subsec. (a) of this section was repealed by act Dec. 23, 1963, 77 Stat. 620, Pub. L. 88–241, § 21(a), and subsec. (c) thereof is now covered by § 11–982.

CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

EFFECTIVE DATE

Section effective at the expiration of 60 days after Aug. 6, 1956, see note under § 2–2001.

§ 2–2008. Advertising—Statement of rates.

(a) No licensee or other person, firm, voluntary association, joint stock company, incorporated society, or corporation shall advertise, print, display, publish, distribute, or broadcast, or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner whatsoever, any statement or representation with regard to the rates, terms, or conditions for the lending of money, credit, goods, or things in action in the amount or of the value of $1,000 or less, which is false, misleading, or deceptive, or, in the case of a licensee, which refers to the supervision of such business by the District of Columbia, or any department or official thereof. The Commissioners may order any licensee to desist from any conduct which they shall find to be a violation of the foregoing provisions.

(b) The Commissioners may require that rates of charge, if stated by a licensee, be stated fully and clearly in such manner as they may deem necessary to prevent misunderstanding thereof by prospective borrowers. (Aug. 6, 1956, 70 Stat. 1040, ch. 970, § 8.)

EFFECTIVE DATE

Section effective at the expiration of 60 days after Aug. 6, 1956, see note under § 2–2001.

§ 2–2009. Investigations of economic conditions relating to pawnbrokerage business—Fixing of interest rates—Payment of loan.

(a) The Commissioners shall investigate from time to time the economic conditions and other factors relating to and affecting the business of making pawnbroker loans under this chapter, and shall ascertain all pertinent facts necessary to determine what maximum rate of interest should be permitted. Upon the basis of such ascertained facts, the Commissioners shall determine and fix by regulation or order a maximum rate of interest in connection with such loans which will induce efficiently managed commercial capital to be invested in such business in sufficient amounts to make available adequate credit facilities to individuals seeking such loans at reasonable rates of interest, and which will afford those engaged in such business a fair and reasonable return upon the assets. The Commissioners may from time to time, upon the basis of changed conditions or facts, redetermine and refix any such maximum rate of interest, but, before determining or redetermining any such maximum rate, the Commissioners shall give reasonable notice of their intention to consider doing so to all licensees and a reasonable opportunity to be heard and introduce evidence with respect thereto and such notice shall also be published once each week for two consecutive weeks in one or more of the daily newspapers published in the District. Any such changed maximum rate of interest shall not affect preexisting loan contracts lawfully entered into between any licensee and any borrower. Until such time as a different rate is fixed by the Commissioners in accordance with the authorization contained in this section, every licensed pawnbroker may contract for and receive on any loan of money, not exceeding 2 per centum per month, or fraction thereof, upon any loan not exceeding the sum of $200, or more than 1 per centum per month or fraction thereof, upon any loan exceeding $200 and not exceeding $1,000, and 8 per centum per annum on any loan in excess of $1,000, under a penalty of $100 for each such offense: *Provided,* That pawnbrokers may ask, demand, and receive a minimum charge in lieu of interest of 50 cents.

(b) The borrower may pay all or any part of any loan made pursuant to this chapter at any time before the date of maturity thereof, but any such payment may first be applied by the licensee to all interest unpaid up to the date of such payment. (Aug. 6, 1956, 70 Stat. 1040, ch. 970, § 9.)

EFFECTIVE DATE

Section effective at the expiration of 60 days after Aug. 6, 1956, see note under § 2–2001.

§ 2–2010. Charging, demanding or receiving interest, discount, fee or other charge, except as authorized by law prohibited—Payment of fees by licensees for performance of prohibited acts—Nonvalidity of instruments for loans made in violation of law—Loans made in violation of chapter against public policy—Loans outside of District.

(a) No person, except as authorized by this chapter, shall directly or indirectly, by any device, subterfuge, or pretense, whatsoever, ask, demand, charge, contract for, or receive, or participate, as agent, broker, procurer, intermediary, or volunteer, or in any other capacity, in asking, demanding, charging, contracting for, or receiving any interest, discount, fee, charge, or other consideration which in the aggregate is greater than the interest which is permitted by sections 28–2701 to 28–2703, upon any loan or application for loan in the amount or of the value of $1,000, or less, whether or not such loan is made.

(b) No person engaged in the business regulated by this chapter shall pay, directly or indirectly, to any person, any money, service, or thing of value for the doing of any of the acts prohibited in the subsection (a) of this section: *Provided,* That this subsection shall apply only to acts done or performed with reference to loan transactions or applications for loans in sums of $1,000 or less, or in inducing or seeking to induce any person to borrow in sums of $1,000 or less.

(c) No instrument evidencing a loan made within the District in violation of the provisions of this chapter shall be valid or enforceable in the District by the lender or by any other holder thereof who acquired the same with actual knowledge that said loan was made in violation of the provisions of this chapter or with knowledge of such facts that his action in taking such instrument amounted to bad faith.

(d) Any loan made by any person not licensed under this chapter for which there has been charged, contracted for, or received a greater rate of interest, discount, or consideration than the interest which is permitted by sections 28–2701 to 28–2703, and any loan made by a licensee under this chapter for which there has been charged, contracted for, or received a greater rate of interest, discount, or consideration than licensees are permitted to charge, contract for, or receive under this chapter is hereby declared to be against the public policy of the District. No such loan made outside the District shall be enforced in the District and every person in anywise participating therein in the District shall be subject to the pro-

visions of this chapter, except that the provisions of this subsection shall not apply to a loan legally made in any State under and in accordance with the provisions of a duly enacted pawnbroker law. (Aug. 6, 1956, 70 Stat. 1041, ch. 970, § 10.)

REFERENCES IN TEXT

Sections 28–2701 to 28–2703, referred to in subsecs. (a) and (d) of this section were repealed by act Aug. 30, 1964, 78 Stat. 679, Pub. L. 88–509, § 8(b), and are now covered by sections 28–3301 to 28–3303.

EFFECTIVE DATE

Section effective at the expiration of 60 days after Aug. 6, 1956, see note under § 2–2001.

§ 2–2011. Pawnbroker to keep accurate records of loan transactions—Books open to inspection by Commissioners—Police to be admitted by pawnbroker during business hours—Divulging contents of records—Daily transcripts of loan transactions to be filed with Chief of Police.

(a) Every pawnbroker shall keep a book in which shall be fairly written, at the time of each loan, an accurate account and description of the goods, article, or thing pawned or pledged, the amount of money loaned thereon, the time of pledging the same, the rate of interest to be paid on such loan, and the name and residence of the person pawning or pledging the said goods, article, or thing, together with a particular description of such person, including complexion, color of eyes and hair, and his or her height and general appearances.

(b) The said book shall at all reasonable times be open to the inspection of the Commissioners. It shall be the duty of every pawnbroker, and of every person in his employ, to admit to his premises during business hours any member of the Metropolitan Police Force of the District of Columbia as aforesaid to examine any pledge or pawn book or other record on the premises, as well as the articles pledged, purchased, or received, and to search for and take possession of any article known by him to be missing or known or believed by him to have been stolen, without the formality of the writ of search warrant or any other process, which search or seizure is hereby authorized.

(c) Except as to any judicial or other official of the District, having a right thereto in his official capacity, it shall be unlawful for any officer or employee of the District to divulge or make known in any manner the contents of such book.

(d) Every pawnbroker shall, every day, except Sunday, before the hour of eleven o'clock in the forenoon, deliver to the Chief of Police, or his representative, on forms to be prescribed by the Commissioners of the District of Columbia, a legible and correct transcript from the book or books provided for in subsection (a), showing an accurate and complete description of every article or thing received by him, in pawn or pledge, and giving all numbers, marks, monograms, trademarks, manufacturers' names and other marks of identification appearing on the same, on the business day next preceding, together with the numbers of the pawn ticket issued therefor, the amount of the loan thereon, and the name, residence, and physical description of the person pawning or pledging the said goods, article or thing. (Aug. 6, 1956, 70 Stat. 1041, ch. 970, § 11.)

EFFECTIVE DATE

Section effective at the expiration of 60 days after Aug. 6, 1956, see note under § 2–2001.

§ 2–2012. Pawnbroker to deliver accurate memorandum of loan transaction to borrower.

Every pawnbroker shall, at the time of each loan, deliver to the person pawning or pledging any goods, article, or thing a memorandum or note, signed by him, containing the substance of the entry required to be made in his or her book by section 2–2011, excepting as to the description of the person and no charge shall be made or received by any pawnbroker for any such entry, memorandum, or note. (Aug. 6, 1956, 70 Stat. 1042, ch. 970, § 12.)

EFFECTIVE DATE

Section effective at the expiration of 60 days after Aug. 6, 1956, see note under § 2–2001.

§ 2–2013. Sale of pledge.

No pawnbroker shall sell any pawn or pledge until the same shall have remained one year in his possession, unless by consent in writing by the pawner; and all such sales shall be made at public auction and not otherwise, and shall be made or conducted only by an auctioneer licensed by the District of Columbia. (Aug. 6, 1956, 70 Stat. 1042, ch. 970, § 13.)

EFFECTIVE DATE

Section effective at the expiration of 60 days after Aug. 6, 1956, see note under § 2–2001.

§ 2–2014. Publication of notice of sale.

Notice of every such sale shall be published for at least six days previous thereto, in one or more of the daily newspapers of general circulation printed in the District of Columbia, and such notice shall specify the time and place at which such sale is to take place, the name of the auctioneer by whom the same is to be conducted, and a description of the article to be sold, and in addition thereto the pawnbroker shall mail to the pawner a copy of such notice and shall obtain from the postmaster or his authorized agent a certificate showing such mailing, issued pursuant to section 260a of Title 39, U.S. Code, and regulations made thereunder. Such certificates shall be deemed to be part of the records of the business of the pawnbroker required by this title to be kept. (Aug. 6, 1956, 70 Stat. 1042, ch. 970, § 14.)

REFERENCES IN TEXT

Section 260a of Title 39, U.S. Code, referred to in the text of this section, was repealed by act Sept. 2, 1960, 74 Stat. 708, Pub. L. 86–682, § 12(c), and is now covered by 39 U.S.C. §§ 507 and 5012.

EFFECTIVE DATE

Section effective at the expiration of 60 days after Aug. 6, 1956, see note under § 2–2001.

§ 2–2015. Disposition of surplus moneys.

The surplus money, if any, arising from any such sale, after deducting the amount of the loan, the interest then due on the same, and the expenses of the advertisement and sale, shall be paid over by the pawnbroker to the person who would be entitled to redeem the pledge in case no such sale had taken place. (Aug. 6, 1956, 70 Stat. 1042, ch. 970, § 15.)

EFFECTIVE DATE

Section effective at the expiration of 60 days after Aug. 6, 1956, see note under § 2–2001.

§ 2–2016. Penalties—Loans in violation of chapter void—Pledged goods to be returned.

(a) Any individual or any member, officer, director, agent, or employee of any firm, voluntary association, joint-stock company, incorporated society, or corporation who shall violate or participate in the violation of any of the provisions of this chapter shall be punished by a fine of not more than $300 or by imprisonment for not more than ninety days.

(b) Any contract of loan in the making or collection of which any act shall have been done which constitutes a violation of any of the provisions of this chapter shall be void and the lender shall have no right to collect or receive any principal, interest, or charges whatsoever on account thereof. Any person pledging any goods, article, or other thing as security for a loan which is void shall be entitled to the return of such goods, article, or thing without being required to pay any principal, interest, or other charge on account of such void loan. (Aug. 6, 1956, 70 Stat. 1042, ch. 970, § 16.)

EFFECTIVE DATE

Section effective at the expiration of 60 days after Aug. 6, 1956, see note under § 2–2001.

§ 2–2017. Rules and regulations.

The Commissioners are authorized to make and enforce such rules and regulations as they deem necessary to carry out the purposes of this chapter. (Aug. 6, 1956, 70 Stat. 1043, ch. 970, § 17.)

EFFECTIVE DATE

Section effective at the expiration of 60 days after Aug. 6, 1956, see note under § 2–2001.

§ 2–2018. Nonapplicability to certain financial institutions or Federal agencies.

Nothing in this chapter shall apply to any person, firm, joint-stock company, incorporated society, credit union, or corporation doing business in the District of Columbia under the supervision of the Federal Reserve System, or the Comptroller of the Currency, or the Federal Deposit Insurance Corporation, or the Home Loan Bank Board, or the Federal Savings and Loan Insurance Corporation, or the Department of Health, Education, and Welfare or to loans made by them. (Aug. 6, 1956, 70 Stat. 1043, ch. 970, § 18.)

EFFECTIVE DATE

Section effective at the expiration of 60 days after Aug. 6, 1956, see note under § 2–2001.

§ 2–2019. Separability of provisions.

If any provision of this chapter or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances shall not be affected thereby. (Aug. 16, 1956, 70 Stat. 1043, ch. 970, § 20.)

EFFECTIVE DATE

Section effective at the expiration of 60 days after Aug. 6, 1956, see note under § 2–2001.

Chapter 21.—CHARITABLE SOLICITATIONS

Sec.

2–2101. Definitions.
2–2102. Powers of Commissioners.
2–2103. Certificate of registration—Nonapplicability to educational or religious groups—Other exemptions by regulations.
2–2104. Application for and issuance of certificate.
2–2105. Solicitor information cards—Conditions under which solicitation may be made.
2–2106. Registrant required to make report of contributions—Time.
2–2107. Representations as to truth or finding by Commissioners in regard to registration certificate or solicitor card prohibited.
2–2108. Telephone solicitation for compensation prohibited.
2–2109. Commissioners may appoint advisory committee—Composition of committee—Secretary.
2–2110. Promulgation of regulations—Hearing.
2–2111. Use of other person's name by registered solicitor—Listing of other person's name in advertisement or other publication—Publication of list of contributors by charitable organizations.
2–2112. Penalties—Prosecutions in name of District of Columbia—Action to enjoin violations of this chapter or regulations.
2–2113. Separability of provisions.
2–2114. Appropriations.

§ 2–2101. Definitions.

As used in this chapter—

(a) The term "Commissioners" means the Commissioners of the District of Columbia, sitting as a board, or any agent or agency designated by them to perform any function vested in the Commissioners by this chapter.

(b) The term "registrant" means the holder of a valid certificate of registration duly issued under the terms of this chapter.

(c) "Solicit" and "solicitation" mean the request directly or indirectly for any contribution on the plea or representation that such contribution will or may be used for any charitable purpose, and also mean and include any of the following methods of securing contributions:

(1) Oral or written request;

(2) The distribution, circulation, mailing, posting, or publishing of any handbill, written advertisement, or publication;

(3) The making of any announcement to the press, over the radio, by television, by telephone, or telegraph concerning an appeal, assemblage, athletic or sports event, bazaar, benefit, campaign, contest, dance, drive, entertainment, exhibition, exposition, party, performance, picnic, sale, or social gathering, which the public is requested to patronize or to which the public is requested to make a contribution;

(4) The sale of, offer, or attempt to sell, any advertisement, advertising space, book, card, magazine, merchandise, subscription, ticket of admission, or any other thing, or where the name of any charitable person is used or referred to in any such appeal as an inducement or reason for making any such sale, or when or where in connection with any such sale, any statement is made that the whole or any part of the proceeds from any such sale will go or be donated to any charitable purpose.

A "solicitation" as defined herein shall be deemed completed when made, whether or not the person making the same receives any contribution or makes any such sale.

(d) "Charitable" means and includes philanthropic, social service, patriotic, welfare, benevo-

lent, or educational (except religious education), either actual or purported.

(e) "Contribution" means and includes alms, food, clothing, money, subscription, credit, property, financial assistance, or donations under the guise of a loan of money or property.

(f) "Person" means any individual, firm, copartnership, corporation, company, association, or joint stock association, church, religious sect, religious denomination, society, organization, or league, and includes any trustee, receiver, assignee, agent, or other similar representative thereof. (July 10 1957, 71 Stat. 278, Pub. L. 85–87, § 2.)

EFFECTIVE DATE

Section 17 of act July 10, 1957, provides that: "The provisions of sections 10, 11, and 16 of this Act [sections 2–2109, 2–2110 and 2–2114] shall take effect upon approval of this Act [July 10, 1957] and the remainder thereof shall take effect sixty days after the promulgation of the first regulations made pursuant to section 11 of this Act [section 2–2110]."

SHORT TITLE

Section 1 of act July 10, 1957, provides that: "This Act [this chapter] may be cited as the 'District of Columbia Charitable Solicitation Act'."

APPLICABILITY OF REORGANIZATION PLAN NO. 5

Section 14 of Act July 10, 1957, provides: "Where any provision of this Act [this chapter] refers to an office or agency abolished by Reorganization Plan Number 5 of 1952 (66 Stat. 824) [set out in the Appendix to Title 1, Administration], such reference shall be deemed to be the office, agency, or officer now or hereafter exercising the functions of the office or agency so abolished. Nothing contained in this Act [this chapter] shall be construed as a limitation on the authority vested in the Commissioners by Reorganization Plan Number 5 of 1952."

§ 2–2102. Powers of Commissioners.

(a) The Commissioners are authorized and empowered—

(1) to administer and enforce the provisions of this chapter;

(2) to investigate the allegations of any application for a certificate of registration;

(3) to have access to and inspect and make copies of all the financial books, records, and papers of any person making any solicitation or on whose behalf any solicitation is made;

(4) to investigate at any time the methods of making or conducting any solicitation;

(5) to issue a certificate of registration to any person filing an application pursuant to this chapter;

(6) to suspend or revoke any certificate of registration or solicitor information card, on the ground that the holder of such certificate or card has violated any provision of this chapter or any regulation promulgated pursuant thereto. The Commissioners shall give to the interested person or persons an opportunity for a hearing after reasonable notice thereof before suspending or revoking any such certificate or card;

(7) to prescribe by regulation the form of and the information to be contained in the solicitor information cards required by this chapter, and to prescribe the manner of reproduction and authentication of such cards; and

(8) to publish, in any manner they deem appropriate, the results of any investigation authorized by this chapter. The Commissioners shall, in publishing the results of any such investigation, have power to publish information concerning the officers and members of the governing board of any organization coming within the purview of this chapter: *Provided,* That such information shall not include membership and contribution lists of any such organization.

(b) The Commissioners are authorized to prescribe and collect fees for the filing of applications, issuance of certificates of registration, and any other service which this chapter authorizes to be performed by the Commissioners. The Commissioners shall fix such fees in such amounts as will, in their judgment, approximate the cost to the District of Columbia of such services. In fixing such fees the Commissioners may, in their discretion, prescribe either uniform fees or varying schedules of fees based on actual or estimated amounts solicited or to be solicited by registrants or applicants for certificates of registration. No fees may be fixed pursuant to this section until after a public hearing has been held thereon pursuant to reasonable notice thereof. (July 10, 1957, 71 Stat. 278, Pub. L. 85–87, § 3.)

EFFECTIVE DATE

Section effective 60 days after the promulgation of the first regulations made pursuant to § 2–2110, see note under § 2–2101.

CROSS REFERENCE

Regulations generally, authority of Commissioners, see § 2–2110.

§ 2–2103. Certificate of registration—Nonapplicability to educational or religious groups—Other exemptions by regulations.

(a) No person shall solicit in the District of Columbia unless he holds a valid certificate of registration authorizing such solicitation.

(b) The provisions of this chapter shall not apply to any person making solicitations, including solicitations for educational purposes, solely for a church or a religious corporation or a corporation or an unincorporated association under the supervision and control of any such church or religious corporation: *Provided,* That such church, religious corporation, corporation or unincorporated association is an organization which has been granted exemption from taxation under the provisions of section 501 of the Internal Revenue Code of 1954: *Provided further,* That such exemption from the provisions of this chapter shall be in effect only so long as such church, religious corporation, corporation or unincorporated association shall be exempt from taxation under the provisions of section 501 of the Internal Revenue Code of 1954.

(c) The provisions of subsection (a) of this section and sections 2–2104, 2–2105, 2–2106 and 2–2108 shall not apply to any person making solicitations (1) solely for the American National Red Cross or (2) exclusively among the membership of the soliciting agency.

(d) The Commissioners may by regulation prescribe the terms and conditions under which solicitations in addition to those enumerated in subsection (b) of this section may be exempted from the provisions of subsection (a) of this section and

sections 2–2105 and 2–2106: *Provided,* That no exemption granted under authority of this subsection (d) shall exceed for any calendar year $1,500 in money or property. (July 10, 1957, 71 Stat. 279, Pub. L. 85–87, § 4.)

EFFECTIVE DATE

Section effective 60 days after the promulgation of the first regulations made pursuant to § 2–2110, see note under § 2–2101.

§ 2–2104. Application for and issuance of certificate.

(a) Application for such certificate of registration shall be made upon such form or forms as shall be prescribed by the Commissioners, shall be sworn to and shall be filed with the Commissioners at least fifteen days prior to the time when the certificate of registration applied for shall become effective. Each such application shall contain such information as the Commissioners shall by regulation require.

(b) If, while any application is pending, or during the term of any certificate of registration granted thereon, there is any change in fact, policy, or method from the information given in the application, the applicant or registrant shall within ten days after such change report the same in writing to the Commissioners.

(c) The Commissioners shall issue a certificate of registration within ten days after the filing of an application therefor: *Provided,* That, whenever in the opinion of the Commissioners the application does not disclose sufficient information required by this chapter, or the regulations made pursuant thereto, to be stated in such application, then the applicant shall file in writing, within 48 hours, exclusive of Sundays and legal holidays, after a demand therefor made by the Commissioners, such additional information as may be required by said Commissioners: *Provided further,* That the Commissioners, for good cause shown by the applicant, may extend the time for filing such additional information: *Provided further,* That the Commissioners may withhold the issuance of a certificate of registration until such additional information is furnished. Each certificate of registration shall be valid for such period of time as shall be specified therein. (July 10, 1957, 71 Stat. 280, Pub. L. 85–87, § 5.)

EFFECTIVE DATE

Section effective 60 days after the promulgation of the first regulations made pursuant to § 2–2110, see note under § 2–2101.

§ 2–2105. Solicitor information cards—Conditions under which solicitation may be made.

(a) No individual shall solicit in the District of Columbia unless he exhibits a solicitor information card or a copy thereof, produced and authenticated as provided in regulations made pursuant to this chapter, and reads it to the person solicited, or presents it to said person for his perusal, allowing him sufficient opportunity to read such card before accepting any contribution so solicited.

(b) No individual shall solicit in the District of Columbia by printed matter or published article, or over the radio, television, telephone, or telegraph, unless such publicity shall contain the data and information required to be set forth on the solicitor information card: *Provided,* That when any solicitation is made by telephone, the solicitor shall present to each person who consents or indicates a willingness to contribute, prior to accepting a contribution from said person, such solicitor information card or a copy thereof produced and authenticated as provided in regulations made pursuant to this chapter. (July 10, 1957, 71 Stat. 280, Pub. L. 85–87, § 6.)

EFFECTIVE DATE

Section effective 60 days after the promulgation of the first regulations made pursuant to § 2–2110, see note under § 2–2101.

§ 2–2106. Registrant required to make report of contributions—Time.

Each registrant shall, within thirty days after the period for which a certificate of registration has been issued, and within thirty days after a demand therefor by the Commissioners, file a report with the Commissioners, stating the contributions secured as a result of any solicitation authorized by such certificate and in detail all expenses of or connected with such solicitation, and showing exactly for what use and in what manner all such contributions were or are intended to be dispensed or distributed. (July 10, 1957, 71 Stat. 280, Pub. L. 85–87, § 7.)

EFFECTIVE DATE

Section effective 60 days after the promulgation of the first regulations made pursuant to § 2–2110, see note under § 2–2101.

§ 2–2107. Representations as to truth or finding by Commissioners in regard to registration certificate or solicitor card prohibited.

No person shall make or cause to be made any representation that the issuance of a certificate of registration or of a solicitor information card is a finding by the Commissioners (1) that the statements contained in the registrant's application are true and accurate, (2) that the application does not omit a material fact, or (3) that the Commissioners have in any way passed upon the merits or given approval to such solicitation. (July 10, 1957, 71 Stat. 281, Pub. L. 85–87, § 8.)

EFFECTIVE DATE

Section effective 60 days after the promulgation of the first regulations made pursuant to § 2–2110, see note under § 2–2101.

§ 2–2108. Telephone solicitation for compensation prohibited.

No person shall for pecuniary compensation or consideration conduct or make any solicitation by telephone for or on behalf of any actual or purported charitable use, purpose, association, corporation, or institution. (July 10, 1957, 71 Stat. 281, Pub. L. 85–87, § 9.)

EFFECTIVE DATE

Section effective 60 days after the promulgation of the first regulations made pursuant to § 2–2110, see note under § 2–2101.

§ 2–2109. Commissioners may appoint advisory committee—Composition of committee—Secretary.

The Commissioners may appoint an advisory committee to advise the Commissioners in respect to any matter related to the enforcement of this chapter, and the members thereof shall serve without compensation. Such committee shall consist of not less than five nor more than nine members, whose terms

shall be fixed by the Commissioners. The Commissioners are authorized to assign an employee of the District of Columbia to serve as secretary for the committee. (July 10, 1957, 71 Stat. 281, Pub. L. 85–87, § 10.)

EFFECTIVE DATE

Section effective on July 10, 1957, see note under § 2–2101.

§ 2–2110. Promulgation of regulations—Hearing.

The Commissioners are authorized to promulgate regulations to carry out the purposes of this chapter: *Provided,* That no such regulation shall be put in effect until after a public hearing has been held thereon. (July 10, 1957, 71 Stat. 281, Pub. L. 85–87, § 11.)

EFFECTIVE DATE

Section effective on July 10, 1957, see note under § 2–2101.

§ 2–2111. Use of other person's name by registered solicitor—Listing of other person's name in advertisement or other publication—Publication of list of contributors by charitable organizations.

(a) No person who is required to obtain a certificate of registration under this chapter shall, for the purpose of soliciting contributions, use the name of any other person, except that of an officer, director, or trustee of the organization for which contributions are solicited, without the written consent of such other person.

(b) A person shall be deemed to have used the name of another person for the purpose of soliciting contributions if such latter person's name is listed on any stationery, advertisement, brochure, or correspondence in or by which a contribution is solicited by or on behalf of a charitable organization or his name is listed or referred to in connection with a request for a contribution as one who has contributed to, sponsored, or endorsed the charitable organization or its activities.

(c) Nothing contained in this section shall prevent the publication of names of contributors without their written consents, in an annual or other periodic report issued by a charitable organization for the purpose of reporting on its operations and affairs to its membership or for the purpose of reporting contributions to contributors. (July 10, 1957, 71 Stat. 281, Pub. L. 85–87, § 12.)

EFFECTIVE DATE

Section effective 60 days after the promulgation of the first regulations made pursuant to § 2–2110, see note under § 2–2101.

§ 2–2112. Penalties—Prosecutions in name of District of Columbia—Action to enjoin violations of this chapter or regulations.

(a) Any person violating any provision of this chapter, or regulation made pursuant thereto, or filing, or causing to be filed, an application or report pursuant to this chapter, or regulation made pursuant thereto, containing any false or fraudulent statement, shall be punished by a fine of not more than $500, or by imprisonment of not more than sixty days, or by both such fine and imprisonment.

(b) Prosecutions for violations of this chapter, or the regulations made pursuant thereto, shall be conducted in the name of the District of Columbia by the Corporation Counsel or any of his assistants.

(c) The Corporation Counsel of the District of Columbia or any of his assistants is hereby empowered to maintain an action or actions in the United States District Court for the District of Columbia in the name of the District of Columbia to enjoin any person from soliciting in violation of this chapter or in violation of any regulation made pursuant to this chapter. (July 10, 1957, 71 Stat. 281, Pub. L. 85–87, § 13.)

EFFECTIVE DATE

Section effective 60 days after the promulgation of the first regulations made pursuant to § 2–2110, see note under § 2–2101.

CROSS REFERENCE

Suspension or revocation of certificate of registration, see § 2–2102.

§ 2–2113. Separability of provisions.

If any provision of this chapter, or the application thereof to any persons or circumstances, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances, shall not be affected thereby. (July 10, 1957, 71 Stat. 282, Pub. L. 85–87, § 15.)

EFFECTIVE DATE

Section effective 60 days after the promulgation of the first regulations made pursuant to § 2–2110, see note under § 2–2101.

§ 2–2114. Appropriations.

Such appropriations as may be necessary to carry out the purposes of this chapter are authorized. (July 10, 1957, 71 Stat. 282, Pub. L. 85–87, § 16.)

EFFECTIVE DATE

Section effective July 10, 1957, see note under § 2–2101.

Chapter 22.—LEGAL AID AGENCY

Sec.

2–2201. Legal aid agency—Creation of.
2–2202. Counsel for indigents to be provided in criminal proceedings and proceedings of a criminal nature.
2–2203. Eligibility for legal services—Standards and procedures—Penalty.
2–2204. Power of agency vested in Board of Trustees—Appointment and terms of trustees.
2–2205. Appointment of director—Qualifications and salary.
2–2206. Appointment and assignment of personnel—Qualifications and compensation.
2–2207. Volunteer attorneys—Status.
2–2208. Dual employment prohibited.
2–2209. Board of Trustees to file annual reports—Contents and review of reports.
2–2210. Appropriations.

§ 2–2201. Legal aid agency—Creation of.

There is hereby created a Legal Aid Agency (hereinafter called the Agency) for the District of Columbia, to provide legal representation of indigents in judicial proceedings in the District of Columbia, as provided in section 2–2202. (June 27, 1960, 74 Stat. 229, Pub. L. 86–531, § 2.)

EFFECTIVE DATE

Section 12 of act June 27, 1960, provided that:

"(a) Except as provided in subsection (b), this Act [adding this chapter] shall take effect on the date of its enactment [June 27, 1960].

"(b) Sections 6, 7, and 8 [sections 2–2205, 2–2206, and 2–2207] shall take effect on the date of enactment of the first Act appropriating moneys to carry out the purposes of this Act [this chapter] which is enacted after the date

of enactment of this Act [June 27, 1960], and section 3 [section 2–2202] shall take effect on the sixtieth day after the date of enactment of such appropriation Act."

SHORT TITLE

Section 1 of act June 27, 1960, provided: "That this Act [adding this chapter] may be cited as 'The District of Columbia Legal Aid Act'."

§ 2–2202. Counsel for indigents to be provided in criminal proceedings and proceedings of a criminal nature.

The Agency shall make attorneys available to represent indigents in criminal proceedings in the United States District Court for the District of Columbia and in preliminary hearings in felony cases, and in cases involving offenses against the United States in which imprisonment may be for one year or more in the District of Columbia Court of General Sessions, in proceedings before the Coroner for the District of Columbia and the United States Commissioner, in proceedings before the juvenile court of the District of Columbia, and in proceedings before the Commission on Mental Health of the District of Columbia and proceedings in the courts arising therefrom.

The Agency shall from time to time advise each of the courts and tribunals named in this section of the names of the attorneys employed by the Agency who are available to accept assignments in said court or tribunal. The judges or other presiding officers of the several courts and tribunals may assign attorneys employed by the Agency to represent indigents, such assignments to be upon a case-to-case basis, a group-of-cases basis, or a time basis, as the assigning authority may prescribe. Each such court and tribunal will make every reasonable effort to provide assignment of counsel as early in the proceeding as practicable. (June 27, 1960, 74 Stat. 229, Pub. L. 86–531, § 3; July 8, 1963, 77 Stat. 77, Pub. L. 88–60 § 1.)

CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

EFFECTIVE DATE

Section effective on the sixtieth day after the date of enactment of the first act appropriating moneys to carry out the purposes of this chapter, see note under section 2–2201.

NOTES TO DECISIONS

Duty of counsel

Legal Aid Agency attorney as much as other attorney owes entire devotion to interest of client, warm zeal in maintenance and defense of client's rights and exertion of his utmost learning and ability to end that nothing be taken or be withheld from client, save by rules of law, legally applied. *D. A. Young and J. W. Simmons* v. *United States* (1965, 346 F. 2d 793, 120 U.S. App. D.C. 312).

Juvenile court proceedings

Proceeding to determine question of waiver of juvenile court jurisdiction is one in which assistance of counsel is provided by District of Columbia Legal Aid Act. *Black* v. *United States* (1965, 355 F. 2d 104, 122 U.S. App. D.C. 393).

Right to counsel

Defendant at preliminary hearing should have been informed by commissioner that if he desired a lawyer and was unable to retain one, commissioner could assign one to represent him. *R. A. Smith, Jr.* v. *United States* (1966, 361 F. 2d 74, 124 U.S. App. D.C. 57).

Under District of Columbia Legal Aid Act, United States Commissioner sitting in District of Columbia must not only inform defendant of his right to retain counsel but must inform indigent defendant of his right to have counsel assigned. *W. D. Blue* v. *United States* (1964, 342 F. 2d 894, 119 U.S. App. D.C. 315, cert. denied 85 S. Ct. 1029).

If prisoner, once informed, chooses freely and intelligently to refuse legal representation Congress has provided in District of Columbia, no appointment must be made. *Id.*

Where United States Commissioner sitting in District of Columbia informed indigent defendant of right to retain counsel but not of his right to have counsel assigned, subsequent return of indictment did not cure inadequacy. *Id.*

Waiver of preliminary hearing

Accused who is permitted in District of Columbia to waive preliminary hearing without proper advice or who is wrongfully denied opportunity to present witnesses in his own behalf will be entitled to order of release unless hearing is held, or to order reopening hearing for presentation of further evidence, but such remedies should be asserted at earliest possible moment. *W. D. Blue* v. *United States* (1964, 342 F. 2d 894, 119 U.S. App. D.C. 315, cert. denied 85 S. Ct. 1029).

Unless some reason is shown why counsel could not have discovered and challenged defect before trial, it will generally be assumed that any objection to preliminary proceedings were considered and waived, and no post-conviction remedies will be available. *Id.*

Purpose of preliminary hearing is to afford accused opportunity to establish that there is no probable cause for continued detention and thereby to regain his liberty and, possibly, escape prosecution, and to afford a chance to learn in advance of trial the foundations of charge and evidence which will comprise government's case against him. *Id.*

That indigent accused who waived preliminary hearing before United States Commissioner in District of Columbia was erroneously not informed before such waiver that he was entitled to have counsel appointed for him did not require new trial where accused was represented at trial by counsel who had opportunity to move, before trial, to correct defect and where no prejudice appeared. *Id.*

§ 2–2203. Eligibility for legal services—Standards and procedures—Penalty.

The legal representation services hereinbefore described shall be provided only to such persons who first subscribe and state in writing upon oath that such person has been unable to hire an attorney and is further unable to pay modest attorney's fee; except that the aforesaid sworn statement in writing shall not be required of patients in proceedings before the Commission on Mental Health of the District of Columbia and proceedings in courts arising therefrom. This oath may be administered by any person under law authorized and empowered to administer oaths. The Board of Trustees may provide more detailed standards and procedures consistent with the rules and policies of the respective courts and tribunals, to carry out the provisions of this section: *Provided further,* That any person making a false oath on any material matter required herein shall be fined not more than $1,000 or imprisoned not more than one year, or both. (June 27, 1960, 74 Stat. 230, Pub. L. 86–531, § 4.)

EFFECTIVE DATE

Section effective on June 27, 1960, see note under § 2–2201.

§ 2–2204. Power of agency vested in Board of Trustees—Appointment and terms of trustees.

The powers of the Agency shall be vested in a Board of Trustees composed of seven members, each serving a term of three years. Each trustee shall be appointed, for a full term or for the balance of an unexpired term, by a panel (of which four members shall be a quorum) consisting of—

the Chief Judge of the United States Court of Appeals for the District of Columbia;

the Chief Judge of the United States District Court for the District of Columbia;

the Chief Judge of the District of Columbia Court of General Sessions;

the Chief Judge of the District of Columbia Court of Appeals;

the President of the Board of Commissioners of the District of Columbia; and

the Judge of the juvenile court of the District of Columbia.

Said panel shall be presided over by the Chief Judge of the United States Court of Appeals for the District of Columbia (or his designee, in his absence).

The Board of Trustees of the Agency shall be appointed initially as follows: three members for three-year terms, two members for two-year terms, and two members for a one-year term. Thereafter each appointment (except an appointment for the balance of an unexpired term) shall be for a three-year term. Each appointee shall hold office until his successor is appointed and qualifies. (June 27, 1960, 74 Stat. 230, Pub. L. 86–531, § 5; July 8, 1963, 77 Stat. 77, 78, Pub. L. 88–60, §§ 1, 6.)

REFERENCES IN TEXT

The Juvenile Court of the District of Columbia is now composed of three judges, and references in laws to the judge of that court, as contained in this section, are to be construed as meaning any judge of such court. See § 11–1502, and section 17(c) of act Dec. 23, 1963, Pub. L. 88–241, 77 Stat. 620, set out in note under such section.

CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

Act July 8, 1963, § 6, substituted "District of Columbia Court of Appeals" for "Municipal Court of Appeals for the District of Columbia". Provisions identical with those of said section 6 were contained in act Oct. 23, 1962, 76 Stat. 1172, Pub. L. 88–873, § 6, which was repealed by act Dec. 23, 1963, 77 Stat. 620, Pub. L. 88–241, § 21(a).

EFFECTIVE DATE

Section effective on June 27, 1960, see note under § 2–2201.

§ 2–2205. Appointment of director—Qualifications and salary.

The Board of Trustees of the Agency shall appoint a Director of the Agency, who shall be responsible for the supervision of the legal work of said Agency, and perform such other duties as the Board of Trustees may prescribe. The Director shall be a member of the bar of, and qualified to practice law in, the District of Columbia. The Board may delegate to the Director such powers of the Board as the said Board may find in the interest of good administration. Said Director shall receive compensation of $16,000 per annum, and shall hold office at the pleasure of the Board of Trustees. (June 27, 1960, 74 Stat. 230, Pub. L. 86–531, § 6.)

EFFECTIVE DATE

Section effective on the date of enactment of the first act appropriating moneys to carry out the purposes of this chapter which is enacted after June 27, 1960, see note under § 2–2201.

§ 2–2206. Appointment and assignment of personnel—Qualifications and compensation.

The Director, with the approval of the Board of Trustees, shall employ such professional and office staff as may be necessary properly to conduct the business of the Agency, subject to the availability of appropriated funds. The Director shall, with the approval of the Board of Trustees, make assignments of the professional personnel of the Agency so as to provide the best practicable handling of the case load involving indigents in the courts and other tribunals specified in section 2–2202. All attorneys employed to represent indigents by the Agency shall be members of the bar of, and qualified to practice law in, the District of Columbia. The salaries of all employees of the Agency, except the Director, shall be fixed by the Board of Trustees, following the salary scale for employees of similar qualifications and seniority in the office of the United States attorney for the District of Columbia. (June 27, 1960, 74 Stat. 230, Pub. L. 86–531, § 7.)

EFFECTIVE DATE

Section effective on the date of enactment of the first act appropriating moneys to carry out the purposes of this chapter which is enacted after June 27, 1960, see note under § 2–2201.

§ 2–2207. Volunteer attorneys—Status.

The Director, with the approval of the Board of Trustees, may employ volunteer attorneys, without salary, who shall be reimbursed their out-of-pocket expenses properly incurred in the course of their employment. Service of individual as a volunteer attorney pursuant to this section shall not be considered as service or employment bringing such individual within the provisions of sections 281, 283, 284, or 1914 of title 18, U.S. Code, or section 99 of title 5, U.S. Code, nor shall any person serving as a volunteer attorney be considered, by reason of such service, an employee of the government of the District of Columbia for any purpose. (June 27, 1960, 74 Stat. 231, Pub. L. 86–531, § 8.)

REFERENCES IN TEXT

Sections 281, 283, 284 and 1914 of title 18, U.S. Code, referred to in this section, were repealed "(except as they may apply to retired officers of the armed forces of the United States)" by Act Oct. 23, 1962, Pub. L. 87–849, §2, 76 Stat. 1126, which provided further that such sections would "respectively, be supplanted" by sections 203, 205, 207 and 209 of such title 18, as amended by other provisions of that Act.

Section 99 of title 5, U.S. Code, also referred to in this section, was repealed by section 3 (76 Stat. 1126) of the same Act. It is not now specifically covered, although said section 207 of title 18, U.S. Code, as amended by other provisions of such Act, relates generally to the same subject covered in said former section 99 of title 5, U.S. Code.

EFFECTIVE DATE

Section effective on the date of enactment of the first act appropriating moneys to carry out the purposes of this chapter which is enacted after June 27, 1960, see note under § 2–2201.

§ 2–2208. Dual employment prohibited.

All salaried employees of the Agency shall give full time to the Agency work. The Director, with the approval of the Board of Trustees, shall fix the requirements upon the time of volunteer attorneys, and shall fix the office hours of the Agency. No salaried employee of the Agency, including the Director, shall engage in any private practice of the law, and no such employee shall receive a fee for any legal service. (June 27, 1960, 74 Stat. 231, Pub. L. 86–531, § 9.)

EFFECTIVE DATE

Section effective on June 27, 1960, see note under § 2–2201.

§ 2–2209. Board of Trustees to file annual reports—Contents and review of reports.

The Board of Trustees of the Agency shall, on June 1 of each year, submit a report of the Agency's work for the past year to the Congress of the United States, to the Chief Judge of the United States Court of Appeals for the District of Columbia, to the Commissioners of the District of Columbia and to the Administrative Office of the United States Courts. Said report shall include a statement of financial condition, revenues, and expenses for the past year, prepared by a certified public accountant or by a designee of the Administrative Office. Said Board shall also forward a copy of the report required by this section to each member of the panel described in section 2–2204, and such panel shall meet with the Board of Trustees and Director not later than August 1 of each year to review the work and financial needs of the Agency in the light of the report submitted the previous June 1, as required by this section. (June 27, 1960, 74 Stat. 231, Pub. L. 86–531, § 10.)

EFFECTIVE DATE

Section effective on June 27, 1960, see note under § 2–2201.

§ 2–2210. Appropriations.

For the purpose of carrying out the provisions of this chapter, there is authorized to be appropriated for each fiscal year, out of any moneys in the Treasury to the credit of the District of Columbia, such sums as may be necessary; except that not to exceed $75,000 shall be appropriated for the fiscal year beginning July 1, 1960. Such sums shall be appropriated for the judiciary, to be disbursed by the Administrative Office of the United States Courts to carry on the business of the Agency. The Administrative Office in disbursing and accounting for said sums will follow, so far as possible, its standard fiscal practices. The budget estimates for the Agency shall be prepared in consultation with the Commissioners of the District of Columbia. (June 27, 1960, 74 Stat. 231, Pub. L. 86–531, § 11.)

EFFECTIVE DATE

Section effective on June 27, 1960, see note under § 2–2201.

Chapter 23.—BONDING OF HOME IMPROVEMENT BUSINESS

Sec.
2–2301. Bonding of persons engaged in home improvement business—Definitions.
2–2302. Commissioners may establish classes and subclasses of persons licensed in the home improvement business—Bonds for the protection of the public—Licensees may be required to carry public liability and property damage insurance—Designation of Commissioners by licensees as their attorney for service of process—Terms and conditions of bonds—Aggrieved person may sue on the bond.
2–2303. Payment as defense to assertion of lien.
2–2304. Penalty for violation of chapter.
2–2305. Prosecutions to be conducted by Corporation Counsel.
2–2306. Supplemental authority of Commissioners.
2–2307. Separability of provisions.

§ 2–2301. Bonding of persons engaged in home improvement business—Definitions.

The Commissioners of the District of Columbia are authorized, in connection with the licensing of persons engaged in the home improvement business, whether as principal, agent, salesman, employee, or otherwise, to require the furnishing of bond as a condition to the issuance of such license. For the purposes of this chapter, the term "home improvement business" means the repair, remodeling, alteration, conversion, or modernization of, or addition to, residential property, all as may be more particularly defined in regulations promulgated by the Commissioners. Such bonding may be required notwithstanding the fact that a person may also be subject to the bonding requirements of any other law. (Sept. 6, 1960, 74 Stat. 815, Pub. L. 86–715, § 1.)

EFFECTIVE DATE

Section 8 of act Sept. 6, 1960, provided that: "This Act [adding this chapter] shall take effect on the thirtieth day after the date of enactment of this Act [Sept. 6, 1960]."

NOTES TO DECISIONS

Payment in advance

Under regulations promulgated pursuant to Home Improvement Business Act that no person shall accept any payment under home improvement contract "in advance of the full completion of all of the work required to be performed by such contract" unless such person is licensed as home improvement contractor, absence of a license is relevant only where contractor requires or accepts payment in advance of full completion of contracted work. *F. P. Hoffheins et ano.* v. *B. E. Heslop etc.* (D.C. App. 1965, 210 A. 2d 841).

Where following execution of contract for home improvement at price of $15,635 homeowners sold the contractor a used automobile for $50 which he credited to contract price, the $50 credit could not be considered payment "under" that contract within regulations promulgated pursuant to Home Improvement Business Act that no person shall require or accept any payment under home improvement contract in advance of full completion of contracted work unless contractor is licensed as home improvement contractor. *Id.*

§ 2–2302. Commissioners may establish classes and subclasses of persons licensed in the home improvement business—Bonds for the protection of the public—Licensees may be required to carry public liability and property damage insurance—Designation of Commissioners by licensees as their attorney for service of process—Terms and conditions of bonds—Aggrieved person may sue on the bond.

(a) The Commissioners may, from time to time, and in their discretion, establish classes and sub-

classes of persons licensed to engage in the home improvement business and specify the amount and conditions of the bond or other security acceptable to the Commissioners to be deposited by each of the members of any such class or subclass. In connection with the licensing of persons to engage in the home improvement business, and the bonding of the members of any such class or subclass of such persons, the Commissioners, in their discretion, may by regulation require applicants for licenses or licensees—

(1) to furnish and keep in force a bond or bonds running to the District, or other security acceptable to the Commissioners, to protect members of the public against financial loss by reason of the failure of the licensee or of any officer, agent, employee, salesman, or other person acting on behalf of said licensee, to observe any law or regulation in force in the District of Columbia applicable to the licensee's conduct of the licensed business;

(2) to procure and keep in force public liability insurance or property damage insurance, or both; and

(3) to appoint the Commissioners as their true and lawful attorney upon whom all judicial and other process or legal notice directed to such person may be served.

(b) The bonds authorized by this section shall be corporate surety bonds in amounts to be fixed by the Commissioners, but no bond shall exceed $25,000, and such bond shall be conditioned upon the observance by the licensee and any officer, agent, employee, salesman, or other person acting on behalf of said licensee, of all laws and regulations in force in the District applicable to the licensee's conduct of the licensed business, for the benefit of any person who may suffer damages resulting from the violation of any such law or regulation by or on the part of such licensee or any officer, agent, employee, salesman, or other person acting on behalf of the licensee.

(c) Any person aggrieved by the violation of any law or regulation applicable to the licensee's conduct of the licensed activity shall have, in addition to his right of action against such licensee, a right to bring suit against the surety on a bond authorized by this section, either alone or jointly with the principal thereon, and to recover in an amount not exceeding the penalty of the bond any damages sustained by reason of any act, transaction, or conduct of the licensee, or of any officer, agent, employee, salesman, or other person acting on behalf of said licensee, which is in violation of law or regulation in force in the District relating to the licensed activity. The provisions of the second, third, and fifth subparagraphs of paragraph (b) of section 1–244 shall be applicable to each bond authorized by this section as if it were the bond authorized by the first subparagraph of such paragraph (b) of section 1–244: *Provided,* That nothing in this subsection shall be construed to impose upon the surety on any such bond a greater liability than the total amount thereof or the amount remaining unextinguished after any prior recovery or recoveries. (Sept. 6, 1960, 74 Stat. 815, Pub. L. 86–715, § 2.)

§ 2–2303. Payment as defense to assertion of lien.

In any case in which a property owner or occupant has entered into a contract with a person offering to perform or to arrange for the performance of home improvement work, and such property owner or occupant makes payment for such work to the person offering to perform or arrange for the performance of the same, proof of such payment shall constitute a defense against, and render void, any lien sought to be asserted under the authority of sections 38–101 to 38–103. (Sept. 6, 1960, 74 Stat. 816, Pub. L. 86–715, § 3.)

§ 2–2304. Penalty for violation of chapter.

Any person who shall violate any provision of this chapter or of any regulation promulgated by the Commissioners under the authority of this chapter, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding $300 or by imprisonment for not more than ninety days, or both. (Sept. 6, 1960, 74 Stat. 816, Pub. L. 86–715, § 4.)

§ 2–2305. Prosecutions to be conducted by Corporation Counsel.

Prosecutions for violations of this chapter, or of the regulations made pursuant thereto, shall be conducted in the name of the District by the Corporation Counsel or any of his assistants. As used in this chapter the term "Corporation Counsel" means the attorney for the District, by whatever title such attorney may be known, designated by the Commissioners to perform the functions prescribed for the Corporation Counsel in this chapter. (Sept. 6, 1960, 74 Stat. 816, Pub. L. 86–715, § 5.)

§ 2–2306. Supplemental authority of Commissioners.

The authority and power vested in the Commissioners by any provision of this chapter shall be deemed to be additional and supplementary to authority and power now vested in them, and not as a limitation. (Sept. 6, 1960, 74 Stat. 816, Pub. L. 86–715, § 6.)

§ 2–2307. Separability of provisions.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or the application of this chapter which can be effected without the invalid provision or application, and to this end the provisions of this chapter are severable. (Sept. 6, 1960, 74 Stat. 816, Pub. L. 86–715, § 7.)

Chapter 24.—SECURITY AGENTS AND BROKERS

Sec.

2–2401. Definitions.
2–2402. Fraud.
2–2403. License requirement.
2–2404. License procedure.
2–2405. Unlawful representation concerning licensing.
2–2406. Records and reports.
2–2407. Filing of sales and advertising literature.
2–2408. Misleading filings.
2–2409. Denial, revocation, suspension, cancellation, and withdrawal of license.
2–2410. Investigations and subpenas.
2–2411. Injunctions.
2–2412. Criminal penalties.
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Sec.
2–2414. Scope of chapter and service of process.
2–2415. Administration of chapter.
2–2416. Advisory committee.
2–2417. Severability.
2–2418. Change of name of Public Utilities Commission.

§ 2–2401. Definitions.

When used in this chapter, unless the context otherwise requires—

(a) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include any individual who represents an issuer in (1) effecting transactions in an exempt security, (2) effecting exempt transactions, or (3) effecting transactions with existing employees, partners, or directors of the issuer or any of its subsidiaries if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in the District. A partner, officer, or director of a broker-dealer or issuer, or a person occupying similar status or performing similar functions, is an agent only if he otherwise comes within this definition.

(b) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include (1) an agent, (2) an issuer, (3) a bank, savings institution, or trust company, or (4) a person who has no place of business in the District if (A) he effects transactions in the District exclusively with or through (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, or (iii) banks, savings institutions, trust companies, insurance companies, investment companies, as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (B) during any period of twelve consecutive months he does not direct more than fifteen offers to sell or buy into the District in any manner to persons other than those specified in clause (A), whether or not the offeror or any of the offerees is then present in the District.

(c) "Commission" means the Public Service Commission of the District of Columbia as so designated by section 2–2418.

(d) "District" means the District of Columbia, either as a territorial area as defined in section 1–101, or as the government and municipal corporation of that name as created by section 1–102, depending on the context.

(e) For the purpose of subsection (a) of this section "exempt security" means—

(1) any security (including a revenue obligation) issued or guaranteed by the United States, any State, any political subdivision of a State, the District, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing;

(2) any security issued or guaranteed by Canada, any Canadian Province, any political subdivision of any such Province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, or trust company organized and supervised under the laws of any State;

(4) any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewals of such paper which is likewise limited, or any guarantee of such paper or of any such renewal; or

(5) any investment contract issued in connection with an employees' stock purchase, savings, pension, profit-sharing, or similar benefit plan.

(f) For the purpose of subsection (a) of this section "exempt transaction" means—

(1) any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or any transaction among underwriters;

(2) any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

(3) any transaction by a receiver or trustee in bankruptcy;

(4) any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(5) any transaction pursuant to an offer directed by the offeror to not more than twenty-five persons in the District during any period of twelve consecutive months, whether or not the offeror or any of the offerees is then present in the District, if the seller reasonably believes that all the buyers in the District are purchasing for investment;

(6) any offer or sale of a preorganization certificate or subscription if (A) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, and (B) the number of subscribers does not exceed twenty-five, and (C) no payment is made by any subscriber;

(7) any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transactions are holders of convertible securities, nontransferable warrants, or transferable warrants, exercisable within not more than ninety days of their issuance, if (A) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in the District, or (B) the issuer first

files a notice specifying the terms of the offer and the Commission does not by order disallow the exemption within the next five full business days; or

(8) any transaction effected with existing employees, partners, or directors of the issuer or any of its subsidiaries if no commission or other remuneration is paid or given, directly or indirectly, for soliciting any person in the District.

(g) "Fraud", "deceit", and "defraud" shall not be limited to common law deceit.

(h) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(i) "Issuer" means any person who issues or proposes to issue any security, except that—

(1) with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions, or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued; and

(2) with respect to certificates of interest or participation in oil, gas, or mining titles or leases or in payments out of production under such titles or leases, there is not considered to be any "issuer".

(j) "Person" means an individual, a corporation, a partnership, an association, joint-stock company, a trust where the interest of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(k)—

(1) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

(2) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of any offer to buy, a security or interest in a security for value.

(3) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.

(4) A purported gift of assessable stock is considered to involve an offer and sale.

(5) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(6) The terms defined in this subsection do not include (A) any bona fide pledge or loan; (B) any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock; (C) any act incident to a class vote by stockholders, pursuant to the certificate of incorporation or the applicable corporation statute, on a merger, consolidation, reclassification of securities, or sale of corporate assets in consideration of the issuance of securities of another corporation; or (D) any act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash.

(*l*) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some other specified period or any contract issued by an insurance company pursuant to section 35–541.

(m) "State" means any State, territory, or possession of the United States, and the Commonwealth of Puerto Rico, but not the District of Columbia. (Aug. 30, 1964, 78 Stat. 620, Pub. L. 88–503, § 2.)

REFERENCES IN TEXT

The Investment Company Act of 1940 referred to in text is set out in 15 U.S.C. §§ 80a–1 to 80a–52.

EFFECTIVE DATE

See note to section 2–2402.

POPULAR NAME

Section 1 of act Aug. 30, 1964, provides as follows: "This Act [This chapter and the amendment of section 11–742], may be cited as the 'District of Columbia Securities Act'."

§ 2–2402. Fraud.

It shall be unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly—

(a) to employ any device, scheme, or artifice to defraud;

(b) to make any untrue statement of a material fact, or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances in which they are made, not misleading; or

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(Aug. 30, 1964, 78 Stat. 623, Pub. L. 88–503, § 3.)

EFFECTIVE DATE

Section 20 of act Aug. 30, 1964, provides: "(a) Sections 3, 13b, 13d, 16, and 25 [Sections 2–2402, 2–2412(b), 2–2412(d), 2–2415, and 2–2418], together with definitions of

terms used therein, shall take effect upon approval of this chapter.

"(b) The remaining provisions of this chapter shall take effect at 12:01 antemeridian on the one hundred and eightieth day after approval of this chapter, or, if the one hundred and eightieth day be a holiday in the District, at 12:01 antemeridian on the first business day thereafter."

§ 2–2403. License requirement.

(a) It shall be unlawful for any person to transact business in the District as a broker-dealer or agent unless he is effectively licensed under this Chapter.

(b) It shall be unlawful for any broker-dealer or issuer to employ an agent unless the agent is effectively licensed under this Chapter. The license of an agent shall not be effective during any period when he is not associated with a particular broker-dealer or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make him an agent, the agent as well as the broker-dealer or issuer shall promptly notify the Commission.

(c) Every license and renewal license shall expire one year from its effective date, but in any case in which timely and sufficient application for a renewal license has been made in accordance with section 2–2404(a) no license shall expire until final action of the Commission upon such pending application. The Commission may by rule or order fix a schedule for the first renewal of licenses so that subsequent renewals may be staggered over the one-year period. For this purpose the Commission shall reduce the license fee proportionately for any initial license which may expire before one year from its effective date. (Aug. 30, 1964, 78 Stat. 623, Pub. L. 88–503, § 4.)

EFFECTIVE DATE

See note to section 2–2402.

§ 2–2404. License procedure.

(a) A broker-dealer or agent may obtain an initial license by filing with the Commission an application executed by all partners, directors, and officers of the applicant personally engaged in the securities business in the District, together with a consent to service of process pursuant to section 2–2414(f). The application for each broker-dealer applicant shall contain the following information, and for each partner, officer, or director, each person occupying a similar status or performing similar functions and each person directly or indirectly controlling such broker-dealer the information prescribed in subdivisions (3), (4), (5) and (7); and the application for each agent shall contain the information specified in subdivisions (3), (4), (5) and (7):

(1) the applicant's form and place of organization;

(2) the applicant's proposed method of doing business;

(3) the qualifications and business history of the applicant;

(4) each injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;

(5) each disciplinary action by a securities exchange or securities association within the ten years preceding the date of application;

(6) the applicant's financial condition and history; and

(7) such other matters as the Commission may by rule prescribe as being necessary or appropriate in the public interest or for the protection of investors.

The Commission may by rule or order require an applicant for an initial license to publish an announcement of the application in one or more specified newspapers published in the District. If no denial order is in effect and no proceeding is pending under section 10, a license shall become effective at noon of the thirtieth day after any application is filed. The Commission may by rule or order specify an earlier effective date, and it may by order defer the effective date until noon of the thirtieth day after the filing of any amendment to an application. A license of a broker-dealer shall be deemed to constitute a license of any agent who is a partner, officer, or director, or a person occupying a similar status or performing similar functions.

(b) An applicant for an initial or renewal license shall pay a filing fee. The filing fee for an initial or a renewal license shall, except for agents, be fixed by the Commission but shall not exceed $125 for a broker-dealer, plus an amount not exceeding $12.50 for each partner, officer, and director, and each person occupying a similar status or performing similar functions, who transacts business in the District. The filing fee for an initial license for an agent shall be $12.50. The filing fee for each renewal license for an agent shall be $5.

(c) A licensed broker-dealer may file an application for a license of a successor, whether or not the successor is then in existence, for the unexpired portion of the period during which the license of such broker-dealer is effective. There shall be no filing fee.

(d) Each broker-dealer licensed in the District shall have and maintain a minimum net capital of $25,000, except that the Commission may, by rule, fix a minimum net capital in lesser amounts, but in no case less than $5,000 net capital, for a broker-dealer with a limited license which authorizes such broker-dealer to engage only in transactions in securities registered under the Investment Company Act of 1940. The Commission may by rule prescribe a ratio between net capital and aggregate indebtedness.

(e) The Commission may by rule require a licensed broker-dealer or the agent of an issuer to post a surety bond issued by a corporate surety company licensed to do business in the District of Columbia in such amounts up to $25,000 and on such conditions as the Commission may determine to be necessary or appropriate in the public interest or for the protection of investors, the surety bond of a licensed broker-dealer to cover such broker-dealer and all licensed agents thereof in the District of Columbia. Every bond shall provide for suit thereon by any person who may have a cause of action arising under section 2–2413, and, if the Commission by rule or order requires, by any person who may have

a cause of action not arising under this chapter. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within two years after the sale or other act upon which such liability is based.

(f) The license of a broker-dealer or agent may be renewed by filing with the Commission prior to the expiration thereof an application containing such information as the Commission may require to indicate any material change in the information contained in the original application or any renewal thereof, payment of the prescribed fee and, in the case of a broker-dealer, a financial statement showing the financial condition of such broker-dealer as of a date within one year prior to the date of such application for renewal. (Aug. 30, 1964, 78 Stat. 625, Pub. L. 88–503, § 5).

EFFECTIVE DATE

See note to section 2–2402.

§ 2–2405. Unlawful representation concerning licensing.

(a) Neither the fact that an application for a license has been filed nor the fact that a person is effectively licensed shall constitute a finding by the Commission that any document filed under this chapter, or that any statement made therein, is true, complete, and not misleading. Neither any such fact nor the fact that an exemption is available for any person, security or transaction shall mean that the Commission has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction.

(b) It shall be unlawful for any broker-dealer or agent to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with subsection (a). (Aug. 30, 1964, 78 Stat. 625, Pub. L. 88–503, § 6.)

EFFECTIVE DATE

See note to section 2–2402.

§ 2–2406. Records and reports.

(a) Every licensed broker-dealer and agent shall make, keep, and preserve for such periods, such accounts, correspondence, memorandums, papers, books, and other records, and make such reports, as the Commission by rule shall prescribe as necessary or appropriate in the public interest or for the protection of investors.

(b) All the records and reports referred to in subsection (a) shall be subject at any time or from time to time to such reasonable periodic, special, or other examinations by the Commission, within or without the District, as the Commission may deem necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the Commission, insofar as it may deem it practicable in administering this subsection, may cooperate with the securities administrator of any State, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934. (Aug. 30, 1964, 78 Stat. 625 Pub. L. 88–503, § 7.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934 is set out in 15 U.S.C. ch. 2B.

EFFECTIVE DATE

See note to section 2–2402.

§ 2–2407. Filing of sales and advertising literature.

The Commission may by order require any specific broker-dealer or agent to file with the Commission any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, except sales and advertising literature describing an exempt security as defined in section 2–2401(e) or used in an exempt transaction as defined in section 2–2401(f). (Aug. 30, 1964, 78 Stat. 625, Pub. L. 88–503, § 8.)

EFFECTIVE DATE

See note to section 2–2402.

§ 2–2408. Misleading filings.

It shall be unlawful for any person to make or cause to be made, in any document filed with the Commission or in any proceeding under this chapter, any statement which is, at the time and in the light of the circumstances in which it is made, false or misleading in any material respect. (Aug. 30, 1964, 78 Stat. 626, Pub. L. 88–503, § 9.)

EFFECTIVE DATE

See note to section 2–2402.

§ 2–2409. Denial, revocation, suspension, cancellation, and withdrawal of license.

(a) The Commission may by order deny, suspend, or revoke any license if it finds that the order is in the public interest and that the applicant or licensee or, in the case of a broker-dealer, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer—

(1) has filed an application for a license which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) has willfully violated or willfully failed to comply with any provision of this chapter or any rule or order under this chapter, or has violated or failed to comply with the minimum capital requirement of section 2–2404(d) or any ratio rule prescribed thereunder;

(3) has been convicted, within the past ten years, of any misdemeanor involving a fiduciary relationship or a security or any aspect of the securities business, or of any felony, or has been acquitted of any such offense within the same period solely on the ground that he was insane at the time of its commission;

(4) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(5) is the subject of an order of the Commission denying, suspending, or revoking a license as a broker-dealer or agent;

(6) is the subject of an order entered within the past five years by the securities administrator of any State or by the Securities and Exchange Commission denying or revoking a license or registration as a broker-dealer or agent, or the substantial equivalent of those terms as defined in this chapter, or is the subject of an order of the Securities and Exchange Commission suspending or expelling him from a national securities exchange or national securities association, or is the subject of a United States Post Office fraud order; but (i) the Commission may not institute a revocation or suspension proceeding under clause (6) more than two years from the date of the order or action relied on, and (ii) it may not enter an order under clause (6) on the basis of an order under a State act unless that order was based on facts which would currently constitute a ground for an order under this section;

(7) has engaged in dishonest or unethical practices in the securities business or while acting in any fiduciary capacity;

(8) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the Commission may not enter an order against a broker-dealer under this clause without a finding of insolvency as to the broker-dealer; or

(9) is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, except as otherwise provided in subsection (b).

The Commission may by order deny, suspend, or revoke any license if it finds that the order is in the public interest and that the applicant or licensee—

(10) has failed reasonably to supervise his agents if he is a broker-dealer; or

(11) has failed to pay the proper filing fee; but the Commission may enter only a denial order under this clause, and it shall vacate any such order when the deficiency has been corrected.

The Commission may not institute a suspension or revocation proceeding solely on the basis of a fact or transaction known to it when the license became effective unless the proceeding is instituted within the next thirty days.

(b) The following provisions shall govern the application of subsection (a)(9):

(1) The Commission may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than (A) the broker-dealer himself if he is an individual or (B) an agent of the broker-dealer.

(2) The Commission may not enter an order solely on the basis of lack of experience if the applicant or licensee is qualified by training or knowledge or both.

(3) The Commission shall consider that an agent who will work under the supervision of a licensed broker-dealer need not have the same qualifications as a broker-dealer.

(4) The Commission shall by rule provide for an examination, which may be written or oral or both, to be taken by any class of, or all, applicants.

(c) The Commission may by order summarily postpone issuance of a license or suspend an effective license pending determination of any proceeding under this section. Upon the entry of the order, the Commission shall promptly notify the applicant or licensee, as well as the employer or prospective employer if the applicant or licensee is an agent, that it has been entered and of the reasons therefor and that within fifteen days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the Commission, the order will remain in effect until it is modified or vacated by the Commission. If hearing is requested or ordered, the Commission, after notice of an opportunity for hearing, may modify or vacate the order or extend it until final determination.

(d) If the Commission finds that any licensee or applicant for a license is no longer in existence, or has ceased to do business as a broker-dealer or agent, or has been adjudicated to be of unsound mind or is subject to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the Commission may by order cancel the license or application.

(e) Withdrawal of a license of a broker-dealer or agent shall become effective thirty days after receipt of an application to withdraw or within such shorter period of time as the Commission may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty days after the application is filed. If a proceeding is pending or instituted, withdrawal shall become effective at such time and upon such conditions as the Commission shall by order determine. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Commission may nevertheless institute a revocation or suspension proceeding under subsection (a)(2) within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which the license was effective.

(f) No order may be entered under any part of this section except the first sentence of subsection (c) without (1) appropriate prior notice to the applicant or licensee (as well as the employer or prospective employer if the applicant or licensee is an agent), (2) opportunity for hearing, and (3) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record. (Aug. 30, 1964, 78 Stat. 626, Pub. L. 88–503, § 10.)

EFFECTIVE DATE

See note to section 2–2402.

§ 2–2410. Investigations and subpenas.

(a) The Commission in its discretion (1) may make such public or private investigations within or without the District as it deems necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder, (2) may require or permit any person to file a statement in writing, under oath or otherwise as the Commission may determine, as to all the facts

and circumstances concerning the matter to be investigated, and (3) may publish information concerning any violation of this chapter or any rule or order hereunder, except that no public statement, notice, or release concerning any investigation, proceeding, or order under this chapter which is not a finding of a hearing examiner or of a Commissioner or a final determination of the Commission shall allege a violation of this chapter or a ground for denial, suspension, or revocation of a license, unless such statement, notice, or release specifies that such allegations are unproved until final determination, and that the purpose of the investigation or proceeding is to determine whether the allegations are true.

(b) For the purpose of any investigation or proceeding under this chapter, the Commission may administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memorandums, agreements, or other documents or records which it deems relevant or material to the inquiry.

(c) In case of contumacy by, or refusal to obey a subpena issued to any person, the United States District Court for the District of Columbia, upon application by the Commission with the approval of the United States Attorney for the District of Columbia, may issue an order compelling such person to appear before the Commission, or the officer designated by it, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) No person shall be excused from attending and testifying or from producing any document or record before the Commission, or the officer designated by it, in obedience to a court order pursuant to subsection (c), on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is by such order compelled, after claiming his privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual testifying shall not be exempt from prosecution and punishment for perjury or contempt committed in testifying.

(e) Any person compelled to appear in person before the Commission or a representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel. (Aug. 30, 1964, 78 Stat. 628, Pub. L. 88–503, § 11.)

EFFECTIVE DATE

See note to section 2–2402.

§ 2–2411. Injunctions.

Whenever it shall appear to the Commission that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule or order hereunder, it may in its discretion bring an action in the United States District Court for the District of Columbia to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court may not require the Commission to post a bond. (Aug. 30, 1964, 78 Stat. 629, Pub. L. 88–503, § 12.)

§ 2–2412. Criminal penalties.

(a) Any person who shall willfully violate any provision of this chapter except sections 2–2402 and 2–2408, or who shall willfully violate section 2–2408 knowing the representation to be false or misleading in any material respect shall upon conviction be fined not more than $5,000 or imprisoned not more than three years, or both.

(b) Any person who shall willfully violate section 2–2402 shall upon conviction be fined not more than $5,000 or imprisoned not more than five years, or both.

(c) Any person who shall willfully violate any rule or order under this chapter shall upon conviction be fined not more than $5,000 or imprisoned not more than one year, or both; but no person may be imprisoned for the violation of any rule or order if he proves that he had no knowledge of the rule or order.

(d) No person shall be prosecuted, tried, or punished for any offense under this chapter or any rule or order hereunder unless the indictment is returned or the information is filed within five years next after such offense shall have been committed.

(e) Nothing in this chapter shall be construed to limit the power of the United States or of the District of Columbia to punish any person for any conduct which constitutes an offense under any other Act of Congress applicable in the District, or under any municipal ordinance or regulation of the District, or at common law. (Aug. 30, 1964, 78 Stat. 629, Pub. L. 88–503, § 13.)

EFFECTIVE DATE

Section 20 of act Aug. 30, 1964, provides: "(a) Sections 3, 13b, 13d, 16, and 25 [Sections 2–2402, 2–2412(b), 2–2412(d), 2–2415, and 2–2418], together with definitions of terms used therein, shall take effect upon approval of this chapter.

"(b) The remaining provisions of this chapter shall take effect at 12:01 antemeridian on the one hundred and eightieth day after approval of this chapter, or, if the one hundred and eightieth day be a holiday in the District, at 12:01 antemeridian on the first business day thereafter."

§ 2–2413. Civil liabilities.

(a) Any person who—

(1) offers or sells a security in violation of section 2–2403(a) or 2–2405(b); or

(2) offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission,

shall be liable to the person purchasing such security from him, and the purchaser may bring a civil action to recover the consideration paid for the security with interest thereon and with costs and reasonable attorney fees less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. For this purpose damages shall be the amount that would be recoverable upon a tender, less the market value of the security when the buyer disposed of it and interest from the date of disposition.

(b) Any person who directly or indirectly controls a seller liable under subsection (a), any partner, officer, or director of such a seller and any person occupying a similar status or performing similar functions, any employee of such a seller who materially aids in the sale, and any broker-dealer or agent who materially aids in the sale shall also be liable jointly and severally with and to the same extent as the seller, unless the nonseller who shall be so liable sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution as in cases of contract among the several persons so liable.

(c) Any tender specified in this section may be made at any time before entry of judgment.

(d) Any liability or cause of action under this section shall survive the death of any person who, if living, would have such a liability or cause of action.

(e) No person may bring an action under this section after two years from the contract of sale. No person may bring an action under this section (1) if the buyer received a written offer, before suit and at a time when he owned the security, to refund the consideration paid for the security together with interest at 6 per centum per annum from the date of payment, less the amount of any income received on the security, and if he failed to accept that offer within thirty days of its receipt, or (2) if the buyer received such an offer before suit and at a time when he did not own the security, unless he rejected the offer in writing within thirty days of its receipt.

(f) No person who has made or engaged in the performance of any contract in violation of any provision of this chapter or of any rule or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit upon the contract.

(g) Any condition, stipulation, or provision binding any person who acquires any security to waive compliance with any provision of this chapter or with any rule or order under this chapter shall be void.

(h) The rights and remedies provided by this chapter shall be in addition to any other rights or remedies that may exist at law or in equity, but this chapter shall not create any cause of action not specified in this or section 2–2404(e). (Aug. 30, 1964, 78 Stat. 629, Pub. L. 88–503, § 14.)

EFFECTIVE DATE

See note to section 2–2402.

§ 2–2414. Scope of chapter and service of process.

(a) Sections 2–2402, 2–2403(a), 2–2405, and 2–2413 shall apply to persons who sell or offer to sell when (1) an offer to sell is made in the District, or (2) an offer to buy is made and accepted in the District.

(b) Sections 2–2404, 2–2403(a), and 2–2405 shall apply to persons who buy or offer to buy when (1) an offer to buy is made in the District, or (2) an offer to sell is made and accepted in the District.

(c) For the purpose of this section, an offer to sell or to buy is made in the District whether or not either party is then present in the District, when the offer (1) originates from the District or (2) is directed by the offeror to the District and received at the place to which it is directed (or at any post office in the District in the case of a mailed offer).

(d) For the purpose of this section, an offer to buy or to sell is accepted in the District when acceptance (1) is communicated to the offeror in the District and (2) has not previously been communicated to the offeror, orally or in writing, outside the District. Acceptance is communicated to the offeror in the District, whether or not either party is then present in the District, when the offeree directs it to the offeror in the District reasonably believing the offeror to be in the District and it is received at the place to which it is directed (or to any post office in the District in the case of a mailed acceptance).

(e) An offer to sell or to buy is not made in the District by anything appearing in (1) any bona fide newspaper or other publication of general, regular, and paid circulation, circulated by or on behalf of the publisher in the District which is not published in the District, or which is published in the District but has had more than two-thirds of its circulation outside the District during the past twelve months, or (2) any radio or television program received in the District which originates outside of the District.

(f) Any applicant for a license under this chapter shall file with the Commission, in such form as it by rule may prescribe, an irrevocable consent appointing each member of the Commission or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor, executor, or administrator which shall arise under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who shall have filed such a consent in connection with one application or offering need not file another. Service may be made by leaving a copy of the process in the office of the Commission, but it shall not be effective unless (1) the plaintiff forthwith shall sent notice of the service and a copy of the process by registered mail to the defendant or respondent at his last address on file with the Commission, and (2) the plaintiff's affidavit of compliance with this subsection shall be filed in the case on or before the return day of the process, if any, or within such further time as the court may allow.

(g) When any person, including any nonresident of the District, shall engage in conduct prohibited or made actionable by this chapter or any rule or order under this chapter and he shall not have filed a consent to service of process under subsection (f) and

personal jurisdiction over him cannot otherwise be obtained in the District, that conduct shall be considered equivalent to his appointment of each member of the Commission, or his successor in office, to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor, executor, or administrator which shall arise from that conduct and which shall be brought under this chapter or any rule or order under this chapter, with the same force and validity as if served on him personally. Service may be made by leaving a copy of the process in the office of the Commission, but it shall not be effective unless (1) the plaintiff forthwith shall send notice of the service and a copy of the process by registered mail to the defendant or respondent at his last known address or shall take other steps reasonably calculated to give actual notice, and (2) the plaintiff's affidavit of compliance with this subsection shall be filed in the case on or before the return day of the process, if any, or within such further time as the court may allow.

(h) For the purposes of subsections (f) and (g) of this section, the term "plaintiff" includes the Commission in any suit, action or proceeding initiated by it.

(i) After service of process under this section, the court, or the Commission in a proceeding before it, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend. (Aug. 30, 1964, 78 Stat. 630, Pub. L. 88–503, § 15.)

EFFECTIVE DATE

See note to section 2–2402.

§ 2–2415. Administration of chapter.

(a) This chapter shall be administered by the Public Service Commission of the District of Columbia. The Commission is hereby authorized to establish such offices and with such names or titles, and to appoint and employ such officers and employees and prescribe their duties, as may be necessary to carry out the provisions of this chapter, and such positions shall be subject to section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of employees and related matters].

(b) All collections, including fees, received pursuant to this Act shall be deposited in the Treasury of the United States in a trust fund from which may be paid, in the same manner as provided by law for other expenditures of the District, the expenses, as authorized by the Commission, of hearings held pursuant to this chapter, including stenographic and reporting services (by contract or otherwise) and rental or purchase of equipment. Whenever the amount of such trust fund exceeds $5,000, the excess shall be transferred to the funds deposited in the Treasury to the credit of the District of Columbia.

(c) Appropriations to carry out the purposes of this chapter are hereby authorized.

(d) A majority of the members of the Commission shall constitute a quorum to do business, and any vacancy shall not impair the power of the remaining members to exercise all the powers of the Commission. In the case of any application, investigation, inquiry, hearing, or proceeding under this chapter, the Commission may designate one of its members or a hearing examiner to examine documents, hear testimony, and submit to the Commission the record of testimony and such documents with his proposed findings and conclusions of fact and law.

(e) The Commission is hereby authorized to make, amend, and rescind such rules, orders, and forms as may be necessary to carry out the provisions of this chapter, including, but not limited to, rules, orders, and forms governing applications and amendments thereto, investigations, inquiries, hearings, and proceedings, and including by rule definitions of any items, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of this chapter. For the purposes of rules and forms, the Commission may classify persons and matters within its jurisdiction and may prescribe different requirements for different classes.

(f) No rule, form, or order may be made, amended, or rescinded, unless the Commission finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this chapter. In prescribing rules and forms the Commission may cooperate with the securities administrator of any State and the Securities and Exchange Commission with a view to effectuating the policy of this chapter to achieve maximum uniformity in the form and content of license applications, records, and reports, and other documents wherever practicable.

(g) The Commission may by rule or order prescribe (1) the form and content of statements, records, reports, and other documents required under this chapter or rules or orders thereunder, (2) the circumstances under which such statements, records, reports or other documents shall be filed with the Commission, and (3) whether any required statements, records, reports, or other documents shall be certified by independent or certified public accountants.

(h) All rules and forms of the Commission made under this chapter shall be published.

(i) No provision of this chapter imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, form, or order of the Commission, notwithstanding that the rule, form, or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(j) A document shall be deemed to be filed or submitted to the Commission when it is received by it during regular business hours.

(k) The Commission shall keep a register of all license applications which are or have ever been effective under this chapter, and all denial, suspension, postponement, or revocation orders entered under this chapter. Such register shall be open for public inspection during regular business hours.

(*l*) License applications and materials submitted therewith or in connection therewith may be made available to the public under such rules as the Commission may prescribe. Such rules may include.

but shall not be limited to, rules prescribing reasonable fees for furnishing photostatic or other copies upon request. The Commission may certify under seal such copy or copies of any document available to the public or any entry in the register, and any copy so certified shall be admitted as evidence with the same effect as the exemplifications of record referred to in section 14–501 of the District of Columbia Code.

(m) The Commission may refer evidence concerning violations of this chapter or of any rule or order under this chapter to the United States Attorney for the District of Columbia who may, with or without such reference, institute criminal proceedings under this chapter. The Commission shall comply with any request of the Attorney General of the United States, the Postmaster General of the United States, the Securities and Exchange Commission, or the United States Attorney for the District of Columbia for any information or evidence coming to it in the administration of the chapter. The Commission in its discretion may refer any information or evidence coming to it in the administration of this chapter to any department or agency of the United States, to the securities administrator of any State, or to any national securities exchange or national securities association registered under the Securities Exchange Act of 1934.

(n) Any hearing held by the Commission pursuant to this chapter shall be public unless the Commission in its discretion and with the consent of all the parties to such hearing order that the hearing be conducted privately. (Aug. 30, 1964, 78 Stat. 632, Pub. L. 88–503, § 16.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934 is set out in 15 U.S.C. ch. 2B.

CODIFICATION

In subsec. (a) the reference "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of employees and related matters]" was substituted for "the Classification Act of 1949", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

EFFECTIVE DATE

Section 20 of act Aug. 30, 1964, provides: "(a) Sections 3, 13b, 13d, 16, and 25 [Sections 2–2402, 2–2412(b), 2–2412(d), 2–2415, and 2–2418], together with definitions of terms used therein, shall take effect upon approval of this chapter.

"(b) The remaining provisions of this chapter shall take effect at 12:01 antemeridian on the one hundred and eightieth day after approval of this chapter, or, if the one hundred and eightieth day be a holiday in the District, at 12:01 antemeridian on the first business day thereafter."

§ 2–2416. Advisory committee.

The President of the Board of Commissioners of the District of Columbia shall appoint a District of Columbia Securities Advisory Committee which shall consist of six members, who shall be residents of the District of Columbia or the State of Maryland or the State of Virginia, at least two of whom shall be actively engaged in the securities business and at least two of whom shall be members of the bar of the District of Columbia. In no case shall more than three members of the Advisory Committee be members of the same political party. The members shall be selected on the basis of their experience and qualifications to advise the Public Service Commission on all phases of the securities business. The members shall be appointed for staggered terms of three years each, with two members appointed each year, to serve without compensation and eligible for reappointment for additional terms, provided that not more than two of the terms are in succession. The duration of the terms of the first members appointed hereunder shall be designated by the President of the Board of Commissioners at the time of their appointment. The members of the Advisory Committee shall select their own chairman. Meetings of the Advisory Committee shall be held when called by the Chairman of the Public Service Commission and may be attended by members of the said Commission. The Advisory Committee shall give the Public Service Commission the benefit of its advice on any and all matters pertaining to the administration of this chapter, particularly the adoption, amendment or repeal of rules, regulations, and forms provided for herein. (Aug. 30, 1964, 78 Stat. 633, Pub. L. 88–503, § 18.)

EFFECTIVE DATE

See note to section 2–2402.

§ 2–2417. Severability.

If any provision of this chapter or the application thereof to any person or circumstance shall be held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are severable. (Aug. 30, 1964, 78 Stat. 633, Pub. L. 88–503, § 19.)

EFFECTIVE DATE

See note to section 2–2402.

§ 2–2418. Change of name of Public Utilities Commission.

The Public Utilities Commission of the District of Columbia established by section 43–201 hereafter shall be known as the "Public Service Commission of the District of Columbia". Wherever reference is made to the Public Utilities Commission of the District of Columbia in any Act of Congress, or in any compact authorized by an Act of Congress, or in any regulation or order, such reference shall be held to be a reference to the Public Service Commission of the District of Columbia. (Aug. 30, 1964, 78 Stat. 634, Pub. L. 88–503, § 21.)

EFFECTIVE DATE

Section 20 of act Aug. 30, 1964, provides as follows: "(a) Sections 2–2402, 2–2412(b), 2–2412(d), 2–2415, and 2–2418, together with definitions of terms used therein, shall take effect upon approval of this chapter.

"(b) The remaining provisions of this chapter shall take effect at 12:01 antemeridian on the one hundred and eightieth day after approval of this chapter, or, if the one hundred and eightieth day be a holiday in the District, at 12:01 antemeridian on the first business day thereafter."

TITLE 3.—BOARD OF PUBLIC WELFARE

Chap. Sec.
1. Board of Public Welfare..... 3–101
2. Public Assistance..... 3–201

Chapter 1.—BOARD OF PUBLIC WELFARE

Sec.
3–101. Board of Charities, Board of Children's Guardians, and National Training School for Girls abolished.
3–102. Board of Public Welfare—Creation—Successor to boards abolished—Employees transferred.
3–103. Composition of board—Term of office—Eligibility of members—Removal—Service without compensation.
3–104. Organization—Meetings—Rules, regulations, and orders.
3–105. Director of Public Welfare—Appointment and duties—Qualifications—Other employees—Compensation.
3–106 Institutions placed under control of board.
3–107. Supervision of personnel of institutions—Appointment and discharge of personnel.
3–108. Regulation of admissions to, and administration of institutions.
3–109. Registration records—System of accounts.
3–110. Powers of Board of Charities transferred.
3–111. General supervision over institutions supported by Congressional appropriations.
3–112. Plans for new institutions to be submitted to board—Investigation of institutions.
3–113. Members and employees to have no interest in contracts.
3–114. Powers of Board of Children's Guardians transferred.
3–115. Contracts for care of dependent children.
3–116. Children over whom board shall have supervision.
3–117. Board to care for dependent and neglected children—Children to be placed in private families—Adoption.
3–118. Antecedents of children to be investigated—Records confidential—Physical and mental care.
3–119. Voluntary aid may be accepted.
3–120. Commitments by Juvenile Court.
3–121. Children under 17 years not to be committed to jail, workhouse, or police station.
3–122. Duties of trustees of National Training School for Girls transferred.
3–123. Annual budgets—Report of activities—Studies of social conditions—Children to be placed with regard to religious faith of parents—Record if placed elsewhere—Religious freedom.
3–124. Wards placed outside District of Columbia, Virginia, and Maryland to be visited.
3–125. Board may discharge from guardianship children entrusted to it.
3–126. Additional duties of Board.
3–127. Assisting child to leave institution without authority—Penalty.

§ 3–101. Board of Charities, Board of Children's Guardians, and National Training School for Girls abolished.

The Board of Charities of the District of Columbia, created by Act of Congress June 6, 1900, the Board of Children's Guardians of the District of Columbia, created by Act of Congress July 26, 1892, the board of trustees of the National Training School for Girls, created under the name of the Reform School for Girls, by Act of Congress July 9, 1888, shall be abolished upon the appointment and organization of the Board of Public Welfare, as hereinafter provided. (Mar. 16, 1926, 44 Stat. 208, ch. 58, § 1.)

REFERENCES IN TEXT

The portions of act July 9, 1888, 25 Stat. 245, ch. 595, which are still in effect appear herein as §§ 32–902 to 32–905, 32–907, and 32–913.

The portions of act July 26, 1892, 27 Stat. 269, ch. 250, which are still in effect appear herein as §§ 3–115 to 3–118.

The portions of act June 6, 1900, 31 Stat. 664, ch. 807, which are still in effect appear herein as §§ 3–111 to 3–113.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3–102.

CROSS REFERENCE

Transfer of powers, duties, and employees, see § 3–102.

§ 3–102. Board of Public Welfare—Creation—Successor to boards abolished—Employees transferred.

There is hereby created in and for the District of Columbia a Board of Public Welfare, hereinafter called the board, which shall be the legal successor to the boards specified in section 3–101 and shall succeed to all of the powers, authority, and property and to all the duties and obligations vested in or imposed by law upon such boards. All employees of the boards specified in section 3–101 shall be the employees of the board for such time as their services may be deemed necessary. (Mar. 16, 1926, 44 Stat. 208, ch. 58, § 2.)

TRANSFER OF FUNCTIONS

Reorganization Order No. 58 as amended, designated Organization Order No. 140 and amended, established under the direction and control of a Commissioner, a Department of Public Welfare, headed by a Director with the purpose of planning, implementing and directing public welfare programs. Reorganization Order No. 58 provided that the previously existing Board of Public Welfare would be abolished. Part V of that order transferred specified functions of the former board to the Department of Public Health and the Department of Public Welfare. The order was issued in accordance with Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to Title 1, Administration.

§ 3–103. Composition of board—Term of office—Eligibility of members—Removal—Service without compensation.

The board shall consist of nine members who shall be appointed by the Commissioners of the District of Columbia for terms of six years: *Provided, however,* That vacancies for unexpired terms, caused by death, resignation, removal, or otherwise, shall be filled by the Commissioners of the District of Columbia for such unexpired terms. No person shall be eligible for membership on the board who has not been a legal resident of the District of Columbia for at least three years. Any members of such board may be removed at any time for cause by the Commissioners of the District of Columbia. Appointments to the board shall be made without discrimination as to sex, color, religion, or political affiliation. The members of the board shall serve

without compensation. (Mar. 16, 1926, 44 Stat. 208 ch. 58, § 3; Apr. 17, 1930, 46 Stat. 170, ch. 176.)

CODIFICATION

A proviso in both the 1926 Act and the 1930 Act, reading: *"Provided,* That the first appointments made under this Act shall be for the following terms: Three persons shall be appointed for terms of two years, three persons shall be appointed for terms of four years, and three persons shall be appointed for terms of six years" was omitted as executed.

AMENDMENT

1930—Act Apr. 17, 1930, provided for the filling of vacancies.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3–102.

§ 3–104. Organization—Meetings—Rules, regulations, and orders.

The board shall elect a chairman, vice-chairman and secretary, who shall severally discharge the duties usual to such offices and shall serve for terms of one year or until their successors are elected The board shall hold not less than nine regular monthly meetings during each year. Special meetings may be held upon the call of the chairman, or, if he be absent or incapacitated, upon the call of the vice-chairman and also upon the call, in writing, of not less than three members. The board shall have authority to make all necessary rules, regulations, and administrative orders governing the organization of its work and the discharge of its duties as will promote efficiency of service and economy of operation (Mar. 16, 1926, 44 Stat. 208, ch. 58, § 4.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3–102.

CROSS REFERENCES

Duties concerning persons found guilty under laws against prostitution, see § 22–2703.

Rules and regulations in general, see § 1–226 and notes.

§ 3–105. Director of Public Welfare—Appointment and duties—Qualifications—Other employees—Compensation.

The Commissioners of the District of Columbia, upon the nomination of the Board, are hereby authorized to appoint a Director of Public Welfare, which position is hereby authorized and created, who shall be the chief executive officer of the Board and shall be charged, subject to its general supervision, with the executive and administrative duties provided for in this Act. The Director shall be a person of such training, experience, and capacity as will especially qualify him or her to discharge the duties of the office. The Director of Public Welfare may be discharged by the Commissioners of the District of Columbia upon recommendation of the Board. The Commissioners of the District of Columbia are authorized, upon the nomination of the Board, to appoint such personnel as may be necessary for the efficient performance of the duties of the Board: *Provided, however,* That all employees of the Board, except the Director, shall be appointed in accordance with and be subject to the provisions of sections 2102, 2953, 3303, 3304, 3319, 3361 and 7352 of title 5, U.S. Code [relating to the civil service], and the rules and regulations made in pursuance thereof in the same manner as members in the classified civil service of the United States, the Commissioners of the District of Columbia, however, being authorized in their discretion to give preference to residents of the District of Columbia. The Civil Service Commission is hereby authorized and directed to confer a competitive civil-service status upon those employees performing services for the Board on the effective date of this section who are citizens of the United States and who, within six months after the effective date of this section, are certified by the Commissioners, upon recommendation of the Board, (a) as having been appointed from among the highest available eligibles from an appropriate register of the Civil Service Commission or (b) as having rendered active service for the Board prior to the effective date of this section, and who qualify in such appropriate noncompetitive examinations as the Civil Service Commission may prescribe, except that as to employees engaged in work in which the Federal Government shares the expense, the Board of Public Welfare shall prescribe such conditions for eligibility to enter appropriate noncompetitive examinations prescribed by the Civil Service Commission as shall conform to the Federal Acts providing for Federal financial participation and to rules and regulations of the Federal agencies administering such Acts. Any employee of the Board who fails to meet these requirements or who fails to take or pass the noncompetitive examination prescribed by the Commission, or who is not certified by the Commissioners, may continue to serve for a period of not more than thirty days after the establishment of appropriate registers. (Mar. 16, 1926, 44 Stat. 209, ch. 58, § 5; Dec. 20, 1941, 55 Stat. 849, ch. 605, § 1.)

REFERENCES IN TEXT

This Act, referred to in the text, means act Mar. 16, 1926, 44 Stat. 208, ch. 58, which is classified to §§ 3–101 to 3–110, 3–114, 3–122 and 3–123.

Effective date of this section, referred to in the text, probably means Dec. 20, 1941, the date of enactment of act Dec. 20, 1941 amending this section.

CODIFICATION

The reference in this section to "sections 2102, 2953, 3303, 3304, 3319, 3361 and 7352 of title 5, U.S. Code, [relating to the civil service,]" was substituted for "U.S. Code, title 5, secs. 638 et seq." on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. In the original of this section, as amended by the act of Dec. 20, 1941, cited to the text, the reference is to "an Act entitled 'An Act to regulate and improve the civil service of the United States, approved January 16, 1883', as amended (U.S.C., title 5, sec. 638 et seq.)". Actually, the act of January 16, 1883 (22 Stat. 403, ch. 27), as amended, was classified to sections 632, 633, 635, 637, 638, and 640—642a of title 5, U.S.C. Such act was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and it is now covered by §§ 1101—1103, 1105, 1301—1303, 1307, 1308, 1917, 2102, 2951, 3302—3306, 3318, 3319, 3321, 3361, 7152, 7321, 7322, and 7352 of revised title 5, U.S.C.; and §§ 638 and 640—642a of former title 5, U.S.C., are now covered by sections 2102, 2953, 3303, 3304, 3319, 3361 and 7352 of revised title 5, U.S.C.

AMENDMENT

1941—Act Dec. 20, 1941, added proviso relating to civil service status for employees of Board.

TRANSFER OF FUNCTIONS

Department of Public Welfare under direction and control of a Commissioner and headed by a Director established, and Board of Public Welfare abolished and specified functions thereof transferred to Department of Public Health and Department of Public Welfare, see note under § 3–102.

§ 3–106. Institutions placed under control of board.

The board shall have complete and exclusive control and management of the following institutions of the District of Columbia: (a) The workhouse at Occoquan in the state of Virginia; (b) the reformatory at Lorton in the state of Virginia; (c) the Washington Asylum and Jail; (d) the National Training School for Girls, in the District of Columbia and at Muirkirk in the state of Maryland; (e) the Gallinger Municipal Hospital; (f) the Tuberculosis Hospital; (g) the Home for the Aged and Infirm; (h) the Municipal Lodging House; (i) the Industrial Home School; (j) Industrial Home School for Colored Children; (k) District Training School in Anne Arundel County, in the state of Maryland. (Mar. 16, 1926, 44 Stat. 209, ch. 58, § 6.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3–102.

Reorganization Order No. 57 as amended, redesignated Organization Order No. 141 and amended, established under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical functions. Prior to its redesignation the order abolished the previously existing Gallinger Municipal Hospital and transferred all of its positions and functions to the new department. It further provided that within the department the District of Columbia General Hospital performs all functions previously performed by Gallinger Municipal Hospital. The redesignated order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to Title 1, Administration.

Management and regulation of the Workhouse at Occoquan in the State of Virginia, the Reformatory at Lorton in the State of Virginia, and the Washington Asylum and Jail was vested in the Department of Corrections by act June 27, 1946, 60 Stat. 320, ch. 507, § 2, set out as section 24–442. The Department of Corrections was abolished and another Department of Corrections established under direction and control of a Commissioner and headed by a Director to take care of persons committed to the Workhouse, Lorton Reformatory, Women's Reformatory and the D.C. Jail. See note under § 24–441.

The direction and control of Gallinger Municipal Hospital and Tuberculosis Hospital had been transferred to the former Health Department of the District of Columbia on July 1, 1937 by act June 29, 1937, 50 Stat. 376, ch. 403, § 1, set out as § 6–117.

CROSS REFERENCES

Control and supervision of District Training School, see § 32–602 et seq.

Exclusive control and management of Industrial Home School, see § 32–501.

§ 3–107. Supervision of personnel of institutions—Appointment and discharge of personnel.

The superintendents and all other employees engaged in the operation of the institutions enumerated in section 3–106 shall be subject to the supervision of the board. Each superintendent shall have the management and control of the institution to which he is appointed and shall be subordinate to the director of public welfare. The superintendent and all other employees of each of the institutions enumerated in section 3–106 shall be appointed by the Commissioners of the District of Columbia upon nomination by the board and shall be subject to discharge by the Commissioners upon recommendation of the board. (Mar. 16, 1926, 44 Stat. 209, ch. 58, § 7.)

SUPERINTENDENT OF GALLINGER MUNICIPAL HOSPITAL; TERMINATION DATE

Act July 5, 1945, 59 Stat. 411, ch. 270, provided for the appointment as Superintendent of Gallinger Municipal Hospital of any retired officer of the United States Public Health Service or retired civilian employee of United States or District of Columbia government with right to elect salary and commutation of living quarters or retired pay and retirement benefits, and terminated six months after the termination of World War II, which was proclaimed at 12 o'clock noon of Dec. 31, 1946, by Proc. No. 2714, Dec. 31, 1946, 12 F.R. 1. Said act July 5, 1945, was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a).

TRANSFER OF FUNCTIONS

Department of Public Welfare under direction and control of a Commissioner and headed by a Director established and Board of Public Welfare abolished and specified functions thereof transferred to Department of Public Health and Department of Public Welfare, see note under § 3–102.

CROSS REFERENCE

Approval of superintendents of prisons, see §§ 24–411 to 24–419.

§ 3–108. Regulation of admissions to, and administration of institutions.

It shall be the duty of the board to make such rules and regulations relating to the admission of persons to, and the administration of, the institutions hereinbefore referred to, as will promote discipline and good conduct of inmates and employees and efficiency and economy in the operation of these institutions (Mar. 16, 1926, 44 Stat. 209, ch. 58, § 9.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3–102. See, also, note under § 32–308 respecting establishment of Department of Public Health and abolition of Gallinger Municipal Hospital.

CROSS REFERENCE

Gallinger Municipal Hospital, and Tuberculosis Hospital commissioners authorized to issue regulations for admission of pay patients, see §§ 32–308 to 32–310.

§ 3–109. Registration records—System of accounts.

Under the authority herein granted the board may prescribe forms of record keeping to secure accuracy and completeness in the registration of persons under care and the services rendered in their behalf. The board may recommend to the Comptroller General of the United States, and the Comptroller General may prescribe, so far as practicable, a uniform system of accounts to record receipts and disbursements and to determine comparative costs of operation. (Mar. 16, 1926, 44 Stat. 209, ch. 58, § 9.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3–102.

§ 3–110. Powers of Board of Charities transferred.

The following powers and duties prior to March 16, 1926, imposed by law upon the Board of Charities shall be vested in the board, and the unexpended balance of all appropriations made for the purpose of discharging such powers and duties shall become available to the board: (a) To provide for the transportation to their respective places of residence of nonresident indigent persons, and to provide for indigent persons, who are legal residents of the District of Columbia, medical care and treatment when necessary, under contracts with such hospitals as are or may be designated by law; (b) to provide for the transportation to their respective places of residence, of nonresident insane persons and to afford hospital care for indigent insane persons who are legal residents of the District of Columbia in such hospital or hospitals as are or may be designated by law; (c) to provide for the maintenance of boys committed by the courts of the District of Columbia to the National Training School for Boys under contracts which are or may be authorized by law; (d) to provide for all other aged, infirm, or needy persons, including women and children, in the manner authorized by law or by appropriations enacted by the Congress. (Mar. 16, 1926, 44 Stat. 210, ch. 58, § 10.)

CODIFICATION

The words "and the unexpended balance of all appropriations made for the purpose of discharging such powers and duties shall become available to the board" are temporary and probably obsolete.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under § 3–102.

CROSS REFERENCES

Aged and infirm persons making application to Commissioners for assistance under the Social Security Act, referral for admission to Home for Aged and Infirm, see § 46–203.

Duty to collect cost of maintenance of insane persons in hospital, see § 21–586.

General provision concerning nonresident insane persons, see § 21–551.

§ 3–111. General supervision over institutions supported by congressional appropriations.

The said Board of Public Welfare shall visit, inspect, and maintain a general supervision over all institutions, societies, or associations of a charitable, eleemosynary, correctional, or reformatory character which are supported in whole or in part by appropriations of Congress, made for the care or treatment of residents of the District of Columbia; and no payment shall be made to any such charitable, eleemosynary, correctional, or reformatory institution for any resident of the District of Columbia who is not received and maintained therein pursuant to the rules established by such Board of Public Welfare, except in the case of persons committed by the courts, or abandoned infants needing immediate care. (June 6, 1900, 31 Stat. 664, ch. 807; Mar. 16, 1926, 44 Stat. 210, ch. 58, § 10.)

CODIFICATION

This section may partially supersede §§ 32–1001, 32–1002, which require the Commissioners to investigate and inspect institutions of charity supported, in whole or in part, by public funds.

AMENDMENT

1926—Act Mar. 16, 1926, conferred the powers and duties of the Board of Charities upon the Board of Public Welfare.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under section 3–102.

§ 3–112. Plans for new institutions to be submitted to board—Investigation of institutions.

All plans for new institutions shall, before adoption of the same, be submitted to the Board of Public Welfare for suggestion and criticism. The commissioners of the District of Columbia may at any time order an investigation by the board, or a committee of its members, of the management of any penal, charitable, or reformatory institution in the District of Columbia; and said board, or any authorized committee of its members, when making such investigation, shall have power to send for persons and papers and to administer oaths and affirmations; and the report of such investigation, with the testimony, shall be made to the commissioners. (June 6, 1900, 31 Stat. 664, ch. 807; Mar. 16, 1926, 44 Stat. 210, ch. 58, § 10.)

AMENDMENT

1926—Act Mar. 16, 1926, conferred the powers and duties of the Board of Charities upon the Board of Public Welfare.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under section 3–102.

§ 3–113. Members and employees to have no interest in contracts.

No member or employee of said board shall be either directly or indirectly interested in any contract for building, repairing, or furnishing any institution which by this chapter the Board of Public Welfare is authorized to investigate and supervise. (June 6, 1900, 31 Stat. 665, ch. 807; Mar. 16, 1926, 44 Stat. 210, ch. 58, § 10.)

AMENDMENT

1926—Act Mar. 16, 1926, conferred the powers and duties of the Board of Charities upon the Board of Public Welfare.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under section 3–102.

§ 3–114. Powers of Board of Children's Guardians transferred.

The following powers and duties prior to March 16, 1926, imposed by law upon the Board of Children's Guardians shall be vested in the board and the unexpended balance of all appropriations made for the purpose of discharging such powers and duties shall become available to the board: (a) The board may make temporary provision for the care of children pending investigation of their status; (b) to have the care and legal guardianship of children who may be committed by courts of competent jurisdiction and to make such provision for their care and maintenance, either temporarily or permanently, in private homes or in public or private institutions, as the welfare of the child may require. The board

shall cause all of its wards placed out under care to be visited as often as may be required to safeguard their welfare and when children are placed in family homes or private institutions, so far as practicable such homes or institutions shall be in control of persons of like faith with the parents of such children: *Provided*, That whenever the board shall for any reason place the child with any organization, institution, or individual other than of the same religious faith as that of the parents of the child, the board shall set forth the reasons for such action in the records of the case; (c) to provide care and maintenance for feeble-minded children who may be received upon application or upon court commitment, in institutions equipped to receive them, within or without the District of Columbia (Mar. 16, 1926, 44 Stat. 210, ch. 58, § 11.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under section 3–102.

BOARD OF GUARDIANS

Act July 26, 1892, 27 Stat. 270, ch. 250, § 7, provided as follows:

"The Commissioners of the District shall have authority to prescribe the form of records to be kept by the board of guardians, and the methods to be employed by them in paying bills and auditing accounts; and an annual report of its operations hereunder shall be made by the board to the superintendent of charities. The superintendent of charities shall have full powers of investigation and report regarding all branches of the work of the board as well as over all institutions in which children are placed by the board; and it shall be his duty to recommend annually the appropriations which in his judgment are necessary to the carrying on of its work."

§ 3–115. Contracts for care of dependent children.

The board shall have the power, subject to the approval of the commissioners, to conclude arrangements with persons or institutions for the care of dependent children at such rates as may be agreed upon. (July 26, 1892, 27 Stat. 269, ch. 250, § 3.)

CODIFICATION

Act July 26, 1892, provided for the employment of two agents and fixed their compensation. It also provided for the election of officers of the Board of Children's Guardian, which board was abolished and its powers and duties transferred to the Board of Public Welfare by act Mar. 16, 1926, 44 Stat. 210, ch. 58, §§ 1, 2 (§§ 3–101, 3–102).

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under section 3–102.

CROSS REFERENCE

Aid to dependent children, see § 3–201 et seq.

§ 3–116. Children over whom board shall have supervision.

Said Board of Public Welfare shall have the care and supervision of the following classes of children: First. All children committed under section 32–209. Second. All children who are destitute of suitable homes and adequate means of earning an honest living, all children abandoned by their parents or guardians, all children of habitually drunken or vicious or unfit parents, all children habitually begging on the streets or from door to door, all children kept in vicious or immoral associations, all children known by their language or life to be vicious or incorrigible whenever such children may be committed to the care of the board by the Juvenile Court of the District: *Provided*, That the laws regulating the commitment of children to the training schools of the District shall not be deemed to be repealed in any part by this section. Third. Such children as the board of trustees of the National Training School for Boys may, in their discretion, commit to the Board of Public Welfare, and power is hereby given the board of trustees of the said school to commit any inmate thereof to the said Board of Public Welfare, conditionally upon the good behavior of the child so committed. Fourth. Under the rules to be established by the board children may be received and temporarily cared for pending investigation or judgment of the court. (July 26, 1892, 27 Stat. 269, ch. 250, § 4; Mar. 19, 1906, 34 Stat. 73, ch. 960, § 8; May 27, 1908, 35 Stat. 380, ch. 200; Mar. 16, 1926, 44 Stat. 210, ch. 58, § 11.)

AMENDMENTS

1926—Act Mar. 16, 1926, transferred the powers and duties of the Board of Children's Guardians to the Board of Public Welfare.

1908—Act May 27, 1908, changed the name of the reform school to the National Training School for Boys.

1906—Act Mar. 19, 1906, changed the words "police or criminal court" to "juvenile court", having conferred original and exclusive jurisdiction of all cases involving legal punishment of children upon the juvenile court.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under section 3–102.

CROSS REFERENCES

Commitment of juveniles by juvenile court, see §§ 16–2307, 16–2308.

Commitment of minors employed in violation of law, see § 36–222.

Duty to designate hospital for treatment to prevent blindness of new-born infants, see § 6–202.

NOTES TO DECISIONS

Effect of marriage of incorrigible

Under this section and other laws giving the courts jurisdiction of an incorrigible female of the age of 15 years, marriage of such a child does not automatically end the right of custody and care by the Government nor give her the right to release, on habeas corpus, from the National Training School to which she has been committed. *Richardson* v. *Browning* (1927, 18 F. 2d 1008, 57 App. D.C. 186).

Rehabilitation

The objective of legislation dealing with juvenile offenders is rehabilitation, not punishment. *In re Kroll* (D.C. Mun. App. 1945, 43 A. 2d 706).

§ 3–117. Board to care for dependent and neglected children—Children to be placed in private families—Adoption.

The Board shall have full power (1) to accept for care, custody, and guardianship dependent or neglected children whose custody or parental control has been transferred to the Board, and to provide for the care and support of such children during their minority or during the term of their commitment; (2) the Board shall also have full power with respect to all children accepted by it for care to place them in private families either without expense or at a fixed rate of board, to place them in institutions willing to receive them either without expense or at a fixed rate of board; (3) to consent to the adoption

of all children committed to its care whose parents have been permanently deprived of custody by court order. (July 26, 1892, 27 Stat. 269, ch. 250, § 5; Mar. 19, 1906, 34 Stat. 73, ch. 960, § 8; Mar. 16, 1926, 44 Stat. 210, ch. 58, § 11; Jan. 12, 1942, 55 Stat. 883, ch. 649, § 3.)

AMENDMENTS

1942—Act Jan. 12, 1942, amended section generally.

1926—Act Mar. 16, 1926, eliminated the provision which made the board the guardian of all children committed to it by the courts and gave the power to board the children in private families and in institutions and re-created this status and power in § 3–114 of this code.

1906—Act Mar. 19, 1906, conferred jurisdiction upon the juvenile court. (See note under § 3–116.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under section 3–102.

CROSS REFERENCE

General provisions concerning apprentices, see §§ 36–121 to 36–133.

§ 3–118. Antecedents of children to be investigated—Records confidential—Physical and mental care.

The antecedents, character, and condition of life of each child received by the Board shall be investigated as fully as possible, and the facts learned entered in permanent records, in which shall also be noted the subsequent history of each child, so far as it can be ascertained. Such records shall be confidential but may be made available in the discretion of the Board. Provision shall be made for study of the physical and mental conditions of children received for care in order that care for each child may be planned to meet his particular physical and mental needs. (July 26, 1892, 27 Stat. 269, ch. 250, § 6; Mar. 16, 1926, 44 Stat. 210, ch. 58, § 11; Jan. 12, 1942, 55 Stat. 883, ch. 649, § 4.)

AMENDMENTS

1942—Act Jan. 12, 1942, added provisions regarding keeping records confidential and regarding physical and mental care.

1926—Act Mar. 16, 1926, transferred the powers and duties of the Board of Children's Guardians to the Board of Public Welfare.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under section 3–102.

§ 3–119. Voluntary aid may be accepted.

The said Board of Public Welfare is authorized to accept voluntary aid in the placement and supervision of children under its care. (May 18, 1910, 36 Stat. 409, ch 248; Mar. 16, 1926, 44 Stat 210, ch. 58, § 11.)

AMENDMENT

1926—Act Mar. 16, 1926, conferred the powers and duties of the Board of Children's Guardians upon the Board of Public Welfare.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under section 3–102.

CROSS REFERENCE

General provision prohibiting voluntary services to District, see § 1–215.

§ 3–120. Commitments by Juvenile Court.

The judge of the Juvenile Court of the District of Columbia is hereby authorized and empowered, at his discretion, to commit to the custody and care of the Board of Public Welfare of the District of Columbia children under seventeen years of age who shall be convicted of petty crimes or misdemeanors which may be punishable with fine or imprisonment; and said Board of Public Welfare shall place, under contract, such children in such suitable homes, institutions, or training schools for the care of children as it may deem wise and proper. (Mar. 3, 1901, 31 Stat. 1095, ch. 847, § 1; Mar 19, 1906, 34 Stat. 73, ch. 960, § 8; Mar. 16, 1926, 44 Stat. 210, ch. 58, § 11.)

REFERENCES IN TEXT

The Juvenile Court of the District of Columbia is now composed of three judges, and the reference in this section to "The judge of the Juvenile Court" is to be construed as meaning any judge of that court. See § 11–1502, and section 17(c) of act Dec. 23, 1963, Pub. L. 88–241, 77 Stat. 620, set out in note under such section.

AMENDMENTS

1926—Act Mar. 16, 1926, conferred the powers and duties of the Board of Children's Guardians upon the Board of Public Welfare.

1906—Act Mar. 19, 1906, conferred jurisdiction upon the juvenile court. (See note under § 3–116.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under section 3–102.

CROSS REFERENCE

Commitment by juvenile court, see § 16–2307.

§ 3–121. Children under 17 years not to be committed to jail, workhouse, or police station.

No court shall commit a child under seventeen years of age, charged with or convicted of a petty crime or misdemeanor punishable by a fine or imprisonment, to a jail, workhouse, or police station, but if such child be unable to give bail or pay a fine, it may be committed to the Board of Public Welfare temporarily or permanently, in the discretion of the court, and said board shall make some suitable provision for said child outside the inclosure of any jail, workhouse, or police station, or said court may commit such child to the National Training School under the laws now providing for such commitment. (Mar. 3, 1901, 31 Stat. 1095, ch. 847, § 2; Mar 16, 1926, 44 Stat. 210, ch. 58, § 11.)

AMENDMENT

1926—Act Mar. 16, 1926, conferred the powers and duties of the Board of Children's Guardians upon the Board of Public Welfare.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under section 3–102.

CROSS REFERENCES

Laws "providing for such commitment", see §§ 32–801 to 32–822, 32–901 to 32–913

Provision of place of detention for minor in custody of juvenile court, see §§ 16–2306, 16–2313.

NOTES TO DECISIONS

Felony

This section did not forbid the commitment to a jail, workhouse, or police station any child under 17 years of age if charged with or convicted of a felony. *Peak* v. *Reed* (1928, 24 F. 2d 619, 58 App. D.C. 44).

§ 3–122. Duties of trustees of National Training School for Girls transferred.

The duties prior to March 16, 1926, imposed by law upon the board of trustees of the National Training School for Girls concerning the admission, care, parole, and discharge of inmates shall be vested in the board. (Mar. 16, 1926, 44 Stat. 210, ch. 58, § 12.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under section 3–102.

CROSS REFERENCE

Control, management, parole, and discharge of inmates, rules and regulations of National Training School for Girls, see § 32–901 et seq.

§ 3–123. Annual budgets—Report of activities—Studies of social conditions—Children to be placed with regard to religious faith of parents—Record if placed elsewhere—Religious freedom.

It shall be the duty of the board to prepare and submit to the commissioners of the District of Columbia, in such manner as they shall require, an annual budget itemizing the appropriations necessary to the proper discharge of the duties imposed by law upon the board and for the support and maintenance of the institutions under its management. The board shall also submit to the commissioners an annual report of its activities and the work carried on under its direction, together with its recommendations for securing more efficient and humane care for all persons in need of public assistance. The board shall study from time to time the social and environmental conditions of the District of Columbia and shall incorporate in its reports the results thereof and recommendations designed to further safeguard the interests and well-being of the children of the District of Columbia and to diminish and ameliorate poverty and disease and to lessen crime. Except in the placement of children in institutions under the public control, the board shall when practicable place them in institutions or homes of the same religious faith as the parents: *Provided*, That whenever the board shall for any reason place the child with any organization, institution, or individual other than of the same religious faith as that of the parents of the child, the board shall set forth the reason for such action in the record of the case. Inmates of public institutions shall be given the fullest opportunity for the practice of their religion. (Mar. 16, 1926, 44 Stat. 210, ch. 58, § 13.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under section 3–102.

§ 3–124. Wards placed outside District of Columbia, Virginia, and Maryland to be visited.

A ward placed outside the District of Columbia and the states of Virginia and Maryland shall be visited not less than once a year by a voluntary agent or correspondent of the Board of Public Welligion. (Mar. 16, 1926, 44 Stat. 210, ch. 58, § 13.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under section 3–102.

§ 3–125. Board may discharge from guardianship children entrusted to it.

The Board of Public Welfare shall have power upon proper showing, in its discretion, to discharge from guardianship any child committed to its care (Mar. 2, 1927, 44 Stat. 1323, ch. 271.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under section 3–102.

§ 3–126. Additional duties of Board.

The Board of Public Welfare of the District of Columbia established by this title, shall, in addition to the other duties and responsibilities imposed upon it by law, have the following duties and responsibilities:

(1) To investigate the circumstances affecting children handicapped by dependency, neglect or mental defect, or who may be in danger of becoming delinquent, and to provide such services for the protection and care of such children as will assist in conserving satisfactory home life;

(2) To safeguard the welfare of children born out of wedlock, by providing services for their mothers and in caring for and in obtaining support for such children;

(3) To assume responsibility for the care and support of dependent or neglected children under the age of eighteen years needing public care away from their own homes, when such need has been determined by careful investigation and is requested by the parent or parents or any person or agency responsible for the care of such children;

(4) To make suitable provision for the reception and care of children in need of detention pending court action, or who are temporarily detained under court order, or who are temporarily homeless;

(5) Upon proper showing, in its discretion, to discharge from custody or guardianship any child committed to its care.

(Jan. 12, 1942, 55 Stat. 882, ch. 649, § 1.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under section 3–102.

§ 3–127. Assisting child to leave institution without authority—Penalty.

Any person who shall entice or attempt to entice, away from any home or institution, any child legally committed to the Board of Public Welfare and placed by said Board in such home or institution, or any person who shall assist or attempt to assist any such child to leave without permission such home or institution, knowing such child to be an inmate of such institution or to have been placed in such home, or any person who shall harbor, conceal, or aid in harboring or concealing any such child who shall be absent without leave from a home or institution in which he has been placed by the Board of Public Welfare, shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall pay a fine of not less than $10 nor more than $100; and any policeman shall have power, and it is hereby made his duty, to

take into custody any child, when in his power to do so, who shall be absent without leave from a home or institution in which he has been placed and return him thereto or to the Receiving Home. (Jan. 12, 1942, 55 Stat. 883, ch. 649, § 2.)

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under section 3–102.

Chapter 2.—PUBLIC ASSISTANCE

Sec.
3–201. Definitions.
3–202. Categories and administration of public assistance.
3–203. Eligibility for public assistance.
3–204. Amount of public assistance.
3–205. Application for public assistance.
3–206. Investigation of applicant.
3–207. Award and payment of public assistance.
3–208. Recipient incapacitated.
3–209. Emergency public assistance.
3–210. Redetermination of grants.
3–211. Records.
3–212. Penalties.
3–213. Funeral expenses.
3–214. Hearings.
3–215. Public assistance not assignable.
3–216. Fraud in obtaining public assistance—Repayment.
3–217. Property—District's claim against estate of recipient.
3–218. Responsible relatives.
3–219. Payment of expenses.
3–220. Delegation of authority.
3–221. Voluntary services.
3–222. Appropriations.
3–223. Validity.

§ 3–201. Definitions.

As used in this chapter, the word "District" means the District of Columbia; the word "Commissioners" means the Commissioners of the District of Columbia or the agents, agencies, officers, and employees designated by them to perform any function vested in them by this chapter; the term "public assistance" means payment in or by money, medical care, remedial care, goods or services to, or for the benefit of, needy persons; the word "recipient" means a person to whom or on whose behalf public assistance is granted and the word "State" includes Puerto Rico, Guam, and the Virgin Islands. (Oct. 15, 1962, 76 Stat. 914, Pub. L. 87–807, § 2.)

EFFECTIVE DATE

Section 27 of act Oct. 15, 1962, provides as follows: "Except as otherwise provided [see § 3–204] in this Act, [this chapter] the provisions of this Act [this chapter] shall take effect on the first day of the second month following the date of enactment."

SHORT TITLE

Section 1 of act Oct. 15, 1962, provided: "That this Act [this chapter] may be cited as the 'District of Columbia Public Assistance Act of 1962'."

REPEAL

Section 24 of act Oct. 15, 1962, repealed chapters 1 and 2 of Title 46, and chapter 7A of Title 32.

EFFECT ON REORGANIZATION PLAN NO. 5

Act Oct. 15, 1962, provides as follows: "This Act [this chapter] shall not be considered as affecting the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), and the performance of any function vested by said plan in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners shall continue to be subject to delegation by said Board of Commissioners in accordance with section 3 of such plan. Any function vested by this Act [this chapter] in any agency established pursuant to such plan shall be deemed to be vested in said Board of Commissioners and shall be subject to delegation in accordance with such plan."

TRANSFER OF FUNCTIONS

Organization Order No. 140 of the Board of Commissioners, dated Feb. 11, 1964, established a Department of Public Welfare in the District of Columbia, headed by a Director. The order provided [Part III] that the Director shall perform all the functions vested in the Commissioners by the District of Columbia Public Assistance Act of 1962 [this chapter], except the adoption and promulgation of regulations. For its complete provisions see the order as set out in the appendix to title 1.

§ 3–202. Categories and administrations of public assistance.

(a) The following categories of public assistance are hereby established:

(1) Old Age Assistance;

(2) Aid to the Blind;

(3) Aid to the Disabled;

(4) Aid to Dependent Children;

(5) General Public Assistance.

(b) This chapter shall be administered by the Commissioners who shall—

(1) provide for maximum cooperation with other agencies rendering services to maintain and strengthen family life and to help applicants for public assistance and recipients to attain self-support or self-care;

(2) establish and enforce such rules and regulations as may be necessary or desirable to carry out the provisions of this chapter;

(3) cooperate in all necessary respects with agencies of the United States Government in the administration of this chapter, and accept any funds, goods, or services payable to the District for public assistance and for administering public assistance;

(4) enter into reciprocal agreements with any State relative to the provision of public assistance to residents and nonresidents.

(Oct. 15, 1962, 76 Stat. 914, Pub. L. 87–807, § 3.)

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

§ 3–203. Eligibility for public assistance.

Public assistance shall be awarded to or on behalf of any needy individual who either (a) has resided in the District for one year immediately preceding the date of filing his application for such assistance; or (b) who was born within one year immediately preceding the application for such aid, if the parent or other relative with whom the child is living has resided in the District for one year immediately preceding the birth; or (c) is otherwise within one of the categories of public assistance established by this chapter: *Provided,* That no persons shall be eligible for old-age assistance established by category number 1, subsection (a) of section 3–202 of this chapter, unless he has resided in the District for five years or more within the nine years immediately preceding application for such assistance,

and who has resided continuously therein for one year immediately preceding the said application. (Oct. 15, 1962, 76 Stat. 914, Pub. L. 87–807, § 4.)

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

§ 3–204. Amount of public assistance.

(a) The amount of public assistance which any person shall receive shall be determined in accordance with regulations approved by the Commissioners.

(b) Such amount as referred to in subsection (a) of this section shall not be less than the full amount determined as necessary on the basis of the minimum needs of such person as established in accordance with such regulations.

(c) The provisions of subsection (b) of this section shall become effective upon enactment. (Oct. 15, 1962, 76 Stat. 915, Pub. L. 87–807, § 5.)

EFFECTIVE DATE

Subsection (b) of this section became effective on Oct. 15, 1962. For effective date of the remainder of chapter see note to section 3–201.

§ 3–205. Application for public assistance.

Application for public assistance shall be accepted from, or on behalf of, any person who believes himself eligible for public assistance. Such application shall be made in the manner and form prescribed by the Commissioners, and shall contain such information as the Commissioners shall require. (Oct. 15, 1962, 76 Stat. 915, Pub. L. 87–807, § 6.)

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

§ 3–206. Investigation of applicant.

Whenever the Commissioners shall receive an application for public assistance, they shall promptly make an investigation and record of the circumstances of the applicant in order to ascertain the facts supporting the application and to obtain such other information as they may require. (Oct. 15, 1962, 76 Stat. 915, Pub. L. 87–807, § 7.)

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

§ 3–207. Award and payment of public assistance.

(a) Upon completion of the investigation, the Commissioners shall determine whether the applicant is eligible for public assistance, the type and amount of public assistance for which he is eligible, and the date from which such public assistance shall begin, and shall furnish public assistance with reasonable promptness to all eligible persons: *Provided,* That such date shall not be prior to the first day of the calendar month in which such determination is made, except that as a result of reconsideration or review of a case, and in order to correct previous erroneous administrative action such as undue delay or improper denial of assistance, an initial payment of public assistance may be made for a period beginning prior to the first day of the calendar month in which the eligibility determination is made.

(b) Money payments of public assistance shall be made by check, except that in emergency cases under section 3–203, money payments of public assistance may be made in cash, and to accomplish such purpose the Commissioners are authorized to make necessary provisions for advancing from time to time to one or more officers or employees of the District such sum or sums as the Commissioners may determine: *Provided,* That no such advance shall be made to any such officer or employee who has not been previously bonded in such amount and form as the Commissioners shall determine. (Oct. 15, 1962, 76 Stat. 915, Pub. L. 87–807, § 8.)

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

§ 3–208. Recipient incapacitated.

Whenever a recipient has been found by the Commissioners to be incapable of taking care of himself, his property, or his money, and a person has been judicially appointed as legal representative, or a responsible person has been appointed by the Commissioners, on behalf of such incapacitated individual for the purpose of receiving and managing such individual's public assistance payments (whether or not he is such individual's legal representative for other purposes), public assistance payments may be made on behalf of such individual to such judicially appointed legal representative, or to such responsible person appointed by the Commissioners. (Oct. 15, 1962, 76 Stat. 916, Pub. L. 87–807, § 9.)

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

§ 3–209. Emergency public assistance.

The Commissioners may grant emergency public assistance pending completion of investigation when eligibility has been established pursuant to section 3–203: *Provided,* That such emergency assistance shall not be granted in any case for a period exceeding thirty days. (Oct. 15, 1962, 76 Stat. 916, Pub. L. 87–807, § 10.)

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

§ 3–210. Redetermination of grants.

All public assistance grants made under this chapter shall be reconsidered by the Commissioners as frequently as they may deem necessary, but in every case the Commissioners shall make such reconsiderations at least once in each year. After such further investigation as the Commissioners may deem necessary, the amount of public assistance may be changed, or may be entirely withdrawn, if the Commissioners find that any such grant has been made erroneously, or if they find that the recipient's circumstances have altered sufficiently to warrant such action. If at any time during the continuance of public assistance the recipient thereof becomes possessed of income or resources in excess of the amount previously reported by him, or if other changes should occur in the circumstances previously reported by him which would alter either his need or his eligibility, it shall be his duty to notify the Commissioners of such fact immediately on the receipt or possession of such additional income or resources, or on the change of circumstances. (Oct. 15, 1962, 76 Stat. 916, Pub. L. 87–807, § 11.)

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

§ 3–211. Records.

(a) The Commissioners are directed to prescribe regulations governing the custody, use, and preservation of the records, papers, files, and communications of the Commissioners relating to public assistance. Except as herein otherwise provided, such regulations shall provide safeguards restricting the use or disclosure of information concerning applicants for, or recipients of, public assistance to purposes directly connected with the administration of public assistance. The Commissioners are authorized in their discretion to include in such regulations provision for the public to have access to the records of disbursement or payment of public assistance made after the effective date of this chapter.

(b) No person who obtains information by virtue of any regulation made pursuant to subsection (a) of this section shall use such information for commercial or political purposes.

(c) This section and section 3–212 shall be construed as State legislation conforming to the requirements of section 618 of the Revenue Act of 1951 (Public Law 183, Eighty-second Congress). (Oct. 15, 1962, 76 Stat. 916, Pub. L. 87–807, § 12.)

REFERENCES IN TEXT

Section 618 of the Revenue Act of 1951 referred to in text is set out as a note to 42 U.S.C. § 302.

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

§ 3–212. Penalties.

Any person violating subsection (b) of section 3–211 shall be punished by a fine of not more than $500, or by imprisonment of not more than ninety days, or by both such fine and imprisonment. Prosecutions for such violations and for violations of section 3–216(a) shall be brought to the District of Columbia Court of General Sessions by the Corporation Counsel or any of his assistants. (Oct. 15, 1962, 76 Stat. 917, Pub. L. 87–807, § 13; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, §1.)

CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

§ 3–213. Funeral expenses.

On the death of a recipient, reasonable funeral expenses may be paid, subject to rules and regulations approved by the Commissioners. (Oct. 15, 1962, 76 Stat. 917, Pub. L. 87–807, § 14.)

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

§ 3–214. Hearings.

An applicant for, or recipient of, public assistance aggrieved by the action or inaction of the Commissioners shall be entitled to a hearing. Each applicant or recipient shall be notified of his rights to a hearing. Upon request for such hearing, reasonable notice of the time and place thereof shall be given to such applicant or recipient. Such hearing shall be conducted in accordance with rules and regulations prescribed by the Commissioners. The findings of the Commissioners on any appeal shall be final. (Oct. 15, 1962, 76 Stat. 917, Pub. L. 87–807, § 15.)

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

NOTES TO DECISIONS

Jurisdiction of Court of General Sessions

Findings of commissioners of public welfare department are final under statute and judicial review of such findings does not lie with District of Columbia Court of General Sessions or any branch thereof. *D. D. Brewer, Director, etc.* v. *M. Simmons and H. Simmons, Jr.* (D.C. App. 1964, 205 A. 2d 60).

Power of domestic relations branch to provide for support of minor children by persons responsible for their care was not intended to extend to actions and duties of local governmental agency dealing with distribution of welfare money provided by separate statute passed by the Congress merely because agency also deals with support and care of dependent minor children. *Id.*

General equity power that is vested in domestic relations branch of District of Columbia Court of General Sessions is applicable only to effectively carry out purposes of its creative statute and encompasses no supervisory control or restraint over actions and funds of local welfare agency operating under separate statute. *Id.*

§ 3–215. Public assistance not assignable.

Public assistance awarded under this chapter shall not be transferable or assignable at law or in equity, and none of the money paid or payable to any recipient under this chapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. (Oct. 15, 1962, 76 Stat. 917, Pub. L. 87–807, § 16.)

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

§ 3–216. Fraud in obtaining public assistance—Repayment.

(a) Any person who by means of false statement, failure to disclose information, or impersonation, or by other fraudulent device obtains or attempts to obtain or any person who knowingly aids or abets such person in the obtaining or attempting to obtain, (1) any grant or payment of public assistance to which he is not entitled; (2) a larger amount of public assistance than that to which he is entitled; or (3) payment of any forfeited grant of public assistance; or any person who with intent to defraud the District aids or abets in the buying or in any way disposing of the real property of a recipient of public assistance, shall be guilty of a misdemeanor and shall be sentenced to pay a fine of not more than $500, or imprisoned not to exceed one year, or both.

(b) Any person who obtains any payment of public assistance to which he is not entitled, or in excess of that to which he is entitled shall be liable to repay such sum, or if continued on assistance, shall have future grants proportionately reduced until the excess amount received has been repaid. In any case in which, under this section, a person is liable to repay any sum, such sum may be collected without interest by civil action brought in the name of the District. Any repayment required by this subsection may, in the discretion of the Commissioners,

be waived in whole or in part, upon a finding by the Commissioners that such repayment would deprive such person, his spouse, parent, or child of shelter or subsistence needed to enable such person, spouse, parent, or child to maintain a minimum standard of health and well-being. (Oct. 15, 1962, 76 Stat. 917, Pub. L. 87–807, § 17.)

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

§ 3–217. Property—District's claim against estate of recipient.

(a) At the death of any person who has received public assistance in the form of old-age assistance, or aid to the disabled pursuant to the provisions of this chapter, or of any Act repealed by this chapter, the District shall have a preferred claim for the amount of any such public assistance against the estate of the deceased recipient. Notwithstanding the provisions of any other law, no statute of limitations shall be deemed applicable as a defense to any claim of the District made pursuant to this section. The Commissioners are authorized to waive any such claim when in their judgment they deem it appropriate to do so.

(b) In addition to the remedy provided by subsection (a) of this section, or by any other provision of law, the Commissioners may file a notice in the office of the Recorder of Deeds in any case where public assistance in the form of old-age assistance or aid to the disabled is granted to any person under this chapter, and such notice shall constitute and have the effect of a lien in favor of the District against the real and personal property of such person for the amount of such public assistance which theretofore has been granted or which may thereafter be granted to, or on behalf of, such persons. Any such lien may be enforced by a proceeding filed in the United States District Court for the District of Columbia. The Commissioners shall file in the office of the Recorder of Deeds a release of any such real and personal property from the effect of such lien whenever there has been repaid to the District the amount of the public assistance theretofore granted to, or on behalf of, such person. The Commissioners are also authorized to release any such lien when in their judgment they deem it appropriate to do so. Such notices and releases may be filed without payment of fees.

(c) If the District collects from any recipient of public assistance in the form of old-age assistance or aid to the disabled or from his estate, or otherwise, any amount with respect to public assistance furnished him under this chapter, or under any Act repealed by this chapter the pro rata share to which the United States is equitably entitled shall be paid to the United States in accordance with the provisions of the Social Security Act, as amended (42 U.S.C. §§ 303, 603, 1203, 1353). The pro rata share due the District shall be deposited as miscellaneous receipts to the credit of the District. (Oct. 15, 1962, 76 Stat. 918, Pub. L. 87–807, § 18.)

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

NOTES TO DECISIONS

[Transferred from former section 46–201 et seq.]

Public policy

There is a sound public policy in favor of upholding contracts which will insure the support of parties attempting to provide for their own support in their old age, and at the same time effect the transfer of properties and businesses to their heirs or relatives prior to death. *G. Ottenberg, assignee etc.* v. *F. Ottenberg, Individually etc.* (D.C.D.C. 1961, 194 F. Supp. 98).

§ 3–218. Responsible relatives.

(a) The husband, wife, father, mother, or adult child of a recipient of public assistance, or of a person in need thereof, shall, according to his ability to pay, be responsible for the support of such person. Any such recipient of public assistance or person in need thereof or the Commissioners may bring an action to require such husband, wife, father, mother, or adult child to provide such support and the court shall have the power to make orders requiring such husband, wife, father, mother, or adult child to pay to such recipient of public assistance or to such person in need thereof such sum or sums of money in such installments as the court in its discretion may direct and such orders may be enforced in the same manner as orders for alimony.

(b) The Commissioners shall be empowered on behalf of the District to sue such husband, wife, father, mother, or adult child for the amount of public assistance granted under this chapter or under any Act repealed by this chapter to such recipient or for so much thereof as such husband, wife, father, mother, or adult child is reasonably able to pay.

(c) All suits, actions, and court proceedings under this section shall be brought in the domestic relations branch of the District of Columbia Court of General Sessions. To the extent applicable, the provisions of sections 11–758 to 11–770 shall be followed in suits, actions, and proceedings brought pursuant to this section. (Oct. 15, 1962, 76 Stat. 918, Pub. L. 87–807, § 19; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

REFERENCES IN TEXT

Sections 11–758 to 11–770, referred to in subsec. (c) of this section were repealed by act Dec. 23, 1963, 77 Stat. 620, Pub. L. 88–241, § 21, and are now covered by sections 11–741, 11–1101 to 11–1103, 11–1121, 11–1122, 11–1141, 11–1161, 13–101, 13–301, 13–302, 15–132, 15–710, 17–302, 17–305 to 17–307.

CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

NOTES TO DECISIONS

Abatement of action for support

Where action had been brought under statute by mother to compel an adult daughter to support the mother, trial court denied relief, and mother appealed but died while appeal was pending, and executor was substituted as appellant, appeal would be dismissed as moot

on ground that mother's death abated the action since the statute is prospective only. *Stone* v. *Brewster* (D.C. App. 1966, 218 A. 2d 41).

Responsibility of adult child

At common law there was no duty on adult child to support his parent, and the statute does not ipso facto place such an obligation on the child; the statutory obligation does not arise until the court first determines the parent's need for support, the child's ability to furnish such support, and the extent to which such support should be furnished. *Stone* v. *Brewster* (D.C. App. 1966, 218 A. 2d 41).

The statute making the husband, wife, father, mother, or adult child of a person in need of public assistance responsible, according to his ability to pay, for support of such person contemplates present and future support, and a child may not be required to make restitution for what should have been paid in the past or to reimburse a private person for support already furnished. *Id.*

§ 3–219. Payment of expenses.

All necessary expenses incurred by the District in carrying out the provisions of this chapter shall be disbursed in the same manner as other expenses of the District are disbursed. (Oct. 15, 1962, 76 Stat. 919, Pub. L. 87–807, § 20.)

§ 3–220. Delegation of authority.

The Commissioners are authorized to make provisions for delegation and subdelegation of any function vested in them by this chapter to any agency, officer, or employee of the District. (Oct. 15, 1962, 76 Stat. 919, Pub. L. 87–807, § 21.)

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

§ 3–221. Voluntary services.

The Commissioners are authorized to accept voluntary services in administering the provisions of this chapter. Such voluntary services shall not create any obligation against the District. (Oct. 15, 1962, 76 Stat. 919, Pub. L. 87–807, § 22.)

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

§ 3–222. Appropriations.

(a) The Commissioners shall include in their annual estimates of appropriations such sums as may be needed to carry out the provisions of this chapter.

(b) Unobligated balances of appropriations for the Department of Public Welfare are hereby made available for the purposes of this chapter. (Oct. 15, 1962, 76 Stat. 919, Pub. L. 87–807, § 23.)

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

§ 3–223. Validity.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby. (Oct. 15, 1962, 76 Stat. 920, Pub. L. 87–807, § 26.)

EFFECTIVE DATE

See note to sections 3–201 and 3–204.

TITLE 4.—POLICE AND FIRE DEPARTMENTS

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2.	United States Park Police	4–201
3.	White House Police	4–301
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Chapter 1.—METROPOLITAN POLICE

Sec.

4–101. Metropolitan Police district created.
4–102. Police districts and precincts to be established by commissioners.
4–103. Appointments—Civil service rules made applicable—Classification.
4–104. Oath of office.
4–105. Service during probationary period—Discharge for unsatisfactory service—Retention equivalent to permanent appointment.
4–106. Classification of officers and privates of police department—Duties of each.
4–106a. Assistant to inspector commanding detective bureau—Rank and pay—Chief of detectives—Rank and pay.
4–107. Age limits on original appointments.
4–108. Repealed.
4–108a. Allowance for use of private motor vehicles by inspectors.
4–109. Repealed.
4–110. Detail of privates for detective work.
4–111. Police not to be detailed as watchmen at municipal building.
4–112 Crossing policemen—Detail—Penalty for failure to stop cars.
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4–184. Appropriations for band authorized.
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4–186. Bonding of Metropolitan Police.
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§ 4–101. Metropolitan Police district created.

The District is constituted a police district, to be called "The Metropolitan Police district of the District of Columbia." (R. S., D. C., § 321.)

TRANSFER OF FUNCTIONS

Reorganization Order No. 46 of the Board of Commissioners dated June 26, 1953 established under the direction and control of the President of the Board of Commissioners, a Metropolitan Police Department headed by a Chief of Police whose authority is to be exercised in accordance with applicable laws, rules, and regulations. The order sets forth the purpose, organization, and functions of the Metropolitan Police Department. The previously existing Metropolitan Police Department was abolished, and its functions transferred together with all positions, personnel, property, records, and unexpended funds relating to those functions to the new Metropolitan Police Department. This order was issued pursuant to Reorganization Plan No. 5 of 1952. This order and plan are set out in the Appendix to Title 1, Administration.

CROSS REFERENCE

Territorial area, see §§ 1–101, 4–102.

NOTES TO DECISIONS

Status of employees

A member of metropolitan police in District of Columbia is not an employee of the United States, but is an employee of the municipal corporation, the District of Columbia. *Wham* v. *United States* (D.C.D.C. 1949, 81 F. Supp. 126, reversed on other grounds 180 F. 2d 38, 86 U.S. App. D.C. 128).

§ 4–102. Police districts and precincts to be established by commissioners.

The Metropolitan Police district of the District of Columbia shall be coextensive with the District of Columbia, and shall be subdivided into such police districts and precincts as the commissioners of said District may from time to time direct. (Feb. 28, 1901, 31 Stat. 819, ch. 623, § 1, par. 1; June 8, 1906, 34 Stat. 221, ch. 3056.)

AMENDMENT

1906—Act June 8, 1906, designated existing provisions as par. 1 and added the words "into such police districts and precincts."

CROSS REFERENCE

Territorial area, see § 1–101.

§ 4–103. Appointments—Civil service rules made applicable—Classification.

The commissioners of said District shall appoint to office, assign to such duty or duties as they may prescribe, and promote all officers and members of said Metropolitan police force: *Provided,* That all officers, members, and civilian employees of the force except the major and superintendent, the assistant superintendents, and the inspectors, shall be appointed and promoted in accordance with the provisions of sections 1101—1103, 1105, 1301—1303, 1307, 1308, 1917, 2102, 2951, 3302—3306, 3318, 3319, 3321, 3361, 7152, 7321, 7322, and 7352 of title 5, U.S. Code [relating to the civil service], and the rules and regulations made in pursuance thereof, in the same manner as members of the classified civil service of the United States: *Provided further,* That the assistant superintendents and inspectors shall be selected from among the captains of the force and shall be returned to the rank of captain when the commissioners so determine: *Provided further,* That privates of class 1, if found efficient, shall serve one year on probation, privates of class 2 shall serve two years subsequent to service in class 1, and privates of class 3 shall include all those privates who have served efficiently three or more years. In order that the full complement of the Metropolitan police force may at all times be maintained, as authorized by law, the commissioners of the District of Columbia are authorized, when vacancies occur in classes 2 and 3 of said Metropolitan police force, which can not be filled by promotion, to appoint privates in class 1 equal in number to the positions vacated in said classes 2 and 3; and the respective salaries specifically provided for such vacant positions may be reduced to pay the salaries of the privates so appointed to class 1. (Feb. 28, 1901, 31 Stat. 819, ch. 623, § 1, par. 2; June 8, 1906, 34 Stat. 221, ch. 3056; May 26, 1908, 35 Stat. 296, ch. 198; Dec. 5, 1919, 41 Stat. 363, ch. 1, § 1.)

CODIFICATION

The reference in this section to "sections 1101—1103, 1105, 1301—1303, 1307, 1308, 1917, 2102, 2951, 3302—3306, 3318, 3319, 3321, 3361, 7152, 7321, 7322, and 7352 of title 5, U.S. Code, [relating to the civil service]" was substituted for "an act entitled 'An Act to regulate and improve the civil service of the United States', approved January 16, 1883, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The act of January 16, 1883 (22 Stat. 403, ch. 27), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the sections of title 5, U.S.C., cited.

AMENDMENTS

1919—Act Dec. 5, 1919, added the two proviso clauses.
1908—Act May 26, 1908, added to the last sentence.
1906—First sentence to the first colon is from act June 8, 1906; the remaining part of act June 8, 1906, providing

for the classification of police officers at the time of the passage of the act was deleted in effect by the later amendments.

TRANSFER OF FUNCTIONS

The office of the Major and Superintendent of Metropolitan Police was abolished and all functions of that office transferred to and vested in the Chief of Police; the Assistant Superintendent, Executive Officer of the Metropolitan Police Department was designated "Deputy Chief of Police, Executive Officer"; the Assistant Superintendent of the Metropolitan Police in command of the Detective Bureau was designated "Deputy Chief of Police, Chief of Detectives"; and each other Assistant Superintendent of the Metropolitan Police was designated "Deputy Chief of Police" by Reorganization Order No. 7 dated and effective Sept. 16, 1952, issued pursuant to Reorganization Plan No. 5 of 1952, 66 Stat. 824. The plan and reorganization orders are set forth in the Appendix to Title 1, Administration.

CROSS REFERENCES

Appointment of Metropolitan Police to White House Police, see 3 U.S.C. § 203.

Appointment of police matrons, see §§ 4–116 to 4–118

Appointment of police surgeons, see § 4–124.

Appointment of property clerk, see § 4–151.

Appointment of special policemen for protection of specific private property, see § 4–115.

Appointment of special policemen for street intersections, see §§ 4–112 to 4–114.

Capitol police for Capitol Building and grounds, see 40 U.S.C. § 206 et seq.

Free transportation by street railway companies see § 44–213.

Membership on the Police and Firemen's Retiring and Relief Board, see note under § 4–510.

Number of privates and officers to be appointed, see § 4–106.

Policemen excluded from unemployment compensation under Social Security Act, see § 46–301.

Police receiving awards for meritorious service in line of duty given preference in promotions, see § 4–703.

Removal of policemen, see notes under §§ 4–121, 4–122.

Resignation of policemen, see § 4–125.

Seniority of policemen serving in armed forces, see §§ 4–902, 4–903.

Special police upon emergency of riot, pestilence, invasion, insurrection, public election, ceremony, or celebration, see § 4–133.

United States Park Police, see §§ 4–201, 4–202, 4–204 to 4–208.

White House Police, see 3 U.S.C. §§ 202—208.

NOTES TO DECISIONS

Decisions under former law

Whole tenor of this act shows that it was intended to supersede previous laws relating to the same subject matter, and to provide a system of government for the District complete in itself, and Commissioners may select such persons, under appropriate regulations, as they may deem suitable and competent for the discharge of their duties, without regard to previous acts. *District of Columbia* v. *Hutton* (1892, 12 S. Ct. 869, 143 U. S. 18, 36 L. Ed. 60).

§ 4–104. Oath of office.

The Commissioners of the District of Columbia shall require an oath of office to be taken by the members of the police force, and shall make suitable provisions respecting the same, and for the registry thereof, and such oath may be taken before one of said commissioners, any of whom is empowered to administer the same. (R. S., D. C., § 351; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

CODIFICATION

Act June 11, 1878, transferred the powers and duties of the Board of Metropolitan Police to the commissioners of the District of Columbia.

§ 4–105. Service during probationary period—Discharge for unsatisfactory service—Retention equivalent to permanent appointment.

No person shall receive a permanent appointment who has not served the required probationary period, but the service during probation shall be deemed to be service in the uniformed force if succeeded by a permanent appointment, and as such shall be included and counted in determining eligibility for advancement, promotion, retirement, and pension in accordance with existing law. If the conduct or capacity of the probationer be unsatisfactory to the commissioners, the probationer shall be notified in writing that at the end of such probationary period he shall for that reason not be retained in the service The retention of the probationer in the service otherwise shall be equivalent to a permanent appointment therein. (Aug. 31, 1918, 40 Stat. 938, ch. 164.)

CODIFICATION

Introductory words reading: "Preliminary to permanent appointment as private, there shall be a period of probation for such time as may be fixed by the commissioners and." were omitted as obsolete. See § 4–827 declaring first year of service to be probationary.

CROSS REFERENCES

Discharge for inefficiency, see § 4–802.

Proceedings for removal of policemen for cause see §§ 4–121, 4–122 and notes thereunder.

§ 4–106. Classification of officers and privates of police department—Duties of each.

The said Metropolitan police force shall consist of one major and superintendent, who shall continue to be invested with such powers and charged with such duties as is provided by existing law; and also of one assistant superintendent with the rank of inspector; four surgeons for the police and fire departments; three inspectors; ten captains; twelve lieutenants, one of whom shall be harbor master; and such number of sergeants; and privates of class three; privates of class two; privates of class one; mounted inspectors, captains, lieutenants, sergeants, and privates on horses and bicycles, and such others as said commissioners may deem necessary within the appropriations made by Congress: *Provided,* That the inspectors shall perform the duties required on June 8, 1906, of captains in the force, that the captains shall command police precincts and perform such duty or duties in connection therewith as the laws and regulations of the said commissioners may prescribe. The major and superintendent of the Metropolitan police shall be charged with the enforcement of all laws and regulations relating to the harbor, and employ the lieutenant, force, and means provided for this service in the execution of the duties appertaining thereto. The Metropolitan Police force shall consist of not less than three thousand officers and members, in addition to the persons appointed as surgeons for the Metropolitan Police force, appointed as police matrons, or appointed as special privates pursuant to section 4–133, and in addition to any retired officer or member of the Metropolitan Police force called back into service pursuant to section 4–514. (Feb. 28, 1901, 31 Stat. 819, ch. 623, § 1, par. 3; Mar. 3, 1905, 33 Stat. 902, ch. 1406; June 8, 1906, 34 Stat. 221, ch. 3056; May 9, 1956, 70 Stat. 148, ch. 243, § 1; June 27, 1961, 75 Stat. 121, Pub. L. 87–60, § 1.)

REFERENCES IN TEXT

Section 4–514, referred to in the text, constituted a paragraph of section 12 of act Sept. 1, 1916, 39 Stat. 720, ch. 433, which was amended generally by section 3 of act Aug. 21, 1957, 71 Stat. 391, Pub. L. 85–157. Section 4–514 related to service of pensioners in emergency cases and is now covered by section 4–528 relating to suspension of retirement provisions during emergency.

AMENDMENTS

1961—Act June 27, 1961, Pub. L. 87–60, struck out the words "two thousand five hundred officers and members" in the last sentence and inserted in lieu thereof the words "three thousand officers and members".

1956—Act May 9, 1956, added the sentence prescribing the size of the Metropolitan Police force.

1906—Act June 8, 1906, increased the numbers of certain officers.

1905—Act Mar. 3, 1905, added the sentence respecting the enforcement of laws and regulations relating to the harbor.

Board of Police and Fire Surgeons, reconstitution of, see note under section 4–124.

ADDITIONAL APPOINTMENTS

Act Mar. 3, 1925, 43 Stat. 1125, ch. 443, § 15, authorized the Commissioners to appoint 100 additional privates for the Metropolitan Police force.

TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police and designation as Deputy Chiefs of Police of former assistant superintendents, see note under section 4–103.

CROSS REFERENCES

Appointment and qualifications of police surgeons, see § 4–124.

Assessment of a tax against premises used for purposes of prostitution, see § 22–2720.

Copy of records of sales of certain weapons, see § 22–3210.

Criminal penalty for impersonating police officer, after expiration of commission, see § 22–1306.

Designation of officer to take bonds and collateral, see § 23–610.

Detail of officer to assist Washington Humane Society in preventing cruelty to children and animals, see §§ 32–209, 32–210.

Duty to enforce pharmacy regulations, see § 2–617.

Duty to enforce Uniform Narcotic Drug Act, see § 33–422.

Duty to investigate pharmacy licenses which may be subject to revocation, see § 2–605.

Enforcement of laws regulating dentists, see § 2–305.

General provisions concerning wharves, see §§ 9–101, 9–102.

Harbor regulations, see §§ 22–1701 to 22–1703a.

Issuance of license to carry a pistol, see § 22–3206.

Member of committee to make awards for meritorious service of police in line of duty, see § 4–702.

Permission to sell certain types of weapons to designated classes of persons, see §§ 22–3208, 22–3210, 22–3214.

Permit to congregate near property of foreign governments, see § 22–1115.

Police rules and regulations, see §§ 4–177, 4–178.

Power to file petition to revoke or suspend nurse's registration, see § 2–407.

Probation officers as possessors of power of police officers, see § 11–1524.

Service of process issued by Court of General Sessions, see § 16–703.

§ 4–106a. Assistant to inspector commanding detective bureau—Rank and pay—Chief of detectives—Rank and pay.

On and after June 20, 1942 the Commissioners of the District of Columbia may assign to duty as assistant to the inspector commanding the detective bureau in the Metropolitan Police Department any officer or member of the Metropolitan Police force and, during the period of such assignment, the said officer or member shall hold the rank and receive the pay of a captain of police and shall be eligible for assignment, by the said Commissioners, as chief of detectives. For the duration of such latter assignment such officer or member shall hold the rank and receive the pay of an assistant superintendent of police. (June 20, 1942, 56 Stat. 374, ch. 427, § 1.)

TRANSFER OF FUNCTIONS

"Deputy Chief of Police, Chief of Detectives" as the designation of former Assistant Superintendent of the Metropolitan Police in command of the Detective Bureau, see note under section 4–103.

§ 4–107. Age limits on original appointments.

The Commissioners of the District of Columbia are authorized to determine and fix the minimum limits of age within which original appointments to the Metropolitan police department may be made. (Jan. 24, 1920, 41 Stat. 398, ch. 54, § 4.)

§ 4–108. Repealed. June 20, 1953, 67 Stat. 76, ch. 146, § 404 (a) (2), (9), eff. July 1, 1953.

Section, acts July 1, 1930, 46 Stat. 839, ch. 783 § 1; June 30, 1949, 63 Stat. 376, ch. 287, § 2, related to salaries of officers and members of the Police Force of the District of Columbia, and is now covered by sections 4–823 to 4–837.

EFFECTIVE DATE OF REPEAL

Repeal of section effective July 1, 1953, see section 407 of act June 20, 1953, set out as a note under section 4–821.

§ 4–108a. Allowance for use of private motor vehicles by inspectors.

The Commissioners of the District of Columbia are hereby authorized to pay to not more than three inspectors of the Metropolitan Police force who may be called upon to use privately owned automobiles in the performance of official duties for each automobile an allowance not to exceed $480 per annum. (June 25, 1947, 61 Stat. 179, ch. 145.)

CODIFICATION

Provisions which authorized the Commissioners to allow not more than $480 per annum to three inspectors for privately owned automobiles used by the inspectors in the performance of official duties during the fiscal years 1945 and 1946 are omitted as executed and obsolete.

§ 4–109. Repealed. June 29, 1953, 67 Stat. 101, ch. 159, § 305, eff. July 1, 1953.

Section, act Feb. 28, 1901, 31 Stat. 820, ch. 623, § 2, provided that certain police officers intrusted with the keeping of money and valuables would be required to give security, and is now covered by section 4–186.

EFFECTIVE DATE OF REPEAL

Repeal of section effective July 1, 1953, see section 305(c) of act June 29, 1953, set out as a note under section 4–186.

§ 4–110. Detail of privates for detective work.

The Commissioners of the District of Columbia are hereby authorized to detail from time to time from the privates of the police force such number of privates as may in their judgment be necessary for special service in the detection and prevention of crime, and while serving in such capacity they shall have the rank of sergeants in the force. (Feb. 28, 1901, 31 Stat. 820, ch. 623, § 3.)

§ 4–111. Police not to be detailed as watchmen at municipal building.

Policemen shall not be detailed for duty as watchmen at the municipal building. (Mar. 3, 1909, 35 Stat. 689, ch. 250.)

§ 4–112. Crossing policemen—Detail—Penalty for failure to stop cars.

The Commissioners of the District of Columbia are hereby authorized and required to station special policemen at such street railway crossings and intersections in the city of Washington as the said commissioners may deem necessary; every car shall be brought to a full stop, immediately before making such crossing or intersection. Neglect or failure to stop any car, as herein provided for shall subject the company to a fine of not to exceed twenty-five dollars for every such neglect or failure, to be recovered in any court of competent jurisdiction. (June 24, 1898, 30 Stat. 489, ch. 496, § 3; Jan. 14, 1933, 47 Stat. 759, ch. 10, § 3.)

AMENDMENT

1933—Act Jan. 14, 1933, providing in part that "All provisions of law making it incumbent upon any street railway company to bear the expense of policemen at street railway crossings and intersections, * * * are hereby repealed" repealed the clause following the word "necessary" and preceding the word "every" reading "The expense of such service to be paid pro rata by the respective companies" and the provision in the last sentence for a fine of not to exceed $25 for failure to pay for the service monthly, i.e., the keeping of special policemen at street railway crossings and intersections.

CROSS REFERENCE

Removal of special policemen without cause or hearing, see § 4–121.

§§ 4–113, 4–114. Transferred.

CODIFICATION

Section 12 of act Sept. 1, 1916, 39 Stat. 718, ch. 433, as amended, formerly classified to sections 4–113, 4–114, 4–501, 4–503, 4–506, 4–507, 4–508 to 4–510, and 4–512 to 4–514, was completely amended by act Aug. 21, 1957, 71 Stat. 391, Pub. L. 85–157, § 3, and is now classified to sections 4–521 to 4–535.

Sections made crossing policemen members of Mertopolitan police force and substituted other members of the force for crossing duty, respectively.

§ 4–115. Special policemen—Appointment and compensation.

The Commissioners of the District of Columbia, on application of any corporation or individual, or in their own discretion, may appoint special policemen for duty in connection with the property of, or under the charge of, such corporation or individual; said special policemen to be paid wholly by the corporation or person on whose account their appointments are made, and to be subject to such general regulations as the said commissioners may prescribe. (Mar. 3, 1899, 30 Stat. 1057, ch. 422.)

CROSS REFERENCES

Police rules and regulations, see §§ 4–177, 4–178.

Removal of special policemen without cause or hearing, see § 4–121.

NOTES TO DECISIONS

License, requirement of

A defendant was neither a "policeman" nor a "law enforcement officer" so as to be exempt from the statute against carrying a pistol without a license, where defendant was a special policeman appointed by the Commissioners and he was not "on actual duty in the area" of the place where he was arrested nor was he "traveling without deviation immediately before and immediately after the period of actual duty between such places and his residence" within the Commissioner's regulation authorizing the carrying of firearms by special policemen under such circumstances. *McKenzie* v. *United States* (D.C. Mun. App. 1960, 158 A. 2d 912).

Scope of employment

Special policemen are appointed "for one sole purpose, that of guarding from depredation the property of those who paid him for his services," and are not required to keep in repair the streets on their beats and may recover from the District for injuries sustained by its negligence in failing to remove the obstructions from the sidewalks. *Klopfer* v. *District of Columbia* (1905, 25 App. D.C. 41).

§ 4–116. Police matrons—Appointments.

The Commissioners of the District of Columbia are authorized to appoint three matrons for the police department of said District. (July 23, 1888, 25 Stat. 340, ch. 694, § 1.)

§ 4–117. Duties of police matrons.

It shall be the duty of said police matrons to search, when necessary, examine, and care for the female prisoners who may be taken into custody by the police, and to take charge of lost or abandoned children while detained at a station-house to which a matron may be assigned, under such rules and regulations as the Commissioners of the District of Columbia may from time to time make. (July 23, 1888, 25 Stat. 340, ch. 694, § 2.)

CROSS REFERENCES

Duties concerning persons found guilty under laws against prostitution, see § 22–2703.

Police rules and regulations, see §§ 4–177, 4–178.

§ 4–118. Police matrons to be recommended by ten women before appointment.

No woman shall be appointed a police matron unless suitable for the position, and recommended therefor in writing by at least ten women of good standing, residents of the District. (July 23, 1888, 25 Stat. 340, ch. 694, § 3.)

§ 4–119. Duties of Board of Commissioners as head of police department.

It shall be the duty of the Commissioners of the District of Columbia at all times of the day and night within the boundaries of said police district—

First. To preserve the public peace;

Second. To prevent crime and arrest offenders;

Third. To protect the rights of persons and of property;

Fourth. To guard the public health;

Fifth. To preserve order at every public election;

Sixth. To remove nuisances existing in the public streets, roads, alleys, highways, and other places;

Seventh. To provide a proper police force at every fire, in order that thereby the firemen and property may be protected;

Eighth. To protect strangers and travelers at steamboat and ship landings and railway-stations;

Ninth. To see that all laws relating to the observance of Sunday, and regarding pawnbrokers, mock auctions, elections, gambling, intemperance, lottery dealers, vagrants, disorderly persons, and the public health, are promptly enforced; and

Tenth. To enforce and obey all laws and ordinances in force in the District, or any part thereof, which are properly applicable to police or health, and not inconsistent with the provisions of this title. The police shall, as far as practicable, aid in the enforcement of garbage regulations. (R. S., D. C., § 335; June 11, 1878, 20 Stat. 107, ch. 180, § 6; July 14, 1892, 27 Stat. 160, ch. 171.)

AMENDMENTS

1892—Act July 14, 1892, added the last sentence.

1878—Act June 11, 1878, abolished the Board of Metropolitan Police and transferred its duties to the Commissioners of the District of Columbia.

CROSS REFERENCES

Arrests to be made known, see § 4–142.

Authority to search and arrest in certain cases, see § 4–145.

Detention of mentally ill persons, see § 21–521 et seq.

Detention of witnesses, see § 4–144.

Discriminatory laws not to be enforced, see § 4–139.

Duty of police force to obey chief of police and Commissioners, see § 4–126.

Duty to enforce Healing Arts Practice Act, see § 2–137.

Enforcement of harbor laws and regulations, see § 4–106.

Enforcement of smoke-prevention laws and regulations, see § 6–804.

General limitation on power of Commissioners, see § 1–801.

General provisions for the disposal of garbage, see §§ 6–501 to 6–511.

Jurisdiction over alley laid out in plats of subdivisions, see §§ 1–623, 7–307.

Motor vehicles of department not to be transferred to other departments, see § 40–504.

Ordinances, rules, and regulations authorized, see §§ 4–105, 4–115, 4–117, 4–121, 4–122, 4–124, 4–139, 4–131, 4–142, 4–144.

Other provisions concerning police power of Commissioners, see §§ 1–218, 1–224, 1–226.

Policemen and Commissioners as possessors of powers of common-law constables, except in service of civil process or collection of civil debt, see § 4–136.

Policing Capitol grounds, see §§ 9–125 to 9–127.

Power and authority of police to arrest without a warrant, see § 4–140.

Power of police to execute warrant for search or arrest, see § 4–138.

Powers of officers in connection with suspected felonies, see § 4–141.

Prosecution of gaming houses and houses of prostitution, see §§ 4–145, 4–146.

NOTES TO DECISIONS

Abuse of authority

Where Board of Commissioners for the District of Columbia issued a directive requiring all police officers to answer lengthy questionnaire of Senate District Crime Investigating Committee, and there was no clear showing of an abuse of lawful authority or wrongful usurpation of power by Board, action would not be enjoined although Board had no authority to issue such a directive under governing statutes. *Barrett* v. *J. Russell Young et al., as the Board of Commissioners for the District of Columbia* (D.C.D.C. 1955, 134 F. Supp. 106).

Power of Commissioners

Under this act a distinction is provided between the police and the schools and an intermediate board is to be appointed for the latter, while the direct control of the police is given to the commissioners. *Eckloff* v. *District of Columbia* (1890, 10 S. Ct. 752, 135 U. S. 240, 34 L. Ed. 120).

Board of Commissioners for the District of Columbia is a creature of statute and derives its power from expressed statutory authority which is in the nature of a restraining rather than an enabling act. *Robert J. Barrett* v. *J. Russell Young et al., as the Board of Commissioners for the District of Columbia* (D.C.D.C. 1955, 134 F. Supp. 106).

§ 4–120. Police jurisdiction to extend to public buildings and grounds.

The provisions of the several laws and regulations within the District of Columbia for the protection of public or private property and the preservation of peace and order are extended to all public buildings and public grounds belonging to the United States within the District of Columbia. (July 29, 1892, 27 Stat. 325, ch. 320, § 15.)

CODIFICATION

This section contains the last part of act July 29, 1892, 27 Stat. 325, ch. 320, § 15. The first part of § 15 of the act appears herein as § 22–3111.

Section is also classified to 40 U.S.C. § 101.

CROSS REFERENCES

Capitol Police for Capitol Building and Grounds, see 40 U.S.C. §§ 206—215.

Jurisdiction and control over Capitol Building, Grounds, and Terraces, see §§ 9–105, 9–119 to 9–130.

Regulation and control over public parks, playgrounds and reservations in general, see §§ 8–103 to 8–105, 8–115 to 8–171.

United States Park Police, see §§ 4–201, 4–202, 4–204 to 4–208.

White House Police, see 3 U.S.C. §§ 202—208.

NOTES TO DECISIONS

Assimilation of subsequently enacted statute

The District of Columbia statute providing that provisions of several laws and regulations within District of Columbia for protection of public or private property and preservation of peace and order are extended to all public buildings and public grounds belonging to United States within District of Columbia assimilated subsequently enacted District of Columbia unlawful entry statute, if such assimilation were necessary. *D. H. Whittlesey et al.* v. *United States* (D.C. App. 1966, 221 A. 3d 86).

§ 4–121. Rules and regulations—Fine, suspension, or dismissal of police—Charges to be heard by trial board.

Said commissioners, in addition to the powers vested in them by law, are also hereby authorized and empowered to make, modify, and enforce, under such penalties as they may deem necessary, all needful rules and regulations for the proper government, conduct, discipline, and good name of said Metropolitan Police force; and said commissioners are hereby authorized and empowered to fine, suspend with or without pay, and dismiss any officer or member of said police force for any offense against the laws of the United States or the laws and ordinances or regulations of the District of Columbia, whether before or after conviction thereof in any court or courts, and for misconduct in office, or for any breaches or violation of the rules and regulations made by said commissioners for the government, conduct, discipline, and good name of said police force: *Provided,* That no person shall be removed from said police force except upon written charges preferred against him in the name of the major and superintendent of said police force to the trial board or boards hereinafter provided for and after an opportunity shall have been afforded him of being heard in his defense; but no person so removed shall be reappointed to any office in said police force: *Provided further,* That special policemen and additional privates may be removed from office by said commissioners, or a majority of them, without cause and without trial: *Provided further,* That charges preferred against any member of said police force to the trial board or boards hereinafter provided for may be altered or amended, in the discretion of such trial board or boards, at any time before final action by such board or boards, under such regulations as the commissioners may adopt, provided the accused have an opportunity to be heard thereon (Feb. 28, 1901, 31 Stat. 819, ch. 623, § 1, par. 4; June 8, 1906, 34 Stat. 221, ch. 3056.)

AMENDMENT

1906—Act June 8, 1906, deleted most of the prior act, retaining only the sense of the last proviso thereof con-

cerning removal by written charges and an opportunity to be heard.

TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under § 4–103.

Regular Police Trial Board, Special Police Trial Board and Complaint Review Board established and former Police Trial and Review Boards abolished, see note under § 4–122.

CROSS REFERENCES

Accepting fees or presents in addition to salary as cause for removal, see § 4–129.

Compromising of a felony or other unlawful act as cause for removal, see § 4–175.

Failure to comply with rules of Commissioners concerning uniforms as cause for removal, see § 4–130.

Inefficiency as cause for removal, see § 4–802.

Joining organization which uses strikes to enforce demands as cause for removal, see § 4–125.

Police rules and regulations, see §§ 4–177, 4–178.

Removal of probationers without hearing, see § 4–105.

Trial boards, see §§ 4–122, 4–601 to 4–604.

NOTES TO DECISIONS

Decisions under former law

Full authority is given to the Commission; and in the absence of rules and regulations directing a different procedure, its act of summary dismissal from the police force of the District of Columbia of officers and members can not be challenged. *Eckloff* v. *District of Columbia* (1890, 10 S. Ct. 752, 135 U. S. 240, 34 L. Ed. 120).

Charges

"While a member of the police force may not be removed except upon written charges, Congress did not intend to require such charges to be formed with the technical accuracy of an indictment for crime. If the nature of the dereliction forming the subject matter of the investigation is pointed out with sufficient clearness and accuracy to enable the accused to prepare his defense, the purpose of the statute is met." *Rudolph* v *Creamer* (1912, 39 App. D. C. 1).

Where charges were filed against members of District of Columbia police force on ground of conduct prejudicial to reputation, good order and discipline of police force, specification that the members stopped in front of certain premises and were given money in attempt to procure or bring about failure of the members to report violation of law, or to take proper police action in connection with gambling business carried on in the premises, was sufficient. *Brodie* v. *Young* (1943, 133 F. 2d 406, 77 U.S. App. D. C. 169).

Hearing on transfer

Even if transfer of District of Columbia police officer having civil service status from detective bureau to traffic bureau was a demotion, he was not entitled to hearing and to be furnished with copies of charges and to be allowed to answer, although police force rules provided that duration of assignment should be dependent on quality of officer's work which was subject to judgment of superintendent and Commissioners. *Maghan* v. *Board of Com'rs of District of Columbia* (1944, 141 F. 2d 274, 78 U. S. App. D. C. 370).

Libel and slander

One who writes communications to police captain and chief of police relating to alleged misconduct of police officer, acting out of what he believes to be his social duty, is entitled to qualified privilege against liability for libel and slander with respect to such communications. *Sowder* v. *William E. Nolan* (D.C. Mun. App. 1956, 125 A. 2d 52).

Performance of duty

Under police regulation providing that in no case will sick time be allowed any member of the police force in excess of 30 days in any one calendar year, except when the same is in direct consequence of injury received in the actual performance of duty, the words "actual performance of duty" are used in a literal sense and mean more than being subject to orders from proper authorities and to call from citizens. *Stanberger* v. *Mason* (1942, 124 F. 2d 401, 75 U. S. App. D. C. 105).

Where policewoman's 30-day sick leave for calendar year had been exhausted before granting of leave, salary for which was in issue, injury received by policewoman when struck by a taxicab while on her way home, after police surgeon, at about 11 a. m., had restored her to duty to report for active duty at 4 p. m. on the same day was not received in the "actual performance of duty" within regulation providing that in no case will sick time be allowed in excess of 30 days in any one calendar year, except when the same is in direct consequence of injury received in the actual performance of duty. *Id.*

Sick leave

It is for the Commissioners of the District of Columbia to make the rules which mark the limits of the classes of injuries for which sick leave on pay in excess of 30 days in any one calendar year will be allowed to members of the police force, and when the rules are clear the courts must enforce them as they find them. *Stanberger* v. *Mason* (1942, 124 F. 2d 401, 75 U. S. App. D. C. 105).

§ 4–122. Trial board—Appointment—Hearings—Findings—Appeals—Existing rules and regulations ratified.

The said commissioners are also hereby authorized and empowered to create one or more trial board or boards, to be composed of such number of persons as said commissioners may appoint thereto, for the trial of officers and members of said police force; and said commissioners are hereby also authorized and empowered to make and amend rules of procedure before such trial board or boards and to change or abolish any such trial board or boards as they may deem proper; and the findings of such trial board or boards shall be final and conclusive unless appeal in writing therefrom is made within five days to the Commissioners of the District of Columbia, the hearings on appeal to be submitted either orally or in writing, and the decision of the said commissioners thereon shall be final and conclusive: *Provided,* That said commissioners shall not be required, in their review of the sentences and findings of such trial board or boards, to take evidence, either oral, written, or documentary, and they shall have power to reduce or modify the findings and penalty of the trial board or boards or remand any case against any officer or member of said police force to such board or boards for such further proceedings as they may deem necessary: *Provided,* That the chairman for the time being of any and every trial board be, and he is hereby, authorized to administer oaths to and take affirmations of witnesses before such board or boards; *And provided,* That the rules and regulations of said Metropolitan police force promulgated and in force on July 8, 1906, are hereby ratified and shall remain in force until changed, altered, amended, or abolished by said commissioners. (Feb. 28, 1901, ch. 623, § 1, par. 5, as added June 8, 1906, 34 Stat. 222, ch. 3056.)

CODIFICATION

The proviso of act June 8, 1906, amending this section and reading: *"Provided further,* That all proceedings now pending before any trial board authorized by said Commissioners shall be continued according to the practice heretofore existing until final determination thereof" has been omitted as obsolete.

TRANSFER OF FUNCTIONS

Reorganization Plan No. 48 of the Board of Commissioners dated June 26, 1953, established in the Government of the District of Columbia a Regular Police Trial Board, a Special Police Trial Board, and a Complaint Review Board to operate in accordance with applicable laws, rules, and regulations. The order sets forth the

purpose, manner of selection of members, and the functions of the boards, and abolished the previously existing Police Trial and Review Boards. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to Title 1, Administration.

NOTES TO DECISIONS

Advisory opinions

The Board of Commissioners of the District of Columbia may not delegate its power to take disciplinary action for dereliction of duty against members of Metropolitan Police Department but there is nothing to prevent Board from seeking outside advisory opinions from members of local bar association or any other group, and such group would not be part of Board and its designated representatives since they would not be bona fide employees of municipal government, and therefore commissioners did not oust themselves of their statutory powers by appointment of three member outside committee to render advisory opinion relating to activities of certain police officers. *In re Bullock* (D.C.D.C. 1952, 103 F. Supp. 639).

Certiorari

Where police tribunals had full jurisdiction of charges against members of police force, specifications were adequate and sufficient and evidence supported finding that the members were guilty, it was not necessary for court to decide whether case was proper one for certiorari or whether the members lost privilege of using certiorari by their long delay in filing petition. *Brodie* v. *Young* (1943, 133 F. 2d 406, 77 U. S. App. D. C. 169).

Evidence

Where members of police force of District of Columbia were charged with conduct prejudicial to reputation, good order, and discipline of police force, evidence supported trial board's determination finding the members guilty and the affirmation of such determination by the Commissioners of the District of Columbia. *Brodie* v. *Young* (1943, 133 F. 2d 406, 77 U. S. App. D. C. 169).

Jurisdiction

Where charges were filed against members of police force of District of Columbia on ground of conduct prejudicial to reputation, good order, and discipline of police force, the police tribunals had full jurisdiction. *Brodie* v. *Young* (1943, 133 F. 2d 406, 77 U. S. App. D. C. 169).

Libel and slander

One who writes communications to police captain and chief of police relating to alleged misconduct of police officer, acting out of what he believes to be his social duty, is entitled to qualified privilege against liability for libel and slander with respect to such communications. *Sowder* v. *William E. Nolan* (D.C. Mun. App. 1956, 125 A. 2d 52).

§ 4–123. Commissioners and major and superintendent of police may administer oaths.

Each commissioner, the major and superintendent of police, have power to administer, take, receive and subscribe all affirmations and oaths to any depositions necessary by the rules and regulations of the commissioners, relating to the Metropolitan Police. (R. S., D. C., § 392; June 11, 1878, 20 Stat. 107, ch. 180, § 6; June 8, 1906, 34 Stat. 221, ch. 3056.)

AMENDMENT

1878—Act June 11, 1878 abolished the Board of Metropolitan Police and transferred its duties to the Commissioners of the District of Columbia.

TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under § 4–103.

CROSS REFERENCE

Oath by members of trial boards, see § 4–604.

§ 4–124. Police surgeons—Qualifications—Duties.

Police surgeons shall have actually and bona fide resided in the District of Columbia for at least two years next preceding the date of their appointment and shall be duly qualified according to law for the practice of medicine and surgery in said District and shall have actively been engaged in the practice of their profession for a period of at least three years next preceding the date of their appointment. Such police surgeons shall be subject to such laws, rules, and regulations as the Commissioners of the District of Columbia may from time to time make, alter, or amend. Such police surgeons shall attend, without charge, all members of said police force and of the fire department of said District for any injury received or disease contracted (whether or not received or contracted in the performance of duty), examine applicants for appointment and retirement in and to said police force and said fire department, and attend such dependent sick and injured, and examine and attend such insane or alleged insane persons as may be taken in charge by said police, and shall perform such other duties as the said commissioners may direct. (Feb. 28, 1901, 31 Stat. 819, ch. 623, § 1; June 8, 1906, 34 Stat. 222, ch. 3056, par. 7; Sept. 27, 1962, 76 Stat. 635, Pub. L. 87–708, § 1.)

AMENDMENT

1962—Act of Sept. 27, 1962, amended the third sentence of this section by adding after the words "fire department of said District" the clause, "for any injury received or disease contracted (whether or not received or contracted in the performance of duty)".

TRANSFER OF FUNCTIONS

Reorganization Order No. 47 of the Board of Commissioners dated June 26, 1953 reconstituted the then existing Board of Police and Fire Surgeons including the Office of the Chairman, with the same name and with the same functions previously performed, including the powers, duties, and authorities of all members, officers, and employees assigned thereto. The order provided that the reconstituted Board should be organizationally a part of the Fire Department. All positions, personnel, property, records and unexpended funds relating to the functions of the previous Board were transferred to the reconstituted Board. The order provided that the previously existing Board would be abolished. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to Title 1, Administration.

CROSS REFERENCES

Commissioners to appoint four police surgeons, see § 4–106.

Other provisions requiring police surgeon to attend firemen, see § 4–404.

Police rules and regulations, see §§ 4–177, 4–178.

Policemen and firemen's retirement and disability, see § 4–521 et seq.

Required to attend members of United States police, see § 4–206.

§ 4–125. Affiliation with organizations advocating strikes, prohibited—Penalties—Conspiracy to interfere with operation of police force—Right of resignation restricted.

No member of the Metropolitan Police of the District of Columbia shall be or become a member of any organization, or of an organization affiliated with another organization, which itself, or any subordinate, component, or affiliated organization of which holds, claims, or uses the strike to enforce its demands. Upon sufficient proof to the Commissioners of the District of Columbia that any member of

the Metropolitan Police of the District of Columbia has violated the provisions of this section, it shall be the duty of the commissioners of the District of Columbia to immediately discharge such member from the service.

Any member of the Metropolitan Police who enters into a conspiracy, combination, or agreement with the purpose of substantially interfering with or obstructing the efficient conduct or operation of the police force in the District of Columbia by a strike or other disturbance shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $300 or by imprisonment of not more than six months, or by both.

No officer or member of the said police force, under penalty of forfeiting the salary or pay which may be due him, shall withdraw or resign, except by permission of the Commissioners of the District of Columbia, unless he shall have given the major and superintendent one month's notice in writing of such intention. (Feb. 28, 1901, ch. 623, § 1, par. 9, as added June 8, 1906, 34 Stat. 223, ch. 3056, and amended Dec. 5, 1919, 41 Stat. 364, ch. 1.)

AMENDMENT

1919—Act Dec. 5, 1919, added the first two paragraphs and reenacted the last paragraph.

TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under § 4–103.

CROSS REFERENCE

Proceedings to remove officer, see §§ 4–121, 4–122.

§ 4–126. Police to respect and obey major and superintendent.

It shall be the duty of the police force to respect and obey the major and superintendent of police as the head and chief of the police force, subject to the rules, regulations, and general orders of the Board of Commissioners. (R. S., D. C., § 344; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

AMENDMENT

1878—Act June 11, 1878, abolished the Board of Metropolitan Police and transferred its powers to the Commissioners of the District of Columbia.

TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under § 4–103.

§ 4–127. Major and superintendent to make quarterly reports.

The major and superintendent of police shall make to the Board of Commissioners quarterly reports in writing of the state of the police district, with such statistics and suggestions as he may deem advisable for the improvement of the police government and discipline of said district. (R. S., D. C., § 346; June 11, 1878, 20 Stat. 107, ch 180 § 6.)

TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under § 4–103.

§ 4–128. Police exempt from military and jury service—Service of process.

No person holding office under this chapter shall be liable to military or jury duty, nor to arrest on civil process, nor to service of subpoenas from civil courts while actually on duty (R. S., D. C., § 353.)

CROSS REFERENCES

Exemption from military service, see § 39–102.
Jury service, exemption, fees for service, see § 11–2302.

§ 4–129. Rewards, presents, fee, or emoluments to police officers—Notice to commissioners—Penalty for failure to give notice.

No member of the Board of Commissioners, or of the police force, shall receive or share in, for his own benefit, under any pretense whatever, any present, fee, or emolument, for police services, other than the regular salary and pay provided by law, except by consent of the Board of Commissioners.

The commissioners, for meritorious and extraordinary services rendered by any member of the police force, in the due discharge of his duty, may permit such member to retain for his own benefit any reward or present tendered him therefor.

Upon notice to the commissioners from any member of the police force, of the receipt by such member of any reward or present, the commissioners may order the member to retain the same, or shall dispose thereof for the benefit of the policemen and firemen's relief fund.

It shall be cause of removal from the police force for any member to receive rewards or presents without giving notice of the same to the commissioners. (R. S., D. C., §§ 357, 358, 359, 360; June 11, 1878, 20 Stat. 107, ch. 180, § 6; Sept. 1, 1916, 39 Stat. 718, ch 433, § 12.)

CODIFICATION

Section 3 of act Aug. 21, 1957, 71 Stat. 391, Pub. L. 85–157, amended section 12 of act Sept. 1, 1916, 39 Stat. 718, to read as set out in sections 4–521 to 4–535. Section 12 of act Sept. 1, 1916, was classified to sections 4–113, 4–114, 4–129, 4–159, 4–160, 4–501, 4–503, 4–506 to 4–510, 4–512 to 4–514, and 11–625. Said § 11–625 was later transferred to, and became, § 11–710c. Said § 11–710c was repealed by act Dec. 23, 1963, 77 Stat. 620, Pub. L. 88–241, § 21(a), and is now covered by § 11–984.

AMENDMENTS

1916—Act Sept. 1, 1916, provided that the funds known as the "Firemen's Relief Fund" and the "Police Relief Fund" shall be designated and known as the "Policemen and Firemen's Relief Fund, District of Columbia."

1878—Act June 11, 1878 abolished the Board of Metropolitan Police and transferred its powers and duties to the Commissioners of the District of Columbia.

PAYMENT AND DEPOSIT OF MONEYS

Payment of moneys to collector of taxes of District of Columbia and deposit in treasury to credit of revenues of District, of moneys deposited to credit of policemen and firemen's relief fund, see § 4–502.

CROSS REFERENCES

Awards for meritorious service, see §§ 4–701 to 4–704.
Compromising a felony or other unlawful act, see § 4–175.
Increase in salary for demonstrated efficiency, see § 4–802.
Proceedings to remove officers, see §§ 4–121, 4–122.

§ 4–130. Clothing to be uniform.

The Board of Commissioners shall provide specific rules for uniform clothing of the police force, and any member shall be removed from the force for not complying with such rules. (R. S., D. C., § 365; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

AMENDMENT

1878—Act June 11, 1878, abolished the Board of Metropolitan Police and transferred its duties to the Commissioners of the District of Columbia.

CROSS REFERENCES

Police rules and regulations, see §§ 4–177, 4–178.
Proceedings for removal of officers, see §§ 4–121, 4–122.

§ 4–131. Appropriations for clothing.

For furnishing uniforms and all other official equipment prescribed by department regulations as necessary and requisite in the performance of duty there is hereby authorized to be appropriated a sum not exceeding $75.00 per annum for each member of the Metropolitan police, to be expended subject to rules and regulations to be prescribed by the commissioners of the District of Columbia. (May 25, 1926. 44 Stat. 635, ch. 381.)

CROSS REFERENCE

Police rules and regulations, see §§ 4–177, 4–178.

§ 4–132. Repealed. July 25, 1956, 70 Stat. 647, ch. 726, § 3.

Section, R.S., D.C., § 373; act Aug. 9, 1935, 49 Stat. 568, ch. 501, related to residence of members of police force and telephone requirement and is now covered by § 4–132a.

§ 4–132a. Residence requirements of members of Police Force and Fire Department.

(a) There shall be no limitation or restriction of place of residence of any officer or member of the Metropolitan Police force, or of the Fire Department of the District of Columbia other than residence within the Washington, District of Columbia, metropolitan district. For the purposes of sections 4–132a and 4–409a, "Washington, District of Columbia, metropolitan district" shall, except as otherwise provided in subsection (b) of this section, be held to include the District of Columbia and the territory adjacent thereto within a radius of twelve miles from the United States Capitol Building. Any officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia living outside of the District of Columbia shall have and maintain a telephone at all times in his residence.

(b) For the purposes of sections 4–132a and 4–409a, the Commissioners of the District of Columbia are hereby authorized, in their discretion, to prescribe the area constituting the "Washington, District of Columbia, metropolitan district" so as to include the District of Columbia and the territory within any radius which is greater than twelve miles but not more than twenty-five miles from the United States Capitol Building. (July 25, 1956, 70 Stat. 646, ch. 726, § 1; Aug. 30, 1964, 78 Stat. 698, Pub. L. 88–517, § 1.)

AMENDMENT

1964—Section 1 of act Aug. 30, 1934, amended section by striking "twenty" and inserting in lieu "twenty-five".

§ 4–133. Appointment of special police without pay.

The Board of Commissioners may, upon any emergency of riot, pestilence, invasion, insurrection, or during any day of public election, ceremony, or celebration, appoint as many special privates without pay, from among the citizens, as it may deem advisable, and for a specified time. During the term of service of such special privates, they shall possess all the powers and privileges and perform all the duties of the privates of the standing police force of the District and such special privates shall wear an emblem to be presented by the commissioners. (R. S., D. C., §§ 378, 379; June 11, 1878, 20 Stat. 107 ch. 180, § 6.)

AMENDMENT

1878—Act June 11, 1878, abolished the Board of Metropolitan Police and transferred its powers and duties to the Commissioners of the District of Columbia.

CROSS REFERENCES

General limitation on power of Commissioners, see § 1–801.
Removal of special police without cause or hearing, see § 4–121.

§ 4–134. Records—General complaint files—Lost, missing, or stolen property—Personnel records of police.

The Board of Commissioners shall cause the Metropolitan Police force to keep the following records:

(1) General complaint files, in which shall be entered every complaint preferred upon personal knowledge of the circumstances thereof, with the name and residence of the complainant;

(2) Records of lost, missing, or stolen property;

(3) A personnel record of each member of the Metropolitan Police force, which shall contain his name and residence; the date and place of his birth; his marital status; the date he became a citizen, if foreign born; his age; his former occupation; and the dates of his appointment and separation from office, together with the cause of the latter;

(4) Arrest books, which shall contain the following information:

(a) Case number, date of arrest, and time of recording arrest in arrest book;

(b) Name, address, date of birth, color, birthplace, occupation, and marital status of person arrested;

(c) Offense with which person arrested was charged and place where person was arrested;

(d) Name and address of complainant;

(e) Name of arresting officer; and

(f) Disposition of case; and

(5) Such other records as the Board of Commissioners considers necessary for the efficient operation of the Metropolitan Police force.

(R. S., D. C., § 386; June 11, 1878, 20 Stat. 107, ch. 180, § 6; June 29, 1953, 67 Stat. 99, ch. 159, title III, § 301(a); Aug. 20, 1954, 68 Stat. 755, ch. 778, § 1.)

AMENDMENTS

1954—Par. 4 added by act Aug. 20, 1954. Former par. (4) redesignated (5).

Par. (5), formerly (4), so redesignated by act Aug. 20, 1954.

1953—Opening clause amended by act June 29, 1953, to require the Metropolitan Police force to keep records and to eliminate reference to books.

Par. (1), formerly designated First, so redesignated by act June 29, 1953 and amended to substitute "complaint files" for "complaint-books."

Par. (2), formerly designated Second, so redesignated by act June 29, 1953 and amended to eliminate "Books of registry of" preceding "lost" and "for the general convenience of the public and of the police of the District" following "property."

Par. (3), formerly designated Third, so redesignated by act June 29, 1953 and amended to restate existing provisions, to change references to books of records of the police and number and residence of family to personnel record of each member of the Metropolitan Police force,

residence and marital status, and to eliminate provision for space in the record to record number of arrests made

Par. (4) (now par. (5)) added by act June 29, 1953.

Act June 11, 1878, abolished the Board of Metropolitan Police and transferred its powers and duties to the Commissioners of the District of Columbia.

CROSS REFERENCE

General limitation on power of Commissioners, see § 1–801.

NOTES TO DECISIONS

Police records

Contents of resume used by police in homicide cases was not within scope of statute requiring police department to keep general complaint files in which name and residence of complainant was entered, and government was not required to produce it for inspection and copying by defense which had already learned identity and residence of informant. *United States* v. *G. E. Ross, Jr.* (D.C.D.C. 1966, 259 F. Supp. 388).

Contents of resume used by police in homicide cases was not within scope of statute requiring police department to keep arrest books containing information concern, inter alia, accused, offense and complainant, and government was not required to produce resume for inspection and copying by defense even if arrest books did not contain all information required by statute to be contained therein. *Id.*

In context of a homicide case in which there is no complainant in usual sense of that term, statute requiring police department to keep general complaint files in which name and address of complainant is entered requires police to record similar information with respect to person who notifies them that crime may have been committed. *Id.*

Purpose of amendment to statute governing police records and requiring police department to keep arrest books containing information concerning, inter alia, accused, offense and complainant was to insure that keeping of such records and their availability to public should be matters of law and not of administrative discretion. *Id.*

§ 4–134a. Central criminal records.

(a) In addition to the records kept under section 4–134, the Metropolitan Police force shall keep a record of each case in which an individual in the custody of any police force or of the United States marshal is charged with having committed a criminal offense in the District (except those traffic violations and other petty offenses to which the Commissioners determine this section should not apply). The record shall show—

(1) the circumstances under which the individual came into the custody of the police or the United States marshal;

(2) the charge originally placed against him, and any subsequent changes in the charge (if he is charged with murder, manslaughter, or causing the death of another by the operation of a vehicle at an immoderate speed or in a careless, reckless, or negligent manner, the charge shall be recorded as "homicide");

(3) if he is released (except on bail) without having his guilt or innocence of the charge determined by a court, the circumstances under which he is released;

(4) if his guilt or innocence is so determined, the judgment of the court;

(5) if he is convicted, the sentence imposed; and

(6) if, after being confined in a correctional institution, he is released therefrom, the circumstances of his release.

(b) The Attorney General, the Corporation Counsel, the United States Commissioner for the District, the clerk of the district court, the clerk of the municipal court, and the Director of the Department of Corrections shall furnish the Chief of Police with such information as the Commissioners consider necessary to enable the Metropolitan Police force to carry out this section. (June 29, 1953, 67 Stat. 100, ch. 159, title III, § 302.)

COMMISSIONERS' ORDER

Commissioners' Order No. 56–1639, dated Aug. 16, 1956, provides that subsec. (a) of this section shall not apply to certain traffic violations listed in said order.

§ 4–134b. Reports by independent police.

Reports shall be made to the Chief of Police, in accordance with regulations prescribed by the Commissioners, of each offense reported to, and each arrest made by, any other police force operating in the District. (June 29, 1953, 67 Stat. 100, ch. 159, title III, § 303.)

DEFINITIONS

Section 102 of act June 29, 1953, provided that:

"(1) The term 'Commissioners' means the Board or Commissioners of the District of Columbia;

"(2) The term 'district court' means the United States District Court for the District of Columbia;

"(3) The term 'United States attorney' means the United States attorney for the District of Columbia;

"(4) The term 'municipal court' means The Municipal Court for the District of Columbia; and

"(5) The term 'District' means the District of Columbia."

§ 4–134c. Notice of release of prisoners.

(a) Whenever the Board of Parole of the District of Columbia has authorized the release of a prisoner under section 24–204, or the United States Board of Parole has authorized the release of a prisoner under section 24–206, it shall notify the Chief of Police of that fact as far in advance of the prisoner's release as possible.

(b) Except in cases covered by subsection (a) of this section, notice that a prisoner under sentence of six months or more is to be released from an institution under the management and regulation of the Director of the Department of Corrections shall be given to the Chief of Police as far in advance of the prisoner's release as possible. (June 29, 1953, 67 Stat. 100, ch. 159, title III, § 304.)

§ 4–135. Records open to public inspection.

The records to be kept by paragraphs (1), (2), (3), and (4) of section 4–134 shall be open to public inspection when not in actual use and this requirement shall be enforceable by mandatory injunction issued by the United States District Court for the District of Columbia on the application of any person. (R. S., D. C., § 389, June 29, 1953, 67 Stat. 99, ch. 159, title III, § 301(b); Aug. 20, 1954, 68 Stat. 755, ch. 778, § 2.)

AMENDMENTS

1954—Act Aug. 20, 1954, added a reference to par. (4) of section 4–134 and the provision for enforcement by injunction.

1953—Act June 29, 1953, amended the section by revising the language to conform to section 4–134, and designating pars. (1)—(3) as the records which shall be open to public inspection.

NOTES TO DECISIONS

Police records

Contents of resume used by police in homicide cases was not within scope of statute requiring police department to keep general complaint files in which name and

residence of complainant was entered, and government was not required to produce it for inspection and copying by defense which had already learned identity and residence of informant. *United States* v. *G. E. Ross, Jr.* (D.C.D.C. 1966, 259 F. Supp. 388).

§ 4–136. Police to have power of constables.

The members of the Board of Commissioners, and of the police force, shall possess in every part of the District all the common-law powers of constables, except for the service of civil process and for the collection of strictly private debts, in which designation fines imposed for the breach of the ordinances in force in the District, shall not be included. (R. S., D. C., §§ 394, 1035; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

AMENDMENT

1878—Act June 11, 1878, abolished the Board of Metropolitan Police and transferred its powers and duties to the Commissioners of the District of Columbia.

NOTES TO DECISIONS

Common-law powers

"At common-law a constable could arrest without warrant one whom he had reason to suspect had committed a felony, and we are aware of no statute in modification of that rule in this District." *Carroll* v. *Parry* (1919, 48 App. D.C. 453.)

§ 4–137. Preservation and destruction of records.

All records of the Metropolitan Police force shall be preserved, except that the Board of Commissioners, upon recommendation of the major and superintendent of police, may cause records which it considers to be obsolete or of no further value to be destroyed. (R. S., D. C., § 390; June 11, 1878, 20 Stat. 107, ch. 180, § 6; June 29, 1953, 67 Stat. 99, ch. 159, title III, § 301(c).)

AMENDMENTS

1953—Act June 29, 1953, amended the section to provide for preservation and destruction of records and to eliminate requirement respecting the keeping and binding of police returns and reports by the Commissioners.

1878—Act June 11, 1878, abolished the Board of Metropolitan Police and transferred its powers and duties to the Commissioners of the District of Columbia.

§ 4–138. Execution of warrants.

Any warrant for search or arrest, issued by any magistrate of the District, may be executed in any part of the District by any member of the police force, without any backing or indorsement of the warrant, and according to the terms thereof; and all provisions of law in relation to bail in the District shall apply to this chapter. (R. S., D. C., § 395.)

CROSS REFERENCES

Arrest by officers pursuing fugitive into District, under Uniform Act on Fresh Pursuit, see § 23–501 et seq.

Duties under search warrant, see § 23–301.

Execution of search warrant under Alcoholic Beverage Control Act, see § 25–129.

Execution of search warrant under Uniform Narcotic Drug Act, see § 33–414.

Service of process issued by Court of General Sessions, see § 16–703.

§ 4–139. Discriminating laws not to be enforced.

The said Board of Commissioners shall not enforce any law or ordinance discriminating between persons in the administration of justice. (R. S., D. C., § 396; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

AMENDMENT

1878—Act June 11, 1878, abolished the Board of Metropolitan Police and transferred its powers and duties to the Commissioners of the District of Columbia.

§ 4–140. Arrests without warrant.

The several members of the police force shall have power and authority to immediately arrest, without warrant, and to take into custody any person who shall commit, or threaten or attempt to commit, in the presence of such member, or within his view, any breach of the peace or offense directly prohibited by Act of Congress, or by any law or ordinance in force in the District, but such member of the police force shall immediately, and without delay, upon such arrest, convey in person such offender before the proper court, that he may be dealt with according to law. (R. S., D. C., § 397.)

CROSS REFERENCES

Arrest by inspectors of weights, measures, and markets see § 10–126.

Arrest by officers pursuing fugitives into District, under Uniform Act on Fresh Pursuit, see § 23–501 et seq.

Arrest without warrant of violations of laws against cruelty to animals, see § 32–205.

NOTES TO DECISIONS

Appeal and error

Record on appeal from conviction for carrying concealed pistol without license failed to establish plain error warranting reversal, notwithstanding failure to raise issue below, on ground that defendant's arrest for disorderly conduct was sham employed by police as gamble for detecting larger crime. *H. Johnson* v. *United States* (1966, 370 F. 2d 489, 125 U.S. App. D.C. 43).

Applicability of Federal Rules in Municipal Court

Federal Rules of Criminal Procedure do not apply to proceedings in District of Columbia Municipal Court (now District of Columbia Court of General Sessions) in which the judges try misdemeanors, although they do govern proceedings in which the judges act as committing magistrates. *K. B. Larkin* v. *United States* (D. C. Mun. App. 1958, 144 A. 2d 100).

Arrest by narcotics officer

Local narcotics officer had authority extended by statute to police officers generally to make arrest without warrant of person committing offense in his presence of drinking alcoholic beverage in public place. *L. R. Hutcherson* v. *United States* (1965, 345 F. 2d 964, 120 U.S. App. D.C. 274

Arrest, definition of

Evidence that from time that police stopped defendant because of traffic violations he was not free to go, that police intended to take him to police station, and that defendant felt he was being detained established that defendant was in fact arrested by such officers. *M. L. Brown* v. *United States* (1966, 365 F. 2d 976, 125 U.S. App. D.C. 43).

Mere detention does not give rise to arrest in all circumstances, and police may question citizen even though such questioning may involve momentary detaining. *Id.*

"Arrest" occurred when police officer waved motorist to a halt and restricted his liberty of movement pursuant to traffic violation, notwithstanding officer's testimony that he did not place motorist under arrest until after glove compartment had been opened and numbers slips discovered, when officer formally arrested him for both traffic violation and lottery violation. *United States* v. *Washington* (D.C.D.C. 1965, 249 F. Supp. 40).

A man is under "arrest" at that point when officer has effectively restrained him and he is cognizant of that restraint, not necessarily when officer formally proclaims that he is being taken into custody. *Id.*

Action of police officer, who released defendant to custody of his mother upon learning that he was a juvenile, on understanding that she would bring him to police headquarters, constituted an "arrest." *United States* v. *Willis* (D.C.D.C. 1965, 248 F. Supp. 265).

The term "arrest" may be applied where a person is taken into custody or restrained of his full liberty, or where detention of person in custody is continued for even a short period of time. *Morton* v. *United States* (1945, 147 F. 2d 28, 79 U.S. App. D.C. 329, certiorari denied 65 S. Ct. 1015, 324 U.S. 875, 89 L. Ed. 1428). See, also, *Hanna* v. *The Meteor* (1950, 179 F. 2d 957); *United States* v *Willis* (D.C.D.C. 1965, 248 F. Supp. 265).

Arrest, illegal

Offense of failure to exhibit operator's permit could not be upheld since it was directly traceable to illegal stopping in District of Columbia by Maryland state police officer and subsequent illegal arrest by the United States Park Police officer, even though committed within officer's presence. *District of Columbia* v. *Perry* (D.C. App. 1966, 215 A. 2d 845).

Illegality of arrest is material when it forms basis for motion to suppress evidence obtained as result of such arrest. *Id.*

Where police stopped moving automobile, not for purpose of routine interrogagtion but to investigate suspected connection between occupants of automobile and felony, there was not momentary detention but unlawful arrest for investigation. *H. Bowling* v. *United States* (1965, 350 F. 2d 1002, 122 U.S. App. D.C. 25).

Arrest without warrant

Where defendant, who was known to police as a narcotics addict, was seen to surreptitiously take a small brown envelope from a person who was known by police to be a narcotic peddler, arrest of defendant immediately upon street without a warrant and search of his person was lawful. *United States* v. *Simms* (D.C.D.C. 1959, 171 F. Supp. 834).

Officer, who found billfold containing numbers slips, possession of which constituted crime, had right to determine owner and to arrest him, and, therefore, when party admitted ownership of billfold, no warrant for his arrest was necessary. *Roseborough* v. *United States* (D. C. Mun. App. 1952, 86 A. 2d 920).

Where police officers were in a position to see a crime committed in their presence, and saw narcotics paraphernalia in room and defendant in act of injecting himself, officers were under duty to arrest offender immediately without a warrant. *P. C. Reid* v. *United States* (D.C. App. 1964, 201 A. 2d 867).

Court in prosecution for unlawful entry was not required to inquire into legality or illegality of defendant's arrest, where no evidence was obtained as result of arrest. *L. E. Smith* v. *United States* (D.C. Mun. App. 1961, 173 A. 2d 739).

Circumstances warranting arrest

An arrest for an offense committed in actual view of police officer is lawful. *Hoover* v. *District of Columbia* (D. C. Mun. App. 1945, 42 A. 2d 730).

Where officers knew, before going to defendant's room, that another had been killed, and that liquor dealer had identified defendant as the man who had purchased liquor, prior to the killing, in a bottle of same kind, and same stamp number as one found at scene of murder, and who had come back later for more liquor, with blood on his clothing, evidence was sufficient to justify an arrest without a warrant, and shirt and trousers taken from defendant's closet and partly filled bottle of whisky and newspaper taken from table in his room were properly admitted in evidence. *Morton* v. *United States* (1945, 147 F. 2d 28, 79 U.S. App. D.C. 329, certiorari denied 65 S. Ct. 1015, 324 U.S. 875, 89 L. Ed. 1428). See, also, *Hanna* v. *The Meteor* (1950, 179 F. 2d 957).

Confession

Statements which police elicited from defendant on day of his arrest, after victim had positively identified defendant to satisfaction of arresting officer about 30 minutes after arrest and before defendant was taken before committing magistrate were inadmissible. *C. L. Ricks* v. *United States* (1964, 334 F. 2d 964, 118 U.S. App. D.C. 216).

Construction

Where Congress enacted two statutes applicable to different jurisdictions but both requiring that an accused be taken promptly before a committing officer, courts must assume the congressional intention in both instances was the same and give each statute the same construction. *Hayes* v. *District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 709).

Delay in presentment before magistrate

Once police delay accused's presentment before magistrate for production of evidence, detention becomes illegal and time for admissible threshold confessions has passed. *H. W. Greenwell* v. *United States* (1964, 336 F. 2d 962, 119 U.S. App. D.C. 43).

Evidence

Where police officer, after making informal arrest for traffic violations, searched glove compartment of automobile for driver's registration card, discovering numbers slips, and then formally arrested driver for both traffic violation and lottery violation, and made further search of automobile for lottery evidence, the lottery evidence was not subject to suppression. *United States* v. *Washington* (D.C.D.C. 1965, 214 F. Supp. 40).

Where accused confessed guilt and consented to officers going to his home to recover stolen property shortly after his arrest, evidence of confession, and stolen property, were admissible, notwithstanding that accused was not arraigned until eight days later. *United States* v. *Mitchell* (1944, 64 S. Ct. 896, 322 U.S. 65, 88 L. Ed. 1140, rehearing denied 64 S. Ct. 1257, 322 U.S. 770, 88 L. Ed. 1595).

Confessions made while a defendant is under arrest are admissible in evidence if voluntarily made and if the rule requiring defendant to be promptly taken before a committing magistrate is not violated, whether the arrest was legal or illegal. *Smith* v. *United States* (1958, 254 F. 2d 751, 103 U.S. App. D.C. 48).

In prosecution for narcotics violation, inculpatory statement made immediately on the arrest and without there having been any illegal detention was admissible, and this was so whether the arrest was legal or illegal. *Id.*

Where officers, who had been informed by arrested addict that certain person had sold him narcotics procured at apartment at certain address, arranged for purchase of narcotics from that person, whom they followed to apartment building and arrested in taxicab with narcotics and marked bills, and subsequently occupants of apartment opened door on being informed of presence of officers but left in place chain lock which officers broke, and officers entered and arrested occupants, arrest was lawful, under such exceptional circumstances, and marked money seized in search of apartment was admissible in evidence in narcotics prosecution of occupants. *Shepherd* v. *United States* (1957, 244 F. 2d 750, 100 U.S. App. D.C. 302).

A voluntary confession is not rendered inadmissible because obtained during an illegal detention provided it was not induced by the illegal detention. *Sykes* v. *United States* (1944, 143 F. 2d 140, 79 U.S. App. D.C. 97).

Where defendant, after arrest but prior to arraignment, denied having any connection with robbery but admitted being in company of two other men, charged with same offense, shortly before and shortly after the robbery, admission of evidence of defendant's statement was not error where statement was not claimed to have been coerced. *Id.*

The rule excluding from evidence a confession elicited during a period of illegal detention or delay between arrest and arraignment is applicable to proceedings in the District of Columbia Municipal Court (now District of Columbia Court of General Sessions). *K. B. Larkin* v. *United States* (D.C. Mun. App. 1958, 144 A. 2d 100).

Any delay in arraignment after confession is immaterial and could have no retroactive effect on validity of confession. *Id.*

The period of time from formal arrest of defendant at 11:00 a. m., after he had made oral confession, to the conclusion of dictation of written confession at 12:40 p. m. the same day, which was simply used to reduce oral statements to written form, was legitimate delay and permissible. *Id.*

Delay from 10:00 a. m., when defendant arrived at police headquarters at officer's request, to 11:00 a. m. when oral admissions were made, was not so unreasonable as to render inadmissible written confessions based on the oral admissions, where no interrogation took place during

such period but defendant and officers were waiting arrival of complaining witness so that identification could be made and the oral admissions were made promptly and spontaneously upon being confronted with complainant's version of incident especially in view of police officer's testimony that defendant was free to come and go. *Id.*

Where defendant was arrested for vagrancy on Sunday, July 4, but criminal division of the Municipal Court (now District of Columbia Court of General Sessions) was in session Monday notwithstanding that Monday was a legal holiday and defendant was not taken into court until Tuesday, defendant's detention was unlawful and testimony of arresting officer in vagrancy prosecution as to admissions made to him by defendant after arrest was improperly admitted. *Burns* v. *District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 714).

The rule that those statements obtained by the police through an unlawful detention are inadmissible against defendant does not exclude from evidence all statements made by defendant while in custody of the police. *Clark* v. *District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 711).

Where defendant was arrested Saturday afternoon while court was not in session but was taken to court Monday morning when court reopened, the detention was not illegal so as to justify excluding statement made by defendant to officer while under arrest. *Id.*

Where defendant was arrested without warrant Friday evening and could have been taken to court for arraignment on Saturday but was not taken into court until Tuesday, the detention was unlawful, and, in prosecution for vagrancy which followed, admission of statements made by defendant to arresting officer was error notwithstanding statements were made at time of arrest and while detention was still lawful. *Hayes* v. *District of Columbia* (D. C. Mun. App. 1944, 34 A. 2d 709).

Admission of unsolved housebreakings and larcenies made a number of hours after defendant had been arrested at 12:25 a.m. upon probable cause for attempted housebreaking was inadmissible against defendant who was not presented before a commissioner until some time after 10 a.m. *Coleman* v. *United States* (1963, 317 F. 2d 891, 115 U.S. App. D.C. 191).

Issue of fact

Whether defendant's arrest for disorderly conduct was sham, employed by police as gamble for detecting larger crime, was one for inference to be drawn by fact-finder based upon credibility and demeanor. *H. Johnson* v. *United States* (1966, 370 F. 2d 489, — U.S. App. D.C. —).

Lawful arrest

Arrest of defendant, who was observed by officers running across street from church doorway at midnight, and who, when stopped, used obscene language toward officers, on charges of disorderly conduct was lawful, and thus incriminating statement made by defendant and pistol found near scene of arrest were not inadmissible on the grounds asserted. *H. Johnson* v. *United States* (1966, 370 F. 2d 489, — U.S. App. D.C. —).

Not in officer's view

Defendant's arrest by United States Park Police officer for offenses of operating automobile in excess of speed limit and while under influence of intoxicating liquor was invalid where offenses were not committed in presence of or within view of officer. *District of Columbia* v. *Perry* (D.C. App. 1966, 215 A. 2d 845).

An officer may not arrest for a misdemeanor, in the District, without a warrant, if not committed in his view *Maghan* v. *Jerome* (1937, 88 F. 2d 1001, 67 App. D.C. 9).

Probable cause for arrest

Police officers, who, after observing defendant's violations of traffic regulations, stopped his automobile, and who, while questioning him as to such violations, heard over police radio that robbery had been committed by person answering defendant's general appearance and driving automobile similar to that driven by defendant, had probable cause for arresting defendant on robbery charge. *M. L. Brown* v. *United States* (1966, 365 F. 2d 976, 125 U.S. App. D.C. 43).

Although observations by victim of crime may be faulty in some respects, such mistakes are irrelevant if there is sufficient particularized information to constitute probable cause for arrest based on such observations. *Id.*

Where police continued their detention of arrested defendant, after having probable cause to believe that defendant was wanted robber described over police radio, arrest of defendant also became one for robbery, and whether or not specific statement of that fact was made to defendant was irrelevant. *Id.*

Arrest without warrant may be made if there is probable cause to believe that felony has been committed and that arrested person committed it, or if a misdemeanor has been committed in presence of arresting officer. *S. A. Curtis* v. *United States and District of Columbia* (D.C. App. 1966, 222 A. 2d 840).

Where defendant set off hotel burglar alarm by leaving through side door and returned inside with employee who called police and arresting officer found defendant sitting quietly at desk, officer lacked probable cause to believe that the felony had been committed. *Id.*

Officers who, in responding to radio report of possible robbery, found defendant being restrained outside dwelling, who observed one victim still handcuffed to stair rail, and who were informed by men restraining defendant that they had observed him fleeing from house, had probable cause to believe that defendant had committed crime and thus had probable cause for arrest. *Kennedy* v. *United States* (1965, 353 F. 2d 462, 122 U.S. App. D.C. 291).

The evidence, including police officer's testimony that when he looked through partially opened window of parked automobile he recognized operator of automobile as meeting the description given in police broadcast, disclosed that the on-the-spot arrest of operator was made with probable cause. *Smith* v. *United States* (1965, 353 F. 2d 838, 122 U.S. App. D.C. 300).

Evidence discovered subsequent to time of arrest may not be considered in determining probable cause. *Id.*

Police officers who were on routine investigation of report that heroin was being "capped" at rooming house and who saw paraphernalia used by narcotics addicts in room from public hallway to which they had been properly admitted had probable cause to enter the room to arrest defendant, and having done so, properly seized heroin found in envelope and the paraphernalia. *Jennings* v. *United States* (1957, 247 F. 2d 784, 101 U.S. App. D.C. 198).

Probable cause for arrest depends upon reasonable ground for belief of guilt. *Sherherd* v. *United States* (1957, 244 F. 2d 750, 100 U.S. App. D.C. 302). See, also, *United States* v. *Willis* (D.C.D.C. 1965, F. Supp. 265).

Search and seizure

Where defendant was properly arrested on robbery charge, search of his person and automobile incidental to arrest and not remote in time and place therefrom was valid. *M. L. Brown* v. *United States* (1966, 365 F. 2d 976, 125 U.S. App. D.C. 43).

In case involving arrest without warrant for traffic violation, additional factors may validate search of arrested driver and his automobile, if search is not remote in time or place from arrest. *Id.*

Where defendant's arrest was illegal, search of defendant's pocketbook and seizure of narcotics paraphernalia was unlawful and admission of evidence was reversible error. *S. A. Curtis* v. *United States and District of Columbia* (D.C. App. 1966, 222 A. 2d 840).

Police officer's limited inspection of glove compartment in automobile, where motorist had indicated his registration card was located, was incident to arrest for traffic violation and reasonable, though officer was allegedly also concerned with protecting himself by searching for weapon in glove compartment. *United States* v. *Washington* (D.C.D.C. 1965, 249 F. Supp. 40).

Where informal traffic arrest preceded officer's search in glove compartment for driver's registration card, opening of such compartment and subsequent uncovering of envelopes showing lottery violation was not subject to objection that search took place prior to arrest. *Id.*

Seizure of key of rape and robbery victim from pocket of defendant's pants found alongside defendant's bed in room in which he slept was incident to a lawful arrest. *United States* v. *Willis* (D.C.D.C. 1965, 248 F. Supp. 265).

Where arrests are lawful, it is equally lawful to search premises and to use incriminating things found as evidence in the prosecution. *Hoover* v. *District of Columbia* (D. C. Mun. App. 1945, 42 A. 2d 730).

An officer making a lawful arrest on a criminal charge may take such articles as may reasonably be used as evidence, *Morton* v. *United States* (1945, 147 F. 2d 28, 79 U.S. App. D.C. 329, certiorari denied 65 S. Ct. 1015, 324 U.S. 875, 89 L. Ed. 1428). See, also, *Hanna* v. *The Meteor* (1950, 179 F. 2d 957).

Where defendant was informed by officers that they were from police headquarters and that inspector wanted to talk to defendant, and officers took defendant to a police automobile, there was an "arrest" so as to authorize seizure of articles usable as evidence. *Id.*

§ 4–141. Powers of officers in connection with suspected felonies.

The major and superintendent of police and the lieutenants of police, having just cause to suspect that any felony has been, or is being, or is about to be, committed within any building, or on board of any ship, boat, or vessel within the said District, may enter upon the same at all hours of day or night, to take all necessary measures for the effectual prevention or detection of all felonies, and may take then and there into custody all persons suspected of being concerned in such felonies, and also may take charge of all property which he or they shall have then and there just cause to suspect has been stolen. (R. S., D. C., § 398.)

TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under § 4–103.

CROSS REFERENCE

Duties of officers and privates of police department, see § 4–106.

NOTES TO DECISIONS

Arrest without warrant

Where defendant, who was known to police as a narcotics addict, was seen to surreptitiously take a small brown envelope from a person who was known by police to be a narcotic peddler, arrest of defendant immediately upon street without a warrant and search of his person was lawful. *United States* v. *Simms* (D.C.D.C. 1959, 171 F. Supp. 834).

Circumstances warranting arrest

Probable cause for arrest depends upon reasonable ground for belief of guilt. *Shepherd* v. *United States* (1957, 244 F. 2d 750, 100 U.S. App. D.C. 302).

Evidence

Where officers, who had been informed by arrested addict that certain person had sold him narcotics procured at apartment at certain address, arranged for purchase of narcotics from that person, whom they followed to apartment building and arrested in taxicab with narcotics and marked bills, and subsequently occupants of apartment opened door on being informed of presence of officers but left in place chain lock which officers broke, and officers entered and arrested occupants, arrest was lawful, under such exceptional circumstances, and marked money seized in search of apartment was admissible in evidence in narcotics prosecution of occupants. *Shepherd* v. *United States* (1957, 244 F. 2d 750, 100 U.S. App. D.C. 302).

Evidence in detinue action sustained finding that money, which was found in coin-operated locker at railroad station by locker company after locker had been in use in excess of 24 hours without additional deposit having been paid and which had been turned over to property clerk of police department, was not wrongfully detained by locker company and property clerk. *J. E. Lewis* v. *A. A. Aderholdt and Washington Terminal Co.* (D.C. App. 1964, 203 A. 2d 919).

Evidence concerning burglary of drug store at which plaintiff had recently worked was admissible in detinue action against locker company, which found money in railroad station locker, and property clerk of police department to whom money was turned over, since evidence was relevant and material to determination whether there was probable cause for suspecting that money found in locker was connected with burglary. *Id.*

Probable cause for arrest

Police officers, who, after observing defendant's violations of traffic regulations, stopped his automobile, and who, while questioning him as to such violations, heard over police radio that robbery had been committed by person answering defendant's general appearance and driving automobile similar to that driven by defendant, had probable cause for arresting defendant on robbery charge. *M. L. Brown* v. *United States* (1966, 365 F. 2d 976, 125 U.S. App. D.C. 43).

Although observations by victim of crime may be faulty in some respects, such mistakes are irrelevant if there is sufficient particularized information to constitute probable cause for arrest based on such observations. *Id.*

Where police continued their detention of arrested defendant, after having probable cause to believe that defendant was wanted robber described over police radio, arrest of defendant also became one for robbery, and whether or not specific statement of that fact was made to defendant was irrelevant. *Id.*

Right of entry

Entry of police officer into defendant's home was lawful where officer identified himself to defendant's mother as a policeman, stated his purpose, and had probable cause to arrest defendant for serious charges of rape and robbery. *United States* v. *Willis* (D.C.D.C. 1965, 248 F. Supp. 265).

§ 4–142. Information and return after arrest.

Every case of arrest shall be made known within six hours thereafter to the lieutenant of police on duty in the precinct in which the arrest is made, by the person making the same; and it shall be the duty of the lieutenant within twelve hours after such notice, to make written return thereof, according to the rules and regulations of the Board of Commissioners, together with the name of the party arrested, the offense, the place of arrest, and the place of detention. (R. S., D. C., § 399; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

AMENDMENT

1878—Act June 11, 1878, abolished the Board of Metropolitan Police and transferred its powers and duties to the Commissioners of the District of Columbia.

CROSS REFERENCE

Police rules and regulations, see §§ 4–177, 4–178.

§ 4–143. Penalty for neglect to make arrest.

If any member of the police force shall neglect making any arrest for an offense against the laws of the United States committed in his presence, he shall be deemed guilty of a misdemeanor and shall be punishable by imprisonment in the District jail or penitentiary not exceeding two years, or by a fine not exceeding $500. (R. S., D. C., § 400.)

§ 4–144. Detention of witnesses.

The Board of Commissioners shall provide suitable accommodations within the District for the detention of witnesses who are unable to furnish security for their appearance in criminal proceedings, and such accommodations shall be in premises other than those employed for the confinement of persons charged with crime, fraud, or disorderly conduct; and it shall be the duty of all magistrates in committing witnesses to have regard to the rules and

regulations of the Board of Commissioners in reference to their detention. (R. S., D. C., § 401; June 11 1878, 20 Stat. 107, ch. 180, § 6.)

AMENDMENT

1878—Act June 11, 1878, abolished the Board of Metropolitan Police and transferred its duties and powers to the Commissioners of the District of Columbia.

CROSS REFERENCE

Police rules and regulations, see §§ 4–177, 4–178.

§ 4–145. Authority for search and arrest in cases of gaming-houses, bawdy-houses, and deposit or sale of lottery tickets.

If any member of the police force, or if any two or more householders shall report in writing, under his or their signature, to the major and superintendent of police that there are good grounds, stating the same, for believing any house, room, or premises within the police district to be kept or used for any of the following purposes, namely:

First. As a common gaming-house, common gaming-room, or common gaming-premises, for therein playing for wagers of money at any game of chance; or,

Second. As a bawdy-house, or as a house of prostitution, or for purposes of prostitution; or,

Third. For lewd and obscene public amusement or entertainment; or,

Fourth. For the deposit or sale of lottery tickets or lottery policies, it shall be lawful for the major and superintendent of police to authorize any member or members of the police force to enter the same, who shall forthwith arrest all persons there found offending against law, and seize all implements of gaming, or lottery tickets, or lottery policies, and convey any person so arrested before the proper court, and bring the articles so seized to the office of the Board of Commissioners. (R. S., D. C., § 402; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

AMENDMENT

1878—Act June 11, 1878, abolished the Board of Metropolitan Police and transferred its powers and duties to the Commissioners of the District of Columbia

TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under § 4–103.

CROSS REFERENCES

Prostitution, pandering, and houses of prostitution, see § 22–2701 et seq.

Search warrants, see § 23–301 et seq.

NOTES TO DECISIONS

Search without warrant

Where defendant, who had been under police observation, was observed entering rooming house where he had rented a room and one of police officers, without search warrant, opened window leading to landlady's room, climbed through and admitted other officers to the house, officer looked through transom, observed defendant and a guest as well as numbers slips, money and adding machines, and officers then arrested defendant and his guest and seized the machines, numbers slips and money, denial of defendant's motion for suppression of evidence and return of property to him was error, and convictions of both defendant and his guest for carrying on a lottery would be reversed. *McDonald* v. *United States* (1948, 69 S. Ct. 191, 335 U.S. 451, 93 L. Ed. 153).

Where officers heard adding machines which they knew were frequently used in the numbers operation and saw defendants busily engaged in their lottery venture, the officers had adequate grounds for seeking a search warrant and inconvenience of officers and delay in preparing papers and getting before magistrate was not a justification for search without warrant. *Id.*

§ 4–146. Duty of major and superintendent to prosecute—Property seized.

It shall be the duty of the major and superintendent of police to cause all persons arrested in pursuance of the provisions of section 4–145 to be rigorously prosecuted, the articles seized to be destroyed, and such room or house to be closed, and not again used for such unlawful purpose (R. S., D. C., § 403.)

TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under § 4–103.

§ 4–147. Supervisory power over certain classes of business.

The Board of Commissioners shall possess powers of general police supervision and inspection over all—

Licensed pawnbrokers.

Licensed venders.

Licensed hackmen and cartmen.

Dealers in second-hand merchandise.

Intelligence office keepers.

Auctioneers of watches and jewelry.

Suspected private banking-houses, and other doubtful establishments within the Metropolitan police district; and in the exercise and furtherance of said supervision may, from time to time, empower members of the police force to fulfill such special duties in the premises, as may be ordained by the Board of Commissioners. (R. S., D. C., § 404; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

AMENDMENT

1878—Act June 11, 1878, abolished the Board of Metropolitan Police and transferred its powers and duties to the Commissioners of the District of Columbia.

CROSS REFERENCES

Commissioners' authority to regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47–2344, 47–2345.

General limitation on power of Commissioners, see § 1–801.

License required for auctioneers, see § 47–2309.

License required for pawnbrokers, see § 2–2002 et seq.

License required for second-hand dealers, see § 47–2339.

Other provisions concerning police power of Commissioners over business specified in this section and in general, see §§ 1–218, 1–224, 1–226.

§ 4–148. Examination of books and premises of certain establishments.

The Board of Commissioners may direct the major and superintendent to empower any member of the police force, whenever such member shall be in search of property feloniously obtained, or in search of suspected offenders, to examine the books of any pawnbroker or his business premises, or the business premises of any licensed vender or dealer in second-hand merchandise, or intelligence office keeper, or auctioneer of watches and jewelry, or suspected private banking-house, or other doubtful establishment. (R. S., D. C., § 405; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

AMENDMENT

1878—Act June 11, 1878, abolished the Board of Metropolitan Police and transferred its powers and duties to the Commissioners of the District of Columbia.

TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under § 4–103.

CROSS REFERENCE

Pawnbrokers, other provisions as to examination of books or premises, see §§ 2–2007, 2–2011.

§ 4–149. Examination of property pledged.

Any member of the police force, when thereto authorized in writing by the major and superintendent of police, and having in his possession a pawnbroker's receipt or ticket, shall be allowed to examine the property purporting to be pawned or pledged, or deposited upon said receipt or ticket, in whosesoever possession said property may be; but no such property shall be taken from the possessor thereof without due process or authority of law. (R. S., D. C. § 406.)

TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under § 4–103.

CROSS REFERENCE

Search and seizure of pawned or pledged property, see § 2–2011.

§ 4–150. Penalty for interfering with officer.

Any wilfull interference with the major and superintendent of police, or with any member of the police force, by any of the persons named in section 4–147, while in official and due discharge of duty, shall be punishable as a misdemeanor. (R. S., D. C., § 407.)

TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under § 4–103.

§ 4–151. Property clerk—Office created.

There shall be an officer known as "property clerk" of the Metropolitan police district. (R. S., D. C., § 408; Dec. 5, 1919, 41 Stat. 363, ch. 1, § 1.)

CROSS REFERENCE

Bonding of Metropolitan Police, see § 4–186.

NOTES TO DECISIONS

Deposit of unlawfully seized property

Where court had reason to believe from evidence adduced that property unlawfully seized by officers was stolen property, court though suppressing use of such property as evidence, would not order property returned to defendant but rather would direct that the property be returned to custody of the Property Clerk of the District of Columbia without prejudice to defendant's right to gain possession thereof by establishing valid claim thereto. *United States* v. *Scott* (D.C.D.C. 1957, 149 F. Supp. 837).

§ 4–152. Custody of stolen, lost, or abandoned property.

All property or money alleged or supposed to have been feloniously obtained, or which shall be lost or abandoned, and which shall be thereafter taken into the custody of any member of the police force, or the police or criminal court of the district, or which shall come into such custody, shall be, by such member, or by order of the court, given into the custody of the property clerk and kept by him. (R. S., D. C., § 409.)

CHANGE OF NAME

The Police Court of the District of Columbia and the Municipal Court for the District of Columbia were consolidated by act Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1. See § 11–901.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

CROSS REFERENCES

Coroner to deposit property and effects found upon the person of any one on whom he holds an inquest, see § 11–1905.

Custody and disposition of property seized under search warrant, see § 23–302 et seq.

Intoxicating liquors seized under Alcoholic Beverage Control Act, see § 25–129.

NOTES TO DECISIONS

Deposit of unlawfully seized property

Where court had reason to believe from evidence adduced that property unlawfully seized by officers was stolen property, court though suppressing use of such property as evidence, would not order property returned to defendant but rather to custody of the Property Clerk of the District of Columbia without prejudice to defendant's right to gain possession thereof by establishing valid claim thereto. *United States* v. *Scott* (D.C.D.C. 1957, 149 F. Supp. 837).

Presumptions

Billfold found by officer was presumably lost or abandoned property. *Roseborough* v. *United States* (D. C. Mun. App. 1952, 86 A. 2d 920).

§ 4–153. Record of stolen, lost, or abandoned property to be kept.

All such property and money shall be particularly registered by the property clerk in a book kept for that purpose, which shall contain also a record of the names of the persons from whom such property or money was taken, the names of all claimants thereto, the place where found, the time of the seizure, the date of the receipt, the general circumstances connected therewith, and any final disposal of such property and money. (R. S., D. C., § 410.)

NOTES TO DECISIONS

Deposit of unlawfully seized property

Where court had reason to believe from evidence adduced that property unlawfully seized by officers was stolen property, court though suppressing use of such property as evidence, would not order property returned to defendant but rather to custody of the Property Clerk of the District of Columbia without prejudice to defendant's right to gain possession thereof by establishing valid claim thereto. *United States* v. *Scott* (D.C.D.C. 1957, 149 F. Supp. 837).

§ 4–154. Property clerk vested with power of notary public.

The property clerk is vested with all the powers conferred by law upon notaries public in the District. (R. S., D. C., § 411.)

NOTES TO DECISIONS

Deposit of unlawfully seized property

Where court had reason to believe from evidence adduced that property unlawfully seized by officers was stolen property, court though suppressing use of such property as evidence, would not order property returned to defendant but rather to custody of the Property Clerk of the District of Columbia without prejudice to defendant's right to gain possession thereof by establishing valid claim thereto. *United States* v. *Scott* (D.C.D.C. 1957, 149 F. Supp. 837).

§ 4–155. Property clerk may administer oaths.

He may administer oaths and certify depositions which may be necessary to establish the ownership

of any property or money lost, abandoned, or returned to him under the directions of the Board of Commissioners, including such property or money so returned which is alleged to have been feloniously obtained or to be the proceeds of crime. (R. S., D. C., § 412; June 11, 1878, 20 Stat. 107, ch. 180, § 6; May 9, 1941, 55 Stat. 185, ch. 99, § 1.)

AMENDMENTS

1941—Act May 9, 1941, substituted after the word "Commissioners" the words "including such property or money so returned which is alleged to have been feloniously obtained or to be the proceeds of crime" for the words "other than such as may be so returned as the proceeds of crime."

1878—Act June 11, 1878, abolished the Board of Metropolitan Police and transferred its powers and duties to the Commissioners of the District of Columbia.

NOTES TO DECISIONS

Deposit of unlawfully seized property

Where court had reason to believe from evidence adduced that property unlawfully seized by officers was stolen property, court though suppressing use of such property as evidence, would not order property returned to defendant but rather would direct that the property be returned to custody of the Property Clerk of the District of Columbia without prejudice to defendant's right to gain possession thereof by establishing valid claim thereto. *United States* v. *Scott* (D.C.D.C. 1957, 149 F. Supp. 837).

§ 4–156. Return of property by property clerk—Two or more claimants—Liability of property clerk—Property needed as evidence—Storage fees—Disposal after thirty days notice to owner.

(a) Upon satisfactory evidence of the ownership of property or money described in section 4–155 he shall deliver the same to the owner, his next of kin, or legal representative and to him or them only. If, in any case, it is proven impracticable for such owner, next of kin, or legal representative to appear, the property clerk may deliver such property or money to any person having a duly executed power of attorney from such owner, or his next of kin, or legal representative, upon the filing of such power of attorney in the office of said clerk and the signing of a receipt for such property or money.

(b) In the event two or more persons claim ownership of any such property or money, the property clerk may give notice by registered mail to all such claimants of whom he shall have knowledge of the time and place of a hearing to determine the person to whom the property or money shall be delivered. At the time and place so designated the property clerk shall hear and receive evidence of ownership of the property or money concerned, and shall determine the identity of the owner. After such hearing, the property clerk shall deliver the property or money to the person whom the property clerk determines is the owner, his next of kin, or legal representative, and to him or them only. If, in any case, it is proven impracticable for such owner, next of kin, or legal representative to appear, the property clerk may deliver such property or money to any person having a duly executed power of attorney from such owner, his next of kin, or legal representative, upon the filing of such power of attorney in the office of said clerk and the signing of a receipt for such property or money.

(c) The property clerk shall not be liable in damages for any official action performed hereunder in good faith.

(d) Except as provided in sections 4–163, 4–164, and 4–165 hereof, no property or money in the possession of the property clerk alleged to have been feloniously obtained or to be the proceeds of crime shall be delivered under this section if it is required to be held under the provisions of section 4–158 hereof; nor shall it be delivered within one year after the date of receipt of said property or money by the property clerk unless the United States attorney in and for the District of Columbia shall certify that such property or money is not needed as evidence in the prosecution of a crime.

(e) Whenever the owner of property in the custody of the property clerk has been notified by the property clerk, by registered or certified mail, to take possession of such property within thirty days after the date of mailing of such notification, and such owner fails so to do within such period, such property shall be thereafter treated as other unclaimed, abandoned, or lost property and shall be disposed of as provided in section 4–160: *Provided,* That if, in the opinion of the property clerk, such property has no salable value, and if within thirty days after the date of mailing such notification such property is not reclaimed by its owner and removed by him from the custody of the property clerk, such property shall be disposed of by destruction or otherwise, as the Commissioners of the District of Columbia by regulation or order shall provide. (R.S., D.C., § 413; May 9, 1941, 55 Stat. 185, ch. 99, § 1; June 29, 1953, 67 Stat. 101, ch. 159, § 306; Sept. 25, 1962, 76 Stat. 589, Pub. L. 87–691, § 1.)

AMENDMENTS

1962—Section 1 of act Sept. 25, 1962, amended section by adding subsection (e) thereto.

1953—Subsec. (d) amended by act June 29, 1953, to authorize the collection of storage fees.

1941—Act May 9, 1941, designated existing provisions as subsec. (a), substituted the present provisions for "Upon satisfactory evidence of the ownership of property described in section 4–155 he shall deliver the same to the owner, his heirs, and legal representatives, and to him or them only, except it be proved impracticable for such owner, heir, or representatives to appear, when the same may be delivered and receipted for upon such proof of ownership and the filing in the office of the property clerk of a duly executed power of attorney from the owner or his heirs or legal representatives" and added subsecs. (b)—(d).

AFFECT ON REORGANIZATION PLAN NUMBERED 5, OF 1952

Section 6 of act Sept. 25, 1962 [amending this section and sections 4–159, 4–160, repealing last sentence of section 4–156, repealing section 4–156a, and enacting section 4–160a], provides as follows: "Nothing in this Act shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this Act in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan."

REPEAL

Section 3 of act Sept. 25, 1962, 76 Stat. 591, Pub. L. 87–691, repealed subsections (a), (b) and (c) of section 306, act June 29, 1953, 67 Stat. 101, ch. 159. Subsection (a) was set out as the last sentence of subsection (d) of section 4–156. Subsections (b) and (c) were set out as

section 4–156a. These subsections dealt with collections of fees by property clerk and matter is now covered by section 4–159.

NOTES TO DECISIONS

Burden of proof

Where locker company, which maintained coin-operated lockers at railroad station, opened all lockers, which had been in use in excess of 24 hours, and for which additional deposit for extended use had not been made, and found $2,500 in cash in one of the lockers, and money was turned over to property clerk of police department, claimant of money, who brought detinue action against locker company and property clerk had burden of proving ownership of money by preponderance of evidence. *J. E. Lewis* v. *A. A. Aderholdt and Washington Terminal Co.* (D.C. App. 1964, 203 A. 2d 919).

Deposit of unlawfully seized property

Where court had reason to believe from evidence adduced that property unlawfully seized by officers was stolen property, court though suppressing use of such property as evidence, would not order property returned to defendant but rather would direct that the property be returned to custody of the Property Clerk of the District of Columbia without prejudice to defendant's right to gain possession thereof by establishing valid claim thereto. *United States* v. *Scott* (D.C.D.C. 1957, 149 F. Supp. 837).

Retention of seized money subject to tax lien

District court, in a proceeding on motion for return of property and suppression of property as evidence could, after suppressing evidence, direct that money be retained in custody subject to federal tax lien and a final disposition thereof. *Welsh* v. *United States of America* (1955, 220 F. 2d 200, 95 U.S. App. D.C. 93).

Summary judgment

In action by leasehold tenant of apartment to recover damages from her landlord, his agent, and District of Columbia for negligence in execution of writ of restitution from Municipal Court for the District of Columbia (now District of Columbia Court of General Sessions), from allegations of complaint and facts before court which were given in support of defendants' motions for summary judgment, tenant was entitled to trial to show whether property was negligently damaged by defendants or any of them and if so to recover from any defendant who might be liable in law for its negligence or that of its servants for whom it is responsible. *O'Neil Wilson* v. *Bittinger et al.* (1958, 262 F. 2d 714, 104 U.S. App. D.C. 403).

Trial de novo

This section giving police property clerk authority to conduct hearing for purpose of determining ownership of property coming into hands of police department does not confer force of a judgment upon clerk's determination, so as to deprive courts of jurisdiction to determine title to the property as between conflicting claims de novo. *Carroll* v. *E. Heidenheimer, Inc.* (D. C. Mun. App. 1945, 44 A. 2d 71).

§ 4–156a. Repealed. Sept. 25, 1962, 76 Stat. 691, Pub. L. 87–691, § 3.

Section of act June 29, 1953, 67 Stat. 101, ch. 159, §§ 306 (b) and (c) dealt with collection of fees on impounded vehicles and deposit of collected fees in U.S. Treasury. Subject matter is now covered by section 4–159.

§ 4–157. Return of property to accused upon acquittal.

Whenever property or money shall be taken from persons arrested, and shall be alleged to have been feloniously obtained, or to be the proceeds of crime, and whenever so brought with such claimant and the person arrested before any court for trial, and the court shall be satisfied from evidence that the person arrested is innocent of the offense alleged, and that the property rightfully belongs to him, said court may, in writing, order such property or money to be returned, and the property clerk, if he have it, to deliver such property or money to the accused person himself, and not to any attorney, agent, or clerk of such accused person. (R. S., D. C., § 414.)

NOTES TO DECISIONS

Deposit of unlawfullly seized property

Where court had reason to believe from evidence adduced that property unlawfully seized by officers was stolen property, court though suppressing use of such property as evidence, would not order property returned to defendant but rather would direct that the property be returned to custody of the Property Clerk of the District of Columbia without prejudice to defendant's right to gain possession thereof by establishing valid claim thereto. *United States* v. *Scott* (D.C.D.C. 1957, 149 F. Supp. 837).

§ 4–158. Claims of third persons.

If any claim to the ownership of such property or money shall be made on oath before the court, by or in behalf of any other persons than the persons arrested, and the accused person shall be held for trial or examination, such property or money shall remain in the custody of the property clerk until the discharge or conviction of the persons accused. (R. S., D. C., § 415.)

NOTES TO DECISIONS

Deposit of unlawfullly seized property

Where court had reason to believe from evidence adduced that property unlawfully seized by officers was stolen property, court though suppressing use of such property as evidence, would not order property returned to defendant but rather would direct that the property be returned to custody of the Property Clerk of the District of Columbia without prejudice to defendant's right to gain possession thereof by establishing valid claim thereto. *United States* v. *Scott* (D.C.D.C. 1957, 149 F. Supp. 837).

§ 4–159. Property coming into possession of police to be transmitted to property clerk—Disposition of property of deceased and incompetent persons—Storage of property—Fees for storage and custody of property—Sale of stored property—Deposit of collected fees.

(a) All property or money taken on suspicion of having been feloniously obtained, or of being the proceeds of crime, and for which there is no other claimant than the person from whom such property was taken, and all lost property coming into possession of any member of the police force, and all property and money taken from pawnbrokers as the proceeds of crime or from persons alleged to be insane, intoxicated, or otherwise incapable of taking care of themselves, shall be transmitted as soon as practicable to the property clerk to be fully registered and advertised for the benefit of all parties interested, and for the information of the public as to the amount and disposition of the property so taken into custody by the police.

(b) (1) Whenever any money or property of a deceased person of a value of less than $1,000 coming into the custody of the property clerk shall remain in his custody for a period of six months or more without being claimed and repossessed by the next of kin or the legal representative of such deceased person, such money or property shall be disposed of as lost or abandoned property as provided in section 4–160 of this chapter: *Provided,* That prior to the disposition of such property of a deceased person it shall be the duty of the property

clerk to ascertain whether there is pending in the United States District Court for the District of Columbia any petition seeking the appointment of a legal representative of such deceased person, and, if such a petition is pending in such court, the property clerk shall not dispose of such property until final disposition by the court of such petition: *Provided further,* That in any case where the property clerk acquires actual knowledge that a petition for the appointment of a legal representative of such deceased person has been filed or is pending in a court outside of the District of Columbia, the property clerk shall not dispose of such property until final disposition by the court of such petition.

(2) Whenever any money or property of a deceased person shall be of a value of $1,000 or more and shall have remained in the custody of the property clerk for at least six months, all records pertaining to the same shall be referred by the property clerk to the Corporation Counsel of the District of Columbia for the purpose of instituting appropriate proceedings to effect the appointment of an administrator of the estate of such decedent: *Provided,* That upon expiration of the time for final settlement of such estate under law then in effect, the residue thereof in the absence of any claim by the heirs-at-law or next of kin of the decedent, as provided by law, shall be deposited into the Registry of the Probate Court, and upon the expiration of a period of three years, no demand having been made upon such funds by lawful heirs or other rightful claimants, the amount so deposited in such registry shall be deposited in the Treasury to the credit of the District of Columbia: *Provided further,* That if the administrator does not take possession of such property within three months from the date of his appointment, the property clerk may, after giving such administrator thirty days' notice by registered or certified mail, sell such property at public auction, and, after deducting the expenses of such sale, and expense incident to the maintenance of custody of such property, shall pay the remaining proceeds of such sale over to such administrator.

(c) Whenever the property clerk has custody of any property belonging to any person who has been adjudged of unsound mind and a committee has been appointed for such person but fails to take possession of the property of such person in the custody of the property clerk within six months from the date of such committee's appointment, the property clerk shall give such committee sixty days' notice by registered or certified mail of his intention to sell such property at public auction or otherwise dispose of such property in accordance with law. If, upon the expiration of such sixty days' notice, the committee has not taken custody of such property, (a) the property clerk is authorized to sell such property at public auction, and, after deducting the expenses of the sale, expenses incident to the maintenance and custody of such property, and any amounts due the District of Columbia for care and maintenance of the adjudicated patient, shall pay the remaining proceeds of the sale over to such committee, or (b) if in the opinion of the property clerk any such property has no salable value, he is authorized to dispose of such property by destruction or otherwise as the Commissioners of the District of Columbia shall, by regulation or order, determine.

(d)(1) The said Commissioners are authorized, in their discretion, to store in any commercial warehouse or garage in the District of Columbia, or in or on any facility under the jurisdiction of the District of Columbia, any property coming into the custody of the property clerk pursuant to this chapter, including vehicles impounded by any officer or member of the Metropolitan Police force.

(2) The Commissioners are authorized to fix, by regulation, the fees to be charged to reimburse the District of Columbia for the cost of services rendered by the Metropolitan Police force in taking custody of and protecting such property and for the cost of storing such property in any commercial warehouse or garage, and whenever any such property is stored in or on any facility under the jurisdiction of the District of Columbia, the Commissioners shall fix the storage fee in an amount reasonably estimated by them to be the value of the storage service rendered for each day during which such property is so stored, and to collect all such fees due and owing for such property before releasing such property to its owner or his legal representative: *Provided,* That the Commissioners are authorized, in their discretion, to waive the charging and collecting of such fees for property taken into custody as evidence, the proceeds of crime, or from persons supposed to be insane: *Provided further,* That the property clerk is authorized to sell at public auction pursuant to subsection (a) of section 4–160 of this chapter any property stored in a commercial garage or warehouse, when the storage charges for such property exceed 75 per centum of its value as determined by the property clerk, regardless of the amount of time for which such property is required by other sections of this chapter to be held by the property clerk.

(3) Fees collected by reason of this section shall be deposited in the Treasury to the credit of the District of Columbia. (R.S., D.C. § 416; May 29, 1896, 29 Stat. 191, ch. 270; Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 116; Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12; Mar. 3, 1936, 49 Stat. 1158, ch. 121, § 1; Sept. 25, 1962, 76 Stat. 589, Pub. L. 87–691, § 2.)

CODIFICATION

Section 3 of act Aug. 21, 1957, 71 Stat. 391, Pub. L. 85–157, amended section 12 of act Sept. 1, 1916, 39 Stat. 718, to read as set out in sections 4–521 to 4–535. Section 12 of act Sept. 1, 1916, was classified to sections 4–113, 4–114, 4–129, 4–159, 4–160, 4–501, 4–503, 4–506 to 4–510, 4–512 to 4–514, and 11–625. Said § 11–625 was later transferred to, and became, § 11–710c. Said § 11–710c was repealed by act Dec. 23, 1963, 77 Stat. 620, Pub. L. 88–241, § 21(a), and is now covered by § 11–984.

AMENDMENTS

1962—Section 2 of act Sept. 25, 1962, amended section generally.

1936—Act Mar. 3, 1936, changed the amount from $50 to $100.

1916—Act Sept. 1, 1916, changed the name of the policemen's fund to the policemen and firemen's relief fund.

1901—Act Mar. 3, 1901, changed the name of the Orphans' Court to the Probate Court.

PAYMENT AND DEPOSIT OF MONEYS

Payment of moneys to collector of taxes of District of Columbia and deposit in treasury to credit of revenues of District, of moneys deposited to credit of policemen and firemen's relief fund, see § 4–502.

CROSS REFERENCE

Policemen and firemen's retirement and disability, see § 4–521 et seq.

NOTES TO DECISIONS

Summary judgment

In action by leasehold tenant of apartment to recover damages from her landlord, his agent, and District of Columbia for negligence in execution of writ of restitution from Municipal Court for the District of Columbia (now District of Columbia Court of General Sessions), from allegations of complaint and facts before court which were given in support of defendants' motions for summary judgment, tenant was entitled to trial to show whether property was negligently damaged by defendants or any of them and if so to recover from any defendant who might be liable in law for its negligence or that of its servants for whom it is responsible. *O'Neil Wilson* v. *Bittinger et al.* (1958, 262 F. 2d 714, 104 U.S. App. D.C. 403).

§ 4–160. Sales at public auction—Procedure—Sales of motor vehicles with liens of record—Notice to lienors and lienees—Abandonment of liens—Notice to Recorder of Deeds—Application of proceeds of sale—Deposit of moneys in Treasury—Moneys and other property of insane persons excepted.

(a) All property, except perishable property and animals and property of insane persons, not otherwise disposed of in accordance with section 4–159 of this chapter, that shall remain in the custody of the property clerk for not less than ninety days, except motor vehicles which shall be held for not less than sixty days, without being claimed and repossessed, shall, after having been three times advertised in a daily newspaper of general circulation published in the District of Columbia, be sold at public auction, and the proceeds of such sale, after deducting the expenses of the sale, and all other expenses incident to such custody, having been retained by the said property clerk for a period of at least ninety days without being claimed and repossessed, shall be deposited in the Treasury to the credit of the District of Columbia: *Provided,* That if in the opinion of the property clerk any such property has no salable value, he is authorized to dispose of such property by destruction or otherwise as the Commissioners of the District of Columbia shall, by order or regulation, determine.

(b) Whenever the property clerk shall have in his custody any motor vehicle upon which there is a lien or liens of record in the Office of the Recorder of Deeds of the District of Columbia he shall, prior to the sale thereof pursuant to this section, notify by registered or certified mail each lienor and lienee in any such case of such custody and impending sale, and if such lienor or lienee fail to remove such property from the custody of the property clerk within thirty days from the date of the mailing of such notification, such lien or liens shall be considered to have been abandoned, and shall be thenceforth null and void. Upon being notified in writing of such fact by the property clerk, the Recorder of Deeds of the District of Columbia is authorized to indicate on his records that such lien or liens are thenceforth null and void and the property clerk is authorized to sell any such motor vehicle at public auction free and clear of such lien or liens; except that the proceeds of such sale shall be available, first, for the payment of all expenses incident to such sale and custody; second, for the payment of such liens so declared null and void; third, for payment to the owner in accordance with subsection (a) of this section; and the remainder, if any, shall be deposited in the Treasury of the United States to the credit of the District of Columbia.

(c) All money, except money of insane persons, that shall remain in the custody of the property clerk for six months shall be so advertised, and if not claimed and repossessed within thirty days, it shall likewise be deposited in the Treasury to the credit of the District of Columbia. (R.S., D.C., § 417; Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12; Mar. 3, 1936, 49 Stat. 1158, ch. 121, § 2; Sept. 25, 1962, 76 Stat. 591, Pub. L. 87–691, § 4.)

CODIFICATION

Section 3 of act Aug. 21, 1957, 71 Stat. 391, Pub. L. 85–157, amended section 12 of act Sept. 1, 1916, 39 Stat. 718, to read as set out in sections 4–521 to 4–535. Section 12 of act Sept. 1, 1916, was classified to sections 4–113, 4–114, 4–129, 4–159, 4–160, 4–501, 4–503, 4–506 to 4–510, 4–512 to 4–514, and 11–625. Said § 11–625 was later transferred to, and became, § 11–710c. Said § 11–710c was repealed by act Dec. 23, 1963, 77 Stat. 620, Pub. L. 88–241, § 21(a), and is now covered by § 11–984.

AMENDMENTS

1962—Section 4 of act Sept. 25, 1962, amended section generally.

1936—Act Mar. 3, 1936, amended section generally. Prior to the amendment the section provided as follows: "Except money or property of deceased persons, referred to in section 510 of this title, the proceeds of crimes referred to in section 518 of this title, perishable property and animals, all property and money that shall remain in the custody of the property clerk for the period of six months without any lawful claimant thereto, after having been three times advertised in public newspapers, shall be sold at public auction, and the proceeds of such sale shall be paid into the policemen and firemen's relief fund.

1916—Act Sept. 1, 1916, changed the name of the policemen's fund to the policemen and firemen's relief fund.

PAYMENT AND DEPOSIT OF MONEYS

Payment of moneys to collector of taxes of District of Columbia and deposit in treasury to credit of revenues of District, of moneys deposited to credit of policemen and firemen's relief fund, see § 4–502.

NOTES TO DECISIONS

Construction

In imposing a notice requirement, Congress intended that the advertisement contain reasonably complete identification of the particular chattel to be sold, and such description should be such as to convey to a person reading the advertisement sufficient information to enable him to recognize the chattel as his own before commencing to count a limitation against him. *District of Columbia* v. *Hamilton National Bank* (D. C. Mun. App. 1950, 76 A. 2d 60).

Purpose

A two-fold purpose underlies this Code provision, namely, to provide for the police department a legal method of disposing of unclaimed property which has come into its custody and to restore such property to lawful claimants. *District of Columbia* v. *Hamilton National Bank* (D. C. Mun. App. 1950, 76 A. 2d 60).

§ 4–160a. Liability of district government, its officers or employees for damages to property—Net proceeds of judgment in favor of government against warehouseman and garagekeeper for damage to property to be paid to owner—"Gross negligence" defined.

Neither the government of the District of Columbia nor any officer or employee thereof shall be liable for damage to any property resulting from the removal of such property from public space, or the transportation of such property into the custody of the property clerk, Metropolitan Police Department, nor for damage to any such property while such property is in the custody of the property clerk, Metropolitan Police Department, when such custody is maintained pursuant to the requirements of law, except that the government of the District of Columbia or any such officer or employee may be liable for damage to such property as a result of gross negligence in the removal, transportation, or storage of such property: *Provided,* That should a judgment be entered for the District of Columbia against any commercial warehouseman or garagekeeper for damage to such property in his care, recovery on such judgment, less all administrative expenses and court costs to the District of Columbia involved in such litigation, shall be paid by the District of Columbia to the owner of the damaged property as determined by the property clerk. For the purpose of this section the term "gross negligence" means a willful intent to injure property, or a reckless or wanton disregard of the rights of another in his property. (Sept. 25, 1962, 76 Stat. 591, Pub. L. 87–691, § 5.)

§ 4–161. Sale of unclaimed animals.

Horses and other animals taken by the police and remaining unclaimed for twenty days may be advertised and sold upon ten days' public notice. (R. S., D. C., § 418.)

§ 4–162. Sale of perishable property.

All perishable property so taken and unclaimed shall be sold at once (R. S., D. C., § 419.)

§ 4–163. Delivery of property to owner pending trial.

When animals or articles of property (except perishable property) other than money, returned to the property clerk as the proceeds of crime, are shown by sufficient evidence to be necessary for the current use of the owner and not for sale, the Board of Commissioners has power, in its discretion, to authorize the property clerk to place the same in the custody of the owner, upon sufficient bonds being given by the owner in the sum of twice the value of the property, conditioned for the production of the same at any time within one year, when required for use in court as evidence in any proceedings thereon. (R. S., D. C., § 420; June 11, 1878, 20 Stat 107, ch. 180, § 6.)

AMENDMENT

1878—Act June 11, 1878, abolished the Board of Metropolitan Police and transferred its duties and powers to the Commissioners of the District of Columbia.

§ 4–164. Perishable property may be delivered to owner—Security.

Perishable property, returned to the property clerk as the proceeds of crime, may be delivered to the owner on ample security being taken by the court for his appearance to prosecute the case. (R.S., D.C., § 421.)

§ 4–165. When large quantities of goods held for sale by owner may be delivered.

When large quantities of goods held for sale by the owner, come into the possession of the property clerk as the proceeds of crime, the same may be delivered to the owner, his heirs or representatives, as provided in section 4–156, upon ample security to prosecute the case. But in such cases goods to the estimated value of $50.00 shall be retained by the property clerk until the discharge or conviction of the accused. (R.S., D.C., § 422.)

§ 4–166. Use of property as evidence.

If any property or money placed in the custody of the property clerk shall be desired as evidence in any police or other criminal court, such property shall be delivered to any officer who shall present an order to that effect from such court; but such property shall not be retained in the court, but shall be returned to the property clerk, to be disposed of according to the provisions of this chapter. (R.S., D.C., § 423.)

CHANGE OF NAME

The Police Court of the District of Columbia and the Municipal Court for the District of Columbia were consolidated by act Apr. 1, 1942, 56 Stat. 190, ch. 270, § 1.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 4–167. Property not called for within one year to be treated as abandoned.

Any property or money returned to the property clerk as the proceeds of crime, and which shall not be called for as evidence by any proceeding in the courts of the District within one year from the date of such return, may, unless specially claimed by the owner within that time, be thereafter treated as other unclaimed, abandoned, or lost property or money, as provided in this chapter. (R.S., D.C., § 424.)

§§ 4–168 to 4–171. Repealed. Nov. 8, 1965, 79 Stat. 1309, Pub. L. 89–347, 9(a).

Sections 425 to 428, R.S.D.C., as amended [D.C. Code sections 4–168 to 4–171], dealt with appointment of private detectives, the giving of bond, filing of same with the Board of Commissioners, and proceedings by the United States in cases of forfeiture of the detectives bond. See new section 4–171a and section 47–2341.

EFFECTIVE DATE OF REPEAL

The second sentence of section 11 of act Nov. 8, 1965, provided: "Section 9 of this Act [repeal of secs. 4–168 to 4–171 and the enactment of sec. 4–171a] shall take effect on the first day of the first full license year for licensing of private detectives and detective agencies prescribed by section 7 of the Act approved July 1, 1902 [47–2341] (32 Stat. 622, ch. 1352), as amended (sec. 47–2301 et seq., D.C. Code), which begins at least ninety days after approval of this Act."

§ 4–171a. Private detectives required to give bond—Conditions of bond—Suits on bond by injured persons.

The Board of Commissioners of the District of Columbia shall by regulation require that bonds in the amount of not more than $25,000 shall be fur-

nished and kept in force by all persons licensed as private detectives in the District of Columbia. Bonds required by this section shall be corporate bonds and shall run to the District and shall be conditioned upon the observance by the licensed private detective and any agent, employee, or person acting in behalf of the licensed private detective of all laws and regulations in force in the District of Columbia applicable to the conduct of persons licensed as private detectives. Such bonds shall be for the benefit of any person who may suffer damages as a result of violation of any law or regulation by or on the part of any licensed private detective or any agent, employee, or person acting on the behalf of any private detective. In addition to any right to any other legal action, any person aggrieved by the violation of any law or regulation by a licensed private detective may bring suit against the surety on a bond required by this section either alone or jointly with the principal thereon and recover damages for such violation of law or regulation in an amount not to exceed the penal amount of the bond. The provisions of the second, third, and fifth subparagraphs of paragraph (b) of section 1–244, shall be applicable to each bond authorized by this section as if it were the bond authorized by the first subparagraph of such paragraph (b): *Provided,* That nothing in this subsection shall be construed to impose upon the surety on any such bond a greater liability than the total amount thereof or the amount remaining unextinguished after any prior recovery or recoveries. (Nov. 8, 1965, 79 Stat. 1309, Pub. L. 89–347, § 9(b).)

EFFECTIVE DATE

The second sentence of section 11 of act Nov. 8, 1965, provided: "Section 9 of this Act [repeal of secs. 4–168 to 4–171 and the enactment of sec. 4–171a] shall take effect on the first day of the first full license year for licensing of private detectives and detective agencies prescribed by section 7 of the Act approved July 1, 1902 [47–2341] (32 Stat. 622, ch. 1352), as amended (sec. 47–2301 et seq., D.C. Code), which begins at least ninety days after approval of this Act."

§ 4–172. Duty of private detective making arrest.

It shall be the duty of every person prosecuting the business of a private detective, who may arrest a person for crime, to bring the person arrested, with all evidence of the alleged crime, including property or money which may become evidence, immediately to the office of the major and superintendent of police, or to the proper court, where the case shall undergo an examination. (R. S., D. C., § 429.)

TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under § 4–103.

CROSS REFERENCE

Private detectives, see § 47–2341.

§ 4–173. Penalty for acting as private detective without compliance with law.

Any person practicing as a private detective or advertising or holding himself out as such without first complying with the provisions of law relative to private detectives shall be guilty of a misdemeanor and subject to a fine not exceeding $500 or imprisonment in the district jail for a period not exceeding eleven months and twenty-nine days. (Feb. 28, 1901, 31 Stat. 820, ch. 623, § 5.)

CROSS REFERENCE

Private detectives, see § 47–2341.

§ 4–174. Police laws and regulations applicable to private detectives.

All laws which govern the police force in the matters of persons, property, or money shall be applicable to all private detectives (or to persons practicing as detectives, whatever other name they may assume) and such detectives or persons shall make like returns and dispositions of such matters as required by law and the rules of the Board of Commissioners governing the police force. (R. S., D. C., § 430; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

AMENDMENT

1878—Act June 11, 1878, abolished the Board of Metropolitan Police and transferred its powers and duties to the Commissioners of the District of Columbia.

CROSS REFERENCES

General limitation on power of Commissioners, see § 1–801.

Private detectives, see § 47–2341.

§ 4–175. Compromise of felony—Withholding information—Receiving compensation from person arrested or liable to arrest—Permitting escape—Penalty.

It is unlawful for any private detective, or any member of the police force, or for any other person to compromise a felony or any other unlawful act, or to participate in, assent to, aid or assist any person suspected of crime to escape a full judicial examination by failing to give known facts or reasonable causes of suspicion, or withholding any information relative to the charge or suspicion from the proper judicial authorities;

Or in any manner to receive any money, property, favor, or other compensation from, or on account of, any person arrested or subject to arrest for any crime or supposed crime;

Or to permit any such person to go at large without due effort to secure an investigation of such supposed crime.

And for any violation of the provisions of this section, or either of them, such member of the police force, or private detective, or other person guilty thereof, shall be deemed as having compromised a felony, and shall be thereafter prohibited from acting as an officer of said police force, or as a private detective, and shall be prosecuted to the extent of the law for aiding criminals to escape the ends of justice. (R. S., D. C., § 431.)

CROSS REFERENCES

Policemen prohibited from accepting fees or presents in addition to salary, except with consent of Commissioners, see §4–129.

Proceedings for removal of police officer, see §§ 4–121, 4–122.

§ 4–176. Use of unnecessary or wanton force by officer made criminal.

Any officer who uses unnecessary and wanton severity in arresting or imprisoning any person shall be deemed guilty of assault and battery, and, upon conviction, punished therefor. (R. S., D. C., § 434.)

§ 4–177. Police code—Publication authorized.

The Board of Commissioners is authorized, from time to time, without expense to the United States, to cause to be collected into compact form all the laws and ordinances in force in the District having relation and applicable to police and health, and to publish the same in a form easily accessible to all members of the community as the police code of the District. (R. S., D. C., § 437; June 11, 1878, 20 Stat. 107, ch. 180, § 6.)

AMENDMENT

1878—Act June 11, 1878, abolished the Board of Metropolitan Police and transferred its powers and duties to the Commissioners of the District of Columbia.

CROSS REFERENCES

Ordinances. rules, and regulations by Commissioners governing police authorized, see §§ 4–106, 4–115, 4–117, 4–121, 4–122, 4–124, 4–130, 4–131, 4–142, 4–144.

Proof of ordinances and regulations, see § 14–505.

Rules and regulations generally, see § 1–226.

§ 4–178. Legal effect of police code.

The police code, prepared in accordance with section 4–177 and such rules as the Board of Commissioners may from time to time adopt for the purpose of enforcing and carrying out the provisions thereof, shall constitute the law of the District upon the matters therein contained. (R. S., D. C., § 438.)

§ 4–179. Repealed. Aug. 21, 1964, 78 Stat. 583, Pub. L. 88–471, § 7(a).

Section, act of Mar. 3, 1897, 29 Stat. 677, ch. 387, dealing with leaves of absence for members of Metropolitan Police force was covered by sections 4–905 to 4–909, prior to repeal of these sections. It is now covered by 5 U.S.C. § 6301 et seq.

EFFECTIVE DATE OF REPEAL

Section 8 of act Aug. 21, 1964, provided: "This Act [enacting former §§ 4–905 to 4–909, repealing 5 U.S.C. § 2061(b)(3), amending 5 U.S.C. former §§ 2063(a)(c), 2064(e), repealing § 4–179, 4–207 and this section, and amending § 4–409a] shall take effect on the first day of the first pay period which begins after January 1, 1964." After its repeal, it was covered by §§ 4–905 to 4–909, until those sections were repealed. It is now covered by 5 U.S.C. § 6301 et seq.

§ 4–180. Repealed. June 20, 1953, 67 Stat. 76, ch. 146, § 404(a)(1), eff. July 1, 1953.

Section, act May 27, 1924, 43 Stat. 175, ch. 199, § 3, related to time off for Metropolitan Police of the District of Columbia and is now covered by § 4–904.

EFFECTIVE DATE OF REPEAL

Repeal of seection effective July 1, 1953, see § 407 of act June 20, 1953, set out as a note under § 4–821.

§ 4–181. War Department may furnish worn mounted equipment.

CODIFICATION

Section, act Mar. 2, 1927, 44 Stat. 1317, ch. 271, which authorized the War Department to furnish the Commissioners, for use of the police, worn mounted equipment, is omitted as obsolete.

§ 4–182. Police Department band—Director.

There is hereby authorized to be established in the Metropolitan Police Department a band to perform at such municipal or civic functions and events as may be authorized by the Commissioners of the District of Columbia. The Major and Superintendent of Police is authorized in his discretion to detail, without additional compensation, such officers and members of the Metropolitan Police force as may request such a detail to participate in the activities of such band. The said Commissioners are authorized to employ, without reference to the civil-service laws, one director for such band with compensation at a rate not to exceed the rate of compensation to which a captain in the Metropolitan Police force is entitled. (July 11, 1947, 61 Stat. 311, ch. 226, § 1; Aug. 14, 1957, 71 Stat. 345, Pub. L. 85–129, § 1.)

AMENDMENT

1957—Act Aug. 14, 1957, substituted "captain" for "lieutenant".

TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under § 4–103.

§ 4–183. Repealed. Aug. 19, 1964, 78 Stat. 494, Pub. L. 88–448, title IV, § 402(a)(25).

Section, act of July 11, 1947, 61 Stat. 311, ch. 226, § 2, related to employment of retired military or naval officers as director of the band in the Metropolitan Police Force.

EFFECTIVE DATE OF REPEAL

Section 403 of the act of Aug. 19, 1964, provides as follows: "(a) Except as provided in subsection (b) of this section, this Act shall become effective on the first day of the first month which begins later than the ninetieth day following the date of enactment of this Act [Aug. 19, 1964].

"(b) This section and sections 201(g) and 201(b) shall become effective on the date of enactment of this Act."

The above-quoted § 403 of the 1964 act was repealed as executed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a).

§ 4–183a. Retirement of Director—Conditions—Annuities—Appropriations.

Notwithstanding the limitations of existing law, the person who is the director of the Metropolitan Police force band on the effective date of this section may elect to retire after having served ten or more years in such capacity and having attained the age of seventy years. Upon such retirement, whether for age and service or for disability, said director and his surviving spouse shall be entitled to receive annuities in amounts equivalent to, and under the conditions applicable to, the annuities which a captain in the Metropolitan Police force and his surviving spouse may be entitled to receive after such captain has retired from said force for substantially the same reason as that for which said director may retire, whether for age and service or for disability, as the case may be. If the said director shall apply for retirement for disability, he shall not be eligible to retire under section 4–527, but he shall be eligible to apply for retirement under section 4–526, in like manner as if the said director were an officer or member of the Metropolitan Police force. The annuities hereby authorized shall be in addition to any pension or retirement compensation which said director may be entitled to receive from any other source, whether from the United States or otherwise. The annuities payable to said director and his surviving spouse pursuant to sections 4–182 to 4–184 shall be payable from District of Columbia appropriations, but shall not be considered as annuities payable to an officer or member of the Metropolitan Police force or to the surviving spouse of such officer or member. Appropriations for the operations of the Metropolitan Police Department are made available for this purpose. Annuities authorized by this

section shall be computed on the basis of compensated service rendered after July 11, 1947. (July 11, 1947, ch. 226, § 3, as added Sept. 22, 1959, 73 Stat. 640, Pub. L. 86–356.)

§ 4–183b. Retirement of Director to be pursuant to provisions of sections 183a and 183b—Transfer of moneys from Civil Service Retirement and Disability Fund.

The person who is the Director of the Metropolitan Police force band on September 22, 1959 shall, upon his retirement from such position, be retired under the provisions of sections 4–182 to 4–184 and not under sections 1308, 3323, and 8331—8348 of title 5, U.S. Code [relating to retirement of government employees], and the moneys to his credit in the Civil Service Retirement and Disability Fund created under the authority of the Civil Service Retirement Act of May 29, 1930, as amended, on the date of such retirement, together with such moneys in such fund as may have been contributed by the District of Columbia toward the cost of his annuity under such Act, shall be transferred to the credit of the general revenues of the District of Columbia. (July 11, 1947, ch. 226, § 4, as added Sept. 22, 1959, 73 Stat. 641, Pub. L. 86–356.)

CODIFICATION

The reference in this section to "sections 1308, 3323, and 8331—8348 of title 5, U.S. Code [relating to retirement of government employees]" was substituted for "the Civil Service Retirement Act", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Civil Service Retirement Act (May 29, 1930, 46 Stat. 468, ch. 349), as generally amended by act July 31, 1956, 70 Stat. 743, ch. 804, title IV, § 401, and as amended by other acts, was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

However, the second and third statutory references in this section to "Civil Service Retirement Act of May 29, 1930, as amended", and "such Act", respectively, have not been changed, as these appear to have a historical concept, only, and apparently are not prospective as used in this section.

§ 4–184. Appropriations for band authorized.

Appropriations to carry out the purpose of sections 4–182 to 4–184 is hereby authorized. (July 11, 1947, 61 Stat. 311, ch. 226, § 4, formerly § 3; renumbered Sept. 22, 1959, 73 Stat. 641, Pub. L. 86–356.)

AMENDMENT

1959—Section 1 of act Sept. 22, 1959, added section 5 to act July 11, 1947 which provided that "Section 3 of said Act approved July 11, 1947, as amended, is renumbered § 4".

§ 4–185. Advances to the chief of police.

CODIFICATION

Section, act July 5, 1955, 69 Stat. 262, ch. 272, § 9, which authorized the disbursing officer to advance sums of money to the chief of police, is omitted as superseded by section 1–263.

SIMILAR PROVISIONS

Section was from the District of Columbia Appropriation Act, 1956. Similar provisions were contained in the following prior acts.

1955—July 1, 1954, 68 Stat. 394, ch. 449, § 10.
1954—July 31, 1953, 67 Stat. 295, ch. 299, § 11.
1953—July 5, 1952, 66 Stat. 391, ch. 576, § 11.
1952—Aug. 3, 1951, 65 Stat. 172, ch. 292, § 11.
1951—July 18, 1950, 64 Stat. 355, ch. 467, title I, § 1.
1950—June 29, 1949, 63 Stat. 310, ch. 279, § 1.
1949—June 19, 1948, 62 Stat. 544, ch. 555, title I, §1.
1948—July 25, 1947, 61 Stat. 434, ch. 324, § 1 .
1947—July 9, 1946, 60 Stat. 509, ch. 544, § 1.
1946—June 30, 1945, 59 Stat. 279, ch. 209, § 1.

§ 4–186. Bonding of Metropolitan Police.

The Commissioners shall obtain a bond to secure the District against loss resulting from any act of dishonesty by any officer or member of the Metropolitan Police force. Bonds obtained under this section shall be in such amounts, and may secure the District against loss resulting from such other acts by officers and members of the Metropolitan Police force, as the Commissioners shall consider appropriate. The Commissioners may obtain such bonds by negotiation, without regard to section 5 of title 41, U.S. Code and shall pay the cost of such bonds out of funds appropriated for the expenses of the Metropolitan Police Department for fiscal years beginning after June 30, 1953. The premium on any such bond may cover periods not exceeding three years and may be paid in advance. (June 29, 1953, 67 Stat. 101, ch. 159, § 305(a); July 7, 1955, 69 Stat. 281, ch. 280, § 4.)

AMENDMENT

1955—Act July 7, 1955, added the provision for premiums for three year periods and for advance payment of premiums.

EFFECTIVE DATE

Section 305(c) of act June 29, 1953, provided that the provisions of this section and the repeal of section 4–109 shall take effect July 1, 1953.

CROSS REFERENCE

Definitions of "District" and "Commissioners", see note under § 4–134b.

§ 4–187. Mobile laboratory.

The Metropolitan Police force shall maintain and operate a motor vehicle equipped with cameras, photographic developing equipment, an electrical generator, floodlights, and such other equipment as may be necessary to permit the use of the vehicle as a mobile laboratory to handle evidence at the scenes of crimes and otherwise to aid in the prevention and detection of crime. (June 29, 1953, 67 Stat. 101, ch. 159, § 307.)

Chapter 2.—UNITED STATES PARK POLICE

Sec.
4–201. United States watchmen to be known as United State park police—Powers and duties.
4–202. Organization of United States park police.
4–203. Repealed.
4–204. Equipment of United States park police.
4–205 Refund of payments to retirement fund.
4–206 Medical attendance.
4–207. Repealed.
4–208. Special police—Appointment—Powers

§ 4–201. United States watchmen to be known as United States park police—Powers and duties.

The watchmen provided by the United States Government for service in any of the public squares and reservations in the District of Columbia shall, after Aug. 5, 1882, be known as the "United States park police." They shall have and perform the same powers and duties as the Metropolitan police of the District. (Aug. 5, 1882, 22 Stat. 243, ch. 389, § 1; Dec. 5, 1919, 41 Stat. 364, ch. 1, § 3.)

CODIFICATION

Section is comprised of act Aug. 5, 1882, which provided for powers and duties, and act Dec. 5, 1919, which changed the designation of the watchmen to United States park police.

CROSS REFERENCE

Appointment of United States park police to White House Police, see 3 U.S.C. § 203.

NOTES TO DECISIONS

Arrests

Watchmen in public squares or reservations in the District of Columbia, invested with powers of Metropolitan police may make arrests outside of such squares and reservations for offenses committed within the same (1886, 18 Op. Atty. Gen. 433).

§ 4–202. Organization of United States park police.

The United States park police shall be under the exclusive charge and control of the Director of the National Park Service. It shall consist of an active officer of the United States Army, detailed by the Department of the Army, one lieutenant with grade corresponding to that of lieutenant (Metropolitan police), one first sergeant, five sergeants with grade corresponding to that of sergeant (Metropolitan police), and fifty-four privates, all of whom shall have served three years to be with grade corresponding to private, class three (Metropolitan police); all of whom shall have served one year to be with grade corresponding to private, class two (Metropolitan police) and such others as the Director of the National Park Service deems necessary and are appropriated for by Congress; and all of whom shall have served less than one year to be with grade corresponding to private, class one (Metropolitan police). (May 27, 1924, 43 Stat. 175, ch. 199, § 4; Feb. 26, 1925, 43 Stat. 983, ch. 339; July 3, 1926, 44 Stat. 834, ch. 760, § 1; June 10, 1933, Ex. Ord. No. 6166, § 2; Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343, title II. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of act Aug. 10, 1956, enacted 10 U.S.C., Armed Forces, which in sections 3011–3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

AMENDMENT

1926—Act July 3, 1926, inserted the words: "and such others as the Director of Public Buildings and Public Parks of the National Capital deems necessary and are appropriated for by Congress."

TRANSFER OF FUNCTIONS

Act Mar. 2, 1934, changed the "Office of National Parks, Buildings, and Reservations" to the "National Park Service" and provided that the "services of the Director and personnel of the Office of National Parks, Buildings, and Reservations shall be continued in the National Park Service under their present appointments." See 16 U.S.C. § 1, as amended, which created the National Park Service and provided for a Director thereof.

Ex. Ord. No. 6166 abolished the Office of Public Buildings and Public Parks of the National Capital and transferred its functions to the Office of National Parks, Buildings, and Reservations. See 5 U.S.C. §§ 124–132 note.

Act Feb. 26, 1925, abolished the Office of Public Buildings and Grounds and provided that its officers and employees should become officers and employees of the Office of Public Buildings and Public Parks of the National Capital

§ 4–203. Repealed. June 20, 1953, 67 Stat. 76, ch. 146, § 404(a)(1), eff. July 1, 1953.

Section, acts May 27, 1924, 43 Stat. 175, ch. 199, § 5; Apr. 13, 1928, 45 Stat. 429, ch. 369; Apr. 29, 1950, 64 Stat. 96, ch. 138, related to salaries and time off from duty of United States park police. See §§ 4–823 to 4–837 and 4–904.

EFFECTIVE DATE OF REPEAL

Repeal of section effective July 1, 1953, see § 407 of act June 20, 1953, set out as a note under § 4–821.

§ 4–204. Equipment of United States park police.

The members of the United States park police force shall be furnished with uniforms, means of transportation, and such other equipment as may be necessary for the proper performance of their duties, including badges, revolvers, and ammunition; the United States Army officer detailed as superintendent of the United States park police, who shall use on official business motor transportation furnished and maintained by himself, shall receive an extra compensation of not to exceed $480 per annum Members detailed to motorcycle service shall each receive an extra compensation of $120 per annum (May 27, 1924, 43 Stat. 175, ch. 199, § 6.)

CROSS REFERENCE

White House Police, equipment of, see 3 U.S.C. § 204.

§ 4–205. Refund of payments to retirement fund.

CODIFICATION

Section, act May 27, 1924, 43 Stat. 176, ch. 199, § 8, which authorized refund of payments made by United States park police to the civil service retirement fund, is omitted as executed and obsolete.

§ 4–206. Medical attendance.

The park watchmen on April 28, 1902, provided by law and those that may thereafter be provided for by law for service in any of the public squares and reservations in the District of Columbia, shall receive free medical attendance, the same as the Metropolitan police of said District. (Apr. 28, 1902, 32 Stat. 152, ch. 594.)

CROSS REFERENCE

Police surgeons, see § 4–124.

§ 4–207. Repealed. Aug. 21, 1964, 78 Stat. 583, Pub. L. 88–471, § 6(e); Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a).

Section consisted of last sentence of § 7 of act May 27, 1924, ch. 199, 43 Stat. 176, as added to such § 7 by act July 3, 1926, ch. 760, § 2, 44 Stat. 834, and as affected by Exec. Order No. 6166, § 2, June 10, 1933, and act Mar. 2, 1934, ch. 38, § 1, 48 Stat. 389; and related to leaves of absence for members of U.S. Park Police. Act Aug. 21, 1964, cited above, by amending said § 7 of act May 27, 1924, as amended by said act July 3, 1926, to strike out such last sentence, had the effect of repealing this section.

Act Sept. 6, 1966, § 8(a), also cited in catchline to this section, again repealed this section by specifically repealing said act July 3, 1926, 44 Stat. 834, ch. 760, § 2, which, as stated above, had added, to said § 7 of act May 27, 1924, the sentence set out as this section.

The provisions of this section, after its repeal by said act Aug. 21, 1964, were covered by §§ 4–905 to 4–909, but those sections were also repealed by § 8(a) of act Sept. 6, 1966, cited above, and they are now covered by 5 U.S.C. § 6301 et seq.

EFFECTIVE DATE OF REPEAL

Section 8 of act Aug. 21, 1964, provides as follows: "This Act [enacting secs. 4–905 to 4–909, repealing 5 U.S.C. § 2061(b)(3), amending 5 U.S.C. § 2063(a)(c), 5 U.S.C. § 2064(e) striking out the provisions of sec. 4–207, striking

out the last 3 sentences of sec. 4–409a, repealing sec. 4–179 and 4–408] shall take effect on the first day of the first pay period which begins after January 1, 1964."

§ 4–208. Special police—Appointment—Powers.

The Director of the National Park Service, in his discretion, may appoint special policemen, without compensation, for duty in connection with the policing of the public parks and other reservations under his jurisdiction within the District of Columbia, such special policemen to have the same powers and perform the same duties as the United States park police and Metropolitan police of said District of Columbia, and to be subject to such regulations as he may prescribe: *Provided*, That the jurisdiction and police power of such special policemen shall be restricted to the public parks and other reservations under the control of the Director of the National Park Service. (May 27, 1924, 43 Stat. 176, ch. 199, § 9; Feb. 26, 1925, 43 Stat. 983, ch. 339, § 1; June 10, 1933, Ex. Ord. No. 6166, § 2; Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1.)

TRANSFER OF FUNCTIONS

Act Mar. 2, 1934, changed the "Office of National Parks, Buildings, and Reservations" to the "National Park Service" and provided that the "services of the Director and personnel of the Office of National Parks, Buildings, and Reservations shall be continued in the National Park Service under their present appointments." See 16 U.S.C. § 1, as amended, which created the National Park Service and provided for a Director thereof.

Ex. Ord. No. 6166 abolished the Office of Public Buildings and Public Parks of the National Capital and transferred its functions to the Office of National Parks, Buildings and Reservations.

Act Feb. 26, 1925, abolished the Office of Public Buildings and Grounds and provided that its officers and employees should become officers and employees of the Office of Public Buildings and Public Parks of the National Capital.

CROSS REFERENCES

General limitation on power of Commissioners, see § 1–801.

Special policemen, see § 4–115.

Suspension of retirement provisions during emergency, see § 4–528.

Chapter 3.—WHITE HOUSE POLICE

Sec

4–301 to 4–306. Repealed.

§§ 4–301 to 4–306. Repealed. June 25, 1948, 62 Stat. 681, ch. 644, § 3.

Sections, act Sept. 14, 1922, 42 Stat. 841, ch. 308, §§ 1—5, 7, related to White House Police and are now covered by 3 U.S.C. §§ 202—208.

Section 4–301, amended May 14, 1930, 46 Stat. 328, ch. 277, § 1.

Section 4–302, amended May 14, 1930, 46 Stat. 329, ch. 277, § 2; May 28, 1935, 49 Stat. 304, ch. 154; Apr. 22, 1940, 54 Stat. 156, ch. 133.

Section 4–303, amended May 14, 1930, 46 Stat. 329, ch. 277, § 3.

Section 4–306, amended May 14, 1930, 46 Stat. 329, ch. 277, § 4.

Chapter 4.—FIRE DEPARTMENT

Sec

4–401. Fire department to embrace entire District of Columbia—Property of department to be assigned and located by Commissioners.
4–402. Commissioners to have exclusive jurisdiction—Rules and regulations—Appointments to be under civil service—Selection of chief engineer and deputy chief engineers—Original appointment and promotion of privates—Vacancies
4–403. Age limits on original appointments.
4–404. Two-platoon system—Classification of officers—Police surgeons to attend members of fire department—May call veterinary surgeon—Transfer to new grades.
4–404a. Workweek established—Hours—Days off—Holidays—Exceptions.
4–405. Repealed.
4–406. Appropriations for clothing.
4–407. Resignation from service—Membership in organization using strike methods prohibited—Conspiracy to obstruct operations of department—Penalty.
4–408. Repealed.
4–408a. Recording annual and sick leave.
4–408b. Annual leave of officers and members of the Fire-fighting Division—Adjustment of accumulated leave—Formula for determination of annual or sick leave—Maximum accumulations.
4–409. Repealed.
4–409a. Restrictions on members of Fire Department leaving District—Residence.
4–410. Repealed.
4–411 Use of equipment for volunteer fire organizations.
4–412 Use of certain buildings granted fire department
4–413 Apparatus—Construction
4–414. Reciprocal agreements for mutual aid.

§ 4–401. Fire department to embrace entire District of Columbia—Property of department to be assigned and located by Commissioners.

The fire department of the District of Columbia shall embrace the whole of the said District, and its personal and movable property shall be assigned and located as the commissioners of said District may direct within the appropriations made by Congress. (June 20, 1906, 34 Stat. 314, ch. 3443, § 1.)

TRANSFER OF FUNCTIONS

Reorganization of the Fire Department, see note under section 4–402.

CROSS REFERENCE

Territorial area, see § 1–101.

§ 4–402. Commissioners to have exclusive jurisdiction—Rules and regulations—Appointments to be under civil service—Selection of chief engineer and deputy chief engineers—Original appointment and promotion of privates—Vacancies.

The commissioners of the District of Columbia shall appoint, assign to such duty or duties as they may prescribe, promote, reduce, fine, suspend, with or without pay, and remove all officers and members of the fire department of the District of Columbia, according to such rules and regulations as said commissioners, in their exclusive jurisdiction and judgment (except as herein otherwise provided), may from time to time make, alter, or amend: *Provided*, That the rules and regulations of the fire department heretofore promulgated are hereby ratified (except as herein otherwise provided) and shall remain in force until changed by said commissioners: *Provided further*, That all officers, members, and civilian employees of such department, except the chief engineer and deputy chief engineers, shall be appointed and promoted in accordance with the provisions of sections 1101—1103, 1105, 1301—1303, 1307, 1308, 1917, 2102, 2951, 3302—3306, 3318, 3319, 3321, 3361, 7152, 7321, 7322, and 7352 of title 5, U.S. Code [relating to the civil service], and the rules and regulations made in pursuance thereof, in the same manner as members of the classified civil service of the United States, except as herein otherwise provided: *Provided further*, That the chief engineer

of the fire department shall be selected from among the deputy chief engineers, the battalion chief engineers, the fire marshal and the superintendent of machinery; the deputy chief engineers shall be selected from among the battalion chief engineers, the fire marshal, and the superintendent of machinery: *Provided further,* That all original appointments of privates shall be made to class one; privates who have served one year in class one shall, if found efficient, be transferred to class two, and privates who have served two years in class two shall, if found efficient, be transferred to class three. Such transfers shall not be subject to the provisions of said sections of title 5, U.S. Code, and the rules and regulations made in pursuance thereof. Whenever vacancies occur in classes two or three which can not be filled by such transfers, the commissioners may appoint additional privates in class one equal in number to the positions vacant in class two or three; and any moneys appropriated for the payment of the salaries for such vacant positions shall be available to pay to such additional privates of class one the salaries of their grade. (June 20, 1906, 34 Stat. 34, ch. 3443, § 2; Jan. 24, 1920, 41 Stat. 396, ch. 54.)

CODIFICATION

The reference in this section to "sections 1101—1103, 1105, 1301—1303, 1307, 1308, 1917, 2102, 2951, 3302—3306, 3318, 3319, 3321, 3361, 7152, 7321, 7322, and 7352 of title 5, U.S. Code [relating to the civil service]" and the reference to "said sections of title 5, U.S.C." were substituted for "the act entitled 'An Act to regulate and improve the civil service of the United States', approved January 16, 1883, as amended", and "such Act of January 16, 1883, as amended", respectively, for the same reason stated in codification note under § 4–103.

AMENDMENT

1920—Act Jan. 24, 1920, inserted the words "as they may prescribe" after the word "duties," and the parenthetical phrase "except as herein otherwise provided," and added the matter following the first proviso.

TRANSFER OF FUNCTIONS

Reorganization Order No. 38 of the Board of Commissioners dated June 18, 1953, established under the direction and control of the President of the Board of Commissioners, a Fire Department headed by the Fire Chief. The Fire Chief was given full authority over the Department to be exercised in accordance with applicable laws, rules and regulations. The order set up the organization of the Department, and provided that the previously existing Fire Department was abolished and its functions transferred to the new Department. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to Title 1, Administration.

The office of Chief Engineer of the Fire Department was abolished and all functions of that office transferred to and vested in the Fire Chief, the Deputy Chief Engineer of the Fire Department was designated "Deputy Fire Chief", and the Battalion Chief Engineer was designated "Battalion Fire Chief" by Reorganization Order No. 6 dated and effective Sept. 16, 1952, issued pursuant to Reorganization Plan No. 5 of 1952. The plan and order are set out in the Appendix to Title 1, Administration.

CROSS REFERENCES

Exemption from military service, see § 39–102.

Firemen receiving awards for meritorious service in line of duty given preference in promotions, see § 4–703.

Free transportation by street-railway companies, see § 44–213.

Jury service, exemption, fees for service, see § 11–2302.

Motor vehicles of department not to be transferred to other departments, see § 40–504.

Removal of members, trial boards, witnesses, see §§ 4–601 to 4–604.

Removal of officer for engaging in strikes, see § 4–407.

Rules and regulations generally, see § 1–226.

Suspension of retirement provisions during emergency, see § 4–528.

NOTES TO DECISIONS

Prohibition of other employment

Commissioners of District may prohibit fire department employees performing other work for compensation *Reichelderfer* v. *Ihrie* (1932, 59 F. 2d 873, 61 App. D.C. 198, certiorari denied 53 S. Ct. 82, 287 U.S. 631, 77 L. Ed. 547).

§ 4–403. Age limits on original appointments.

The commissioners of the District of Columbia are hereby authorized to determine and fix the minimum and maximum limits of age within which original appointments to the fire department may be made (Jan. 24, 1920, 41 Stat. 398, ch. 54, § 4.)

§ 4–404. Two-platoon system—Classification of officers—Police surgeons to attend members of fire department—May call veterinary surgeon—Transfer to new grades.

The fire department of the District of Columbia shall be composed of and operated upon a two-platoon system and the personnel thereof shall consist of one chief engineer; such number of deputy chief engineers, all of whom shall have had at least five years of experience in some regularly organized municipal fire department and battalion chief engineers as said commissioners may deem necessary from time to time within the appropriations made by Congress; one fire marshal; such number of deputy fire marshals, inspectors, and clerks as said commissioners may deem necessary from time to time within the appropriations made by Congress; such number of captains, lieutenants, and sergeants as said commissioners may deem necessary from time to time within the appropriations made by Congress; one superintendent of machinery; and such number of assistant superintendents of machinery, pilots, marine engineers, assistant marine engineers, marine firemen, privates of class six, privates of class five, privates of class four, privates of class three, privates of class two, privates of class one, hostlers, and laborers as said commissioners may deem necessary from time to time within the appropriations made by Congress: *Provided,* That the chief engineer of the fire department of the District of Columbia shall have the right to call for and obtain the services of any veterinary surgeon employed by the District who at the time shall not be engaged in a more emergent veterinary service for the District: *Provided further,* That the police surgeons of said District are required to attend, without charge, the members of the fire department of said District, and examine all applicants for appointment to, promotion in, and retirement from said fire department. (June 20, 1906, 34 Stat. 314, ch. 3443, § 3; Jan. 24, 1920, 41 Stat 397, ch. 54; June 19, 1948, 62 Stat. 498, ch. 530, § 1).

AMENDMENTS

1948—Act June 19, 1948, provided for a two-platoon system; struck out the word "two" before the words "deputy chief engineers" and inserted in lieu thereof the words "such number of"; and inserted privates of classes four, five and six.

1920—Act Jan. 24, 1920, added different classes of employees.

EFFECTIVE DATE OF 1948 AMENDMENT

Section 3 of act June 19, 1948, as amended by act June 16, 1950, 64 Stat. 232, ch. 267, provided that: "This Act [enacting section 4–404a and amending this section] shall take effect as of the date funds are made available for the additional personnel necessary to carry out the purposes of this Act [enacting section 4–404a and amending this section], or the date funds are appropriated for such personnel, whichever is the later date."

TRANSFER OF FUNCTIONS

Board of Police and Fire Surgeons, reconstitution of, see note under section 4–124.

Fire Chief as successor to Chief Engineer and designation as Deputy Fire Chief and Battalion Fire Chief of former Deputy Chief Engineer and Battalion Chief Engineer, see note under section 4–402.

CROSS REFERENCES

Appointment of police surgeons, duty to attend firemen, see § 4–124.

Certification by chief officer that certain businesses have complied with safety regulations before business license be issued, see § 47–2302.

Membership of committee to make awards for meritorious service of firemen in line of duty, see § 4–702.

§ 4–404a. Workweek established—Hours—Days off—Holidays—Exceptions.

(a)(1) Beginning with the first day of the first pay period which begins not less than one hundred and twenty days after enactment of this amendatory subsection or which begins on or after July 1, 1962, whichever is later, the Commissioners of the District of Columbia are authorized and directed to establish a workweek for officers and members of the Firefighting Division of the Fire Department of the District of Columbia which will result in an average workweek of not to exceed forty-eight hours during an administratively established workweek cycle which the Commissioners are hereby authorized to establish from time to time.

(2) The firefighting division shall operate under a two-shift system and all hours of duty of any shift shall be consecutive.

(3) The Commissioners of the District of Columbia are further authorized and directed to establish a workweek for officers and members of the Fire Department, other than those in the firefighting division of forty hours, and the hours of work in such workweek shall be performed on consecutive days in such workweek: *Provided,* That notwithstanding the provisions of this subsection, the Commissioners of the District of Columbia or their designated agent or agents may, whenever the exigencies of the Fire Department require temporary or short-term services of one or more officers or members, order such officer, officers, member, or members to perform such services.

(4) The days off duty to which each officer or member of the Fire Department is entitled shall be in addition to his annual leave and sick leave allowed by law. In the case of any shift of the Fire Department beginning on one day and extending without a break in continuity into the next day, or in the case of two shifts beginning on the same day, the Commissioners are authorized to designate the shift which shall be the workday, and the entire shift so designated shall be considered the workday for all pay and leave purposes.

(5) If a holiday shall fall on an day off of any officer or member of the Fire Department, he shall be excused from duty on such other day as is designated by the Commissioners of the District of Columbia, and if he is required to be on duty in lieu of such day off, he shall receive compensation for such duty at the rate provided by law for duty performed on a holiday. When any shift of the Fire Department begins on the day before a holiday and extends without a break in continuity into the holiday, or begins on a holiday and extends without a breaks in continuity into the next day, the Commissioners of the District of Columbia are authorized to designate either of such shifts as the holiday workday, and the entire shift so designated shall be considered as the holiday workday for all pay and leave purposes. As used in this subsection the word "holiday" shall have the same meaning as such word has in section 4–808, and as supplemented by section 1–1210.

(6) Repealed. [See partial repeal note below.] (June 19, 1948, 62 Stat. 498, ch. 530, § 2; Aug. 4, 1955, 69 Stat. 491, ch. 549, § 2; Oct. 5, 1961, 75 Stat. 830, Pub. L. 87–399, §§ 1, 2; Sept. 25, 1962, 76 Stat. 596, Pub. L. 87–697, §§ 1, 2; Oct. 21, 1965, 79 Stat. 1015, Pub. L. 89–282, § 2.)

REFERENCES IN TEXT

Section 12 of act Sept. 1, 1916, as amended, referred to in subsec. (f), formerly classified to sections 4–113, 4–114, 4–501, 4–503, 4–506, 4–507, 4–508 to 4–510, and 4–512 to 4–514, was completely amended by act Aug. 21, 1957, 71 Stat. 391, Pub. L. 85–157, § 3, and is now classified to sections 4–521 to 4–535.

Section 5 of act July 1, 1930, as amended, referred to in the text, formerly classified to sections 4–503 and 4–504, was repealed by act Aug. 21, 1957, 71 Stat. 399, Pub. L. 85–157, § 5 (2), and is now covered by section 4–524.

AMENDMENTS

1962—Act Sept. 25, 1962, amended the section as follows:

Paragraph (a) was amended to read as above set out. The amendment reduces the workweek of officers and members of the Firefighting Division to "an average workweek of not to exceed forty-eight hours".

Paragraphs (b), (c), (d), (e), and (f) were redesignated as paragraphs (2), (3), (4), (5), and (6), respectively.

Paragraph (c), redesignated as paragraph (3), was amended by striking the period, the addition of a colon and proviso clause as above set out.

1961—Section 1, act Oct. 5, 1961, amended subsection (a) to read as set out in (a), (b), (c), (d), and (e). The wording of subsection (a) prior to this amendment is set out in the 1961 edition of the Code.

Section 2 of the same act amended the first sentence of former subsection (b) to read as above set out in subsection (f), the said subsection having been redesignated as (f) by the same act.

1955—Subsec. (b) amended by act Aug. 4, 1955, which added the matter following the first sentence.

EFFECTIVE DATE OF ACT OCT. 21, 1965

Section 5, act Oct. 21, 1965, provided: "This Act shall become effective on the first day of the first pay period which begins not less than thirty days after approval of this Act. [Amendment of sections 4–807, 4–904, and the repeal of paragraph 6 of section 4–404a]

EFFECTIVE DATE OF 1962 AMENDMENT

Section 5 of act Sept. 25, 1962, provides as follows:

"This Act [amending sections 4–404a, 4–821 and enacting 4–408b] shall take effect on the first day of the first pay period which begins not less than one hundred and twenty days after its enactment, or on or after the first day of the first pay period which begins on or after July 1, 1962, whichever is later."

EFFECTIVE DATE OF 1961 AMENDMENT

Section 7 of act Oct. 5, 1961, provided: "This Act [amending this section and sections 4–807, 4–821, 4–904, and adding 4–408a] shall take effect on the first day of the first full pay period which begins at least sixty days after the date of approval of this Act" [Oct. 5, 1961].

EFFECTIVE DATE OF 1955 AMENDMENT

Section 3 of act Aug. 4, 1955, provided: "This Act [amending this section and section 4–904] shall take effect on July 1, 1955."

PARTIAL REPEAL

Paragraph 6 of this section was repealed by section 2 of the Act of Oct. 21, 1965, 79 Stat. 1015, Pub. L. 89–282. The paragraph dealt with compensation for emergency duty during off days. For overtime pay provisions, see § 4–904.

TRANSFER OF FUNCTIONS

Fire Chief as successor to Chief Engineer, see note under section 4–402.

CROSS REFERENCES

Establishment of workweek for Metropolitan Police, White House Police and United States Park Police, see § 4–904.

Firemen excluded from general law concerning sick leave for District employees, but included as to annual leave, see § 1–312.

Formula for recording annual and sick leave, see § 4–408a.

Other provisions concerning leave, see §§ 4–905 to 4–909.

Policemen and firemen's retirement and disability, see § 4–521 et seq.

§ 4–405. Repealed. June 20, 1953, 67 Stat. 76, ch. 146, § 404(a)(2)—(4), eff. July 1, 1953.

Section, acts July 1, 1930, 46 Stat. 840, ch. 783, § 2; May 5, 1944, 58 Stat. 217, ch. 190; July 3, 1945, 59 Stat. 318, ch. 261, related to salaries of members of the Fire Department of the District of Columbia. See sections 4–823 to 4–837.

EFFECTIVE DATE OF REPEAL

Repeal of section effective July 1, 1953, see section 407 of act June 20, 1953, set out as a note under section 4–821.

§ 4–406. Appropriations for clothing.

For furnishing uniforms and all other official equipment prescribed by department regulations as necessary and requisite in the performance of duty there is hereby authorized to be appropriated a sum not exceeding $75.00 per annum for each member of the fire department of the District of Columbia to be expended subject to rules and regulations to be prescribed by the commissioners of the District of Columbia. (May 25, 1926, 44 Stat. 635, ch. 381.)

§ 4–407. Resignation from service—Membership in organization using strike methods prohibited—Conspiracy to obstruct operations of department—Penalty.

No officer or member of said fire department, under penalty of forfeiting the salary or pay which may be due him, shall withdraw or resign, except by permission of the commissioners of the District of Columbia, unless he shall have given the said commissioners one month's previous notice, in writing, of such intention.

No member of the fire department of the District of Columbia shall directly or indirectly engage in any strike of such department. Upon sufficient proof to the commissioners of the District of Columbia that any member of the fire department of the District of Columbia has violated the provisions of this section, it shall be the duty of the commissioners of the District of Columbia to immediately discharge such member from the service.

Any member of the fire department of the District of Columbia who enters into a conspiracy, combination, or agreement with the purpose of substantially interfering with or obstructing the efficient conduct or operation of the fire department of the District of Columbia by a strike or other disturbance shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $300 or by imprisonment of not more than six months, or by both. (June 20, 1906, 34 Stat. 315, ch. 3443, § 5; Jan. 24, 1920, 41 Stat. 398 ch 54, § 2; July 31, 1939, 53 Stat. 1143, ch. 397.)

AMENDMENTS

1939—Act July 31, 1939, deleted the first sentence of the second paragraph of the section, added by the 1920 amendment, which read, "No member of the fire department of the District of Columbia shall be or become a member of any organization, or of an organization affiliated with another organization, which itself, or any subordinate, component, or affiliated organization of which, holds, claims, or uses the strike to enforce its demands," and inserted in lieu thereof the said sentence as it now appears.

1920—Act Jan. 24, 1920, added the second and third paragraphs.

CROSS REFERENCE

Proceedings for removal of members, see § 4–402.

§ 4–408. Repealed. Aug. 21, 1964, 78 Stat. 583, Pub. L. 88–471, § 7(b).

Section, act Mar. 3, 1897, ch. 387, 29 Stat. 677, last sentence of first par. under heading "For the Fire Department", related to leaves of absence for members of Fire Department. After its repeal, it was covered by §§ 4–905 to 4-909, until those sections were repealed. It is now covered by 5 U.S.C. § 6301 et seq.

EFFECTIVE DATE OF REPEAL

Section 8 of act Aug. 21, 1964, provides as follows: "This Act [enacting secs. 4–905 to 4–909, repealing 5 U.S.C. § 2061(b)(3), amending 5 U.S.C. § 2063(a)(c), 5 U.S.C. § 2064(e) striking out the provisions of sec. 4–207, striking out the last 3 sentences of sec. 4–409a, repealing sec. 4–179 and 4–408] shall take effect on the first day of the first pay period which begins after January 1, 1964."

§ 4–408a. Recording annual and sick leave.

(a) For the purpose of recording annual and sick leave on the hourly basis for officers and members of the firefighting division of the Fire Department of the District of Columbia, the workday of any workweek shall be considered to be twelve hours.

(b) For the purposes of recording on an hourly basis annual and sick leave taken by officers and members of the firefighting division, the following formula shall be used:

(1) During the day shift of ten hours, one and two-tenths hours of leave shall be charged for each hour taken.

(2) During the night shift of fourteen hours, twelve-fourteenths of an hour of leave shall be charged for each hour taken, calculated to the nearest fractional tenth.

(Oct. 5, 1961, 75 Stat. 832, Pub. L. 87–399, § 6.)

EFFECTIVE DATE

Act Oct. 5, 1961, enacting this section and amending sections 4–404a, 4–807, 4–821, and 4–904 provided as follows:

"This Act shall take effect on the first day of the first full pay period which begins at least sixty days after the date of approval of this Act" [Oct. 5, 1961.]

§ 4–408b. Annual leave of officers and members of the Firefighting Division—Adjustment of accumulated leave—Formula for determination of annual or sick leave—Maximum accumulations.

(a) In lieu of the annual leave to which officers and members of the Firefighting Division of the Fire Department of the District of Columbia are entitled under the provisions of sections 6302—6305, and 6310 of title 5, U.S. Code, such officers and members shall be entitled to annual leave which shall accrue as follows:

(1) Four and eight-tenths hours for each full biweekly pay period in the case of officers and members with less than three years' service;

(2) Seven and five-tenths hours for each full biweekly pay period in the case of officers and members with three but less than fifteen years' service;

(3) Nine and six-tenths hours for each biweekly pay period in the case of officers and members with fifteen years' or more service.

(b) Accumulated annual leave to the credit of each officer and member of such Firefighting Division shall be adjusted by applying a four-fifths factor so that each officer and member of such Firefighting Division shall be given credit for four-fifths of a day of leave for each day of such accumulated annual leave, and thereafter accumulated annual leave credited to him pursuant to sections 6301—6305 and 6307—6311 of title 5, U.S. Code, shall be similarly adjusted when an officer or member is transferred to the Firefighting Division from another agency or from another division of the Fire Department.

(c) When an officer or member of such Firefighting Division is transferred to another agency or to another division of the Fire Department, whose employees are entitled to annual leave with pay pursuant to sections 6301—6305 and 6307—6311 of title 5, U.S. Code, the reverse of the formula in subsection (b) shall be applied for the purpose of adjusting accumulated annual leave.

(d) For computation on an hourly basis, all adjusted days of annual leave or fractions thereof, as provided in subsections (b) and (c) of this section, and days of sick leave shall be multiplied by twelve to determine the number of hours of annual or sick leave to which each such officer or member of such Firefighting Division shall be entitled, and the number of hours of annual or sick leave shall be divided by twelve to determine the number of days, or fraction thereof, of annual or sick leave to which such officer or member of such Firefighting Division shall be entitled.

(e) Notwithstanding any provision in any other law, the amount of annual leave accumulated on the effective date of this section, if thirty days or more, shall, upon conversion to the new total in accordance with this section, be the maximum accumulation authorized: *Provided,* That if the amount of annual leave accumulated before the conversion is less than thirty days on the effective date of this section, then, after conversion to the new total, leave which is not used shall accumulate for use in succeeding years until it totals no more than twenty-four days at the beginning of the first complete biweekly pay period. (Sept. 25, 1962, 76 Stat. 596, Pub. L. 87–697, § 4.)

CODIFICATION

In subsec. (a), the reference to "sections 6302—6305, and 6310 of Title 5, U.S. Code" was substituted for "section 5, U.S.C. 2062", and, in subsecs. (b) and (c), the reference to "sections 6301—6305, 6307—6311 of title 5, U.S. Code" was substituted for "the Annual and Sick Leave Act of 1951, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. Section 2062 of title 5, U.S.C., and the Annual and Sick Leave Act of 1951 (Oct. 30, 1951, 65 Stat. 679, ch. 631, title II), as amended, were repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law). Section 2062 of former title 5, U.S.C., is now covered by §§ 6301—6305, and 6310 of title 5, U.S.C., and the Annual and Sick Leave Act of 1951, as amended, is now covered by §§ 6301–6305, and 6307—6311 of title 5, U.S.C.

EFFECTIVE DATE

Section 5 of act Sept. 25, 1962, provides as follows: "This Act [amending sections 4–404a, 4–821 and enacting 4–408b] shall take effect on the first day of the first pay period which begins not less than one hundred and twenty days after its enactment, or on or after the first day of the first pay period which begins on or after July 1, 1962, whichever is later."

CROSS REFERENCES

Other provisions relating to annual leave, see §§ 1–312, 4–404a, and 4–821.

§ 4–409. Repealed. July 25, 1956, 70 Stat. 647, ch. 726, § 3.

Section, acts Mar. 4, 1913, 37 Stat. 960, ch. 150; Aug. 9, 1935, 49 Stat. 567, ch. 500, related to restrictions on members of Fire Department leaving District, residence and sick leave and is now covered by sections 4–132a and 4–409a, and 5 U.S.C. § 6301 et seq.

§ 4–409a. Restrictions on members of Fire Department leaving District—Residence.

No member of the Fire Department of the District of Columbia shall, unless on leave of absence, go beyond the confines of the District of Columbia, or be absent from duty without permission. Nothing in this section shall be construed to limit the right of officers and members of the Fire Department to reside anywhere within the Washington, District of Columbia, metropolitan district. (July 25, 1956, 70 Stat. 647, ch. 726, § 2; Aug. 21, 1964, 78 Stat. 583, Pub. L. 88–471, § 6(f).)

AMENDMENTS

1964—Section 6(f) of the act of Aug. 21, 1964, amended section by striking the following three sentences: "Thirty days shall be the term of total sick leave in any one year without disallowance of pay. Leaves of absence with pay of members of the Fire Department of the District of Columbia may be extended in cases of illness or injury incurred in line of duty, upon recommendation of the board of surgeons approved by the Commissioners, for such period exceeding thirty days in any one year as in the judgment of the Commissioners may be necessary. For the purposes of this subsection "any one year" shall mean a year from January 1 to December 31, both dates inclusive." After such amendment, the provisions struck out were covered by §§ 4–905 to 4–909, until those sections were repealed. They are now covered by 5 U.S.C. § 6301 et seq.

EFFECTIVE DATE OF AMENDMENT

Section 8 of act Aug. 21, 1964, provides as follows: "This Act [enacting secs. 4–905 to 4–909, repealing 5 U.S.C. 2061(b)(3), amending 5 U.S.C. § 2063(a)(c), 5 U.S.C. § 2064(e) striking out the provisions of sec. 4–207, striking out the last 3 sentences of sec. 4–409a, repealing sec. 4–179 and 4–408] shall take effect on the first day of the first pay period which begins after January 1, 1964."

CROSS REFERENCES

Metropolitan district, territorial extent, see § 4–132a.

Residence requirements of officers or members of Fire Department, see § 4–132a.

Retirement for disability incurred or not incurred in performance of duty, see §§ 4–526, 4–527.

§ 4–410. Repealed. June 20, 1953, 67 Stat. 76, ch. 146, § 404(a)(1), eff. July 1, 1953.

Section, act May 27, 1924, 43 Stat. 175, ch. 199, § 3, related to time off for members of the fire department of the District of Columbia and is now covered by sections 4–404a and 4–821.

EFFECTIVE DATE OF REPEAL

Repeal of section effective July 1, 1953, see section 407 of act June 20, 1953, set out as a note under section 4–821.

§ 4–411. Use of equipment for volunteer fire organizations.

The commissioners of the District of Columbia are authorized to install under such rules and regulations as they may prescribe, in any suburb of the said District, such extra apparatus and appliances belonging to the fire department of the District of Columbia as may, in their opinion, be available for the use of any volunteer fire organization which may be created in such suburb; and such apparatus and appliances shall be maintained in proper condition for service by the purchase of the necessary supplies out of the appropriations provided for the fire department of the District of Columbia. (May 26, 1908, 35 Stat. 298, ch. 198.)

§ 4–412. Use of certain buildings granted fire department.

The right of use and occupancy of the buildings and appurtenances known as the Union, Franklin, Columbia, and Anacostia engine houses, granted to the city of Washington for the purposes of the fire department, shall continue during the pleasure of Congress so long as used for such purposes. (R. S., D. C., § 192; Feb. 27, 1877, 19 Stat. 253, ch. 69, § 2.)

§ 4–413. Apparatus—Construction.

On and after June 29, 1956, the Commissioners in their discretion may authorize the construction, in whole or in part, fire-fighting apparatus in the Fire Department repair shop. (June 29, 1956, 70 Stat. 443, ch. 479, § 1.)

SIMILAR PROVISIONS

Similar provisions were contained in the following prior acts:

1956—July 5, 1955, 69 Stat. 249, ch. 272, § 1.
1955—July 1, 1954, 68 Stat. 382, ch. 449, § 1.
1954—July 31, 1953, 67 Stat. 284, ch. 299, § 1.
1953—July 5, 1952, 66 Stat. 379, ch. 596, § 1.
1952—Aug. 3, 1951, 65 Stat. 160, ch. 292, § 1.
1951—July 18, 1950, 64 Stat. 347, ch. 467, § 1.
1950—June 29, 1949, 63 Stat. 303, ch. 279, § 1.
1949—June 19, 1948, 62 Stat. 544, ch. 555, § 1.
1948—July 25, 1947, 61 Stat. 434, ch. 324, § 1.
1947—July 9, 1946, 60 Stat. 509, ch. 544, § 1.
1946—June 30, 1945, 59 Stat. 280, ch. 209, § 1.
1945—June 28, 1944, 58 Stat. 517, ch. 300, § 1.
1944—July 1, 1943, 57 Stat. 326, ch. 184, § 1.
1943—June 25, 1942, 56 Stat. 439, ch. 452, § 1.
1942—July 1, 1941, 55 Stat. 517, ch. 271, § 1.
1941—June 12, 1940, 54 Stat. 322, ch. 333, § 1.

§ 4–414. Reciprocal agreements for mutual aid.

(a) The Commissioners of the District of Columbia are hereby authorized in their discretion to enter into and to renew reciprocal agreements, for such period as they deem advisable, with the appropriate county, municipal, and other governmental units in Prince Georges and Montgomery Counties, Maryland, and Arlington and Fairfax Counties, Virginia, with the city of Alexandria, Virginia, with the city of Falls Church, Virginia, and with incorporated or unincorporated fire departments, fire companies, and organizations of firemen in such counties and cities, in order to establish and carry into effect a plan to provide mutual aid, through the furnishing of fire-fighting personnel and equipment, by and for the District of Columbia and such counties and cities, for the extinguishment of fires and for the preservation of life and property in emergencies, in the District and in such counties and cities.

(b) The District of Columbia shall not enter into any such agreement unless the agreement provides that each of the parties to such agreement shall: (1) waive any and all claims against all the other parties thereto which may arise out of their activities outside their respective jurisdictions under such agreement; (2) indemnify and save harmless the other parties to such agreement from all claims by third parties for property damage or personal injury which may arise out of the activities of the other parties to such agreement outside their respective jurisdictions under such agreement.

(c) The Commissioners of the District of Columbia are hereby authorized to make available to the Federal Government personnel and equipment of the Fire Department of the District to extinguish fires, and to save lives, on property of the Federal Government in Prince Georges and Montgomery Counties, Maryland; Arlington and Fairfax Counties, Virginia; and the city of Alexandria, Virginia; and the city of Falls Church, Virginia.

(d) For the purposes of the Act of September 1, 1916, as amended and supplemented (D.C. Code, 1940 edition, secs. 4–501 to 4–517), service performed by any officer or member of the Fire Department of the District of Columbia under any mutual-aid agreement entered into by the District pursuant to this section, service performed by any officer or member of the Fire Department of the District of Columbia at any other city, area, municipality, or other location where they shall have been directed to respond for the purpose of saving lives, extinguishing fires, or preserving property on orders of the Commissioners of the District of Columbia or of the Chief Engineer of said Fire Department or his acting designate, and service performed under subsection (c) of this section by any such officer or member in extinguishing fires, or saving lives, on property of the Federal Government, shall be held and considered to be service performed in line of duty. (Aug. 14, 1950, 64 Stat. 441, ch. 706, §§ 1—4; Aug. 21, 1964, 78 Stat. 585, Pub. L. 88–473, § 1.)

AMENDMENT

1964—Act Aug. 21, 1964, amended section by adding indemnity clause.

TRANSFER OF FUNCTIONS

Deputy Fire Chief as the designation of former Deputy Chief Engineer, see note under section 4–402.

Chapter 5.—POLICEMEN AND FIREMEN'S RETIREMENT AND DISABILITY

Sec.
4–501. Creation.
4–502. Payment and deposit.
4–503. Composition—Deficiencies supplied from revenues of District of Columbia—Pensions payable from—Accounting.
4–504. Repealed.
4–504a. Credit for active service in military or naval forces.
4–505. Commissioners to determine amount of pension relief.
4–506, 4–507. Omitted.
4–507a. Equalization of pensions of widows and orphans granted prior to October 1, 1949.
4–508 to 4–510. Omitted.
4–511. Repealed.
4–512 to 4–514. Omitted.
4–515, 4–516. Repealed.
4–517. Equalization of pensions granted prior to December 5, 1919—Arrears of pensions.
4–518. Pension relief allowance or retirement compensation increase.
4–519. Computation of pension of certain retired officers—Equivalent positions.
4–520. Repealed.
4–521. Definitions.
4–522. United States Secret Service Division—Transfer of Civil Service retirement funds—Credit for prior service with other police units.
4–523. Creditable service—Military and other government service.
4–524. Deductions, deposits and refunds—Order of persons entitled to refunds for deductions.
4–525. Medical and hospital service—Payment of by District on certificate of Commissioners.
4–526. Retirement for disability not incurred in performance of duty.
4–527. Retirement for disability while performing or not performing duty.
4–528. Optional retirement—Conditions—Suspension of retirement provisions during emergency.
4–529. Involuntary separation from service.
4–530. Recovery from disability or restoration to earning capacity—Earning capacity defined—Suspension of annuity—Restoration to duty.
4–531. Survivor annuities—Amount—To whom payable—Election of type of annuity.
4–532. Funeral expenses.
4–533. Duties of Commissioners in retirement and annuity matters—Certification of physical condition of member—Written notice of hearing—Procedure at hearings—Subpena—Contempt proceedings.
4–534. Payment of annuities—Order of payment on death of annuitant—Waiver.
4–535. Delegation of functions by Commissioners—Regulations.
4–536. No reduction in existing relief.
4–537. Appropriation—Reimbursement to District of Columbia.
4–538. Eligibility under the federal employees' compensation law.
4–539. Annuity rights of widows and children of officers and members who died in service prior to October 1, 1956—Existing benefits not reduced.

§ 4–501. Creation.

CODIFICATION

Act Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12, as amended, formerly classified to sections 4–113, 4–114, 4–501, 4–503, 4–506, 4–507, 4–508 to 4–510, and 4–512 to 4–514, was completely amended by act Aug. 21, 1957, 71 Stat. 391, Pub. L. 85–157, § 3, and is now classified to sections 4–521 to 4–535.

Section, act Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12, designated as the policemen and firemen's relief fund the funds authorized by law prior to Sept. 1, 1916 and known as the police relief fund and the firemen's relief fund.

PRIOR LAWS: POLICEMEN AND FIREMEN'S RELIEF FUND

1909—Mar. 4, 1909, 35 Stat. 1066, ch. 316.
1908—May 26, 1908, 35 Stat. 296, ch. 198.
1907—Feb. 27, 1907, 34 Stat. 1003, ch. 2081.
1906—Mar. 31, 1906, 34 Stat. 95, ch. 1359.
1905—Mar. 1, 1905, 33 Stat. 821, ch. 1299.
1901—Feb. 28, 1901, 31 Stat. 820, ch. 623.
1896—June 11, 1896, 29 Stat. 404, ch. 419.
1885—Feb. 25, 1885, 23 Stat. 316, 317, ch. 145.

NOTES TO DECISIONS

Decisions under former law

Under this act provision was made for a police fund, and it was derived from small deductions from the salaries of the policemen, dog licenses, police-court fines, etc., supplemented at irregular intervals by appropriations by Congress. *Dougherty* v. *United States ex rel. Roberts* (1929, 30 F. 2d 471, 58 App. D.C. 308).

§ 4–502. Payment and deposit.

Commencing with July 1, 1935, and thereafter, all moneys on June 14, 1935, required to be deposited to the credit of the policemen and firemen's relief fund, District of Columbia, under section 4–503, shall be paid to the collector of taxes of the District of Columbia and deposited in the treasury to the credit of the revenues of said District. (June 14, 1935, 49 Stat. 358, ch. 241, § 1.)

REFERENCES IN TEXT

Section 4–503, referred to in the text, is omitted from the Code in view of the general amendment of section 12 of act Sept. 1, 1916, 39 Stat. 718, ch. 433 by act Aug. 21, 1957, 71 Stat. 391, Pub. L. 86–157, § 3. See sections 4–521 to 4–535.

§ 4–503. Composition—Deficiencies supplied from revenues of District of Columbia—Pensions payable from—Accounting.

CODIFICATION

Act Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12, as amended, formerly classified to sections 4–113, 4–114, 4–501, 4–503, 4–506, 4–507, 4–508 to 4–510, and 4–512 to 4–514, was completely amended by act Aug. 21, 1957, 71 Stat. 391, Pub. L. 85–157, § 3, and is now classified to sections 4–521 to 4–535.

Section, acts Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12; May 27, 1924, 43 Stat. 176, ch. 199, § 7; Aug. 21, 1957, 71 Stat. 399, Pub. L. 85–157, § 5(2), provided for the composition of the policemen and firemen's relief fund and required deficiencies to be supplied from revenues of the District of Columbia, payment of pensions and accounting for expenditures. See section 4–524(1).

§ 4–504. Repealed. Aug. 21, 1957, 71 Stat. 399, Pub. L. 85–157, § 5(2), eff. Oct. 1, 1956.

Section, acts July 1, 1930, 46 Stat. 840, ch. 783, §5; Aug. 4, 1949, 63 Stat. 566, ch. 394, § 4, related to salary deductions, refunds upon separation from service, redeposits on reappointment and payment to the estate of the deceased member, and is now covered by section 4–524.

EFFECTIVE DATE OF REPEAL

Repeal of section effective Oct. 1, 1956, see section 8 of act Aug. 21, 1957, set out as a note under section 4–521.

§ 4–504a. Credit for active service in military or naval forces.

In determining eligibility for and the amount of benefits from the policemen and firemen's relief fund, District of Columbia, each member of the Metropolitan Police Department of the District of Columbia, the United States Park Police force, the White House Police force, the Fire Department of the District of Columbia, and each member of the United States Secret Service who has actively performed duties

other than clerical for ten years or more directly related to the protection of the President, who shall have left active employment in any such department, force, or service to perform active service in the military or naval forces of the United States, shall be credited with all periods of honorable active military or naval service performed on or after September 16, 1940, and prior to the termination of the war as declared by Presidential proclamation or concurrent resolution of the Congress. (July 21, 1947, 61 Stat. 398, ch. 272.)

CROSS REFERENCE

Creditable service for purpose of retirement and disability, see § 4–523.

§ 4–505. Commissioners to determine amount of pension relief.

The commissioners of the District of Columbia are hereby empowered to determine and fix the amount of the pension relief allowance heretofore and hereafter granted to any person under and in accordance with the provisions of sections 4–501, 4–503, 4–506 to 4–510, 4–512 to 4–514. (July 1, 1930, 46 Stat. 841, ch. 783, § 6.)

REFERENCES IN TEXT

Sections 4–501, 4–503, 4–506 to 4–510, 4–512 to 4–514, referred to in the text, are references to section 12 of act Sept. 1, 1916, 39 Stat. 718, ch. 433. Such section 12 was generally amended by act Aug. 21, 1957, 71 Stat. 391, Pub. L. 86–157, § 3, and is now covered by sections 4–521 to 4–535.

CROSS REFERENCE

Automatic equalization of pensions, see § 4–518.

NOTES TO DECISIONS

Redetermination of amount—constitutionality

Commissioners are empowered to redetermine and fix the amount of the pension relief allowance of policemen and firemen already in the service, as well as those thereafter entering the service, and such redetermination is neither retroactive nor is it unconstitutional as impairing obligation of a contract. *Dougherty* v. *United States ex rel. Browning* (1931, 45 F. 2d 926, 60 App. D.C. 8).

§§ 4–506, 4–507. Omitted.

CODIFICATION

Act Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12, as amended, formerly classified to sections 4–113, 4–114, 4–501, 4–503, 4–506, 4–507, 4–508 to 4–510, and 4–512 to 4–514, was completely amended by act Aug. 21, 1957, 71 Stat. 391, Pub. L. 85–157, § 3, and is now classified to sections 4–521 to 4–535.

Section 4–506, act Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12, provided for an allowance for temporary disability upon issuance of a certificate of Board of Police and Fire Surgeons approved by superintendent of Metropolitan police or chief engineer of the fire department, and is now covered by section 4–525.

Section 4–507, acts Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12; Feb. 17, 1923, 42 Stat. 1263, ch. 95, § 1; Aug. 4, 1949, 63 Stat. 565, ch. 394, § 1, provided a retirement allowance for total disability, prescribed the retirement age, and authorized pensions to widows and orphans. See sections 4–527, 4–528 and 4–531.

§ 4–507a. Equalization of pensions of widows and orphans granted prior to October 1, 1949.

All widows and children of deceased members of the police department or of the fire department of the District of Columbia receiving relief under the provisions of sections 4–501, 4–503, 4–506 to 4–510, 4–512 to 4–514, shall be entitled to receive relief to the same extent and in the same manner as is provided by section 4–507: *Provided,* That no relief shall be increased or allowed under the authority of this section for any period prior to October 1, 1949: *Provided further,* That any child or children who had attained the age of sixteen years and whose benefits were terminated shall be entitled to receive relief as provided by section 4–507 until the attainment of eighteen years of age. (Aug. 4, 1949, 63 Stat. 566, ch. 394, § 3.)

REFERENCES IN TEXT

Sections 4–501, 4–503, 4–506 to 4–510, 4–512 to 4–514, referred to in the text, are references to section 12 of act Sept. 1, 1916, 39 Stat. 718, ch. 433. Such section 12 was generally amended by act Aug. 21, 1957, 71 Stat. 391, Pub. L. 86–157, § 3, and is now covered by sections 4–521 to 4–535.

EFFECTIVE DATE

Section 5 of the act of Aug. 4, 1949, provided: "This Act shall take effect on the first day of the second month following the date of approval of this Act."

§§ 4–508 to 4–510. Omitted.

CODIFICATION

Act Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12, as amended, formerly classified to sections 4–113, 4–114, 4–501, 4–503, 4–506, 4–507, 4–508 to 4–510, and 4–512 to 4–514, was completely amended by act Aug. 21, 1957, 71 Stat. 391, Pub. L. 85–157, § 3, and is now classified to sections 4–521 to 4–535.

Section 4–508, act Sept. 1, 1916, 39 Stat. 721, ch. 433, § 12 par., as added Oct. 14, 1940, 54 Stat. 1118, ch. 860, related to voluntary retirement, age and service requirements, benefits, and transfer of funds of members of United States Secret Service Division, and is now covered by sections 4–522 and 4–528.

Section 4–509, acts Sept. 1, 1916, 39 Stat. 719, ch. 433, § 12; Aug. 4, 1949, 63 Stat. 566, ch. 394, § 2, authorized payment of funeral expenses not exceeding $250 of member dying in the service of the police or fire department, and is now covered by section 4–532.

Section 4–510, act Sept. 1, 1916, 39 Stat. 719, ch. 433, § 12, created the Police and Firemen's Retiring and Relief Board to consider cases for retirement and relief of members of police and fire departments and applications for relief of their widows and children, authorized the Commissioners to provide regulations and rules of procedure for conduct of the board, required the Board of Police and Fire Surgeons to certify the physical condition of the members, and provided for board proceedings, compulsory attendance of witnesses, report of findings to the Commissioners and Commission review and determination. See section 4–533.

§ 4–511. Repealed. Aug. 21, 1957, 71 Stat. 399, Pub. L. 85–157, § 5(3), eff. Oct. 1, 1956.

Section, act May 27, 1924, 43 Stat. 176, ch. 199, § 7, made member of park police a member of the board in cases of relief and retirement of park and White House police forces.

EFFECTIVE DATE OF REPEAL

Repeal of section effective Oct. 1, 1956, see section 8 of act Aug. 21, 1957, set out as a note under section 4–521.

§§ 4–512 to 4–514. Omitted.

CODIFICATION

Act Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12, as amended, formerly classified to sections 4–113, 4–114, 4–501, 4–503, 4–506, 4–507, 4–508 to 4–510, and 4–512 to 4–514, was completely amended by act. Aug. 21, 1957, 71 Stat. 391, Pub. L. 85–157, § 3, and is now classified to sections 4–521 to 4–535.

Sections, act Sept. 1, 1916, 39 Stat. 720, ch. 433, § 12, related to medical examinations of pensioners and discretion of Commissioners; reduction or discontinuance of allowance when guilty of a crime involving moral turpitude, of being a drunkard and of lewd or lascivious conduct; and service of pensioners in emergency cases, respectively. See sections 4–521(2) and 4–528(1).

§§ 4–515, 4–516. Repealed. Aug. 21, 1957, 71 Stat. 399, Pub. L. 85–157, § 5(3), eff. Oct. 1, 1956.

Sections, act May 27, 1924, 43 Stat. 176, ch. 199, § 7, made retirement provisions applicable to park police force upon payment of prescribed rate and required apportionment of appropriations between District and United States, respectively.

EFFECTIVE DATE OF REPEAL

Repeal of sections effective Oct. 1, 1956, see section 8 of act Aug. 21, 1957, set out as a note under section 4–521.

§ 4–517. Equalization of pensions granted prior to December 5, 1919—Arrears of pensions.

CODIFICATION

Section, act Feb. 17, 1823, 43 Stat. 1263, ch. 95, which related to equalization of pensions granted prior to Dec. 5, 1919, is omitted as executed and obsolete.

§ 4–518. Pension relief allowance or retirement compensation increase.

Notwithstanding section 4–505, each individual heretofore or hereafter retired from active service and entitled to receive a pension relief allowance or retirement compensation under the provisions of section 12 of the Act entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes", approved September 1, 1916 (39 Stat. 676), as amended, shall be entitled to receive, without making application therefor, with respect to each increase in salary granted by this Act, or hereafter granted by law to which such individual would be entitled if he were in active service, and increase in his pension relief allowance or retirement compensation. Such increase shall be in an amount which bears the same ratio to such increase in salary as the amount of each such individual's pension relief allowance or retirement compensation in effect on the day next preceding such salary increase bore to the salary to which he would have been entitled had he been in active service on the day next preceding such salary increase. Each increase in pension relief allowance or retirement compensation under this section and section 4–519 resulting from an increase in salary shall take effect as of the first day of the first month following the effective date of such increase in salary. (June 20, 1953, 67 Stat. 75, ch. 146, title III, § 301.)

REFERENCES IN TEXT

Section 12 of act Sept. 1, 1916, as amended, referred to in the text, formerly classified to sections 4–113, 4–114, 4–501, 4–503, 4–506, 4–507, 4–508 to 4–510, and 4–512 to 4–514, was completely amended by act Aug. 21, 1957, 71 Stat. 391, Pub. L. 85–157, § 3, and is now classified to sections 4–521 to 4–535.

This Act, referred to in the text, means act June 20, 1953, which is classified to this section and sections 4–519, 4–821, and 4–904 and which was formerly classified to sections 4–813 to 4–816, 4–820, and 4–822, which were repealed by act Aug. 1, 1958, 72 Stat. 486, Pub. L. 85–584, § 507, and are now covered by section 4–823 et seq.

EFFECTIVE DATE

Section effective on July 1, 1953, see note under section 4–821.

CROSS REFERENCE

Determination of amount of pension relief by Commissioners, see § 4–505.

NOTES TO DECISIONS

Pension rights of retired members

The District of Columbia Police and Firemen's Salary Act, providing that members of District Police and Fire Departments "heretofore or hereafter retired" shall be entitled to increased pension allowances based on increases in salary they would have received thereunder, if in active service, grants members retired before its effective date increases in pension allowances based on longevity of their active service before retirement. *George L. Abell et al.* v. *Samuel Spencer, President, Board of Commissioners etc.* (1955, 225 F. 2d 568, 96 U.S. App. D.C. 268).

§ 4–519. Computation of pension of certain retired officers—Equivalent positions.

In computing the pension relief allowance or retirement compensation of any such individual retired before July 1, 1953 as Major and Superintendent of Police, Assistant Superintendent of Police, Chief Engineer of the Fire Department, Deputy Chief Engineer of the Fire Department, or Battalion Chief Engineer of the Fire Department of the District of Columbia, such person shall, for the purposes of this Act, be deemed to have retired as Chief of Police, Deputy Chief of Police, Fire Chief, Deputy Fire Chief, or Battalion Fire Chief, respectively. (June 20, 1953, 67 Stat. 75, ch. 143, title III, § 302.)

REFERENCES IN TEXT

This Act, referred to in the text, means act June 20, 1953, which is classified to this section and sections 4–518, 4–821, and 4–904 and which was formerly classified to sections 4–813 to 4–816, 4–820, and 4–822, which were repealed by act Aug. 1, 1958, 72 Stat. 486, Pub. L. 85–584, § 507, and are now covered by section 4–823 et seq.

EFFECTIVE DATE

Section effective on July 1, 1953, see note under section 4–821.

§ 4–520. Repealed. Aug. 21, 1957, 71 Stat. 399, Pub. L. 85–157, § 5(4), eff. Oct. 1, 1956.

Section, act Aug. 31, 1954, 68 Stat. 1044, ch. 1167, provided for waiver of benefits by a member and revocation of such waiver, and is now covered by section 4–534(2).

EFFECTIVE DATE OF REPEAL

Repeal of section effective Oct. 1, 1956, see section 8 of act Aug. 21, 1957, set out as a note under section 4–521.

§ 4–521. Definitions.

Wherever used in sections 4–521 to 4–535—

(1) The term "member" means any officer or member of the Metropolitan Police force, of the Fire Department of the District of Columbia, of the United States Park Police force, of the White House Police force, and any officer or member of the United States Secret Service Division to whom sections 4–521 to 4–535 shall apply.

(2) The terms "disabled" and "disability" mean disabled for useful and efficient service in the grade or class of position last occupied by the member by reason of disease or injury, not due to vicious habits or intemperance as determined by the Board of Police and Fire Surgeons, or willful misconduct on his part as determined by the Commissioners.

(3) The term "widow" means the surviving wife of a member who was married to such individual while he was a member.

(4) The term "dependent widower" means the surviving husband of a member who was married to such individual while she was a member,

and who is incapable of self-support by reason of mental or physical disability, and who received more than one-half his support from such member.

(5) The term "child" means an unmarried child, including (a) an adopted child, and (b) a stepchild or recognized natural child who received more than one-half his support from the member in a regular parent-child relationship, under the age of eighteen years, or such unmarried child regardless of age who, because of physical or mental disability incurred before the age of eighteen, is incapable of self-support.

(6) The term "basic salary" means regular salary established by law or regulation including any differential for special occupational assignment but shall not include overtime, holiday, or military pay.

(7) The term "annuitant" means any former member who, on the basis of his service, has met all requirements of sections 4–521 to 4–535 for title to annuity and has filed claim therefor.

(8) The term "survivor" means a person who is entitled to annuity under sections 4–521 to 4–535 based on the service of a deceased member or of a deceased annuitant.

(9) The term "survivor annuitant" means a survivor who has filed claim for annuity.

(10) The term "police or fire service" means all honorable service in the Metropolitan Police Department, White House Police force, Fire Department of the District of Columbia, the United States Park Police force, and the United States Secret Service Division coming under the provisions of this Act.

(11) The term "military service" means honorable active service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, but shall not include service in the National Guard except when ordered to active duty in the service of the United States.

(12) The term "Commissioners" means the Commissioners of the District of Columbia or their designated agent or agents.

(13) The term "service" means employment which is creditable under section 4–523.

(14) The term "Government" means the executive, judicial, and legislative branches of the United States Government, including Government-owned or controlled corporations and Gallaudet College, and the municipal government of the District of Columbia.

(15) The term "Government service" means honorable active service in the executive, judicial, or legislative branches of the United States Government, including Government-owned or controlled corporations, and Gallaudet College, and municipal government of the District of Columbia, and for which retirement deductions, other than social security deductions, were made.

(16) The term "department" means any part of the executive branch of the United States Government, or any part of the government of the District of Columbia whose members come under sections 4–521 to 4–535.

(Sept. 1, 1916, ch. 433, § 12(a), as added Aug. 21, 1957, 71 Stat. 391, Pub. L. 85–157, § 3.)

REFERENCES IN TEXT

This act, referred to in subd. (10), means act Sept. 1, 1916, which is classified to sections 1–307, 1–817, 4–521 to 4–535, 7–603, 7–612, 7–901, 24–402, 31–608, 43–1207, 44–213, and 47–702. It was also classified to § 11–1516, which section was repealed by act Dec. 23, 1963, 77 Stat. 620, Pub. L. 88–241, § 21(a), and is now covered by 15–702.

CODIFICATION

Section is comprised of subsec. (a) of section 12 of act Sept. 1, 1916. Remainder of section 12 of act Sept. 1, 1916 is classified to sections 4–522 to 4–535.

EFFECTIVE DATE

Section 8 of act Aug. 21, 1957, provided that: "The effective date of this Act [enacting sections 4–521 to 4–538 and repealing sections 4–504, 4–511, 4–515, 4–516 and 4–520] shall be October 1, 1956."

SHORT TITLE

Section 1 of act Aug. 21, 1957, provided that "This Act [enacting sections 4–521 to 4–538 and repealing sections 4–504, 4–511, 4–515, 4–516 and 4–520] may be cited as the 'Policemen and Firemen's Retirement and Disability Act Amendments of 1957.'"

Section 12(r) of act Sept. 1, 1916, as added Aug. 21, 1957, § 3, provided that "This section [sections 4–521 to 4–535] may be cited as the 'Policemen and Firemen's Retirement and Disability Act.'"

LEGISLATIVE INTENT

Section 2 of act Aug. 21, 1957, provided as follows: "It is the intent of Congress in enacting the Policemen and Firemen's Retirement and Disability Act Amendments of 1957 [enacting sections 4–521 to 4–538 and repealing sections 4–504, 4–511, 4–515, 4–516 and 4–520] to give the members coming under such Act benefits substantially similar to benefits given by the Civil Service Retirement Act Amendments of 1956 [5 U.S.C. § 2251 note] to officers and employees covered by the Civil Service Retirement Act of May 29, 1930, as amended [5 U.S.C. § 2251 et seq.]

The Civil Service Retirement Act Amendments of 1956 (act July 31, 1956, 70 Stat. 743, ch. 804, title IV), and the Civil Service Retirement Act of May 29, 1930 (46 Stat. 468, ch. 349), as amended, referred to in the above-quoted provisions, were repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and are now covered by §§ 1308, 3323, and 8331 et seq. of title 5, U.S.C.

APPLICABILITY OF REORGANIZATION PLAN NO. 5

Act Sept. 1, 1916, ch. 433, § 12(q), as added Aug. 21, 1957, provided as follows:

"Where any provision of this section [sections 4–521 to 4–535] refers to an office or agency abolished by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), such reference shall be deemed to be to the office, agency, or officer now or hereafter exercising the functions of the office or agency so abolished. Nothing contained in this section [sections 4–521 to 4–535] shall be construed as a limitation on the authority vested in the Commissioners by Reorganization Plan Numbered 5 of 1952."

CROSS REFERENCES

Salary of police and firemen, see § 4–823 et seq.

Unclaimed property in the hands of property clerk, see § 4–159.

Unemployment compensation under Social Security Act, exclusion of policemen and firemen, see § 46–301.

United States Park Police, see §§ 4–201, 4–202, 4–204 to 4–208.

White House Police, see 3 U.S.C. §§ 202—208.

NOTES TO DECISIONS

Base of pension

Pensions are to be based on pay of class to which applicant for increase belongs at time of application; and Board had power to make physical examination of retired applicant. *Dougherty* v. *United States ex rel. Roberts* (1929, 30 F. 2d 471, 58 App. D.C. 308).

Employment status

The plaintiff, as a member of the Metropolitan police, is not an employee of the United States but is an em-

ployee of the municipal corporation, the District of Columbia. *Wham* v. *United States* (D.C.D.C. 1949, 81 F. Supp. 126, reversed on other grounds 180 F. 2d 38, 86 U.S. App. D.C. 128).

Moral turpitude

Possession and transportation of intoxicating liquor was a crime involving moral turpitude, as regards ground for discontinuance of pension of policeman under former section 4–513. *Rudolph* v. *United States ex rel. Rock* (1925, 6 F. 2d 487, 55 App. D.C. 362, 40 A.L.R. 1042, certiorari denied 46 S. Ct. 20, 269 U.S. 559, 70 L. Ed. 411).

Vested rights

While there is no vested right in a pension which cannot be divested by the mere exercise of the legislative will, if relators have any rights, they are vested ones so long only as the statute in question remains in force and unchanged, subject to be divested at any time that Congress may desire. *Dougherty* v. *United States ex rel. Browning* (1931, 45 F. 2d 926, 60 App. D.C. 8).

The right of a retired member of the police force to a pension, or to a particular pension, is not a vested right, and a change by statute does not impair the obligation of a contract. *Id.*

§ 4–522. United States Secret Service Division—Transfer of Civil Service retirement funds—Credit for prior service with other police units.

Whenever any member of the United States Secret Service Division has actively performed duties other than clerical for ten years or more directly related to the protection of the President, such member shall be authorized to transfer all funds to his credit in the Civil Service Retirement and Disability Fund continued by sections 8331(5) and 8348 of title 5, U.S. Code, to the general revenues of the District of Columbia and after the transfer of such funds the salary of such member shall be subject to the same deductions for credit to the general revenues of the District of Columbia as the deductions from salaries of other members under sections 4–521 to 4–535, and he shall be entitled to the same benefits as the other members to whom such sections apply. Any member of the United States Secret Service Division appointed from the White House Police force and assigned to duties directly related to the protection of the President shall receive credit for periods of prior service with the Metropolitan Police force, the United States Park Police force, or the White House Police force toward the required ten years or more service. (Sept. 1, 1916, ch. 433, § 12(b), as added Aug. 21, 1957, 71 Stat. 392, Pub. L. 85–157, § 3; Aug. 21, 1964, 78 Stat. 586, Pub. L. 88–476, § 1.)

CODIFICATION

The reference in this section "continued by sections 8331(5) and 8348 of title 5, U.S. Code" was substituted for "created by the Act of May 22, 1920", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The act of May 22, 1920 (41 Stat. 614, ch. 195), which created the Civil Service Retirement and Disability Fund, was superseded by act July 31, 1956, 70 Stat. 743, ch. 804, title IV, § 401 (amending the Civil Service Retirement Act of May 29, 1930). The act of July 31, 1956 was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law). The latter act also repealed said act of May 22, 1920, and provisions regarding the Civil Service Retirement and Disability Fund are now set forth in 5 U.S.C. §§ 8331(5) and 8348.

AMENDMENT

1964—Section 1 of act Aug. 21, 1964, amended section by adding last sentence thereto.

EFFECTIVE DATE

Section effective on Oct. 1, 1956, see note under section 4–521.

CROSS REFERENCE

Civil Service Retirement and Disability Fund, see 5 U.S.C. §§ 2251(f), 2267.

§ 4–523. Creditable service—Military and other government service.

(1) A member's service for the purposes of sections 4–521 to 4–535 shall mean all police or fire service and such military and Government service as is authorized by such sections prior to the date of separation upon which title to annuity is based.

(2) Each member shall be allowed credit for periods of military service served prior to the date of the separation upon which the annuity is based; however, if a member is awarded retired pay on account of military service, such military service shall not be included, unless such retired pay is awarded on account of a service-connected disability (a) incurred in combat with an enemy of the United States or (b) caused by an instrumentality of war and incurred in line of duty during an enlistment or employment as provided in Veterans Regulation numbered 1 (a), part I, paragraph I, or is awarded under title III of Public Law 810, Eightieth Congress. Nothing in sections 4–521 to 4–535 shall affect the rights of members to retired pay, pension, or compensation in addition to the annuity herein provided.

(3) Credit shall be allowed for leaves of absence granted a member while performing military service, excluding from credit so much of any other leaves of absence without pay as may exceed six months in the aggregate in any calendar year.

(4) A member who, during any war or national emergency as proclaimed by the President or declared by the Congress, has left or leaves his position to enter the military service shall not be considered, for the purposes of sections 4–521 to 4–535, as separated from his position by reason of such military service, unless he shall apply for and receive his salary deductions: *Provided,* That such member shall not be considered as retaining such position beyond December 31, 1957, or the expiration of five years of such military service, whichever is later.

(5) Each member shall be allowed credit for government service performed prior to appointment in any of the departments mentioned in paragraph (1) of section 4–521: *Provided,* That such member deposits with the Collector of Taxes of the District of Columbia, for credit to the revenues of the District of Columbia, a sum equal to the entire amount including interest, if any, refunded to him for such period of government service: *Provided further,* That if such member so elects he shall deposit with the Collector of Taxes of the District of Columbia, the total amount of such refund in equal monthly installments not exceeding 24.

(6) The total service of a member shall be the full years and twelfth parts thereof, excluding from the aggregate any fractional part of a month.

(7) Notwithstanding any other provision of this section, any military service (other than military service covered by military leave with pay from a civilian position) performed by an individual after December 1956 shall be excluded in determining the

aggregate period of service upon which an annuity payable under this Act to such individual or to his widow or child is to be based, if such individual or widow or child is entitled (or would upon proper application be entitled), at the time of such determination, to monthly old-age or survivors benefits under section 202 of the Social Security Act based on such individual's wages and self-employment income. If in the case of the individual or widow such military service is not excluded under the preceding sentence, but upon attaining retirement age (as defined in section 216(a) of the Social Security Act) he or she becomes entitled (or would upon proper application be entitled) to such benefits, the Commissioners shall redetermine the aggregate period of service upon which such annuity is based, effective as of the first day of the month in which he or she attains such age, so as to exclude such service. The Secretary of Health, Education, and Welfare shall, upon the request of the Commissioners, inform the Commissioners whether or not any such individual or widow or child is entitled at any specified time to such benefits. (Sept. 1, 1916, ch. 433, § 12(c), as added Aug. 21, 1957, 71 Stat. 392, Pub. L. 85–157, § 3.)

REFERENCES IN TEXT

Veterans Regulation numbered 1(a), part I, paragraph I, referred to in par. (2), was promulgated by Ex. Ord. No. 6156, June 6, 1933 and was repealed by act June 17, 1957, 71 Stat. 167, Pub. L. 85–56, title XXII, § 2202 (129), (217), eff. Jan. 1, 1958. 38 U.S.C. §§ 101, 301, 310—313, 353.

Title III of Public Law 810, Eightieth Congress, referred to in par. (2), refers to act June 29, 1948, 62 Stat. 1087, ch. 708, title III, §§ 301—313, which was repealed by acts Aug. 10, 1956, 70A Stat. 641, ch. 1041, § 53, and Sept. 2, 1958, 72 Stat. 1569, Pub. L. 85–861, § 36A, and is now covered by 10 U.S.C. §§ 101, 676, 1001, 1332—1337, 1401, 3966, 6017, 6034, 6323, 8966.

Sections 202 and 216(a) of the Social Security Act, referred to in par. (7), are sections 202 and 216(a) of act Aug. 14, 1935, ch. 531, title II, which are classified to 42 U.S.C. §§ 402, 416(a).

This act, referred to in par. (7), means act Sept. 1, 1916, which is classified to sections 1–307, 1–817, 4–521 to 4–535, 7–603, 7–612, 7–901, 24–402, 31–608, 43–1207, 44–213, and 47–702. It was also classified to § 11–1516, which section was repealed by act Dec. 23, 1963, 77 Stat. 620, and is now covered by 15–702.

CODIFICATION

Section is comprised of subsec. (c) of section 12 of act Sept. 1, 1916. Remainder of section 12 of act Sept. 1, 1916, is classified to sections 4–521, 4–522 and 4–524 to 4–535.

EFFECTIVE DATE

Section effective on Oct. 1, 1956, see note under section 4–521.

NOTES TO DECISIONS

Separation from position

"Leave of absence without pay," given member of metropolitan police force of District of Columbia when he entered marine corps, temporarily excused him from performing acts of duty as a policeman, was in the nature of a furlough and did not terminate membership in police force or constitute a retirement therefrom. *Thompson* v. *Young* (D.C.D.C. 1946, 63 F. Supp. 890).

§ 4–524. Deductions, deposits and refunds—Order of persons entitled to refunds for deductions.

(1) On and after the first day of the first pay period which begins on or after August 21, 1957 there shall be deducted and withheld from each member's basic salary an amount equal to 6½ per centum of such basic salary. Such deductions and withholdings shall be paid to the Collector of Taxes of the District of Columbia, and shall be deposited in the Treasury to the credit of the District of Columbia.

(2) Any member coming under the provisions of sections 4–521 to 4–535 who is separated from his department, except for retirement as authorized by such sections, shall be refunded the amount of the deductions made from his salary under such sections. The receipt of payment of such deductions by such member shall void all annuity rights under such sections, unless and until such member shall be reappointed to any department whose members come under such sections. If such officer or member is subsequently reappointed to any department whose members come under such sections, he shall be required to redeposit the amount of deductions so refunded to him.

(3) In order to facilitate the settlement of the accounts of each member coming under the provisions of sections 4–521 to 4–535 who dies prior to retirement leaving no survivor entitled to receive an annuity under the provisions of such sections, the Commissioners shall pay all deductions for retirement made from the salary of such deceased member to the person or persons surviving at the time of death, in the following order of precedence, and such payment shall be a bar to recovery by any other person of amounts so paid:

First, to the beneficiary or beneficiaries designated in writing by such member, filed with the Commissioners and received by them prior to the death of such member;

Second, if there be no such beneficiary, to the child or children of such deceased member and the descendants of deceased children by representation;

Third, if there be none of the above, to the parents of such member, or the survivor of them;

Fourth, if there be none of the above, to the duly appointed legal representative of the estate of the deceased member, or if there be none to the person or persons determined to be entitled thereto under the laws of the domicile of the deceased member. (Sept. 1, 1916, ch. 433, § 12(d), as added Aug. 21, 1957, 71 Stat. 393, Pub. L. 85–157, § 3, and amended Aug. 20, 1958, 72 Stat. 686, Pub. L. 85–693, § 1.)

CODIFICATION

Section is comprised of subsec. (d) of section 12 of act Sept. 1, 1916. Remainder of section 12 of act Sept. 1, 1916, is classified to sections 4–521 to 4–523 and 4–525 to 4–535.

AMENDMENT

1958—Par. (1) amended by act Aug. 20, 1958, which substituted "August 21, 1957" for "October 1, 1956."

EFFECTIVE DATE OF 1958 AMENDMENT

Section 2 of act Aug. 20, 1958, provided that: "This Act [amending par. (1)] shall be effective as of the date of approval of the Policemen and Firemen's Retirement and Disability Act Amendments of 1957 [Aug. 21, 1957]."

EFFECTIVE DATE

Section effective on Oct. 1, 1956, see note under section 4–521.

CROSS REFERENCE

Salary of police and firemen, see § 4–823 et seq.

NOTES TO DECISIONS

Redeposit

In computing the period of service required of the fireman in order to qualify him for retirement the period preceding his resignation is included, and there is no

inequity in requiring a member returning to the force to restore that which he had withdrawn for he receives the same consideration thereafter as if he had not retired. *District of Columbia* v. *Smith* (1934, 72 F. 2d 735, 63 App. D.C. 363).

§ 4–525. Medical and hospital service—Payment of by District on certificate of Commissioners.

Whenever any member shall become temporarily disabled by injury received or disease contracted in the performance of duty, to such an extent as to require medical or surgical services, other than such as can be rendered by the Commissioners, or to require hospital treatment, the expense of such medical or surgical services, or hospital treatment, shall be paid by the District of Columbia; but no such expense shall be paid except upon a certificate of the Commissioners setting forth the necessity for such services or treatment and the nature of the injury or disease which rendered the same necessary. (Sept. 1, 1916, ch. 433, § 12(e), as added Aug. 21, 1957, 71 Stat. 394, Pub. L. 85–157, § 3.)

CODIFICATION

Section is comprised of subsec. (e) of section 12 of act Sept. 1, 1916. Remainder of section 12 of act Sept. 1, 1916 is classified to sections 4–521 to 4–524 and 4–526 to 4–535.

EFFECTIVE DATE

Section effective on Oct. 1, 1956, see note under section 4–521.

§ 4–526. Retirement for disability not incurred in performance of duty.

Whenever any member coming under sections 4–521 to 4–535 completes five years of police or fire service and is found by the Commissioners to have become disabled due to injury received or disease contracted other than in the performance of duty, which disability precludes further service with his department, such member shall be retired on an annuity computed at the rate of 2 per centum of his basic salary at the time of retirement for each year or portion thereof of his service: *Provided,* That such annuity shall not exceed 70 per centum of his basic salary at time of retirement: *Provided further,* That the annuity of a member retiring under this section shall be at least 40 per centum of his basic salary at time of retirement. (Sept. 1, 1916, ch. 433, § 12(f), as added Aug. 21, 1957, 71 Stat. 394, Pub. L. 85–157, § 3.)

CODIFICATION

Section is comprised of subsec. (f) of section 12 of act Sept. 1, 1916. Remainder of section 12 of act Sept. 1, 1916 is classified to sections 4–521 to 4–525 and 4–527 to 4–535.

EFFECTIVE DATE

Section effective on Oct. 1, 1956, see note under section 4–521.

CROSS REFERENCE

Salary of police and firemen, see § 4–823 et seq.

NOTES TO DECISIONS

Applicability of statute enacted after retirement

Metropolitan police department member who was retired for disability which was found not to have been contracted in performance of duty, but which was aggravated by performance of duty was not entitled to benefit of statute enacted subsequently to retirement providing higher annuity rates when disability is attributable to aggravation, due to performance of duty, of a disease not contracted in performance of duty. *F. C. Zangardi* v. *W. N. Tobriner, President etc.* (1965, 348 F. 2d 370, 121 U.S. App. D.C. 141).

Evidence

Where District of Columbia police department initiates proceeding to retire officer against his will and for disability which is alleged to be unrelated to his official service evidence of such lack of connection should clearly preponderate and be substantial and persuasive. *Blohm* v. *Tobriner* (1965, 350 F. 2d 785, 122 U.S. App. D.C. 2).

Under showings that police officer suffered recent service injury of serious and apparently relevant nature, subsequent disability was treated by department as service-connected for many purposes and was characterized as such by department physician, department's finding of nonservice-connected disability such as would permit retirement at lower pension was not supported by required convincing evidence. *Id.*

Where District of Columbia police department initiated proceeding to retire plaintiff policeman against his will and finding of disability was made, plaintiff was entitled to judgment setting aside order declaring that disability was not incurred in line of duty and requiring retirement of plaintiff for service connected disability, in absence of substantial and persuasive evidence of lack of duty connection. *Monica* v. *Tobriner* (D.C.D.C. 1966, 253 F. Supp. 851).

Where police department initiates proceedings to retire officer against his will for disability which is alleged to be unrelated to his official service, evidence of such lack of connection should clearly preponderate and be substantial and persuasive. *Carroll* v. *Tobriner* (D.C.D.C. 1966, 253 F. Supp. 87).

Involuntary retirement

Any retirement, under District of Columbia statute setting up machinery for retirement of policemen for disability, may be considered as inherently involuntary in nature, to extent that disability is ordinarily not desired. *Monica* v. *Tobriner* (D.C.D.C. 1966, 253 F. Supp. 851).

Length of service

Under statute providing that when member of police or fire department completes five years of police or fire service and is disabled by injury received not in performance of duty he shall be retired on annuity of at lease forty percent of his salary, a policeman who became disabled, not in performance of duty, after serving four years and nearly ten months in police department was not entitled to statutory benefits on theory that his former military service should be counted. *W. N. Tobriner et al.* v. *J. J. O'Donnell, Jr.* (1964, 336 F. 2d 743, 118 U.S. App. D.C. 354).

Not service connected

Record supported finding that disability of metropolitan police department member who was retired for disability on annuity of 40% of basic salary was not due to injury or disease contracted in performance of duty or aggravated by performance of duty. *E. L. Taylor* v. *W. N. Tobriner et al.* (1965, 346 F. 2d 797, 120 U.S. App. D.C. 316).

Presumption

Usual presumption in favor of sustaining findings of administrative body is not to be indulged in in case where District of Columbia policeman is retired for disability not incurred in line of duty. *Monica* v. *Tobriner* (D.C.D.C. 1966, 253 F. Supp. 851).

§ 4–527. Retirement for disability while performing or not performing duty.

(1) Whenever any member is injured or contracts a disease in the performance of duty or such injury or disease is aggravated by such duty at any time after appointment and such injury or disease or aggravation permanently disables him for the performance of duty, he shall upon retirement for such disability, receive an annuity computed at the rate of 2 per centum of his basic salary at the time of retirement for each year or portion thereof of his service: *Provided,* That such annuity shall not exceed 70 percentum of his basic salary at the time of retirement, nor shall it be less than 66⅔ per centum of his basic salary at the time of retirement.

(2) In any case in which the proximate cause of an injury incurred or disease contracted by a member is doubtful, or is shown to be other than the performance of duty, and such injury or disease is shown to have been aggravated by the performance of duty to such an extent that the member is permanently disabled for the performance of duty, such disability shall be construed to have been incurred in the performance of duty. The member shall, upon retirement for such disability, receive an annuity computed at the rate of 2 per centum of his basic salary at the time of his retirement for each year or portion thereof of his service: *Provided,* That such annuity shall not exceed 70 per centum of his basic salary at the time of retirement, nor shall it be less than 66⅔ per centum of his basic salary at the time of retirement. (Sept. 1, 1916, ch. 433, § 12(g), as added Aug. 21, 1957, 71 Stat. 394, Pub. L. 85–157, § 3; Oct. 23, 1962, 76 Stat. 1133, Pub. L. 87–857, § 1.)

CODIFICATION

Section is comprised of subsec. (g) of section 12 of act Sept. 1, 1916. Remainder of section 12 of act Sept. 1, 1916 is classified to sections 4–521 to 4–526 and 4–528 to 4–535.

AMENDMENT

Act Oct. 23, 1962, amended section by designating first paragraph as (1) and by adding paragraph (2).

EFFECTIVE DATE

Section effective on Oct. 1, 1956, see note under section 4–521.

CROSS REFERENCE

Salary of police and firemen, see § 4–823 et seq.

NOTES TO DECISIONS

Abuse of discretion

Where first count asked for a mandatory injunction requiring Commissioners of District of Columbia to pay policeman a larger retirement allowance, and second count asked for a declaratory judgment that he was entitled to the larger allowance, District Court's denial of Commissioners' motion for summary judgment on first count and granting it on second count was abuse of discretion, and hence the judgment would be set aside and case remanded for further proceedings. *F. C. Zangardi* v. *W. N. Tobriner et al.* (1964, 330 F. 2d 224, 117 U.S. App. D.C. 350).

Civil actions

Where member of the Metropolitan Police Force was injured while on duty by the negligence of a government employee, he has a right of action against the United States under Federal Tort Claims Act, notwithstanding his position in the Metropolitan Police for whose members the United States established a Police Pension Relief Fund. *Wham* v. *United States* (1950, 180 F. 2d 38, 86 U.S. App. D.C. 128).

Construction

D.C. Code (1951) § 4–507, 39 Stat. 718, was not entirely consistent with § 4–508; section 4–507 was enacted in 1916 and § 4–508 in 1940; to the extent of the inconsistency, the later statute superseded the earlier. *Spencer* v. *Bullock* (1954, 216 F. 2d 54, 94 U.S. App. D.C. 388).

The portion of former section 4–527 providing for benefits to widow and children of a deceased member of District of Columbia metropolitan police force was not required to be read in terms with preceding portion providing for retirement for disability sustained in line of duty so as to require a construction that the death must have been the result of injury or disease sustained or contracted in line of duty in order for benefits to be payable. *Thompson* v. *Young* (D.C.D.C. 1946, 63 F. Supp. 887).

Election of remedies

Where member of Metropolitan Police Force was injured while on duty by the negligence of a government employee, and was not barred under Federal Tort Claims Act, he was not required to elect between relief granted by that Act or relief granted under the Police Pension Relief Fund, since case did not present the elements requiring an election: viz. existence of inconsistent remedies to enforce the same cause. *Wham* v. *United States* (1950, 180 F. 2d 38, 86 U.S. App. D.C. 128).

Evidence

Where District of Columbia police department initiates proceeding to retire officer against his will and for disability which is alleged to be unrelated to his official service evidence of such lack of connection should clearly preponderate and be substantial and persuasive. *Blohm* v. *Tobriner* (1965, 350 F. 2d 785, 122 U.S. App. D.C. 2).

Under showings that police officer suffered recent service injury of serious and apparently relevant nature, subsequent disability was treated by department as service-connected for many purposes and was characterized as such by department physician, department's finding of nonservice-connected disability such as would permit retirement at lower pension was not supported by required convincing evidence. *Id.*

Where District of Columbia police department initiated proceeding to retire plaintiff policeman against his will and finding of disability was made, plaintiff was entitled to judgment setting aside order declaring that disability was not incurred in line of duty and requiring retirement of plaintiff for service-connected disability, in absence of substantial and persuasive evidence of lack of duty connection. *Monica* v. *Tobriner* (D.C.D.C. 1966, 253 F. Supp. 851).

Where police department initiates proceedings to retire officer against his will for disability which is alleged to be unrelated to his official service, evidence of such lack of connection should clearly preponderate and be substantial and persuasive. *Carroll* v. *Tobriner* (D.C.D.C. 1966, 253 F. Supp. 87).

In case in which police officer contends that disability warranting retirement occurred in line of duty, evidence should be considered in light of humane purpose of retirement laws. *Id.*

Evidence established that psychoneurotic depressive reaction, chronic, with some paranoid trends suffered by police officer, who contended that his disability requiring retirement had been incurred in line of duty, had been aggravated by his police service. *Id.*

Evidence showing that retired police officer's disability from a chronic lumbosacral strain resulted from officer's fall while making an arrest entitled officer to retirement under this section providing more favorable pension in case of disability due to injury incurred in performance of duty. *Crawford* v. *McLaughlin et al.* (C.A. D.C. 1960, 286 F. 2d 821).

Evidence before Police and Firemen's Retirement and Relief Board of the District of Columbia supported finding that policeman who had worked as a dispatcher and who was suffering from essential hypertension with uncontrolled elevations in blood pressure and hypertensive cardiovascular disease had a disability due to injury received in performance of duties. *J. M. Lynch* v. *W. N. Tobriner, president et al.* (D.C.D.C. 1965, 237 F. Supp. 313).

Evidence did not support finding that District of Columbia police officer's disabling arthritis had not been incurred in performance of duty as motorcycle officer. *J. R. Hyde* v. *W. N. Tobriner, et al.* (1964, 329 F. 2d 879, 117 U.S. App. D.C. 311).

Evidence in officers' retirement cases must be viewed in light more favorable to applicant seeking relief than in usual type of civil action, in consideration of humane purpose of retirement laws. *Id.*

Injury defined

Where "injury" is used in District of Columbia Code provisions regarding disability pension, it is not limited to injuries caused by force or violence and includes any injury, or disease, or illness, arising out of and in the course of the employment, which causes the incapacity. *J. M. Lynch* v. *W. N. Tobriner, president et al.* (D.C.D.C. 1965, 237 F. Supp. 313).

Involuntary retirement

Any retirement, under District of Columbia statute setting up machinery for retirement of policemen for disability, may be considered as inherently involuntary in

nature, to extent that disability is ordinarily not desired. *Monica* v. *Tobriner* (D.C.D.C. 1966, 253 F. Supp. 851).

Presumption

Usual presumption in favor of sustaining findings of administrative body is not to be indulged in in case where District of Columbia policeman is retired for disability not incurred in line of duty. *Monica* v. *Tobriner* (D.C.D.C. 1966, 253 F. Supp. 851).

Public policy

Public policy requires that disability pension provisions of District of Columbia Code be construed liberally. *J. M. Lynch* v. *W. N. Tobriner, president et al.* (D.C.D.C. 1965, 237 F. Supp. 313).

Record of injury

As contained in District of Columbia fireman's personnel file, cryptic notation "3–2–48 Lumbo-sacral strain, Box 9322", when shown to refer to fire at which fireman claimed to have injured his back while carrying a 275–300 pound body of a fire victim, required reconsideration of fireman's claim to retirement on basis of disability incurred in performance of duties, where retirement board had granted retirement for nonservice-connected disability on ground of lack of record of injury in personnel file. *W. D. Lovell* v. *W. N. Tobriner et al., etc.* (1962, 310 F. 2d 870, 114 U.S. App. D.C. 65).

Retroactive application

Amendment to section of District of Columbia Code dealing with police and firemen's disability retirement to effect that, in any case in which cause of injury incurred or disease contracted is doubtful, disability shall be construed to have been incurred in performance of duty is not retroactive and commissioners were not required to function under such provision in disposing of matter prior to effective date of amendment. *J. R. Blohm* v. *W. N. Tobriner et al., Board of Commissioners* (D.C.D.C. 1964, 234 F. Supp. 941).

Service connected disability

Record supported finding that disability of metropolitan police department member who was retired for disability on annuity of 40% of basic salary was not due to injury or disease contracted in performance of duty or aggravated by performance of duty. *E. L. Taylor* v. *W. N. Tobriner et al.* (1965, 346 F. 2d 797, 120 U.S. App. D.C. 316).

Where record concerning policeman's retirement contained no evidence contrary to physician's testimony that policeman's disability, consisting of marked, mixed type of neurosis with anxiety and depressive features and multiple psychogenic complaints following severe attack of bulbar polio, was connected with performance of his police duty, there was no basis in record for Commissioners' determination that disability had not been incurred in line of duty. *T. L. Souder* v. *W. N. Tobriner et al.* (1963, 314 F. 2d 272, 114 U.S. App. D.C. 267).

Summary judgment

Relief from summary judgment in favor of Commissioners of District of Columbia on basis of administrative record involving policeman's right to retire for disability alleged to have occurred in performance of his duty was not available to court almost 16 months thereafter under federal rule. *W. N. Tobriner et al.*, v. *D. Chefer* (1964, 335 F. 2d 281, 118 U.S. App. D.C. 246.)

Where almost 16 months after trial court granted summary judgment for Commissioners of District of Columbia on basis of administrative record involving policeman's right to retire for disability alleged to have occurred in performance of his duty court sua sponte vacated such order and ordered this case set down for hearing, vacating order exceeded court's jurisdiction. *Id.*

Taxation

Where pensioners accepted retirement for age and length of service with maximum retirement pay and raised no objection on procedural or any other ground and thereby acquired and have retained for many years retired status with pay, any provisions of statute prescribing certain procedures in granting of retirement orders which were not followed must be deemed to have been waived insofar as the courts are concerned, and courts could not thereafter require Commissioners to set aside original retirement orders and to issue new ones, even though such action might result in income tax benefit to pensioners, if, upon reconsideration, new orders should rest upon ground of disability incurred in line of duty. *Allen et al.* v. *Spencer et al.* (1954, 214 F. 2d 205, 93 U.S. App. D.C. 361).

Where Board of Commissioners of District of Columbia retired fireman over age of 64 years and granted him pension under provision of former section 4–507 providing that firemen may be retired with compensation after having reached age of 60 years, and prior to such time it appeared that fireman had suffered physical disability in line of duty, but there had been no determination by Commissioners of extent of disability as a basis for fixing compensation or retirement pay, it was necessary to treat fireman for income tax purposes as having been retired for age, and retirement compensation received by him was not excludable from his gross income for income tax purposes under provision of the Internal Revenue Code exempting amounts received under workmen's compensation acts, as compensation for personal injuries or sickness in determining income. *Simms* v. *Commissioner of Internal Revenue* (1952, 196 F. 2d 238, 90 U.S. App. D.C. 322).

Monies received by members of the police or fire departments of the District of Columbia, who were retired for disability, being in the nature of compensation for personal injuries under a workmen's compensation act, was not subject to federal income tax. *Frye* v. *United States* (D.C.D.C. 1947, 72 F. Supp. 405).

§ 4–528. Optional retirement—Conditions—Suspension of retirement provisions during emergency.

(1) Any member who attains the age of fifty years and completes twenty years of police or fire service may, after giving at least sixty days' written advance notice to his department head stating his intention to retire and stating the date on which he will retire, voluntarily retire from the service and shall be entitled to an annuity computed at the rate of 2 per centum of his basic salary at the time of his retirement for each year of service; except that the rate of 3 per centum of his basic salary at time of retirement shall be used to compute each year's police or fire service in excess of twenty years: *Provided,* That such notice requirement may be waived by the department head when, in his opinion, circumstances justify such waiver: *Provided further,* That whenever the Commissioners or the Chief of the White House Police force, or the Chief of the United States Park Police force, or the Chief of the United States Secret Service division shall determine that there exists an emergency which is likely to endanger the safety of the public and that the public safety cannot be adequately protected except by suspending the retirement provisions of this paragraph, then the Commissioners or any of said Chiefs shall be authorized to suspend the retirement provisions of this paragraph in any one or more of the departments under their respective jurisdictions until such time as, in the opinion of the Commissioners or any of said Chiefs, respectively, public safety can be adequately protected without such suspension.

(2) Any member of the Metropolitan Police force or of the Fire Department of the District of Columbia having reached the age of sixty years shall, in the discretion of the Commissioners, and any member of the White House Police force or of the United States Park Police force or of the United States Secret Service Division to whom sections 4–521 to 4–535 apply shall, in the discretion of the head of his department, be retired from the service

and shall be entitled to receive an annuity as computed in paragraph (1).

(3) No annuity granted under paragraph (1) or (2) of this section shall exceed 70 per centum of the basic salary of such member at the time of retirement. (Sept. 1, 1916, ch. 433, § 12(h), as added Aug. 21, 1957, 71 Stat. 395, Pub. L. 85–157, § 3.)

CODIFICATION

Section is comprised of subsec. (h) of section 12 of act Sept. 1, 1916. Remainder of section 12 of act Sept. 1, 1916 is classified to sections 4–521 to 4–527 and 4–529 to 4–535.

EFFECTIVE DATE

Section effective on Oct. 1, 1956, see note under section 4–521.

CROSS REFERENCE

Salary of police and firemen, see § 4–823 et seq.

NOTES TO DECISIONS

Construction

D.C. Code (1951) § 4–507, 39 Stat. 718, was not entirely consistent with § 4–508; section 4–507 was enacted in 1916 and § 4–508 in 1940; to the extent of the inconsistency, the later statute superseded the earlier. *Spencer* v. *Bullock* (1954, 216 F. 2d 54, 94 U.S. App. D.C. 388).

Right to retirement

Under former section 4–528 providing that, whenever police department member, who has served twenty-five or more years as member of department and has reached age of fifty-five, he may, at his election, be retired from service and shall be entitled to retirement compensation, plaintiff, who, at time he made his election, was qualified as to age and length of service requirements, was entitled to retirement even though he was thereafter suspended because of failure to explain source of some of his income. *Spencer* v. *Bullock* (1954, 216 F. 2d 54, 94 U.S. App. D.C. 388).

Fireman suspended for misconduct was still a "member" of fire department within statute providing that any member attaining age of 50 years and completing 20 years of service may state intention to retire and shall be entitled to annuity and firearm, who had not been discharged, had absolute right to elect retirement. *E. J. Daigle* v. *Robert E. McLaughlin et al.* (D.C.D.C. 1961, 193 F. Supp. 902).

Voluntary retirement

Under former section 4–508 providing that police department member, who has served twenty-five or more years as member and has reached age of fifty-five, may, at his election, be retired from service and shall be entitled to retirement compensation, words "may, at his election, be retired" are equivalent to "may elect to be retired", and to say that policeman could, at his election, be retired was not to say that after he had made his election commissioners could, at their election, refuse to retire him. *Spencer* v. *Bullock* (1954, 216 F. 2d 54, 94 U.S. App. D.C. 388).

§ 4–529. Involuntary separation from service.

If any member is injured or contracts a disease during his first five years of service in his department which, in the judgment of the Board of Police and Fire Surgeons, disables him from performing further duty in his department, and if the Police and Firemen's Retiring and Relief Board finds that such injury or disease was not incurred in the performance of duty in his department, such member shall, upon the approval of such finding by the head of his department, and without regard for the provisions of any other law or regulation, be separated from the service. (Sept. 1, 1916, ch. 433, § 12(i), as added Aug. 21, 1957, 71 Stat. 395, Pub. L. 85–157, § 3.)

CODIFICATION

Section is comprised of subsec. (i) of section 12 of act Sept. 1, 1916. Remainder of section 12 of act Sept. 1, 1916 is classified to sections 4–521 to 4–528 and 4–530 to 4–535.

EFFECTIVE DATE

Section effective on Oct. 1, 1956, see note under section 4–521.

TRANSFER OF FUNCTIONS

Reorg. Ord. No. 47, as amended June 21, 1962, transferred the authority to express a judgment as to the disability of a member from performing further duty in his department to the Police and Firemen's Retirement and Relief Board. This authority was formerly vested in the Board of Police and Fire Surgeons. This amendment also outlined certain duties of the Board of Police and Fire Surgeons. The amendment to the order is set out in the appendix to Title 1.

Board of Police and Fire Surgeons, reconstitution of, see note under section 4–124.

CROSS REFERENCE

Surgeons for police and firemen, see §§ 4–106, 4–124.

§ 4–530. Recovery from disability or restoration to earning capacity—Earning capacity defined—Suspension of annuity—Restoration to duty.

(1) If any annuitant retired under section 4–526 or 4–527, before reaching the age of fifty-five, recovers from his disability or is restored to an earning capacity fairly comparable to the current rate of compensation of the position occupied at the time of retirement, payment of the annuity shall cease (1) upon reemployment in the department from which he was retired, (2) one year from the date of the medical examination showing such recovery, or (3) one year from the date of determination that he is so restored, whichever is earliest. Earning capacity shall be deemed restored if in each of two succeeding calendar years the income of the annuitant from wages or self-employment or both shall be equal to at least 80 per centum of the current rate of compensation of the position occupied immediately prior to retirement. Nothing in this section shall preclude such member from having an annuity reestablished if his disability recurs, or when his earning capacity is less than 80 per centum of the rate of compensation of the position occupied immediately prior to retirement for any full year thereafter: *Provided,* That whenever any member is reinstated with his respective department it shall be at the same grade or rank held by the member at the time of his retirement.

(2) When an annuitant recovers prior to age fifty-five from a disabling condition for which he has been retired, and applies for reinstatement in the department from which he was retired, he shall be reinstated in the same or nearest equivalent grade and salary available as that received at the time of his separation from the service: *Provided,* That such applicant meets the current entrance requirements of such department as to character. (Sept. 1, 1916, ch. 433, § 12(j), as added Aug. 21, 1957, 71 Stat. 396, Pub. L. 85–157, § 3.)

CODIFICATION

Section is comprised of subsec. (j) of section 12 of act Sept. 1, 1916. Remainder of section 12 of act Sept. 1, 1916 is classified to sections 4–521 to 4–529 and 4–531 to 4–535.

EFFECTIVE DATE

Section effective on Oct. 1, 1956, see note under section 4–521.

NOTES TO DECISIONS

Recovery from disability

It is apparent that Congress was of the view that it would be more equitable to place on a basis of equality all policemen and firemen who were retired on account

of being unfit for duty due to specified causes, but it was not the intent to continue a pension where the pensioner has recovered from his disability. *Dougherty* v. *United States ex rel. Roberts* (1929, 30 F. 2d 471, 58 App. D.C. 308).

§ 4–531. Survivor annuities—Amount—To whom payable—Election of type of annuity.

(1) In case of the death of any member before retirement, or of any former member after retirement, leaving a widow or dependent widower, such widow or dependent widower shall be entitled to receive an annuity in the greater amount of (1) $1,800, or (2) 30 per centum of such member's basic salary at the time of death, or 30 per centum of the basis upon which the annuity, relief, or retirement compensation being received by such former member at the time of death was computed. Such annuity shall begin on the first day of the month in which the member or former member dies, and such annuity or any right thereto shall terminate upon the survivor's death or remarriage. If such member or former member is survived by a wife or husband, each surviving child shall be entitled to receive an annuity equal to the smallest of (1) 40 per centum of such member's basic salary at the time of death, or 40 per centum of the basis upon which the annuity, relief, or retirement compensation being received by such former member at the time of death was computed, divided by the number of children, (2) $600; or (3) $1,800 divided by the number of children. If such member or former member is not survived by a wife or husband, each surviving child shall be paid an annuity equal to the smallest of (1) 50 per centum of the member's basic salary at the time of death, or 50 per centum of the basis upon which the annuity, relief, or retirement compensation being received by such former member at the time of death was computed, divided by the number of children, (2) $720; or (3) $2,160 divided by the number of children. The annuity of any child under this section shall begin on the first day of the month in which the member or former member dies, and such annuity or any right thereto shall terminate upon (1) his attaining age 18, unless incapable of self-support, (2) his becoming capable of self-support after age 18, (3) his marriage, or (4) his death.

(2) Upon the death of the surviving wife or husband or termination of the annuity of a child, the annuity of any other child or children shall be recomputed and paid as though such wife, husband, or child had not survived the member or former member.

(3) Any member retiring under sections 4–526, 4–527, or 4–528, may, at the time of such retirement, elect to receive a reduced annuity in lieu of the full annuity, and designate in writing the person to receive an increased annuity after the retired annuitant's death: *Provided,* That the person so designated be the surviving spouse or child of the retiring member. Whenever such an election is made, the annuity of the designee shall be increased by an amount equal to the amount by which the annuity of such retiring member is reduced. The annuity payable to the member making such election shall be reduced by 10 per centum of the annuity computed as provided in section 4–526, 4–527, or 4–528. Such increase in annuity payable to the designee shall be reduced by 5 per centum for each full five years the designee is younger than the retiring member, but such total reduction shall not exceed 40 per centum. The increase in annuity payable to the designee pursuant to this paragraph shall be paid in addition to the annuity provided for such designee pursuant to paragraph (1) or (2) of this section and shall be subject to the same limitations as to duration and other conditions as the annuity paid pursuant to such paragraphs (1) and (2). (Sept. 1, 1916, ch. 433, § 12(k), as added Aug. 21, 1957, 71 Stat. 396, Pub. L. 85–157, § 3.)

CODIFICATION

Section is comprised of subsec. (k) of section 12 of act Sept. 1, 1916. Remainder of section 12 of act Sept. 1, 1916 is classified to sections 4–521 to 4–530 and 4–532 to 4–535.

EFFECTIVE DATE

Section effective on Oct. 1, 1956, see note under section 4–521.

CROSS REFERENCE

Salary of police and firemen, see § 4–823 et seq.

NOTES TO DECISIONS

Amount of annuity

Where commissioners of District of Columbia admitted the death of member of metropolitan police force, in exercise of such discretion as they had in determining whether widow and minor children of decedent were entitled to relief from policemen and firemen's relief fund, there was nothing remaining to be done except determination of amount to which widow was entitled. *Thompson* v. *Young* (D.C.D.C. 1946, 63 F. Supp. 890).

Beneficiaries

"Leave of absence without pay", given member of metropolitan police force of District of Columbia when he entered marine corps, temporarily excused him from performing acts of duty as a policeman, was in the nature of a furlough and did not terminate membership in police force or constitute a retirement therefrom so as to preclude benefit to his widow and minor children from policemen and firemen's relief fund following his death in line of duty in marine corps. *Thompson* v. *Young* (D.C.D.C. 1946, 63 F. Supp. 890).

Where member of metropolitan police force of District of Columbia while on military leave, without pay, died in line of duty while serving as a marine corps officer, widow and minor children were within class of beneficiaries designated by former section 4–507 as entitled to relief from policemen and firemen's relief fund notwithstanding that death did not result from injury or disease contracted in line of duty as a policeman. *Thompson* v. *Young* (D.C.D.C. 1946, 63 F. Supp. 887).

Construction

D.C. Code (1951) § 4–507, 39 Stat. 718, was not entirely consistent with § 4–508; section 4–507 was enacted in 1916 and § 4–508 in 1940; to the extent of the inconsistency, the later statute superseded the earlier. *Spencer* v. *Bullock* (1954, 216 F. 2d 54, 94 U.S. App. D.C. 388).

Former section 4–507 providing that in case of death of a member of the District of Columbia metropolitan police force, widow shall be entitled to receive relief from policemen and firemen's relief fund was remedial and entitled to liberality of construction. *Thompson* v. *Young* (D.C.D.C. 1946, 63 F. Supp. 887).

The portion of former section 4–527 providing for benefits to widow and children of a deceased member of District of Columbia metropolitan police force was not required to be read in terms with preceding portion providing for retirement for disability sustained in line of duty so as to require a construction that the death must have been the result of injury or disease sustained or contracted in line of duty in order for benefits to be payable. *Id.*

Divorce

Where purported absolute divorce, obtained by member of police department and police relief association, was void for want of jurisdiction, purported marriage of the member with another was void *ab initio,* and his first wife whose marriage was terminated by his death was entitled to pension relief and death benefits payable to his widow. *Fleischhauer* v. *Hazen* (D.C.D.C. 1948, 80 F. Supp. 74).

Hearing

Where member of metropolitan police force, while on military leave and serving as an officer in the marine corps, died, application of widow for herself and minor children for relief from policemen and firemen's relief fund was properly made by a person legally within class designated by former section 4–507 and entitled as a consequence to a hearing on the merits by commissioners and claim could not summarily be rejected. *Thompson* v. *Young* (D.C.D.C. 1946, 63 F. Supp. 887).

Judgment

Widow of deceased member of metropolitan police force of District of Columbia, in view of broad discretion granted commissioners, was not entitled to a money judgment against policemen and firemen's relief fund, following denial of pension by commissioners. *Thompson* v. *Young* (D.C.D.C. 1946, 63 F. Supp. 887).

Nature of relief

Relief sought by widow and minor children of deceased member of metropolitan police force of District of Columbia from policemen and firemen's relief fund is not a gratuity since fund was created in part by contribution of decedent. *Thompson* v. *Young* (D.C.D.C. 1946, 63 F. Supp. 890).

Review

The broad discretion given District of Columbia commissioners with respect to granting relief to widow and minor children of deceased member of metropolitan police force, which precludes review of commissioners' action properly taken, does not preclude judicial review of arbitrary denial without hearing on the merits of widow's application for relief. *Thompson* v. *Young* (D.C.D.C. 1946, 63 F. Supp. 887).

Summary judgment

Where answer of commissioners of District of Columbia to action by widow of member of metropolitan police force who had died while in military service for mandatory injunction to place widow and minor children on pension roll of police department raised no material issue of fact, widow was entitled to summary judgment, but amount of pension was a matter of discretion for commissioners subject to possible review for abuse thereof. *Thompson* v. *Young* (D.C.D.C. 1946, 63 F. Supp. 890).

Taxation

Although disability retired pay of policeman would be exempt from income tax because it is legally equivalent of workmen's compensation under provision of Internal Revenue Code, which exempts from income taxation "amounts received through accident or health insurance or under Workmen's Compensation Acts, as compensation for personal injuries and sickness," provision for pension for widows under Policemen and Firemen's Relief Fund did not make pension payments dependent on cause of husband's death and therefore widow's pension benefits constituted taxable income. *Riley* v. *United States* (1958, 156 F. Supp. 751, 140 Ct. Cl. 381).

§ 4–532. Funeral expenses.

The Commissioners are authorized to pay a sum not exceeding $300 in any one case to defray the funeral expenses of any deceased member dying while in the service thereof. (Sept. 1, 1916, ch. 433, § 12(*l*), as added Aug. 21, 1957, 71 Stat. 397, Pub. L. 85–157, § 3.)

CODIFICATION

Section is comprised of subsec. (*l*) of section 12 of act Sept. 1, 1916. Remainder of section 12 of act Sept. 1, 1916 is classified to sections 4–521 to 4–531 and 4–533 to 4–535.

EFFECTIVE DATE

Section effective Oct. 1, 1956, see note under section 4–521.

§ 4–533. Duties of Commissioners in retirement and annuity matters—Certification of physical condition of member—Written notice of hearing—Procedure at hearings—Subpena—Contempt proceedings.

The Commissioners shall consider all cases for the retirement of members and all applications for annuities under sections 4–521 to 4–535. In each case of retirement of a member the Commissioners shall certify in writing the physical condition of the member for whom retirement is sought. The Commissioners shall give written notice to any member under consideration by them for retirement to appear before them and to give evidence under oath. The proceedings before the Commissioners involving the retirement of any member, or any application for an annuity under sections 4–521 to 4–535, shall be reduced to writing and shall show the date of appointment of such member, his age, his record in the service, and any other information which may be pertinent to the matter of such retirement or annuity. The Commissioners are authorized to administer oaths and affirmations, may require by subpena or otherwise the attendance and testimony of witnesses and the production of documents at any designated place. In the event of contumacy or refusal to obey any such subpena or requirement under this section, the Commissioners may apply to the District of Columbia Court of General Sessions for an order requiring obedience thereto. Thereupon the court, with or without notice and hearing, as it in its discretion may decide, shall make such order as is proper and may punish as a contempt any failure to comply with such order in accordance with the provisions of subsection (c) of section 11–756. (Sept. 1, 1916, ch. 433, § 12(m), as added Aug. 21, 1957, 71 Stat. 397, Pub. L. 85–157, § 3; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

REFERENCES IN TEXT

Section 11–756, referred to in text was repealed by act Dec. 23, 1963, 77 Stat. 620, Pub. L. 88–241, § 21(a), and subsec. (c) thereof is now covered by section 11–982.

CODIFICATION

Section is comprised of subsec. (m) of section 12 of act Sept. 1, 1916. Remainder of section 12 of act Sept. 1, 1916 is classified to sections 4–521 to 4–532, 4–534 and 4–535.

CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

EFFECTIVE DATE

Section effective Oct. 1, 1956, see note under section 4–521.

TRANSFER OF FUNCTIONS

Reorg. Ord. No. 31 was amended on June 21, 1962, delegating the authority set forth in sec. 4–529 to express a judgment as to the disability of a member, exclusively to the Police and Firemen's Retirement and Relief Board and also outlining the evidence to be considered by the Board in making findings of fact. The amendments to the order are set out in the appendix to Title 1.

Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952, creating the Department of General Administration and the office of Director, transferred the functions

and personnel of the Police and Firemen's Retiring and Relief Board to the Director of General Administration. Reorganization Order No. 31 of the Board of Commissioners dated Apr. 30, 1953, abolished the previously existing Police and Firemen's Retiring and Relief Board and created a new board to be known as the Police and Firemen's Retirement and Relief Board composed of the Personnel Officer, the Director of Public Health, the Corporation Counsel, the Chief of Police, and the Fire Chief. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to title 1, Administration.

NOTES TO DECISIONS

Function of Board

Former section 4–510 providing that Police and Firemen's Retiring and Relief Board of District of Columbia shall consider all cases for retirement and relief of members of Police Department, granted authority to Board to determine whether applicant for retirement was within pertinent statutory provisions as to age and service, but did not grant Board discretion to grant or deny applications for reasons not specified in statute. *Bullock* v. *Spencer* (D.C.D.C. 1953, 112 F. Supp. 147).

Hearing

Where member of metropolitan police force, while on military leave and serving as an officer in the marine corps, died, application of widow for herself and minor children for relief from policemen and firemen's relief fund was properly made by a person legally within class designated by former section 4–507 and entitled as a consequence to a hearing on the merits by commissioners and claim could not summarily be rejected. *Thompson* v. *Young* (D.C.D.C. 1946, 63 F. Supp. 887).

Review

"Commissioners of the District, vested by law with discretion to continue or discontinue plaintiff's pension, have resolved the case against him; and, in the absence of an abuse of that discretion, the court, in a proceeding for a writ of mandamus, is without authority to review the case, as in error, and interfere with the exercise of that discretion." *Rudolph* v. *United States ex rel, Rock* (1925, 6 F. 2d 487, 55 App. D.C. 362, 40 A.L.R. 1042, certiorari denied 46 S. Ct. 20, 269 U.S. 559, 70 L. Ed. 411).

The broad discretion given District of Columbia commissioners with respect to granting relief to widow and minor children of deceased member of metropolitan police force, which precludes review of commissioners' action properly taken, does not preclude judicial review of arbitrary denial without hearing on the merits of widow's application for relief. *Thompson* v. *Young* (D.C.D.C. 1946, 63 F. Supp. 887).

Summary judgment

Where answer of commissioners of District of Columbia to action by widow of member of metropolitan police force who had died while in military service for mandatory injunction to place widow and minor children on pension roll of police department raised no material issue of fact, widow was entitled to summary judgment, but amount of pension was a matter of discretion for commissioners subject to possible review for abuse thereof. *Thompson* v. *Young* (D.C.D.C. 1946, 63 F. Supp. 890).

§ 4–534. Payment of annuities—Order of payment on death of annuitant—Waiver.

(1) Each annuity is stated as an annual amount, one-twelfth of which, fixed at the nearest dollar, accrues monthly and is payable on the first business day of the month after it accrues.

(2) Any person entitled to an annuity under sections 4–521 to 4–535 may decline to accept all or any part of such annuity by a waiver signed and filed with the Commissioners. Such waiver may be revoked in writing at any time, but no payment of the annuity waived shall be made covering the period during which such waiver was in effect.

(3) In order to facilitate the settlement of the accounts of each person who, at the time of his death, was receiving or was entitled to receive, an annuity under sections 4–521 to 4–535, the Commissioners shall pay all unpaid annuity due such person at the time of death to the person or persons surviving at the date of death, in the following order of precedence, and such payment shall be a bar to recovery by any other person of amounts so paid:

First, to the widow or widower of such person;

Second, if there be no surviving spouse, to the child or children of such person, and descendants of deceased children, by representation;

Third, if there be none of the above, to the parents of such person or the survivor of them;

Fourth, if there be none of the above, to the duly appointed legal representative of the estate of the deceased person, or if there be none, to the person or persons determined to be entitled thereto under the laws of the domicile of the deceased person. (Sept. 1, 1916, ch. 433, § 12(n), as added Aug. 21, 1957, 71 Stat. 398, Pub. L. 85–157, § 3.)

CODIFICATION

Section is comprised of subsec. (n) of section 12 of act Sept. 1, 1916. Remainder of section 12 of act Sept. 1, 1916, is classified to sections 4–521 to 4–533 and 4–545.

EFFECTIVE DATE

Section effective on Oct. 1, 1956, see note under section 4–521.

§ 4–535. Delegation of functions by Commissioners—Regulations.

(a) The Commissioners are hereby vested with full power and authority to delegate from time to time to their designated agent or agents any of the functions vested in them by sections 4–521 to 4–535.

(b) The Commissioners are authorized to promulgate such rules and regulations as they may deem necessary to carry out the purposes of sections 4–521 to 4–535. (Sept. 1, 1916, ch. 433, § 12 (*o*), (p), as added Aug. 21, 1957, 71 Stat. 398, Pub. L. 85–157, § 3.)

CODIFICATION

Section is comprised of subsecs. (*o*) and (p) of section 12 of act Sept. 1, 1916. Remainder of section 12 of act Sept. 1, 1916, is classified to sections 4–521 to 4–534.

EFFECTIVE DATE

Section effective Oct. 1, 1956, see note under section 4–521.

CROSS REFERENCE

Rules and regulations in general, see § 1–226.

§ 4–536. No reduction in existing relief.

Nothing in sections 4–521 to 4–538 shall be deemed to reduce the relief or retirement compensation to which any person is entitled on the effective date of such sections and the rights of such persons and their survivors shall continue in the same manner and to the same extent as if such sections had not been enacted. (Aug. 21, 1957, 71 Stat. 399, Pub. L. 85–157, § 4.)

EFFECTIVE DATE

Sections effective on Oct. 1, 1956, see note under section 4–521.

§ 4–537. Appropriation—Reimbursement to District of Columbia.

There are hereby authorized to be appropriated from revenues of the United States such sums as are necessary to reimburse the District of Columbia, on a monthly basis, for benefit payments made from

revenues of the District of Columbia to or for Federal employees and to or for the surviving children and spouse of such Federal employees under the provisions of sections 4–521 to 4–535, to the extent that such benefit payments exceed the deductions from the salaries of Federal employees for credit to the revenues of the District of Columbia. For the purpose of this section, (a) the term "benefit payments" includes relief, retirement compensation, pensions, and annuities and medical, surgical, hospital, and funeral expenses, and (b) the term "Federal employees" means and includes such members of the United States Park Police force as are paid from funds of the United States, members of the White House Police force and such members of the United States Secret Service Division as have or may hereafter become entitled to benefits under sections 4–521 to 4–535. (Aug. 21, 1957, 71 Stat. 399, Pub. L. 85–157, § 6.)

EFFECTIVE DATE

Section effective on Oct. 1, 1956, see note under section 4–521.

CROSS REFERENCE

Annual Federal payment, see § 47–134.

§ 4–538. Eligibility under the federal employees' compensation law.

Notwithstanding any other provision of law, no person entitled to receive any benefit under sections 4–521 to 4–535 on account of death incurred, an injury received, or disease contracted, or an injury or disease aggravated, in the performance of duty shall be entitled, because of the same death, injury, disease, or aggravation, to benefits under section 7902 and subchapter I of chapter 81 of title 5, U.S. Code [relating to compensation to government employees for work injuries]. (Aug. 21, 1957, 71 Stat. 400, Pub. L. 85–157, § 7.)

CODIFICATION

The reference to "section 7902 and subchapter I of chapter 81 of Title 5, U.S. Code, and sections 292 and 1920—1922 of Title 18, U.S. Code [relating to compensation to government employees for work injuries]" was substituted for "the Federal Employees' Compensation Act, as amended (5 U.S.C. 751, and the following)", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Federal Employees' Compensation Act (Sept. 7, 1916, 39 Stat. 742, ch. 458), as amended, was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law, and amended sections in other titles of U.S.C.), and the Federal Employees' Compensation Act, as amended, is now covered by the provisions of titles 5 and 18, U.S.C., cited.

EFFECTIVE DATE

Section effective on Oct. 1, 1956, see note under section 4–521.

§ 4–539. Annuity rights of widows and children of officers and members who died in service prior to October 1, 1956—Existing benefits not reduced.

Each widow or child who, on or after the effective date of this section, was receiving or is now receiving or shall hereafter be entitled to receive relief or annuity by reason of service in the Metropolitan Police force, the Fire Department of the District of Columbia, the United States Park Police force, the White House Police force, or the United States Secret Service Division, of a deceased former officer or member who died in the service of any such organization prior to the effective date of the Policemen and Firemen's Retirement and Disability Act Amendments of 1957, or who retired prior to such effective date, shall be entitled to benefits computed in accordance with the provisions of section 4–531.

Nothing in this section shall be deemed to reduce the relief or retirement compensation any person receives, or is entitled to receive, on the date of the enactment of this section. (Aug. 24, 1962, 76 Stat. 402, Pub L. 87–601, §§ 1, 2.)

REFERENCES IN TEXT

The effective date of Firemen's Retirement and Disability Act Amendments of 1957 is Oct. 1, 1956. The said act is classified to sections 4–521 to 4–538.

EFFECTIVE DATE OF ACT AUG. 24, 1962

Section 3 of act Aug. 24, 1962, provides as follows: "The effective date of this Act shall be the first day of the first month following the date of enactment."

Chapter 6.—TRIAL BOARDS

Sec.
4–601. Trial boards may compel attendance of witnesses—Fees
4–602. False swearing before trial boards.
4–603 Process to secure attendance of witnesses.
4–604. Oath of members of trial boards.

§ 4–601. Trial boards may compel attendance of witnesses—Fees.

Any trial board of the Metropolitan police force or the fire department of the District of Columbia shall have the power to issue subpœnas in the name of the Chief Judge of the United States District Court for the District of Columbia to compel witnesses to appear and testify and/or to produce all books, records, papers or documents before said trial board: *Provided,* That witnesses other than those employed by the District of Columbia subpœnaed to appear before said trial board shall be entitled to the same fees as are paid witnesses for attendance before the United States District Court for the District of Columbia, but said fees need not be tendered said witnesses in advance of their appearing and testifying and/or producing books, records, papers or documents before said trial board. (May 11, 1892, 27 Stat. 29, ch. 65, § 1; Feb. 20, 1896, 29 Stat. 10, ch. 25, § 1; Apr. 16, 1932, 47 Stat. 86, ch. 118, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a)(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENTS

1932—Act Apr. 16, 1932, substituted "Chief Justice of the Supreme Court of the District of Columbia to compel witnesses to appear and testify and/or to produce all books, records, papers or documents before said trial board" for "Board of Commissioners of the District of Columbia, to compel before it the attendance of witnesses upon any trial or proceedings authorized by the rules and regulations of the police force or of the fire department" and added the proviso.

1896—Act Feb. 20, 1896, added the words "or of the fire department" following "rules and regulations of the police force."

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District

Court for the District of Columbia" for "District Court of the United States for the District of Columbia", and "Chief Judge" for "Chief Justice."

TRANSFER OF FUNCTIONS

Reorganization Plan No. 48 of the Board of Commissioners dated June 26, 1953, established in the Government of the District of Columbia a Regular Police Trial Board, a Special Police Trial Board, and a Complaint Review Board. These boards are described in the order as having been established for the purpose of insuring fair and impartial trials and reviews of cases involving infractions of discipline or improper procedure by members of the Police Department. The order set forth the selection, composition, and functions of the boards, and abolished the previously existing Police Trial and Review Boards. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to Title 1, Administration.

Reorganization Order No. 39 of the Board of Commissioners dated June 18, 1953, established in the Government of the District of Columbia a Regular Fire Trial Board and a Special Fire Trial Board with the purpose of trying and reviewing cases involving infractions of discipline or improper procedure by members of the Fire Department. The order set forth the selection, composition, and functions of the boards, and abolished the previously existing Fire Trial Boards. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to Title 1, Administration.

CROSS REFERENCES

Commissioners of District of Columbia, similar powers of, see § 1–237.

Trial board for Metropolitan Police, see § 4–122.

Trial boards for firemen, see § 4–402.

§ 4–602. False swearing before trial boards.

Any wilful false swearing on the part of any witness before any trial board mentioned in section 4–601 as to any material fact shall be deemed perjury and shall be punished in the manner prescribed by law for such offense. (May 11, 1892, 27 Stat. 29, ch. 65, § 2; Feb. 20, 1896, 29 Stat. 10, ch. 25, § 2; Apr. 16, 1932, 47 Stat. 87, ch. 118, § 3.)

AMENDMENTS

1932—Act Apr. 16, 1932, deleted "or corrupt" following "wilful," "or person giving evidence" following "witness" and "in any proceedings under the rules and regulations governing said police force and fire department" following "fact."

1896—Act Feb. 20, 1896, changed the words "making deposition" to "giving evidence" and added after "police force," the words "and fire department."

§ 4–603. Process to secure attendance of witnesses.

If any witness having been personally summoned shall neglect or refuse to obey the subpœna issued in section 4–601, then in that event the chairman of the trial board may report that fact to the United States District Court for the District of Columbia or one of the judges thereof and said court, or any judge thereof, is empowered to compel obedience to said subpœna to the same extent as witnesses may be compelled to obey the subpœnas of that court. (May 11, 1892, 27 Stat. 29, ch. 65, § 3; Feb. 20, 1896, 29 Stat. 10, ch. 25, § 3; Apr. 16, 1932, 47 Stat. 87, ch. 118, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENTS

1932—Act Apr. 16, 1932, substituted the existing provisions for "If any witness, having been first personally summoned, shall neglect or refuse to appear before any trial board mentioned in the first section of this act, then, on the fact being reported by the major and superintendent of police or chief of the fire department to one of the justices of the police court, it shall be the duty of that court to compel the attendance of such witness before such trial board in the same manner as witnesses are now compellable to appear before said court: *Provided,* That witnesses subpœnaed to appear before said trial boards, other than those employed by the District of Columbia, shall be entitled to the same fees as are now paid witnesses for attendance before the Supreme Court of the District of Columbia."

1896—Act Feb. 20, 1896, added after the words "superintendent of police," the words "or chief of the fire department."

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia", and "judge" and "judges" for "justice" and "justices" respectively.

TRANSFER OF FUNCTIONS

Regular Police Trial Board, Special Police Trial Board, Complaint Review Board, Regular Fire Trial Board and Special Fire Trial Board established and former Police and Fire Trial Boards abolished, see notes under section 4–601.

§ 4–604. Oath of members of trial boards.

Each member of trial boards shall take an oath to be administered by the chief clerk of the police department for the faithful and impartial performance of the duties of the office. (Apr. 16, 1932, 47 Stat. 87, ch. 118, § 4.)

TRANSFER OF FUNCTIONS

Reorganization Order No. 46 of the Board of Commissioners dated June 26, 1953, established in the Metropolitan Police Department the Chief Clerk's Section. The order set forth the functions of the Chief Clerk's Section and abolished the previously existing office. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to Title 1, Administration.

Chapter 7.—AWARDS FOR MERITORIOUS SERVICE

Sec.
4–701. Annual awards for meritorious service.
4–702. Committee to make awards.
4–703. Preference to medal holders in promotions
4–704. Appropriation authorized.

§ 4–701. Annual awards for meritorious service.

For the official recognition of outstanding acts in the line of duty by the members of the police and fire departments of the District of Columbia there shall be awarded annually one gold medal and one or more silver medals, appropriately inscribed, to those members of each department who have by outstanding or conspicuous services earned such awards. (Mar. 4, 1929, 45 Stat. 1556, ch. 696, § 1; July 24, 1956, 70 Stat. 627, ch. 685, § 1.)

AMENDMENT

1956—Act July 24, 1956, authorized more than one silver medal to be awarded annually for meritorious service.

CROSS REFERENCE

Policemen prohibited from accepting fees or presents in addition to salary, except with consent of Commissioners, see § 4–129.

§ 4–702. Committee to make awards.

The awards shall be made annually by a committee of five persons, consisting of the head of each de-

partment and three civilians appointed by the commissioners of said District; all to serve without compensation on such committee of award. (Mar. 4, 1929, 45 Stat. 1556, ch. 696, § 2.)

§ 4–703. Preference to medal holders in promotions.

When promotions are being made in the departments, the holders of such medals shall be preferred to other members of said departments, other things being equal. (Mar. 4, 1929, 45 Stat. 1556, ch. 696, § 3.)

§ 4–704. Appropriation authorized.

To provide for the cost of such medals there is hereby authorized to be appropriated annually such sum as the commissioners of the District of Columbia may deem necessary for the purpose. (Mar. 4, 1929, 45 Stat. 1557, ch. 696, § 4.)

Chapter 8.—SALARIES

Sec.
4–801. Repealed.
4–802. Salary increase denied if service unsatisfactory—Removal for inefficiency—Additional compensation for efficiency.
4–803 to 4–806. Repealed.
4–807. Additional compensation for working on holidays.
4–808. Holiday defined.
4–809. Applicability to White House Police force and United States Park Police force.
4–810 to 4–817. Repealed.
4–820. Repealed.
4–821. Computation of rates of compensation.
4–822. Repealed.
4–823. Salary Schedules—Rates of basic compensation of officers and members of Metropolitan Police force and Fire Department.
4–823a. Repealed.
4–823b. Retroactive compensation under section 4–823a—When and to whom payable.
4–823c. Adjustment of rates of basic compensation of officers and members to whom section 4–823, as amended by act October 24, 1962, applies—Service and longevity steps.
4–823d. Adjustment of rates of basic compensation of officers and members to whom section 4–823, as amended by act Sept. 2, 1964, applies.
4–823d–1. Adjustment of rates of basic compensation of officers and members to whom section 4–823, as amended by act Nov. 13, 1966, applies—Dog handlers.
4–824. Adjustment of salaries—Placement in salary classes and steps—Corresponding titles of step increases.
4–825. Positions to be included as Technician I.
4–826. Positions to be included as Technician II.
4–826a. Classification of aide to Fire Marshal.
4–827. Original appointments of Police and Fire Privates.
4–828. Authority to establish and determine, positions to be included as Technicians in Class 1 and 2 in section 4–823—Exception.
4–829. Advancement in compensation after initial salary adjustment—Exception—Condition for advancement—Crediting of satisfactory service.
4–830. Promotion—Rate of basic compensation—Method of placement of an officer or member assigned or transferred to a Sub-Class.
4–831. Demotion—Rate of compensation.
4–832. Longevity step increases—Conditions—Frequency of increases—Maximum increases—Date of beginning of step increases—Manner of crediting satisfactory service rendered prior to effective date of sections 4–823 and 4–824 to 4–837.
4–833. Basic compensation of United States Park Police.
4–834. Sections 4–823 and 4–824 to 4–837 not to be construed to decrease compensation of a member or officer—Vacancy provisions.
4–835. Commissioners authorized to promulgate regulations.
4–836. Retroactive salary—When and to whom payable.
4–837. Delegation of authority by Commissioners, Secretary of Treasury and Secretary of Interior—Exception.

§ 4–801. Repealed. June 20, 1953, 67 Stat. 76, ch. 146, § 404(a)(2), eff. July 1, 1953.

Section, act July 1, 1930, 46 Stat. 840, ch. 783, § 3, related to computation of pay of privates of Metropolitan Police force and the fire department. See section 4–823.

EFFECTIVE DATE OF REPEAL

Repeal of section effective July 1, 1953, see section 407 of act June 20, 1953, set out as a note under section 4–821.

§ 4–802. Salary increase denied if service unsatisfactory—Removal for inefficiency—Additional compensation for efficiency.

No annual increase in salary shall be paid to any person who in the judgment of the commissioners of the District of Columbia, has not rendered satisfactory service, and any private who fails to receive such annual increase for two successive years shall be deemed inefficient and forthwith removed from the service by the commissioners: *Provided*, That under such rules and regulations as the commissioners shall promulgate, the major and superintendent of Police and the chief engineer of the fire department shall select and report to the commissioners from time to time the names of privates and sergeants in each department who by reason of demonstrated ability may be considered as possessed of outstanding efficiency, and the commissioners are authorized and directed to grant to not exceeding 10 per centum of the authorized strength, respectively, of such privates and sergeants in each department additional compensation at the rate of $5.00 per month: *Provided further*, That the commissioners may withdraw such compensation at any time and remove any name or names from among such selections. (July 1, 1930, 46 Stat. 840, ch. 783, § 4.)

TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under section 4–103.

Fire Chief as successor to Chief Engineer, see note under section 4–402.

CROSS REFERENCES

Demotion, rate of compensation, see § 4–831.

Discharge of policeman at end of probationary period, see § 4–105.

Prohibition against acceptance of fees or presents in addition to salary, except by consent of commissioners, see § 4–129.

Rules and regulations in general, see § 1–226.

§§ 4–803, 4–804. Repealed. June 20, 1953, 67 Stat. 76, ch. 146, § 404(a) (5), (8), eff. July 1, 1953.

Section 4–803, acts July 14, 1945, 59 Stat. 470, ch. 303, § 1; July 5, 1946, 60 Stat. 480, ch. 542, § 1, related to salary increases for officers or members of the Metropolitan Police, the United States Park Police, the White House Police, and the Fire Department of the District of Columbia. See section 4–823 et seq.

Section 4–804, act July 14, 1945, 59 Stat. 470, ch. 303, § 2, related to an increase in annual basic salary in lieu of overtime and night differential pay for Metropolitan Police, United States Park Police, White House Police and the Fire Department of the District of Columbia. See section 4–904.

EFFECTIVE DATE OF REPEAL

Repeal of sections effective July 1, 1953, see section 407 of act June 20, 1953, set out as a note under section 4–821.

§ 4–805. Repealed. Dec. 28, 1945, 59 Stat. 662, ch. 598, eff. Dec. 1, 1945.

Section, act July 14, 1945, 59 Stat. 471, ch. 303, § 3, provided that the provisions of former sections 4–803, and 4–804 did not apply to pilots and marine engineers whose salaries had been increased by former section 4–405.

§ 4–806. Repealed. June 20, 1953, 67 Stat. 76, ch. 146, § 404(a)(9), (11), eff. July 1, 1953.

Section, acts June 30, 1949, 63 Stat. 376, ch. 287, § 1; Oct. 25, 1951, 65 Stat. 636, ch. 560, related to an increase in annual basic salary for Metropolitan Police, United States Park Police, White House Police, and the Fire Department of the District of Columbia.

EFFECTIVE DATE OF REPEAL

Repeal of section effective July 1, 1953, see section 407 of act June 20, 1953, set out as a note under section 4–821.

§ 4–807. Additional compensation for working on holidays.

Under regulations promulgated by the Commissioners of the District of Columbia each officer and member of the Metropolitan Police force and of the Fire Department of the District of Columbia when he may be required to work on any holiday, shall be compensated for such duty, excluding periods when he is in a leave status, in lieu of his regular rate of basic compensation for such work, at the rate of twice such regular rate of basic compensation: *Provided,* That for the purpose of sections 4–807 to 4–809, each such officer or member who works eight hours or less on any holiday shall be compensated for such duty in addition to his regular rate of basic compensation for such work, at the rate of one-eighth of his daily rate of basic compensation for each hour so worked, computed to the nearest hour, counting thirty minutes or more as a full hour: *Provided further,* That, when an officer or member is authorized or directed to work on a holiday and such officer or member is required to work longer than his regular tour of duty he shall be compensated for such overtime in accordance with the provisions of subsection (e) of section 4–904. Appropriations for personal services for the Metropolitan Police force, the Fire Department of the District of Columbia, the White House Police force, and the United States Park Police force shall be available for payment of the additional compensation authorized by sections 4–807 to 4–809. (Oct. 24, 1951, 65 Stat. 607, ch. 544, § 1; July 18, 1958, 72 Stat. 377, Pub. L. 85–533, § 4(a); Oct. 5, 1961, 75 Stat. 831, Pub. L. 87–399, § 4; Oct. 21, 1965, 79 Stat. 1015, Pub. L. 89–282, § 3.)

REFERENCES IN TEXT

Section 4–810, referred to in the enumeration "sections 4–807 to 4–810" in the text, was repealed by act June 20, 1953, 67 Stat. 76, ch. 146, § 404(a)(10).

Section 12 of act Sept. 1, 1916, as amended, referred to in the text, formerly classified to sections 4–113, 4–114, 4–501, 4–503, 4–506, 4–507, 4–508 to 4–510, and 4–512 to 4–514, was completely amended by act Aug. 21, 1957, 71 Stat. 391, Pub. L. 85–157, § 3, and is now classified to sections 4–521 to 4–535.

Section 5 of act July 1, 1930, as amended, referred to in the text, formerly classified to sections 4–503 and 4–504, was repealed by act Aug. 21, 1957, 71 Stat. 399, Pub. L. 85–157, § 5(2), and is now covered by section 4–524.

AMENDMENTS

1965—Section 3, act Oct. 21, 1965, amended section by striking the last two of three provisos thereof and added the new proviso relating to overtime work.

1961—Section 4, act Oct. 5, 1961, amended this section to read as above set out. The provisions of the section prior to this amendment are set out in the 1961 edition of this Code.

1958—Act July 18, 1958, substituted in the first sentence "any holiday, shall be compensated * * * *And provided further,*" for "six or more hours on any holiday, shall be entitled to receive as compensation for such holiday work, in lieu of his regular pay for that day, an amount equal to twice his daily rate of basic compensation: *Provided*".

EFFECTIVE DATE OF 1965 AMENDMENT

Section 5, act Oct. 21, 1965, provided: "This Act shall become effective on the first day of the first pay period which begins not less than thirty days after approval of this Act. [Amendment of sections 4–807, 4–904, and the repeal of paragraph 6 of section 4–404a.]

EFFECTIVE DATE OF 1961 AMENDMENT

See note under section 4–404a.

§ 4–808. Holiday defined.

As used in section 4–807 the word "holiday" means the following: The 1st day of January, the 22d day of February, the 4th day of July, the 30th day of May, the first Monday in September, the 11th day of November, Thanksgiving Day, the 25th day of December, and, with respect to officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia, such other holidays as may be designated by the Commissioners of the District of Columbia, and with respect to officers and members of the White House Police force and the United States Park Police force, such other holidays as may be designated by Executive order. (Oct. 24, 1951, 65 Stat. 607, ch. 544, § 2; July 18, 1958, 72 Stat. 378, Pub. L. 85–533, § 4 (b).)

AMENDMENTS

1958—Act July 18, 1958, substituted provision authorizing the designation of other holidays for members of the Metropolitan Police force and the Fire Department by the Commissioners and for members of the White House Police force and United States Police force by executive order for former authorization which read following "December" "and such other days designated by Executive order."

§ 4–809. Applicability to White House Police force and United States Park Police force.

The provisions of sections 4–807 to 4–810 shall be applicable to the White House Police force and the United States Park Police force, under regulations promulgated by the Secretary of the Treasury and the Secretary of the Interior, respectively. (Oct. 24, 1951, 65 Stat. 607, ch. 544, § 3.)

REFERENCES IN TEXT

Section 4–810, referred to in the enumeration "sections 4–807 to 4–810" in the text, was repealed by act June 20, 1953, 67 Stat. 76, ch. 146, § 404(a)(10).

§§ 4–810, 4–811. Repealed. June 20, 1953, 67 Stat. 76, ch. 146, § 404(a) (10), (11), eff. July 1, 1953.

Section 4–810, act Oct. 24, 1951, 65 Stat. 607, ch. 544, § 4, made applicable to members of the Metropolitan Police force and Fire Department of the District of Columbia provisions of section 6 of the Act of June 30, 1906 (34 Stat. 763), as amended, concerning computation of annual or monthly compensation.

Section 4–811, act Oct. 25, 1951, 65 Stat. 636, ch. 560, § 1(a), related to increases in compensation for officers and members of the Metropolitan Police, the United States Park Police, the White House Police, and the Fire Department of the District of Columbia.

Subject matter of the former provisions is now covered by section 4–823 et seq.

EFFECTIVE DATE OF REPEAL

Repeal of sections effective July 1, 1953, see section 407 of act June 20, 1953, set out as a note under section 4–821.

§ 4–812. Repealed. Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a).

Section, act Oct. 25, 1951, 65 Stat. 636, ch. 560, § 4(b), related to retroactive compensation to certain persons under the 1951 salary increases.

§§ 4–813 to 4–816. Repealed. Aug. 1, 1958, 72 Stat. 486, Pub. L. 85–584, § 507.

Section 4–813, acts June 20, 1953, 67 Stat. 72, ch. 146, title I, § 101; Aug. 5, 1955, 69 Stat. 530, ch. 570, § 1, related to basic salaries of the police force.

Section 4–814, acts June 20, 1953, 67 Stat. 73, ch. 146, title I, § 102; Aug. 31, 1954, 68 Stat. 1000, ch. 1146, §§ 1, 2; Aug. 5, 1955, 69 Stat. 531, ch. 570, § 2, related to longevity increases.

Section 4–815, acts June 20, 1953, 67 Stat. 74, ch. 146, title II, § 201; Aug. 5, 1955, 69 Stat. 531, ch. 570, § 3; July 24, 1956, 70 Stat. 624, ch. 680, § 1, related to basic salaries of members of the Fire Department.

Section 4–816, acts June 20, 1953, 67 Stat. 74, ch. 146, § 202; Aug. 31, 1954, 68 Stat. 1000, ch. 1146, §§ 3, 4; Aug. 5, 1955, 69 Stat. 531, ch. 570, § 4; July 24, 1956, 70 Stat. 624, ch. 680, § 2; May 19, 1958, 72 Stat. 122, Pub. L. 85–421, § 1(a), related to longevity increases for members of the Fire Department.

The subject matter of former sections 4–813 to 4–816 is now covered by section 4–823 et seq.

EFFECTIVE DATE OF REPEAL

Repeal of sections effective the first day of first pay period beginning after Jan. 1, 1958, see section 508(a) of act Aug. 1, 1958, set out as a note under section 4–823.

§ 4–817. Repealed. Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a).

Section, act Aug. 5, 1955, 69 Stat. 531, ch. 570, § 5, related to retroactive pay increase with respect to former §§ 4–813 to 4–816.

§ 4–820. Repealed. Aug. 1, 1958, 72 Stat. 486, Pub. L. 85–584, § 507.

Section, act June 20, 1953, 67 Stat. 72, ch. 146, title IV, § 401, related to salaries of United States Park Police, and is now covered by section 4–833.

EFFECTIVE DATE OF REPEAL

Repeal of section effective the first day of first pay period beginning after Jan. 1, 1958, see section 508(a) of act Aug. 1, 1958, set out as a note under section 4–823.

§ 4–821. Computation of rates of compensation.

(a) For all pay computation purposes affecting employees covered by this Act or the District of Columbia Police and Firemen's Salary Act of 1958, basic per annum rates of compensation established by this Act or the District of Columbia Police and Firemen's Salary Act of 1958, shall be regarded as payment for employment during fifty-two basic administrative workweeks.

(b) Whenever for any such purpose it is necessary to convert a basic annual rate established by this Act or the District of Columbia Police and Firemen's Salary Act of 1958 to basic biweekly, weekly, daily, half-daily, or hourly rate, the following rules shall govern:

(A) The annual rate shall be divided by fifty-two or twenty-six, as the case may be, to derive a weekly or biweekly rate;

(B) A weekly or biweekly rate shall be divided by five or ten, as the case may be, to derive a daily rate;

(C) A daily rate shall be divided by two to derive a one-half daily rate; and

(D) In the case of the Metropolitan Police force, except with respect to computation of holiday pay, a biweekly rate shall be divided by the number of hours constituting the biweekly tour of duty in order to derive an hourly rate.

(E) In the case of the Firefighting Division of the Fire Department of the District of Columbia—

(i) a biweekly rate shall be divided by two to derive a weekly rate;

(ii) the weekly rate shall be divided by the number of workdays in the average established workweek to arrive at a daily rate;

(iii) a daily rate shall be divided by two to derive a one-half daily rate; and

(iv) an hourly rate shall be determined by dividing the daily rate of pay by twelve, except for the purpose of computation of holiday pay.

(F) In the case of officers and members of divisions of the Fire Department of the District of Columbia other than the firefighting division, except with respect to computation of holiday pay, a biweekly rate shall be divided by the number of hours constituting the biweekly tour of duty in order to derive an hourly rate.

All rates shall be computed to the nearest cent, counting one-half cent and over as a whole cent.

(c) For all officers and employees referred to in this Act, or the District of Columbia Police and Firemen's Salary Act of 1958 each pay period shall cover two administrative workweeks except that with respect to employees of the Fire Department the first pay period shall be for the period July 1 to July 11, 1953, inclusive.

(d), (e) Omitted.

(June 20, 1953, 67 Stat. 76, 77 ch. 146, title IV, § 405; July 20, 1953, 67 Stat. 182, ch. 231, § 1; June 25, 1956, 70 Stat. 338, ch. 446, § 1; July 18, 1958, 72 Stat. 378, Pub. L. 85–533, § 5; Aug. 1, 1958, 72 Stat. 485, Pub. L. 85–584, title V, § 502 (b); Oct. 5, 1961, 75 Stat. 831, Pub. L. 87–399; § 5; Sept. 25, 1962, 76 Stat. 596, Pub. L. 87–697, § 3.)

REFERENCES IN TEXT

This Act, referred to in the text, means act June 20, 1953, which is classified to section 4–518, 4–519, 4–821, and 4–904, and which was formerly classified to sections 4–813 to 4–816, 4–820 and 4–822, which were repealed by act Aug. 1, 1958, 72 Stat. 486, Pub. L. 85–584, § 507, and are now covered by section 4–823 et seq.

The District of Columbia Police and Firemen's Salary Act of 1958, referred to in the text, is classified to section 4–823 et seq. and 3 U.S.C. § 204(b).

CODIFICATION

Provisions of subsec. (d) relating to computation of pay of officers and members of Fire Department for pay period July 1 to July 11, 1953 and subsec. (e) relating to period from June 27 to June 30, 1956 as a special pay period of officers and members of Metropolitan Police force, White House Police force, and United States Park Police force, are omitted from the Code as executed.

AMENDMENTS

1962—Section 3 of act Sept. 25, 1962, amended clause (E) of subsection (b) to read as above set out. Clause (E) before this amendment read as follows: "(E) in the case of the firefighting division of the Fire Department of the District of Columbia, except with respect to computation of holiday pay, the weekly or biweekly rate shall be divided by 56 or 112, as the case may be, to derive an hourly rate."

1961—Section 5, act Oct. 5, 1961, amended clause (D) of subsection (b) to read as above set out under clauses (D), (E), and (F).

1958—Act Aug. 1, 1958, inserted the phrase "or the District of Columbia Police and Firemen's Salary Act of 1958" following the words "this Act" wherever the same appears in the section.

Subsec. (b) amended by act July 18, 1958, by adding "half-daily, or hourly" to the first par. of the subsec. and by adding clauses C and D.

1956—Subsec. (e) added by act June 25, 1956.

1953—Subsec. (c) amended by act July 20, 1953, which inserted after "workweeks" the words: "except that with respect to employees of the Fire Department the first pay period shall be for the period July 1 to July 11, 1953, inclusive."

Subsec. (d) added by act July 20, 1953.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 5 of act Sept. 25, 1962, provides as follows: "This Act [amending sections 4–404a, 4–821 and enacting 4–408b] shall take effect on the first day of the first pay period which begins not less than one hundred and twenty days after its enactment, or on or after the first day of the first pay period which begins on or after July 1, 1962, whichever is later."

EFFECTIVE DATE OF 1961 AMENDMENT

See note under section 4–404a.

EFFECTIVE DATE

Section 407 of act June 20, 1953, provided: "This Act [enacting sections 4–518 and 4–519, former sections 4–813 to 4–816, 4–820 and 4–822, amending sections 4–821 and 4–904, and repealing sections 4–108, 4–180, 4–203, 4–405, 4–410, 4–801, 4–803, 4–804, 4–810 and 4–811] shall take effect on July 1, 1953".

§ 4–822. Repealed. Aug. 1, 1958, 72 Stat. 486, Pub. L. 85–584, § 507.

Section, act June 20, 1953, 67 Stat. 76, ch. 146, § 406, related to authority of District Commissioners to make regulation for the administration of the District of Columbia Police and Firemen's Salary Act of 1953, and is now covered by section 4–835.

EFFECTIVE DATE OF REPEAL

Repeal of section effective the first day of first pay period beginning after Jan. 1, 1958, see section 508(a) of act Aug. 1, 1958, set out as a note under section 4–823.

§ 4–823. Salary Schedules—Rates of basic compensation of officers and members of Metropolitan Police force and Fire Department.

The annual rates of basic compensation of the officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia shall be fixed in accordance with the following schedule of rates:

SALARY SCHEDULE

"Salary class and title	Service Step						Longevity Step		
	1	2	3	4	5	6	7	8	9
Class 1:									
Subclass (a) Fire private. Police private.	$6,700	$7,040	$7,380	$7,720	$8,060	$8,400	$8,740	$9,080	$9,420
Subclass (b) Private assigned as: Technician I. Plainclothesman.	6,990	7,330	7,670	8,010	8,350	8,690	9,030	9,370	9,710
Subclass (c) Private assigned as: Technician II. Station clerk. Motorcycle officer.	7,280	7,620	7,960	8,300	8,640	8,980	9,320	9,660	10,000
Class 2:									
Subclass (a) Fire inspector.	8,060	8,400	8,740	9,080	----------	----------	9,420	9,760	10,100
Subclass (b) Fire inspector assigned as: Technician I.	8,350	8,690	9,030	9,370	----------	----------	9,710	10,050	10,390
Subclass (c) Fire inspector assigned as: Technician II.	8,640	8,980	9,320	9,660	----------	----------	10,000	10,340	10,680
Class 3 Assistant marine engineer. Assistant pilot. Detective.	8,690	9,030	9,370	9,710	----------	----------	10,050	10,390	10,730
Class 4:									
Subclass (a) Fire sergeant. Police sergeant.	8,975	9,315	9,655	9,995	----------	----------	10,335	10,675	11,015
Subclass (b) Detective sergeant.	9,485	9,825	10,165	10,505	----------	----------	10,845	11,185	11,525
Subclass (c) Police sergeant assigned as: Motorcycle officer.	9,555	9,895	10,235	10,575	----------	----------	10,915	11,255	11,595
Class 5 Fire lieutenant. Police lieutenant. Detective lieutenant.	10,710	11,138	11,566	11,994	----------	----------	12,422	12,850	----------
Class 6 Marine engineer. Pilot.	11,781	12,209	12,637	13,065	----------	----------	13,493	13,921	----------
Class 7 Fire Captain. Police captain. Detective captain.	12,852	13,387	13,922	14,457	----------	----------	14,992	15,527	----------
Class 8 Battalion fire chief. Police inspector.	14,994	15,529	16,064	16,599	----------	----------	17,134	17,669	----------
Class 9:									
Subclass (a) Deputy fire chief. Deputy chief of police.	17,671	18,206	18,741	19,276	----------	----------	19,811	20,346	----------
Subclass (b) Deputy chief assigned as the: Assistant fire chief. Police executive officer. Commanding officer of the White House Police. Commanding officer of the United States Park Police.	18,742	19,277	19,812	20,347	----------	----------	20,882	21,417	----------
Class 10 Fire chief. Chief of police."	22,491	23,026	23,561	24,096	----------	----------	24,631	25,166	----------

(Aug. 1, 1958, 72 Stat. 481, Pub. L. 85–584, title I, § 101; Oct. 24, 1962, 76 Stat. 1239, Pub. L. 87–882, § 1; Aug. 14, 1964, 78 Stat. 431, Pub. L. 88–426, title III, § 306(i)(6); Sept. 2, 1964, 78 Stat. 880, Pub. L. 88–575, title I, § 101; Nov. 13, 1966, 80 Stat. 1591, Pub. L. 89–810, title I, § 101.)

AMENDMENTS

1966—Section 101 of act Nov. 13, 1966, amended section generally to provide increases in salaries of officers and members of Metropolitan Police force and of Fire Department.

1964—Section 101 of act Sept. 2, 1964, amended the salary schedule relating to the compensation of classes 1 through 9.

Section 306(i)(6) of act Aug. 14, 1964, amended the salary schedule relating to the compensation of the Fire Chief and the Chief of Police.

1962—Section 1 of act Oct. 24, 1962, amended section generally.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 106 of act Nov. 13, 1966, 80 Stat. 1593, Pub. L. 89–810, title I, provided:

"This title [amending §§ 4–823 and 4–829, and enacting § 4–823d–1] and the amendments made by this title [to said §§ 4–823 and 4–829] shall take effect on the first day of the first pay period beginning on or after July 1, 1966."

EFFECTIVE DATE OF 1964 AMENDMENTS

Section 108 of act Sept. 2, 1964, provided: "The provisions of this title [amending sections 4–823, 4–825, 4–829, 4–832, and enacting 4–823d] shall take effect on the first day of the first pay period beginning on or after July 1, 1964."

Act Aug. 14, 1964, see note to section 1–204a.

EFFECTIVE DATE OF 1962 AMENDMENTS

Section 5 of act Oct. 24, 1962, provides as follows: "This Act [amending § 4–823, enacting § 4–823c, amending § 4–826, enacting § 826a, amending §§ 4–830 and 4–832 and repealing § 4–823a] shall take effect as of the first day of the first pay period beginning after January 1, 1963."

EFFECTIVE DATE

Section 508(a) of act Aug. 1, 1958, provided that: "This Act [enacting this section and sections 4–824 to 4–837 and repealing sections 4–813 to 4–816, 4–820 and 4–822] shall take effect as of the first day of the first pay period which begins after January 1, 1958".

SHORT TITLES

Section 107 of act Nov. 13, 1966, 80 Stat. 1593, Pub. L. 89–810, title I, provided:

"This title [amending §§ 4–823 and 4–829 and enacting § 4–823d–1] may be cited as the 'District of Columbia Policemen and Firemen's Salary Act Amendments of 1966'."

Section 1 of Pub. L. 85–584 provided that Pub. L. 85–584, which enacted this section and sections 4–824 to 4–837 and repealed sections 4–813 to 4–816, 4–820 and 4–822, may be cited as the "District of Columbia Police and Firemen's Salary Act of 1958".

GROUP INSURANCE

Section 105 of act Nov. 13, 1966, 80 Stat. 1593, Pub. L. 89–810, title I, provided:

"For the purpose of determining the amount of insurance for which an officer or member is eligible under the provisions of chapter 87 of title 5, United States Code (relating to government employees group life insurance), all changes in rates of compensation or salary which result from the enactment of this title [amending §§ 4–823 and 4–829 and enacting § 4–823d–1] shall be held and considered to be effective as of the date of enactment of this Act."

Section 107 of act Sept. 2, 1964, provided: "For the purpose of determining the amount of insurance for which an officer or member is eligible under the Federal Employees' Group Life Insurance Act of 1954, all changes in rates of compensation or salary which result from the enactment of this title shall be held and considered to be effective as of the date of enactment of this Act."

Act Aug. 14, 1964, see note to section 1–204a.

Section 508(b) of act Aug. 1, 1958, provided as follows:

"For the purpose of determining the amount of insurance for which an officer or member is eligible under the Federal Employees' Group Life Insurance Act of 1954 [5 U.S.C. § 2091 et seq.] all changes in rates of compensation or salary which result from the enactment of this Act [sections 4–823 and 4–824 to 4–837] shall be held to be effective as of the first day of the first pay period which begins on or after the date of such enactment."

The Federal Employees' Group Life Insurance Act of 1954 (Aug. 17, 1954, 68 Stat. 736, ch. 752; 5 U.S.C. § 2091 et seq.), referred to in the above-quoted provisions, was, for the most part, repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a), and is now covered by 5 U.S.C. §§ 1308, 8701 et seq. For construction of references, in other laws (such as in the above-quoted provisions), to laws replaced by such act Sept. 6, 1966 (of which § 1 revised and enacted title 5, U.S.C., into law), see § 7(b) of such act, set out in note under § 1–251.

RETROACTIVE COMPENSATION UNDER ACT NOV. 13, 1966, TITLE I

Section 104 of act Nov. 13, 1966, 80 Stat. 1593, Pub. L. 89–810, title I, provided:

"(a) Retroactive compensation or salary shall be paid by reason of this title [amending §§ 4–823 and 4–829, and enacting § 4–823d–1] only in the case of an individual in the service of the District of Columbia government or of the United States (including service in the Armed Forces of the United States) on the date of enactment of this Act, except that such retroactive compensation or salary shall be paid (1) to an officer or member of the Metropolitan Police force, the Fire Department of the District of Columbia, the United States Park Police force, or the White House Police force, who retired during the period beginning on the first day of the first pay period which begins on or after July 1, 1966, and ending on the date of enactment of this Act, for services rendered during such period, and (2) in accordance with the provisions of subchapter 8 of chapter 55 of title 5, United States Code (relating to settlement of accounts of deceased employees), for services rendered during the period beginning on the first day of the first pay period which begins on or after July 1, 1966, and ending on the date of enactment of this Act, by an officer or member who dies during such period.

"(b) For the purposes of this section, service in the Armed Forces of the United States, in the case of an individual relieved from training and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the Federal Government or the municipal government of the District of Columbia."

RETROACTIVE COMPENSATION UNDER ACT, SEPT. 2, 1964, TITLE I

Section 106 (a) and (b), of act Sept. 2, 1964, provided: "(a) Retroactive compensation or salary shall be paid by reason of this title only in the case of an individual in the service of the District of Columbia Government or of the United States (including service in the Armed Forces of the United States) on the date of enactment of this Act, except that such retroactive compensation or salary shall be paid (1) to an officer or member of the Metropolitan Police force, the Fire Department of the District of Columbia, the United States Park Police force, or the White House Police force, who retired during the period beginning on the first day of the first pay period which began on or after July 1, 1964, and ending on the date of enactment of this Act for services rendered during such period, and (2) in accordance with the provisions of the Act of August 3, 1950 (Public Law 636, Eighty-first Congress), as amended [5 U.S.C. 61f–61k], for services rendered during the period beginning on the first day of the first pay period which began on or after July 1, 1964, and ending on the date of enactment of this Act by an officer or member who dies during such period.

(b) For the purposes of this section, service in the Armed Forces of the United States, in the case of an individual relieved from training and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the Federal Government or the municipal government of the District of Columbia."

The act of Aug. 3, 1950 (Public Law 636 [ch. 518], Eighty-first Congress), as amended [5 U.S.C. 61f–61k],

referred to in subsec. (a) of the above-quoted provisions, was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a), and is now covered by 5 U.S.C. §§ 5581–5583. For construction of references, in other laws (such as in subsec. (a) of the above-quoted provisions), to laws replaced by such act Sept. 6, 1966 (of which § 1 revised and enacted title 5, U.S.C., into law), see § 7(b) of such act, set out in note under § 1–251.

RETROACTIVE SALARY PROVISIONS OF ACT AUG. 14, 1964

See note to section 1–204a.

INCREASE IN COMPENSATION

Act July 18, 1966, 80 Stat. 293, Pub. L. 89–504, Title I, § 108(b)(c)(d), provided:

"(b) Notwithstanding section 3679 of the Revised Statutes, as amended (31 U.S.C. 665), the rates of compensation of officers and employees of the Federal Government and of the municipal government of the District of Columbia whose rates of compensation are fixed by administrative action pursuant to law and are not otherwise increased by this Act are hereby authorized to be increased, effective on the effective date of section 102 of this title, by amounts not to exceed the increases provided by this title for corresponding rates of compensation in the appropriate schedule or scale of pay.

"(c) Nothing contained in this section shall be held or considered to authorize any increase in the rates of compensation of officers and employees whose rates of compensation are fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates or practices.

"(d) Nothing contained in this section shall affect the authority contained in any law pursuant to which rates of compensation may be fixed by administrative action."

Said § 108 of the act of July 18, 1966, is a part of the Federal Employees Salary Act of 1966, which was not affected by act Sept. 6, 1966, 80 Stat. 378, Pub. L. 89–554, § 1, revising and enacting Title 5, U.S.C., into law, in view of § 7(a) of the latter act, providing that laws effective after June 30, 1965, that are inconsistent with such act of Sept. 6, 1966, are considered as superseding it to the extent of the inconsistency.

CROSS REFERENCES

Exemption of officers and members of Metropolitan Police and Fire Department of District of Columbia from federal employee classification laws, see 5 U.S.C. § 5102(c)(5).

Federal Employees Salary Act of 1965 (Oct. 29, 1965, 79 Stat. 1111, Pub. L. 89–301), which, among other provisions, provides for increases in rates of compensation fixed by administrative action (§ 15(b—d) thereof), and for ceiling on increases provided for by such act (§ 14 thereof), see classification tables in U.S. Code, with respect to such act.

Severance pay, see clasification tables in U.S. Code, with respect to § 9 of Federal Employees Salary Act of 1965 (Oct. 29, 1965, 79 Stat. 1118, Pub. L. 89–301).

Travel duty, see 5 U.S.C. § 5542.

§ 4–823a. Repealed. Oct. 24, 1962, 76 Stat. 1243, Pub. L. 87–882, § 4.

Section of act Sept. 8, 1960, 74 Stat. 868, Pub. L. 86–734, § 1, provided for salary increases of 7.5 per centum of basic compensation.

For effective date of repeal, see note to section 4–823.

§ 4–823b. Retroactive compensation under section 4–823a—When and to whom payable.

(a) Retroactive compensation or salary shall be paid by reason of section 4–823a only in the case of an individual in the service of the District of Columbia or of the United States (including service in the Armed Forces of the United States) on September 8, 1960, except that such retroactive compensation or salary shall be paid (1) to any employee covered in this section and section 4–823a who retired during the period beginning on the day following the first day of the first pay period which began on or after July 1, 1960, and ending on September 8, 1960, for services rendered during such period and (2) in accordance with the provisions of sections 5581—5583 of title 5, U.S. Code, for services rendered during the period beginning on the first day of the first pay period which began on or after July 1, 1960, and ending on September 8, 1960, by any such employee who dies during such period.

(b) For the purposes of this section, service in the Armed Forces of the United States in the case of an individual relieved from training and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the Federal Government or the municipal government of the District of Columbia. (Sept. 8, 1960, 74 Stat. 868, Pub. L. 86–734, § 2.)

REFERENCES IN TEXT

Section 4 of act Sept. 8, 1960, provided that: "The provisions of this Act [adding this section and former § 4–823a] shall become effective on the first day of the first pay period beginning after July 1, 1960."

CODIFICATION

The reference in this section to "sections 5581–5583 of title 5, U.S. Code" was substituted for "sections 61f–61k of title 5, U.S. Code", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. Sections 61f—61k of title 5, U.S.C., were repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a), and are now covered by 5 U.S.C. §§ 5581—5583.

EFFECTIVE DATE

Section effective on the first day of the first pay period begining after July 1, 1960, see section 4 of act Sept. 8, 1960, set out as a note under section 4–823a.

§ 4–823c. Adjustment of rates of basic compensation of officers and members to whom section 4–823, as amended by act October 24, 1962, applies—Service and longevity rates.

The rates of basic compensation of officers and members to whom the amendment made by section 4–823 apply shall be adjusted in accordance with this section, and on and after the effective date of this Act section 4–824 shall not apply to any such officer or member whose rate of basic compensation is so adjusted in accordance with this section. Such rates of basic compensation shall be adjusted as follows:

(a) Each officer and member receiving basic compensation immediately prior to the effective date of this Act at one of the scheduled service or longevity rates of a class or subclass in the salary schedule in the District of Columbia Police and Firemen's Salary Act of 1958, as amended, shall receive a rate of basic compensation at the corresponding scheduled service or longevity rate in effect on and after the effective date of this Act, except that:

(1) Each private who immediately prior to the effective date of this Act was serving in service step 6, or longevity steps 7 or 8 in any subclass in class 1, and had a total of thirteen or more years of service as of the first day of the first pay period which began after January 1, 1958, shall, on the effective date of this Act, be advanced from service step 6 to longevity step 7, or from longevity step 7 to longevity step 8, or from longevity

step 8 to longevity step 9, as the case may be, and receive the appropriate scheduled rate of basic compensation for such step in the subclass in which he is serving. Any active service immediately prior to the effective date of this Act which each such private has rendered in the service step or longevity step from which he is being advanced will be credited to him for subsequent advancement purposes under the provisions of section 4–832 except that such active service provision shall not apply to any private assigned as detective, class 1, subclass (c), immediately prior to the effective date of this Act.

(2) Each private who, immediately prior to the effective date of this Act, was serving in a position bearing the title of station clerk in class 1, subclass (b), shall be placed in the corresponding title in class 1, subclass (c), and shall receive basic compensation (1) at the service step or longevity step in subclass (c) corresponding to that service step or longevity step in which he was serving immediately prior to the effective date of this Act, or (2) at the longevity step to which he is entitled under the provisions of paragraph (1) of subsection (a) of this section. Any active service which each private so assigned as station clerk has rendered in the service step or longevity step in which he was serving immediately prior to the effective date of this Act will be credited to him for subsequent advancement purposes under the provisions of section 4–829 or section 4–832 as the case may be.

(3) Each private who immediately prior to the effective date of this Act was serving in a position bearing the title of detective or precinct detective in class 1, subclass (c) or subclass (d), shall on the effective date of this Act, after the application of the provisions of paragraph (1) of subsection (a) of this section, be placed in and receive basic compensation at a scheduled rate in class 3, with the title of detective as follows:

From—	To—
Detective, class 1, subclass (c):	Detective, class 3:
Service steps 1, 2, 3, and 4	Service step 1.
Service step 5	Service step 2.
Service step 6	Service step 3.
Longevity step 7	Service step 4.
Longevity step 8	Longevity step 7.
Longevity step 9	Longevity step 8.

From—	To—
Precinct detective, class 1, subclass (d):	Detective, class 3:
Service steps 1, 2, and 3	Service step 1.
Service step 4	Service step 2.
Service step 5	Service step 3.
Service step 6	Service step 4.
Longevity step 7	Longevity step 7.
Longevity step 8	Longevity step 8.
Longevity step 9	Longevity step 9.

In computing the time served by each officer or member so assigned from detective, class 1, subclass (c), to detective, class 3, on the effective date of this Act for purposes of advancement to the next higher scheduled service step or longevity step as provided in section 4–829 or 4–832, as the case may be, such time shall commence as of the effective date of this Act. Any active service which each officer or member so assigned from precinct detective, class 1, subclass (d), to detective, class 3, has rendered in the service step or longevity step in which he was serving immediately prior to the effective date of this Act will be credited to him for subsequent advancement purposes under the provisions of section 4–829 or section 4–832, as the case may be.

(4) Each private who immediately prior to the effective date of this Act was serving in a position bearing the title of detective sergeant in class 1, subclass (e), shall on the effective date of this Act, after the application of the provisions of paragraph (1) of subsection (a) of this section be placed in the corresponding title in class 4, subclass (b), and shall receive the scheduled rate of basic compensation at a service step or longevity step as follows:

From—	To—
Detective sergeant, class 1, subclass (e):	Detective sergeant, class 4, subclass (b):
Service steps 1, 2, and 3	Service step 1.
Service step 4	Service step 2.
Service step 5	Service step 3.
Service step 6	Service step 4.
Longevity step 7	Longevity step 7.
Longevity step 8	Longevity step 8.
Longevity step 9	Longevity step 9.

Any active service which each officer or member so assigned as detective sergeant has rendered in the service step or longevity step in which he was serving immediately prior to the effective date of this Act will be credited to him for subsequent advancement purposes under provisions of section 4–829 or section 4–832, as the case may be.

(5) Each officer and member who, immediately prior to the effective date of this Act, was in class 3, subclass (a), as corporal, or in class 3, subclass (b), as corporal assigned as motorcycle officer, shall, on the effective date of this Act be placed in and receive basic compensation at a scheduled rate in class 4, subclass (a), or class 4, subclass (c), as the case may be, with the title of sergeant as follows:

From—	To—
Corporal, class 3, subclass (a):	Sergeant, class 4, subclass (a):
Service steps 1 and 2	Service step 1.
Service step 3	Service step 2.
Service step 4	Service step 3.
Longevity step 7	Service step 4.
Longevity step 8	Longevity step 7.
Longevity step 9	Longevity step 8.

From—	To—
Corporal assigned as motorcycle officer, class 3, subclass (b):	Sergeant assigned as motocycle officer, class 4, subclass (c):
Service steps 1 and 2	Service step 1.
Service step 3	Service step 2.
Service step 4	Service step 3.
Longevity step 7	Service step 4.
Longevity step 8	Longevity step 7.
Longevity step 9	Longevity step 8.

In computing the time served by each officer or member so assigned from corporal to sergeant or from corporal to sergeant assigned as motorcycle officer on the effective date of this Act for purposes of advancement to the next higher sched-

uled service step or longevity step as provided in section 4–829 or 4–832, as the case may be.

(6) Each officer or member who was a sergeant in class 4 immediately prior to the effective date of this Act, and who was a sergeant prior to July 1, 1953, shall be advanced to and shall receive the scheduled rate of basic compensation for longevity step 9 in class 4. Each officer or member who was a sergeant in class 4 immediately prior to the effective date of this Act and who was promoted to sergeant after June 30, 1953, and prior to the effective date of the District of Columbia Police and Firemen's Salary Act of 1958, shall, if immediately prior to the effective date of this Act he was serving in longevity step 7 or service step 4 or any lower service step, be advanced to the second higher scheduled step in class 4 above such step in which he was so serving or if, immediately prior to the effective date of this Act he was serving in longevity step 8 he shall be advanced to longevity step 9 in class 4, and shall receive the scheduled rate of basic compensation for the step to which he is advanced. Each officer or member who was a sergeant in class 4 immediately prior to the effective date of this Act and who was promoted to sergeant on or after the effective date of the District of Columbia Police and Firemen's Salary Act of 1958, shall be advanced to and receive the scheduled rate of basic compensation for the next higher scheduled step in class 4. Any active service which each such sergeant has rendered in the service step or longevity step in which he was serving immediately prior to the effective date of this Act will be credited to him for subsequent advancement purposes under the provisions of section 4–829 or section 4–832, as the case may be.

(7) Each officer or member receiving basic compensation at scheduled longevity step 9, in classes 5 though 10, respectively, of the District of Columbia Police and Firemen's Salary Act of 1958, as amended, shall be placed in and receive the rate of basic compensation at the scheduled longevity step 8, in classes 5 through 10, respectively, of the above schedule.

(Oct. 24, 1962, 76 Stat. 1240, Pub. L. 87–882, § 2.)

REFERENCES IN TEXT

The District of Columbia Police and Firemen's Salary Act of 1958, as amended, referred to in text, is set out in sections 4–823 to 4–837.

"This Act" referred to in text [act Oct. 24, 1962, Pub. L. 87–882], is this section, the amendments to sections 4–823, 4–826, 4–830, and 4–832, the enactment of 4–826a, and the repeal of section 4–823a.

EFFECTIVE DATE OF 1962 ACT

Section 5 of act Oct. 24, 1962, provides as follows: "This Act [enacting this section, amending sections 4–823, 4–826, 4–830 and 4–832, and enacting section 4–826a and repealing section 4–823a] shall take effect as of the first day of the first pay period beginning after January 1, 1963."

EFFECTIVE DATE OF THE DISTRICT OF COLUMBIA POLICE AND FIREMEN'S SALARY ACT OF 1958

Section 508(a) of act Aug. 1, 1958, Pub. L. 85–584, provided that: "This Act shall take effect as of the first day of the first pay period which begins after January 1, 1958."

§ 4–823d. Adjustment of rates of basic compensation of officers and members to whom section 4–823, as amended by act Sept. 2, 1964, applies.

The rates of basic compensation of officers and members to whom the amendment made by section 101 of this title apply [1] shall be adjusted in accordance with this section, and on and after the effective date of this title, section 4–823c, shall not apply to any such officer or member whose rate of basic compensation is so adjusted in accordance with this section. Such rates of basic compensation shall be adjusted as follows:

(1) Except as otherwise provided in paragraph (2), each officer and member receiving basic compensation immediately prior to the effective date of this title at one of the scheduled service or longevity rates of a class or subclass in the salary schedule in the District of Columbia Police and Firemen's Salary Act of 1958, as amended, shall receive a rate of basic compensation at the corresponding scheduled service or longevity rate in effect on and after the effective date of this title.

(2) Each private in service step 6, longevity step 7, or longevity step 8 in any subclass in class 1, upon completing a minimum of twenty-one years of continuous service as a private, including service in the Armed Forces of the United States but excluding any period of time determined not to have been satisfactory service, shall be advanced to longevity step 9 in class 1, and receive the appropriate scheduled rate of basic compensation for such step in the subclass in which he is serving.

(Sept. 2, 1964, 78 Stat. 881, Pub. L. 88–575, title I, § 102.)

REFERENCES IN TEXT

The District of Columbia Police and Firemen's Salary Act of 1958, as amended, referred to in text, is set out in sections 4–823 to 4–837.

Words "section 101 of this title", as used in this section, refer to § 101 of title I of act Sept. 2, 1964, cited to the text of this section, which amended § 4–823.

Words "effective date of this title", as used in this section, refer to effective date of said title I of the act of Sept. 2, 1964, which, in addition to enacting this section, amended §§ 4–823, 4–825, 4–829 and 4–832. See effective date note below.

EFFECTIVE DATE OF TITLE I, ACT SEPT. 2, 1964

Section 108 of act Sept. 2, 1964, provided: "The provisions of this title [amending sections 4–823, 4–825, 4–829, 4–832, and enacting 4–823d] shall take effect on the first day of the first pay period beginning on or after July 1, 1964."

CROSS REFERENCE

Inapplicability of this section to officers and members whose ratio of basic compensation is adjusted in accordance with § 4–823d–1 as result of 1966 amendment to § 4–823, see § 4–823d–1.

§ 4–823d–1. Adjustment of rates of basic compensation of officers and members to whom section 4–823, as amended by act Nov. 13, 1966, applies—Dog handlers.

The rates of basic compensation of officers and members to whom the amendment made by section 101 of this title applies shall be adjusted in accord-

[1] So in original. Probably should read "applies".

ance with this section, and on and after the effective date of this title, section 4–823d shall not apply to any such officer or member whose rate of basic compensation is so adjusted in accordance with this section. Such rates of basic compensation shall be adjusted as follows:

(1) Except as otherwise provided in paragraph (2), (3), or (4), each officer and member receiving basic compensation immediately prior to the effective date of this title at one of the scheduled service or longevity rates of a class or subclass in the salary schedule in section 4–823 shall receive a rate of basic compensation at the corresponding rate in effect on and after the effective date of this title.

(2) Each private in service step 6, longevity step 7, or longevity step 8 in any subclass in class 1, upon completing a minimum of nineteen years of continuous service as a private, including service in the Armed Forces of the United States but excluding any period of time determined not to have been satisfactory service, shall be advanced to longevity step 9 in class 1, and receive the appropriate scheduled rate of basic compensation for such step in the subclass in which he is serving.

(3) Each officer in longevity step 7 in class 5 or 8, upon completing a minimum of fourteen years of continuous service in his respective class, including service in the Armed Forces of the United States but excluding any period of time determined not to have been satisfactory service, shall be advanced to longevity step 8 in his respective class, and receive the appropriate scheduled rate of basic compensation for such step in the class in which he was serving.

(4) Each officer or member of the Metropolitan Police force who is performing the duty of a dog handler on or after the effective date of this title shall receive in addition to his basic compensation an additional $580 per annum, except that if a police private is classed as technician II in subclass (c) of salary class (1) in the salary schedule in section 4–823 solely on account of his duties as a dog handler, such police private shall not be entitled to the additional compensation authorized by this paragraph. (Nov. 13, 1966, 80 Stat. 1592, Pub. L. 89–810, title I, § 102.)

REFERENCES IN TEXT

Words "section 101 of this title", as used in this section, refer to § 101 of title I of act. Nov. 13, 1966, cited to the text of this section, which amended § 4–823.

Words "effective date of this title", as used in this section, refer to effective date of said title I of the act of Nov. 13, 1966, which in addition to enacting this section, amended §§ 4–823 and 4–829. See effective date note below.

EFFECTIVE DATE

Section as effective on first day of first pay period beginning on or after July 1, 1966, see § 106 of act Nov. 13, 1966, Pub. L. 89–810, set out as a note under § 4–823.

§ 4–824. Adjustment of salaries—Placement in salary classes and steps—Corresponding titles of step increases.

(a) In initially adjusting salaries, officers and members of the Metropolitan Police force and of the Fire Department of the District of Columbia, in service on the effective date of sections 4–823 and 4–824 to 4–837, shall be placed in salary classes and steps provided in section 4–823 as follows:

CLASS I

D. C. Police and Firemen's Salary Act of 1953	*D. C. Police and Firemen's Salary Act of 1958*
Private, class 1	Subclass (a), class 1, service step 1.
Private, class 2	Subclass (a), class 1, service step 2.
Private, class 3	Subclass (a), class 1, service step 3.
Private, class 4	Subclass (a), class 1, service step 4.
Private, class 4 (with 1 longevity increase)	Subclass (a), class 1, service step 5.
Private, class 4 (with 2 longevity increases)	Subclass (a), class 1, service step 6.
Private, class 4 (with 3 longevity increases)	Subclass (a), class 1, longevity step 7.
Private, class 4 (with 4 longevity increases)	Subclass (a), class 1, longevity step 8.
Private, class 4 (with 5 longevity increases)	Subclass (a), class 1, longevity step 9.

(2) Each Private who, on the effective date of sections 4–823 and 4–824 to 4–837 was serving in a position bearing the title Probational Detective, or Precinct Detective, or Detective Sergeant, or Station Clerk, or Motorcycle Officer, or Plain-Clothesman (service as such for over 60 consecutive calendar days immediately preceding such effective date), or Technician I, or Technician II (such titles being provided by or established pursuant to authority contained in the District of Columbia Police and Firemen's Salary Act of 1953, as amended), shall be placed in the corresponding title in Sub-Class (b), or (c), or (d), or (e), of Class 1 and shall be placed in the step within such Sub-Class on the basis of his basic salary and longevity increases in the same manner as Privates in Sub-Class (a) of Class 1. The former position bearing the title "Probational Detective" shall hereafter bear the title "Detective".

CLASS 2 THROUGH CLASS 10

(3) All officers and members serving in titles provided by or established pursuant to authority contained in the District of Columbia Police and Firemen's Salary Act of 1953, as amended, which correspond to titles included in class 2 through class 10 in section 4–823, shall be placed in such classes according to such titles and in the steps within such classes on the basis of their basic salary and longevity increases as follows:

D.C. Police and Firemen's Salary Act of 1953	*D.C. Police and Firemen's Salary Act of 1958*
Basic salary	Service step 1.
Basic salary (with 1 longevity increase)	Service step 2.
Basic salary (with 2 longevity increases)	Service step 3.
Basic salary (with 3 longevity increases)	Service step 4.
Basic salary (with 4 longevity increases)	Longevity step 7.
Basic salary (with 5 longevity increases)	Longevity step 8.

(b) In initially adjusting salaries, each officer and member entitled under sections 4–823 and 4–824 to 4–837 to be placed in a Class above Class 1 and whose latest promotion has been subsequent to June 30, 1953, and prior to the effective date of sections 4–823

and 4–824 to 4–837, shall be placed in the step of his Class which provides a salary not less than the amount he would have received under the provisions of sections 4–823 and 4–824 to 4–837 had he not been so promoted until the effective date of sections 4–823 and 4–824 to 4–837. (Aug. 1, 1958, 72 Stat. 482, Pub. L. 85–584, title II, § 201.)

REFERENCES IN TEXT

The District of Columbia Police and Firemen's Salary Act of 1953, as amended, referred to in subsec. (a), is classified to sections 4–518, 4–519, 4–821, and 4–904, and was formerly classified to sections 4–813 to 4–816, 4–820 and 4–822 which were repealed by section 507 of act Aug. 1, 1958, and are now covered by section 4–823 et seq.

EFFECTIVE DATE

Section effective the first day of first pay period beginning after Jan. 1, 1958, see section 508(a) of act Aug. 1, 1958, set out as a note under section 4–823.

§ 4–825. Positions to be included as Technician I.

In initially adjusting salaries, the following positions shall be included as Technician I in Sub-Class (b) of Class 1 of the schedule in section 4–823:

(a) Chief Photographer, Fire Department;

(b) Regular first driver-operator or tillerman of a Fire Department hose wagon, pumper, aerial ladder truck, or rescue squad: *Provided,* That on and after the effective date of this proviso, privates in the Fire Department, while assigned as ambulance drivers may, in the discretion of the Commissioners, be placed in subclass (b) or subclass (c) of class 1 in accordance with section 4–828: *Provided further,* That any private assigned as an ambulance driver who on the effective date of this proviso is designated as 'Technician 1' in subclass (b), class 1, shall continue in subclass (b), class 1, until action is taken to change his subclass placement in accordance with the preceding proviso or such assignment is terminated. (Aug. 1, 1958, 72 Stat. 483, Pub. L. 85–584, title II, § 202; Sept. 2, 1964, 78 Stat. 881, Pub. L. 88–575, title I, § 103.)

AMENDMENTS

1964—Section 103 amended subsection (b) by striking "rescue squad, or fire department ambulance", and insert in lieu "or rescue squad" and adding the two proviso clauses.

EFFECTIVE DATE OF TITLE I, ACT SEPT. 2, 1964

Section 108 of act Sept. 2, 1964, provided: "The provisions of this title [amending sections 4–823, 4–825, 4–829, 4–832, and enacting 4–823d] shall take effect on the first day of the first pay period beginning on or after July 1, 1964."

EFFECTIVE DATE

Section effective the first day of first pay period beginning after Jan. 1, 1958, see section 508(a) of act Aug. 1, 1958, set out as a note under section 4–823.

§ 4–826. Positions to be included as Technician II.

In initially adjusting salaries, the following positions shall be included as Technician II in Sub-Class (c) of Class 1 of the schedule in section 4–823:

(a) Chief Radio Technician for the Fire Department;

(b) Aide to the Fire Chief, Deputy Chief, Battalion Fire Chief, or Superintendent of Machinery. (Aug. 1, 1958, 72 Stat. 483, Pub. L. 85–584, title II, § 203; Oct. 24, 1962, 76 Stat. 1242, Pub. L. 87–882, § 3(a).)

AMENDMENT

1962—Act Oct. 24, 1962, section 3(a) amended section by striking out the words, "Fire Marshal."

EFFECTIVE DATE OF 1962 AMENDMENT

See note to section 4–823.

EFFECTIVE DATE

Section effective the first day of first pay period beginning after Jan. 1, 1958, see section 508(a) of act Aug. 1, 1958, set out as a note under section 4–823.

§ 4–826a. Classification of aide to Fire Marshal.

The aide to the Fire Marshal shall be included as a fire inspector in class 2, subclass (a). (Aug. 1, 1958, Pub. L. 85–584, title II, § 204, as added, Oct. 24, 1962, 76 Stat. 1242, Pub. L. 87–882, § 3(b).)

EFFECTIVE DATE

See note to section 4–823.

§ 4–827. Original appointments of Police and Fire Privates.

All original appointments of Police and Fire Privates shall be made at the minimum rate set forth in the schedule in section 4–823, and the first year of service shall be probationary. (Aug. 1, 1958, 72 Stat. 483, Pub. L. 85–584, title III, § 301.)

EFFECTIVE DATE

Section effective the first day of first pay period beginning after Jan. 1, 1958, see section 508(a) of act Aug. 1, 1958, set out as a note under section 4–823.

§ 4–828. Authority to establish and determine, positions to be included as Technicians in Class 1 and 2 in section 4–823—Exception.

The Commissioners of the District of Columbia, in the case of the Metropolitan Police force and the Fire Department of the District of Columbia, the Secretary of the Treasury, in the case of the White House Police force, and the Secretary of the Interior, in the case of the United States Park Police force, are hereby authorized to establish and determine, from time to time, the positions to be included as Technicians in Classes 1 and 2 in section 4–823, with the exception of those positions included as Technician I and Technician II in sections 4–825 and 4–826. (Aug. 1, 1958, 72 Stat. 483, Pub. L. 85–584, title III, § 302.)

EFFECTIVE DATE

Section effective the first day of first pay period beginning after Jan. 1, 1958, see section 508(a) of act Aug. 1, 1958, set out as a note under section 4–823.

§ 4–829. Advancement in compensation after initial salary adjustment—Exception—Condition for advancement—Crediting of satisfactory service.

(a) Subsequent to the initial salary adjustment provided in sections 4–824 to 4–826, each officer and member, except an officer or member in service step 1, or 2, or 3, Class 1, who has not attained the maximum service step rate of compensation for the rank or title in which he is placed shall be advanced in compensation successively to the next higher service step rate for such rank or title at the beginning of the first pay period immediately subsequent to the completion of one hundred and four calendar weeks of active service, if he has a current performance rating of "satisfactory" or better.

(b) Satisfactory service (other than that credited in the initial adjustment of salaries under sections 4–823 and 4–824 to 4–837), rendered immediately prior to the effective date of sections 4–823 and

4–824 to 4–837 by any officer or member who, in the initial adjustment of salaries, is placed in service step 4 or 5, Class 1, or service step 1, or 2, or 3, Classes 2 through 9, shall be credited as follows: each five calendar days of such service shall be credited as the equivalent of two calendar days of service for the purpose of computing the first period of one hundred and four calendar weeks of active service required by this section to entitle such officer or member to an advance in compensation to the next higher service rate for his rank or title.

(c) Each officer and member serving in steps 1, 2, or 3 of Sub-Classes (a), (b), or (c) of Class 1 shall be advanced in compensation successively to the next higher service step rate for his current Sub-Class at the beginning of the first pay period immediately subsequent to the completion of fifty-two calendar weeks of active service in his class if he has a current performance rating of "satisfactory" or better.

(d) Satisfactory service (other than that credited in the initial adjustment of salaries under sections 4–823 and 4–824 to 4–837) rendered immediately prior to the effective date of such sections in the rank of Private, Class 1, or Private, Class 2, or Private, Class 3, shall be credited in computing the first period of fifty-two calendar weeks required under the provisions of this section for advancement from service steps 1, or 2, or 3, of Class I.

(e) As used in sections 4–823 and 4–824 to 4–837, the term "calendar week of active service" includes all periods of leave with pay, and periods of nonpay status which do not cumulatively equal one basic workweek. (Aug. 1, 1958, 72 Stat. 483, Pub. L. 85–584, title III § 303; Sept. 2, 1964, 78 Stat. 881, Pub. L. 88–575, title I, § 104; Nov. 13, 1966, 80 Stat. 1593, Pub. L. 89–810, title I, § 103.)

AMENDMENT

1966—Section 103 of act Nov. 13, 1966, added subsec. (e).

1964—Section 104 of act Sept. 2, 1964, amended subsection (c) by striking "(c), (d), or (e)" and inserting in lieu "or (c)".

EFFECTIVE DATE OF TITLE I, ACT SEPT. 2, 1964

Section 108 of act Sept. 2, 1964, provided: "The provisions of this title [amending sections 4–823, 4–825, 4–829, 4–832, and enacting 4–823d] shall take effect on the first day of the first pay period beginning on or after July 1, 1964."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act Nov. 13, 1966, Pub. L. 89–810 (adding subsec. (e)), as effective on first day of first pay period beginning on or after July 1, 1966, see § 106 of such act, set out as a note under § 4–823.

EFFECTIVE DATE

Section effective the first day of first pay period beginning after Jan. 1, 1958, see section 508(a) of act Aug. 1, 1958, set out as a note under section 4–823.

CROSS REFERENCE

Annual increase, withholding for inefficiency, discharge for inefficiency, extra compensation for demonstrated ability, see § 4–802.

§ 4–830. Promotion—Rate of basic compensation—Method of placement of an officer or member assigned or transferred to a Sub-Class.

Any officer or member who is promoted or transferred to a higher class shall receive basic compensation at the lowest scheduled rate of such higher class which exceeds his existing rate of compensation by not less than one step increase of the class from which he is promoted or transferred: *Provided,* That any such officer or member serving in a subclass other than subclass (a) of any class (who is not assigned as a detective sergeant in class 4, subclass (b)) shall receive basic compensation at the lowest scheduled rate of such higher class which exceeds by one step increase the rate shown for subclass (a) in the same step in which he was serving in the class from which promoted: *Provided further,* That such scheduled rate in the higher class shall not be less than his existing rate of pay. If the existing rate of compensation of an officer or member is above the maximum longevity step increase in the class from which he is promoted or transferred and there is no rate in the higher class to which he is promoted or transferred, which is at least one step increase above his existing rate, such officer or member shall receive the maximum longevity rate of such higher class or his existing rate, whichever is greater. Any officer or member in any class who is assigned or transferred to any Sub-Class within the same Class shall be placed in the same service or longevity step in such Sub-Class as that which he was in immediately prior to being so assigned or transferred. (Aug. 1, 1958, 72 Stat. 484, Pub. L. 85–584, title III, § 304; Oct. 24, 1962, 76 Stat. 1243, Pub. L. 87–882, § 3(c).)

AMENDMENT

1962—Section 3(c) of act Oct. 24, 1962, amended the section by adding the proviso clauses to the first sentence.

EFFECTIVE DATE OF 1962 AMENDMENT

See note to section 4–823.

EFFECTIVE DATE

Section effective the first day of first pay period beginning after Jan. 1, 1958, see section 508(a) of act Aug. 1, 1958, set out as a note under section 4–823.

§ 4–831. Demotion—Rate of compensation.

Whenever any officer or member of the Metropolitan Police force, the Fire Department of the District of Columbia, the White House Police force, or the United States Park Police force is changed or demoted from any class to a lower class, the Commissioners of the District of Columbia, or the Secretary of the Treasury, or the Secretary of the Interior, as the case may be, may, in their or his discretion, in changing or demoting such officer or member, fix his rate of compensation at any rate provided for the Class or Sub-Class to which he is changed or demoted which does not exceed his existing rate of compensation, except that if his existing rate falls between two step rates provided in such lower class, he may receive the higher of such rates. (Aug. 1, 1958, 72 Stat. 484, Pub. L. 85–584, title III, § 305.)

EFFECTIVE DATE

Section effective the first day of first pay period beginning after Jan. 1, 1958, see section 508(a) of act Aug. 1, 1958, set out as a note under section 4–823.

§ 4–832. Longevity step increases—Conditions—Frequency of increases—Maximum increases—Date of beginning of step increases—Manner of crediting satisfactory service rendered prior to effective date of sections 4–823 and 4–824 to 4–837.

(a) In recognition of long and faithful service, each officer and member shall receive an additional

step increase (to be known as a longevity step increase) beyond the maximum scheduled service step rate for the Sub-Class in which he is serving, or for the Class in which he is serving if there are no Sub-Classes in his Class for each 208 calendar weeks of continuous service completed by him following the effective date of sections 4–823 and 4–824 to 4–837 at such maximum rate or at a rate in excess thereof, without change to a higher Class, subject to all of the following conditions:

(1) No officer or member shall receive more than one longevity step increase for any two hundred and eight calendar weeks of continuous service, and in order to be eligible therefor he shall have a current performance rating of "satisfactory" or better.

(2) Not more than three successive longevity step increases may be granted to any officer or member in classes 1 through 4, nor more than two successive longevity step increases may be granted to any officer or member in classes 5 through 10; nor shall any officer or member be granted a longevity step increase above the maximum scheduled longevity step in the subclass in which he is serving or, if there are no subclasses in his class, in the class in which he is serving.

(3) Each longevity step increase shall be equal to one step increase of the class or Sub-Class in which the officer or member is serving.

(4) Each longevity step increase shall begin on the first day of the first pay period following completion of each two hundred and eight weeks.

(b) Satisfactory service (other than that credited in the initial adjustment of salaries under sections 4–823 and 4–824 to 4–837) rendered immediately prior to the effective date of sections 4–823 and 4–824 to 4–837 by any officer or member who, in the initial adjustment of salaries, is placed in service step 6, Class 1, or service step 4, Classes 2 through 9, or longevity steps 7 or 8, shall be credited as follows: each five calendar days of such service shall be credited as the equivalent of four calendar days of service for the purpose of computing the first period of two hundred and eight calendar weeks of active service required by subsection (a) of this section to entitle such officer or member to an advance in compensation to the next higher longevity step rate for his rank or title.

(c) Notwithstanding any other provision of this or any other law, each deputy chief of the Metropolitan Police force and of the Fire Department of the District of Columbia shall, upon completion of thirty years of continuous service on the police force or fire department, as the case may be, including service in the Armed Forces of the United States, but excluding any period of time determined not to have been satisfactory service, be placed in, and receive basic compensation at the highest longevity step in the class or subclass to which his position is assigned in the schedule of rates established by section 4–823. Nothing in this subsection shall be construed to authorize the payment of any retroactive compensation.

(Aug. 1, 1958, 72 Stat. 484, Pub. L. 85–584, title IV, § 401; Oct. 24, 1962, 76 Stat. 1243, Pub. L. 87–882, § 3(d); Sept. 2, 1964, 78 Stat. 882, Pub. L. 88–575, title I, § 105.)

AMENDMENTS

1964—Section 105 of act Sept. 2, 1964, amended section by adding subsection (c).

1962—Section 3(d) of act Oct. 24, 1962, amended paragraph (2) of subsection (a) to read as above set out. For provisions of this paragraph prior to this amendment see 1961 edition of the Code.

EFFECTIVE DATE OF TITLE I, ACT SEPT. 2, 1964

Section 108 of act Sept. 2, 1964, provided: "The provisions of this title [amending sections 4–823, 4–825, 4–829, 4–832, and enacting 4–823d] shall take effect on the first day of the first pay period beginning on or after July 1, 1964."

EFFECTIVE DATE OF 1962 AMENDMENT

See note to section 4–823.

EFFECTIVE DATE

Section effective the first day of first pay period beginning after Jan. 1, 1958, see section 508(a) of act Aug. 1, 1958, set out as a note under section 4–823.

CROSS REFERENCE

White House Police, longevity increases, see 3 U.S.C. § 204.

NOTES TO DECISIONS

Pension rights of retired members

The District of Columbia Police and Firemen's Salary Act, providing that members of District Police and Fire Departments "heretofore or hereafter retired" shall be entitled to increased pension allowances based on increases in salary they would have received thereunder, if in active service, grants members retired before its effective date increases in pension allowances based on longevity of their active service before retirement. *Abell et al.* v. *Spencer* (1955, 225 F. 2d 568, 96 U.S. App. D.C. 268).

§ 4–833. Basic compensation of United States Park Police.

The rates of basic compensation of officers and members of the United States Park Police shall be the same as the rates of compensation, including longevity increases, provided in sections 4–823 and 4–824 to 4–837, for officers and members of the Metropolitan Police force in corresponding or similar Classes or Sub-Classes. (Aug. 1, 1958, 72 Stat. 485, Pub. L. 85–584, title V, § 501.)

EFFECTIVE DATE

Section effective the first day of first pay period beginning after Jan. 1, 1958, see section 508(a) of act Aug. 1, 1958, set out as a note under section 4–823.

§ 4–834. Sections 4–823 and 4–824 to 4–837 not to be construed to decrease compensation of a member or officer—Vacancy provisions.

Nothing contained in sections 4–823 and 4–824 to 4–837 shall be construed to decrease the existing rate of compensation of any present officer or member, but when his position becomes vacant any subsequent appointee to such position shall be compensated in accordance with the rate of pay applicable to such position. (Aug. 1, 1958, 72 Stat. 485, Pub. L. 85–584, title V, § 503.)

EFFECTIVE DATE

Section effective the first day of first pay period beginning after Jan. 1, 1958, see section 508(a) of act Aug. 1, 1958, set out as a note under section 4–823.

§ 4–835. Commissioners authorized to promulgate regulations.

The Commissioners of the District of Columbia are hereby authorized to promulgate such regulations as they may deem necessary to carry out the

intent and purposes of sections 4–823 and 4–824 to 4–837. (Aug. 1, 1958, 72 Stat. 485, Pub. L. 85–584, title V, § 504.)

EFFECTIVE DATE

Section effective the first day of first pay period beginning after Jan. 1, 1958, see section 508(a) of act Aug. 1, 1958, set out as a note under section 4–823.

§ 4–836. Retroactive salary—When and to whom payable.

(a) Retroactive salary shall be paid by reason of sections 4–823 and 4–824 to 4–837 only in the case of an individual in the service of the United States (including service in the Armed Forces of the United States) or the municipal government of the District of Columbia on August 1, 1958, except that retroactive salary shall be paid (1) to an officer or member of the Metropolitan Police force, the Fire Department of the District of Columbia, the United States Park Police force, or the White House Police force, who retired during the period beginning on the first day of the first pay period which began after January 1, 1958, and ending on August 1, 1958, for services rendered during such period, and (2) in accordance with the provisions of sections 5581—5583 of title 5, U.S. Code, for services rendered during the period beginning on the first day of the first pay period which began after January 1, 1958, and ending on August 1, 1958, by an officer or member who dies during such period.

(b) For the purposes of this section, service in the Armed Forces of the United States, in the case of an individual relieved from training and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the Federal Government or the municipal government of the District of Columbia. (Aug. 1, 1958, 72 Stat. 485, Pub. L. 85–584, title V, § 505.)

CODIFICATION

The reference in this section to "sections 5581—5583 of title 5, U.S. Code" was substituted for "sections 61f–61k of title 5, U.S. Code", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. Sections 61f–61k of title 5, U.S.C., were repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a), and are now covered by 5 U.S.C. §§ 5581—5583.

EFFECTIVE DATE

Section effective the first day of first pay period beginning after Jan. 1, 1958, see section 508(a) of act Aug. 1, 1958, set out as a note under section 4–823.

§ 4–837. Delegation of authority by Commissioners, Secretary of Treasury and Secretary of Interior—Exception.

The Commissioners of the District of Columbia, the Secretary of the Treasury, and the Secretary of the Interior are hereby authorized to delegate, from time to time, to their designated agent or agents, any power or function vested in them by sections 4–823 and 4–824 to 4–837, except those powers and functions vested in them by sections 4–831 and 4–835. (Aug. 1, 1958, 72 Stat. 486, Pub. L. 85–584, title V, § 506.)

EFFECTIVE DATE

Section effective the first day of first pay period beginning after Jan. 1, 1958, see section 508(a) of act Aug. 1, 1958, set out as a note under section 4–823.

Chapter 9.—MISCELLANEOUS PROVISIONS

Sec.
4–901. Memorial fountain to members of Metropolitan Police Department.
4–902. Seniority rights for policemen and firemen serving in armed forces—Reenlistment.
4–903. Rank or grade of policemen or firemen serving in armed forces preserved—Restriction on compensation.
4–904. Establishment of workweek for officers and members of Metropolitan Police, United States Park Police and White House Police—Definitions—Compensatory time—Overtime pay.
4–905 to 4–909. Repealed.

§ 4–901. Memorial fountain to members of Metropolitan police department.

The Commissioners of the District of Columbia are authorized and directed to accept and maintain for the District of Columbia the gift of a memorial fountain to the members of the Metropolitan police department: *Provided,* That the design and model of the memorial fountain are approved by the Commission of Fine Arts, and thereafter erected at a location to be approved by the commissioners of the District of Columbia and the National Capital Planning Commission on land now owned by the District of Columbia, for the municipal center. (Apr. 22, 1940, 54 Stat. 157, ch. 136.)

TRANSFER OF FUNCTIONS

"National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in view of act June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission. See section 1–1009.

CROSS REFERENCES

Commission of Fine Arts, see 40 U.S.C. §§ 104—106.

§ 4–902. Seniority rights for policemen and firemen serving in armed forces—Reenlistment.

(a) Any officer or member of the Metropolitan Police force or of the Fire Department of the District of Columbia, who served in the armed forces of the United States during the period beginning May 1, 1940, and ending December 31, 1946, and (1) whose name appeared during such service (as a result of a regular or reopened competitive examination for promotion) on any civil-service register with respect to such force or department for promotion to a higher rank or grade, or (2) whose name appeared on such a register as a result of a reopened examination taken subsequent to his release, shall, for the purpose of determining his seniority rights and service in such rank or grade, be held to have been promoted to such rank or grade as of the earliest date on which an eligible standing lower on the same promotion register received a promotion either permanently or temporarily to such rank or grade.

(b) No officer or member of the Metropolitan Police force or of the Fire Department of the District of Columbia shall be entitled to the benefits of this section who has reenlisted after June 1, 1945, in the Regular Military Establishment or after February 1, 1945, in the Regular Naval Establishment. (July 1, 1947, 61 Stat. 240, ch. 193, § 1.)

§ 4–903. Rank or grade of policemen or firemen serving in armed forces preserved—Restriction on compensation.

No officer or member of the Metropolitan Police force or of the Fire Department of the District of

Columbia shall, by reason of the enactment of section 4–902, be (1) reduced in rank or grade, or (2) entitled to any compensation for any period prior to July 1, 1947. (July 1, 1947, 61 Stat. 240, ch. 193, § 2.)

§ 4–904. Establishment of workweek for officers and members of Metropolitan Police, United States Park Police and White House Police—Definitions—Compensatory time—Overtime pay.

(a) For purposes of this Act, the following definitions apply, unless the context requires otherwise:

(1) "Authorizing official" means the Board of Commissioners of the District of Columbia in the cases of the Metropolitan Police force and the Fire Department of the District of Columbia, the Secretary of the Interior in the case of the United States Park Police force, and the Secretary of the Treasury in the case of the White House Police force.

(2) "Administrative workweek" means a period of seven consecutive calendar days.

(3) "Basic workweek" means a forty-hour workweek, excluding rollcall time, in the case of officers and members of the police forces specified in this Act; a forty-hour workweek in the case of officers and members of the District of Columbia Fire Department other than those in the Firefighting Division; and an average workweek of forty-eight hours in the case of officers and members of the Firefighting Division of the District of Columbia Fire Department.

(4) "Basic workday" means an eight-hour day excluding rollcall time in the case of officers and members of the police forces specified in this Act; an eight-hour day in the case of officers and members of the District of Columbia Fire Department other than those in the Firefighting Division; and an average twelve-hour workday in the case of officers and members of the Firefighting Division.

(5) (A) "Off-duty days" means the nonwork days which, when combined with the basic workdays make up the administrative workweek.

(B) "Off-duty time" means the time in any basic workday outside the regular tour of an officer or member's duty.

(6) "Rollcall time" means that time, not exceeding one-half hour each workday which is in addition to each basic workday of the basic workweek for reading of rolls and other preparation for the daily tour of duty.

(7) "Rate of basic compensation" means the rate of compensation fixed by law for the position held by an officer or member exclusive of any deductions or additional compensation of any kind.

(8) "Premium pay" means compensation not considered as salary for the purpose of computing deductions for life insurance or for computing annuity payments under the Policemen and Firemen's Retirement and Disability Act.

(9) "Officer or member" means any employee in the Metropolitan Police force or the Fire Department of the District of Columbia, the United States Park Police force, or the White House Police force whose compensation is fixed and adjusted in accordance with the District of Columbia Police and Firemen's Salary Act of 1958, as amended.

(10) "Court duty" means attendance by an officer or member in his official capacity, excluding his appearance as a defendant, at court or at a quasi-judicial hearing.

(11) "Special event" or "special assignment" means any planned activity or function which the authorizing official designates in advance as such.

(b) The Board of Commissioners of the District of Columbia, the Secretary of the Interior, or the Secretary of the Treasury, as the case may be, is authorized and directed to establish a basic workweek of forty hours to be scheduled on five days for the respective police forces referred to in this Act: *Provided,* That rollcall time shall be without compensation or credit to the time of the basic workweek.

(c) All officially ordered or approved hours of work (except rollcall time) performed by officers and members in excess of the basic workwork in any administrative workweek, shall be considered as overtime work and shall be compensated for as provided by this Act.

(d) (1) Whenever the authorizing official designates an activity or function as a special event, or special assignment, all overtime work in connection with such special event, or special assignment, shall be compensated for by payment as follows:

(i) For each officer or member who receives compensation at a rate provided for in class 1 through class 4, in the District of Columbia Police and Firemen's Salary Act of 1958, as amended, the overtime work shall be compensated for by payment at one and one-half times the basic hourly rate of such officer or member and all such compensation shall be considered premium pay.

(ii) For each officer or member who receives compensation at a rate provided for classes 5 and above, in the District of Columbia Police and Firemen's Salary Act of 1958, as amended, the overtime work shall be compensated for by payment at the basic hourly rate of such officer or member's basic compensation (except as otherwise limited by subsection (h) (1) and (2) of this section) and all such compensation shall be considered premium pay.

(2) An officer or member may elect to receive compensatory time off as provided in subsection (f) of this section in lieu of payment for overtime work as provided in this subsection.

(e) Each officer or member who on any off-duty time performs court duty (excluding the first appearance in court on each case), or who performs work, as ordered or approved, on any off-duty day shall be compensated in accordance with subsection (d) of this section.

(f) Overtime work, other than that for which compensation by payment or time off is provided by subsections (d) and (e) of this section, shall be compensated for by compensatory time off at a rate of one hour of compensatory time for each hour of overtime work performed. Such compensatory time off shall be granted in accordance with the following provisions:

(1) The authorizing official, or such person as he may designate to act in his place, may, at the request of any officer or member, grant such officer or member compensatory time off from his scheduled tour

of duty in lieu of payment for an equal amount of time spent for overtime work, including the first appearance for court duty in each case, if to grant such leave would not unreasonably diminish the number of officers or members available to maintain law, order, and public safety.

(2) Any officer or member who is eligible for compensatory time off and has made application for such compensatory time off, which application was denied, may within thirty days of such denial make application for compensatory pay at his basic hourly rate of basic compensation and all such compensation shall be considered premium pay.

(3) Such compensatory time off shall be used within such period of time as the authorizing official shall prescribe. If such officer or member fails to take such compensatory time off within the prescribed period, he shall thereby waive all right to such compensatory time off, unless his failure to take such compensatory time off is due to an official denial of his request for such compensatory time off. Such overtime work shall be credited for purposes of compensation in multiples of one hour, rounded to the nearest hour in case of fractions thereof. Thirty minutes or more of any such hour shall be credited as one hour.

(g)(1) Whenever any officer or member is authorized or directed to return to overtime duty at a time which is not an immediate continuation of his regular tour of duty, such officer or member shall receive credit for not less than two hours of overtime work for purposes of compensation under this Act.

(2) Overtime work resulting from the immediate continuation of an officer's or member's regular tour of duty which, excluding rollcall time, is thirty minutes or more in excess of the basic workday shall be credited for purposes of compensation under subsection (f) of this section.

(h)(1) No premium pay provided by this Act shall be paid to, and no compensatory time off is authorized for, any officer or member whose rate of basic compensation equals or exceeds the minimum scheduled rate of basic compensation provided for service step 1 in class 10 of the District of Columbia Police and Firemen's Salary Act of 1958, as amended.

(2) In the case of any officer or member whose rate of basic compensation is less than the minimum scheduled rate of basic compensation provided for service step 1 in class 10 of the Police and Firemen's Salary Act of 1958, as amended, such premium pay may be paid only to the extent that such payment would not cause his aggregate rate of compensation to exceed such minimum scheduled rate with respect to any pay period.

(3) Each authorizing official is authorized to promulgate such regulations and issue such orders as are necessary to carry out the intent and purpose of this Act, and to delegate to a designated agent or agents any of the functions vested in the authorizing official by this Act. (Aug. 15, 1950, 64 Stat. 447, ch. 715, § 1; Mar. 27, 1951, 65 Stat. 27, ch. 20, § 1; June 20, 1953, 67 Stat. 76, ch. 146, title IV, § 403; Aug. 4, 1955, 69 Stat. 491, ch. 549, § 1; Oct. 5, 1961, 75 Stat. 831, Pub. L. 87–399, § 3; Oct. 21, 1965, 79 Stat. 1013, Pub. L. 89–282, § 1.)

REFERENCES IN TEXT

Section 12 of act Sept. 1, 1916, as amended, referred to in subsec. (e), formerly classified to sections 4–113, 4–114, 4–501, 4–503, 4–506, 4–507, 4–508 to 4–510, and 4–512 to 4–514, was completely amended by act Aug. 21, 1957, 71 Stat. 391, Pub. L. 85–157, § 3, and is now classified to sections 4–521 to 4–535.

Section 5 of act July 1, 1930, as amended, referred to in subsec. (e), formerly classified to sections 4–503 and 4–504, was repealed by act Aug. 21, 1957, 71 Stat. 399, Pub. L. 85–157, § 5(2), and is now covered by section 4–524.

The Policemen and Firemen's Retirement and Disability Act, referred to in text is set out as sections 4–521 to 4–538.

The District of Columbia Police and Firemen's Salary Act of 1958, referred to in text is set out as sections 4–823 and 4–824 to 4–837.

"This Act" referred to in text is this section, the repeal of paragraph 6 of section 4–404a and the amendment of section 4–807.

AMENDMENTS

1965—Section 1, act Oct. 21, 1965, amended the section to read as above set out. For provisions of section prior to this amendment, see 1961 edition and supplement IV thereto.

1961—Section 3, act Oct. 5, 1961, amended subsection (e) as follows:

(a) By inserting "the Fire Department of the District of Columbia" after "Metropolitan Police force,"; (b) by striking "Major and Superintendent of Police,"; and inserting in lieu thereof "Chief of Police, the Fire Chief,"; and (c) by striking therefrom "section 5 of the Act entitled 'An Act to fix the salaries of officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia', approved July 1, 1930, as amended", and inserting in lieu thereof "such section" at the end of the subsection.

1955—Subsec. (f) added by act Aug. 4, 1955.

1953—Subsec. (e) amended by act June 20, 1953, by striking therefrom "(one three-hundred-and-sixtieth of his annual basic salary)", as those words appeared after "basic daily rate" in the second sentence.

1951—Subsec. (e) added by act Mar. 27, 1951.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 5, act Oct. 21, 1965, provided: "This Act shall become effective on the first day of the first pay period which begins not less than thirty days after approval of this Act." [Amendment of sections 4–807, 4–904, and the repeal of paragraph 6, of section 4–404a.]

EFFECTIVE DATE OF 1961 AMENDMENT

See note to section 4–404.

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment of section effective July 1, 1955, see note set out under section 4–404a.

EFFECTIVE DATE OF 1953 AMENDMENT

Amendment of section effective July 1, 1953, see section 407 of act June 20, 1953, set out as a note under section 4–821.

EFFECTIVE DATE OF 1951 AMENDMENT

Sec. 2 of act Mar. 27, 1951, provided: "This Act [adding subsec. (e)] shall take effect on the first Sunday following the date of its enactment [Mar. 27, 1951]."

EFFECTIVE DATE

Sec. 3 of act Aug. 15, 1950, provided that: "This Act [enacting this section and amending U.S. Code, title 3, § 203(a)] shall take effect when funds have been appropriated and made available for the additional personnel necessary to carry out the purposes of this Act."

TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under section 4–103.

APPROPRIATIONS

Section 4, act Oct. 21, 1965, provided: "There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act." [This section, the repeal of paragraph 6, of section 4–404a, and the amendment of section 4–807.]

CROSS REFERENCES

Establishment of workweek for Fire Department, see § 4–404a.

For duties and size of White House Police Force, see 3 U.S.C. §§ 202, 203.

Policemen exempted from general law concerning sick leave for District employees, but included as to annual leave, see § 1–312.

§§ 4–905 to 4–909. Repealed. Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a).

Sections, act Aug. 21, 1964, 78 Stat. 582, 583, Pub. L. 88–471, §§ 1—5, which provided for annual and sick leave for officers and members of the Metropolitan Police Force, the Fire Department, the United States Park Police, and the White House Police Force, is now covered by 5 U.S.C. § 6301 et seq.

TITLE 5.—BUILDING RESTRICTIONS AND REGULATIONS

Chap. Sec.

1. Alley Dwellings 5–101
2. Building Lines 5–201
3. Fire Escapes and Safety Provisions 5–301
4. Zoning and Height of Buildings 5–401
5. Unsafe Structures 5–501
6. Insanitary Buildings 5–601
7. Housing Redevelopment 5–701
8. Preservation of Historic Places and Areas in the Georgetown Area 5–801
9. Horizontal Property Regimes 5–901

CROSS REFERENCE

Additional penalties for violation of building regulations, see § 1–224a.

Chapter 1.—ALLEY DWELLINGS

Sec.

5–101, 5–102. Repealed.

5–103. Alley Dwelling Law—Declaration of legislative intent and public policy—Power of President to purchase, condemn, and acquire by gift, land and buildings to prevent alley dwellings, to replat and improve such property, and to make loans for improvements.

5–104. Designation of the Authority—Powers—Approval of plans—Condemnation proceedings.

5–105. Appropriation of funds—"Conversion of inhabited alley fund"—Power of the Authority to borrow money—Incidental powers.

5–105a. Disposition of receipts from sales, leases, etc.

5–106. Annual reports of the Authority.

5–107. The Authority to report to President—Further legislation after July 1, 1944.

5–108. Publication of notice to owners of alley dwellings.

5–109. Definitions.

5–110. Separability of provisions.

5–111. Short title.

5–112. Definitions.

5–113. Additional powers of Authority.

5–114. Authority considered a public housing agency—Federal financial assistance.

5–115. Contributions by District of Columbia authorized.

5–116. Loans authorized.

§§ 5–101, 5–102. Repealed. Aug. 16, 1954, 68 Stat. 730, ch. 739, § 1.

Section 5–101, acts Sept. 25, 1914, 38 Stat. 716, ch. 310, § 1; Sept. 6, 1922, 42 Stat. 837, ch. 304, made it unlawful to construct or reconstruct or occupy as a dwelling certain alley dwellings.

Section 5–102, act Sept. 25, 1914, 38 Stat. 717, ch. 310, § 2, set out the penalties for the violation of the provisions of former section 5–101.

EFFECTIVE DATE OF REPEAL

Section 3 of act Aug. 16, 1954, provided that: "This Act [repealing this section and section 5–102 and subsecs. (b)—(d) of section 5–106] shall take effect sixty days after approval [Aug. 16, 1954] or July 1, 1955, whichever is earlier."

NOTES TO DECISIONS UNDER PRIOR LAW

Anticipated violation

Equity will not take jurisdiction to enjoin an anticipated violation of this act. *Rudolph* v. *Lockwood* (1925, 2 F. 2d 319, 55 App. D. C. 101).

Enforcement not enjoined

Commissioners will not be enjoined from enforcing this act, matters alleged being available for defense if prosecuted. *Rudolph* v. *Lockwood* (1925, 2 F. 2d 319, 55 App. D. C. 101).

Lighting

Information that alley dwelling not lighted by gas or electricity does not charge offense for statute provides alley, not dwelling, must be so lighted. *District of Columbia* v. *Nash* (1927, 20 F. 2d 285, 57 App. D.C. 269). See, also, *District of Columbia* v. *Lockwood* (1927, 20 F. 2d 286, 57 App. D. C. 270).

§ 5–103. Alley Dwelling Law—Declaration of legislative intent and public policy—Power of President to purchase, condemn, and acquire by gift, land and buildings to prevent alley dwellings, to replat and improve such property, and to make loans for improvements.

(a) It is hereby declared to be a matter of legislative determination that the conditions existing in the District of Columbia with respect to the use of buildings in alleys as dwellings for human habitation are injurious to the public health, safety, morals, and welfare; and it is hereby declared to be the policy of the United States to protect and promote the welfare of the inhabitants of the seat of the government by eliminating all such injurious conditions by employing all means necessary and appropriate for the purpose; and control by regulatory processes having proved inadequate and insufficient to remedy the evils, it is in the judgment of Congress necessary to acquire property in the District of Columbia by gift, purchase, or the use of eminent domain in order to effectuate the declared policy by the discontinuance of the use for human habitation in the District of Columbia of buildings in alleys, and thereby to eliminate the communities in the inhabited alleys in said District, and to provide decent, safe, adequate, and sanitary habitations for persons or families substantially equal in number to those who are to be deprived of habitation by reason of the demolition of buildings under the terms of this title, and to prevent an acute shortage of decent, safe, adequate, and sanitary dwellings for persons of low income, and to carry out the policy declared in the Act approved May 18, 1918, as amended, of caring for the alley population in the District of Columbia, and to that end it is necessary to enact the provisions hereinafter set forth.

(b) In order to remedy the conditions and evils hereinbefore recited and to carry out the policy hereinbefore declared, the President is hereby authorized and empowered to acquire by purchase, gift, condemnation, or otherwise—

(1) any land, building, or structures, or any interest therein, situated in or adjacent to any inhabited alley in the District of Columbia;

(2) any land, buildings, or structures, or any interest therein, within any square containing an inhabited alley, the acquisition of which is reasonably necessary for utilization, by replatting, improvement, or otherwise, pursuant to the provisions of sections 5–103 to 5–105 and 5–106 to

5–116, of any property acquired under subparagraph (1) of this subsection; and

(3) any other land, together with any structures that may be located thereon, in the District of Columbia that may be necessary to provide decent, safe, adequate, and sanitary housing accommodations for persons or families substantially equal in number to those who are to be deprived of habitation by reason of the demolition of buildings pursuant to the provisions of this title.

(c) The authority is authorized and empowered to replat any land acquired under sections 5–103 to 5–105 and 5–106 to 5–116; to pave or repave any street or alley thereon; to construct sewers and watermains therein; to install street lights thereon; to demolish, move, or alter any buildings or structures situated thereon and erect such buildings or structures thereon as deemed advisable: *Provided, however,* That the same shall be done and performed in accordance with the laws and municipal regulations of the District of Columbia applicable thereto.

(d) The authority is hereby authorized and empowered to lease, rent, maintain, equip, manage, exchange, sell, or convey any such lands, buildings, or structures acquired under this title, for such amounts and upon such terms and conditions as it may determine: *Provided,* That sales of real property shall be made at public sale to the highest responsible bidder on terms satisfactory to the authority after advertising for three consecutive weeks in at least one daily newspaper of general circulation published in the District of Columbia: *Provided, however,* That the authority may, without advertising, sell such property to a quasi-public institution or agency not organized or operated for private profit at not less than the cost of such property to the authority, including improvements: *And provided further,* That if any such lands, buildings, or structures are required for the purposes of the United States or of the District of Columbia, they may be transferred thereto upon payment to the authority of the reasonable value thereof.

(e) The authority is authorized and empowered to aid in providing, equipping, managing, and maintaining houses and other buildings, improvements, and general community utilities on the property acquired under the provisions of this title, by loans, upon such terms and conditions as it may determine, to limited dividend corporations whose dividends do not exceed 6 per centum per annum, or to home owners to enable such corporations or home owners to acquire and develop sites on the property: *Provided, however,* That no loan shall be made at a lower rate of interest than 5 per centum per annum, and that all such loans shall be secured by reserving a first lien on the property involved for the benefit of the United States. (June 12, 1934, 48 Stat. 930, ch. 465, § 1; June 25, 1938, 52 Stat. 1186, ch. 691, § 1.)

REFERENCES IN TEXT

The Act approved May 18, 1918, as amended, referred to in subsec. (a), probably refers to act May 16, 1918, 40 Stat. 550, ch. 74. Act May 16, 1918, was a temporary act authorizing the President to provide housing for war needs.

AMENDMENT

1938—Act June 25, 1938, amended section generally.

CROSS REFERENCES

Contributions from District of Columbia authorized, see § 5–115.

Definitions, see §§ 5–109, 5–112.

Duty of surveyor to make plats at request of President of United States, see § 1–612.

General provisions concerning plats, recording and effect thereof, see §§ 1–605 to 1–614.

General provisions concerning sale of public lands, see § 9–301 et seq.

Insanitary buildings, see § 5–616 et seq.

Jurisdiction and control of streets, sidewalk, and sewers, see § 7–101.

Other provisions for rental of public lands and buildings, see § 9–202 and notes.

Powers and duties of commissioners concerning building regulations, see §§ 1–228, 5–412.

Provisions for removal of dangerous or unsafe buildings, see §§ 5–501 to 5–505.

Zoning and height of buildings, zoning commission, see §§ 5–401 to 5–430.

NOTES TO DECISIONS

Limitation on authority

Authority held subject to 40 U.S.C. § 276a, but not § 406 of said title (38 O. A. G. 229).

§ 5–104. Designation of the Authority—Powers—Approval of plans—Condemnation proceedings.

(a) The President may designate, for the purpose of carrying out the provisions of sections 5–103 to 5–105 and 5–106 to 5–116, such official or agency of the government of the United States or of the District of Columbia (hereinafter referred to as "the Authority") as in his judgment is deemed necessary or advantageous, and the Authority shall have or obtain all powers necessary or appropriate therefor, including the employment of necessary personal services; but (1) all plans for replatting and/or method of condemnation under the provisions of sections 5–103 to 5–105 and 5–106 to 5–116 shall be submitted to and receive the written approval of the National Capital Planning Commission and of the Board of Commissioners of the District of Columbia: *Provided, however,* That (a) failure of the National Capital Planning Commission or of the Board of Commissioners of the District of Columbia to formally approve or disapprove in writing within sixty days after a plan has been submitted shall be equivalent to a formal approval, and (b) disapproval shall be accompanied by a written statement giving all the reasons for disapproval; and (2) any plan which shall involve action by any department, bureau, or agency of the United States or of the District of Columbia shall be made after consultation with such department, bureau, or agency.

(b) In the event condemnation proceedings are required to carry out the provisions of sections 5–103 to 5–105 and 5–106 to 5–116 the same shall be conducted in accordance with the provisions of sections 16–619 to 16–644.

(c) If the Authority determines in the case of any alley that it will be more advantageous to proceed in accordance with sections 7–301 to 7–305, 7–313 to 7–318, 7–320 to 7–323, the commissioners of the District of Columbia shall be notified of such determination and proceedings shall then be had as provided in such sections for alleys and minor streets, except that if the total amount of damages awarded by the jury and the cost and expenses of the proceedings be in excess of the total amount of the

assessment for benefits, such excess shall be borne and paid by the Authority. (June 12, 1934, 48 Stat. 931, ch. 465, § 2.)

REFERENCES IN TEXT

Sections 16–619 to 16–644, referred to in subsec. (b), were repealed by act Dec. 23, 1963, 77 Stat. 620, Pub. L. 88–241, § 21(a), and are now covered by §§ 16–1301 and 16–1351 et seq., and the Federal Rules of Civil Procedure, set out in appendix to part II.

Section 7–322, included within the reference to sections 7–320 to 7–323 in subsec. (c), was repealed by act July 30, 1951, 65 Stat. 126, ch. 248, § 1, and is now covered by § 7–213a.

CHANGE OF NAME

The "Authority" which was designated the "Alley Dwelling Authority" by Ex. Ord. No. 6868, Oct. 9, 1934, was redesignated "National Capital Housing Authority" by Ex. Ord. No. 9344, May 21, 1943, 8 F. R. 6805.

TRANSFER OF FUNCTIONS

"National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in view of act June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission. See section 1–1009.

CROSS REFERENCE

Condemnation proceedings generally, see § 16–1301 et seq.

§ 5–105. Appropriation of funds—"Conversion of inhabited alley fund"—Power of the Authority to borrow money—Incidental powers.

(a) The President is hereby authorized, in his discretion, to make immediately available to the Authority for its lawful uses and as needed, from the allocation made from the appropriation to carry out the purposes of the National Industrial Recovery Act, contained in the Fourth Deficiency Act, fiscal year 1933, now carried under the title, "National Industrial Recovery, Federal Emergency Administration of Public Works, Housing, 1933–1935," symbol 03/5666, not to exceed $500,000 of any amount thereof dedicated for low-cost housing and slum-clearance projects in the District of Columbia, to be set aside in the treasury and be known as "Conversion of inhabited alleys fund" (hereinafter referred to as the "fund").

(b) The Authority is hereby authorized and empowered to borrow such moneys from individuals or private corporations as may be secured by the property and assets acquired under the provisions of sections 5–103 to 5–105 and 5–106 to 5–116, and such moneys, together with all receipts from sales, leases, or other sources, shall be deposited in the fund and shall be available for the purposes of sections 5–103 to 5–105 and 5–106 to 5–116. The Authority is hereby authorized and empowered to accept gifts of money from private sources; to borrow from the treasury of the United States not to exceed $1,000,000 in the fiscal year ending June 30, 1939, and a like sum in each of the four succeeding fiscal years, upon such terms and conditions as the President may deem advisable, and appropriations for such purpose are hereby authorized out of the general fund of the treasury: *Provided,* That the Authority shall be obligated for the payment of interest at the going federal rate as defined in the United States Housing Act of 1937.

(c) The fund shall be available annually in such amount as may be specified in the annual appropriation acts.

(d) Repealed. Apr. 4, 1960, 74 Stat. 12, Pub. L. 86–400, § 1.

(e) In carrying out the provisions of sections 5–103 to 5–105 and 5–106 to 5–116, the Authority is hereby authorized and empowered (1) to procure services or make any purchase without regard to the provisions of section 5 of title 41, U S. Code, provided the aggregate amount involved is not more than $100, (2) to purchase books of reference, directories, and periodicals that are necessary in connection with its work, and (3) to secure architectural and engineering services on specific projects, without regard to the civil service laws and section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]: *Provided,* That this authorization shall not apply to the employment of architects and engineers by the Authority on a permanent basis. (June 12, 1934, 48 Stat. 931, ch. 465, § 3; June 25, 1938, 52 Stat. 1187, 1188, ch. 691, §§ 2–4; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a); Apr. 4, 1960, 74 Stat. 12, Pub. L. 86–400, § 1.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in subsec. (b), is classified to 42 U.S.C. ch. 8.

CODIFICATION

In subsec. (e) the reference "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

AMENDMENTS

1960—Act Apr. 4, 1960, repealed subsec. (d), which prescribed the maximum cost for property in any square.

1949—Act Oct. 28, 1949, § 1106(a), which was a part of the Classification Act of 1949, and which has since been repealed, substituted "Classification Act of 1949" for "Classification Act of 1923". See codification note above.

1938—Act June 25, 1938, added the last sentence of subsection (b), inserted the phrases "except by condemnation" and changed "present" to "current" in subsection (d) and added subsection (e).

CHANGE OF NAME

For redesignation of Authority, see note under § 5–104.

CROSS REFERENCE

Appropriations under this chapter used in opening, extending, widening, straightening, or closing minor streets and alleys, see § 7–331.

NOTES TO DECISIONS

Constitutional law

Title 1 of the National Industrial Recovery Act was declared unconstitutional. *Panama Ref. Co.* v. *Ryan* (1935, 55 S. Ct. 241, 293 U.S. 388, 79 L. Ed. 446).

§ 5–105a. Disposition of receipts from sales, leases, etc.

All receipts derived from sales, leases, or other sources shall be covered into the Treasury of the United States monthly. (Aug. 16, 1965, 79 Stat. 534, Pub. L. 89–128, title I, § 101.)

SIMILAR PROVISIONS

Section is from the Independent Offices Appropriation Act, 1966, act Aug. 16, 1965. Similar provisions were contained in the following prior appropriations acts:

1967—Sept. 6, 1966, 80 Stat. 676, Pub. L. 89–555, title I, § 101.
1966—Aug. 16, 1965, 79 Stat. 534, Pub. L. 89–128, title I, § 101.
1965—Aug. 30, 1964, 78 Stat. 658, Pub. L. 88–507, title I, § 101.
1964—Dec. 19, 1963, 77 Stat. 440, Pub. L. 88–215, title I, § 101.
1963—Oct. 3, 1962, 76 Stat. 731, Pub. L. 87–741, title I, § 101.
1962—Aug. 17, 1961, 75 Stat. 355, Pub. L. 87–141, title I, § 101.
1961—July 12, 1960, 75 Stat. 436, Pub. L. 86–626, title I, § 101.
1960—Sept. 14, 1959, 73 Stat. 509, Pub. L. 86–255, title I, § 101.
1959—Aug. 28, 1958, 72 Stat. 1072, Pub. L. 85–844, title I, § 101.
1958—June 29, 1957, 71 Stat. 234, Pub. L. 85–69, title I, § 101.
1957—June 27, 1956, 70 Stat. 347, ch. 452, title I, § 101.
1956—June 30, 1955, 69 Stat. 208, ch. 226, title I, § 101.
1955—June 24, 1954, 68 Stat. 285, ch. 359, title I, § 101.
1954—July 31, 1953, 67 Stat. 309, ch. 302, title I, § 101.
1953—July 4, 1952, 66 Stat. 404, ch. 578, title I, § 101.
1952—Aug. 31, 1951, 65 Stat. 278, ch. 376, title I, § 101.
1951—Sept. 6, 1950, 64 Stat. 712, ch. 896, title VIII, § 801.
1950—Aug. 24, 1949, 63 Stat. 647, ch. 506, title I, § 101.
1949—Apr. 20, 1948, 62 Stat. 189, ch. 219, title I, § 101.
1948—July 30, 1947, 61 Stat. 600, ch. 359, § 1.
1947—Mar. 28, 1946, 60 Stat. 73, ch. 113, title I, § 1.
1946—May 3, 1945, 59 Stat. 121, ch. 106, title I, § 1.
1945—June 27, 1944, 58 Stat. 374, ch. 286, title I, § 1.
1944—June 20, 1943, 57 Stat. 191, ch. 145, title I, § 1.
1943—June 27, 1942, 56 Stat. 398, ch. 450, § 1.

§ 5–106. Annual reports of the Authority.

(a) The objects set forth in section 5–103 shall be accomplished as rapidly as feasible and to this end the Authority shall, in each annual report, set forth what it proposes to do during the next succeeding fiscal year.

(b)—(d) Repealed. Aug. 16, 1954, 68 Stat. 731, ch. 739, § 2.

(June 12, 1934, 48 Stat. 932, ch. 465, § 4; June 8, 1944, 58 Stat. 271, ch. 238, § 1; July 5, 1945, 59 Stat. 410, ch. 268, § 1; June 26, 1946, 60 Stat. 319, ch. 503, § 1; Aug. 2, 1946, 60 Stat. 801, ch. 736, § 18 (a); Aug. 16, 1954, 68 Stat. 731, ch. 739, § 2.)

AMENDMENTS

1954—Act Aug. 16, 1954, repealed subsecs. (b), (c), and (d), which made illegal on and after July 1, 1955, the occupancy, construction, alteration, moving, or conversion of alley dwellings; and provided penalties for violation.

1946—Subsec. (b) amended by act Aug. 2, 1946, which substituted "July 1, 1955" for "July 1, 1947".

Subsec. (b) amended by act June 26, 1946, which substituted "July 1, 1947" for "July 1, 1946".

1945—Subsec. (b) amended by act July 5, 1945, which substituted "July 1, 1946" for "July 1, 1945".

1944—Subsec. (b) amended by act June 8, 1944, which substituted "1945" for "1944".

CHANGE OF NAME

For redesignation of Authority, see note under § 5–104.

EFFECTIVE DATE OF 1954 AMENDMENT

Repeal of subsecs. (b)—(d) effective 60 days after Aug. 16, 1954.

§ 5–107. The Authority to report to President—Further legislation after July 1, 1944.

(a) The Authority shall make a report to the President, which he shall transmit to Congress at the beginning of each regular session, giving a full and detailed account of all operations under the provisions of sections 5–103 to 5–105 and 5–106 to 5–116 for the preceding fiscal year, including an itemization of all properties purchased during such fiscal year, setting forth the assessed value of such properies, together with the purchase price therefor.

(b) Upon completion of the work contemplated by sections 5–103 to 5–105 and 5–106 to 5–116, the President shall submit a complete report to Congress giving a full and detailed account of all operations for the entire period of operation. If such work is not completed by July 1, 1944, the President shall, on July 1, 1944, or at the opening of the next regular session of Congress after such date, make a report to Congress covering the operations under sections 5–103 to 5–105 and 5–106 to 5–116, for the entire period to July 1, 1944, including a statement of what further work remains to be done, and recommendation for further legislation if in his opinion such legislation is necessary.

(c) It is hereby declared to be the purpose and intent of Congress that the objects set forth in section 5–103 shall be accomplished, if possible, on or before July 1, 1944, except that loans made under sections 5–103 to 5–105 and 5–106 to 5–116 may run for periods extending beyond such time. (June 12, 1934, 48 Stat. 932, ch. 465, § 5; Apr. 4, 1960, 74 Stat. 12, Pub. L. 86–400, § 2.)

AMENDMENTS

1960—Subsec. (a) amended by act Apr. 4, 1960, to require an itemization of all properties purchased during the fiscal year, setting forth the assessed value of such properties, together with the purchase price therefor.

CHANGE OF NAME

For redesignation of Authority, see note under § 5–104.

§ 5–108. Publication of notice to owners of alley dwellings.

There shall be published three times each year during the month of January in a newspaper of general circulation published in the District of Columbia a notice to owners and tenants of alley dwellings and of other property in squares containing inhabited alleys, that alley dwellings in such squares may be demolished, removed, or vacated, and that the squares may be replatted on or before July 1, 1955. (June 12, 1934, 48 Stat. 933, ch. 465, § 6; June 8, 1944, 58 Stat. 271, ch. 238, § 2; July 5, 1945, 59 Stat. 410, ch. 268, § 2; June 26, 1946, 60 Stat. 319, ch. 503, § 2; Aug. 2, 1946, 60 Stat. 801, ch. 736, § 18 (b).)

AMENDMENTS

1946—Act Aug. 2, 1946, amended section by substituting "1955" for "1947".

Act June 26, 1946, amended section by substituting "1947" for "1946".

1945—Act July 5, 1945, amended section by substituting "1946" for "1945".

1944—Act June 8, 1944, amended section by substituting "1945" for "1944".

§ 5–109. Definitions.

As used in sections 5–103 to 5–105 and 5–106 to 5–116—

(a) The term "alley" means (1) any court, thoroughfare, or passage, private or public, less than thirty feet wide at any point; and (2) any court, thoroughfare, or passage, private or public, thirty

feet or more in width, that does not open directly with a width of at least thirty feet upon a public street that is at least forty feet wide from building line to building line.

(b) The term "inhabited alley" means an alley in or appurtenant to which there are one or more alley dwellings.

(c) The term "alley dwelling" means any dwelling fronting upon or having its principal means of ingress from an alley. This definition does not include an accessory building, such as a garage, with living rooms for servants or other employees; if the principal entrance to the living rooms of the accessory building is from the street property to which it is accessory.

(d) The term "dwelling" means any building or structure used or designed to be used in whole or in part as a living or a sleeping place by one or more human beings.

(e) The term "person" includes any individual, partnership, corporation, or association. (June 12, 1934, 48 Stat. 933, ch. 465, § 7.)

§ 5–110. Separability of provisions.

If any provision of sections 5–103 to 5–105 and 5–106 to 5–116 or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the said sections and the application thereof to other persons and circumstances shall not be affected thereby. (June 12, 1934, 48 Stat. 933, ch. 465, § 8).

REPEAL OF INCONSISTENT PROVISIONS

Section 9 of act June 12, 1934, provided as follows: "All Acts and parts of Acts contrary to the provisions of this Act [sections 5–103 to 5–105 and 5–106 to 5–116] or inconsistent therewith be, and the same are hereby, repealed."

§ 5–111. Short title.

Sections 5–103 to 5–105 and 5–106 to 5–116 may be cited as the "District of Columbia Alley Dwelling Act." (June 12, 1934, 48 Stat. 933, ch. 465, § 10.)

§ 5–112. Definitions.

As used in sections 5–112 to 5–116—

(a) The term "housing project" shall mean any low-rent housing (as defined in the United States Housing Act of 1937), the development or administration of which is assisted by the United States Housing Authority.

(b) The term "development" shall mean any or all undertakings necessary for planning, financing (including payment of carrying charges), land acquisition, demolition, construction, or equipment, in connection with a housing project, but not beyond the point of physical completion. (June 12, 1934, ch. 465, title II, § 201, as added June 25, 1938, 52 Stat. 1188, ch. 691, § 5.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in subsec. (a), is classified to 42 U.S.C. ch. 8.

§ 5–113. Additional powers of Authority.

In addition to its other powers, the Authority shall have the power to acquire sites for and to prepare, carry out, acquire, lease, and operate housing projects, as defined in section 5–112, and to construct or provide for the construction, reconstruction, improvement, alteration, or repair of any such housing project, or any part thereof, in the District of Columbia. (June 12, 1934, ch. 465, title II, § 202, as added June 25, 1938, 52 Stat. 1188, ch. 691, § 5.)

CHANGE OF NAME

For redesignation of Authority, see note under § 5–104.

NOTES TO DECISIONS

Constitutionality

This chapter as amended, which provides for low rent housing projects and authorizes condemnation of land for that purpose, is valid and is not unconstitutional as authorizing condemnation of property for other than public uses. *Keyes* v. *United States* (1941, 119 F. 2d 444, 73 App. D. C. 273, certiorari denied 62 S. Ct. 70, 314 U. S. 636, 86 L. Ed. 510).

Property subject to condemnation

Under provision of this section the Authority had power to condemn sites for low cost housing projects in addition to and wholly independent of provisions of section 104 of this title relating to providing facilities to persons whose alley dwellings have been demolished. *Keyes* v. *United States* (1941, 119 F. 2d 444, 73 App. D. C. 273, certiorari denied 62 S. Ct. 70, 314 U.S. 636, 86 L. Ed. 510).

The fact that taking of owner's property for construction of dwellings for families and persons of low income had no relation to demolition of alley dwellings did not constitute defense to condemnation proceeding which was brought under authority of this section. *Id.*

Under this section, the property to be acquired need not itself be unsafe or unsanitary and is not required to be acquired only in connection with a project including the demolition of unsafe or unsanitary dwellings. *Id.*

§ 5–114. Authority considered a public housing agency—Federal financial assistance.

For the purposes of sections 5–112 to 5–116 the Authority shall be considered a public housing agency within the meaning of, and to carry out the purposes of, the United States Housing Act of 1937; and as such, the Authority is empowered to borrow money or accept contributions, grants or other financial assistance from the United States Housing Authority for or in aid of any housing project in the District of Columbia, in accordance with the United States Housing Act of 1937 to take over or lease or manage any such housing project or undertaking constructed, owned, or operated by the United States Housing Authority, and to those ends to comply with such conditions and enter into such mortgages, trust indentures, leases, or agreements as may be necessary, convenient, or desirable: *Provided,* That the tax exemption of the property of the Authority shall be deemed a contribution by the District of Columbia in accordance with the local contributions requirements of section 1410(a) and section 1411(f), of title 42, U.S. Code. It is the purpose and intent of sections 5–112 to 5–116 to authorize the Authority to do any and all things necessary to secure the financial aid of the United States Housing Authority in the undertaking, construction, maintenance, or operation in the District of Columbia of any housing project by the Authority. (June 12, 1934, ch. 465, title II, § 203, as added June 25, 1938, 52 Stat. 1188, ch. 691, § 5.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in the text, is classified to 42 U.S.C. ch. 8.

CHANGE OF NAME

For redesignation of Authority, see note under § 5–104.

§ 5–115. Contributions by District of Columbia authorized.

For the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of housing projects, the District of Columbia, or any department, instrumentality, or agency thereof, may, upon such terms, with or without consideration, as it may determine, as a contribution—

(a) Dedicate, sell, convey, or lease any needed property to the Authority;

(b) Cause parks, playgrounds, or recreational, community, educational, water, sewer, or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects;

(c) Furnish, dedicate, close, pave, install, grade, regrade, plan, or replan streets, roads, roadways, alleys, sidewalks, or other places which it is otherwise empowered to undertake;

(d) Enter into agreements with the Authority respecting action to be taken pursuant to any of the powers granted by sections 5–103 to 5–105 and 5–106 to 5–116;

(e) Cause services of a character which it is otherwise empowered to furnish to be furnished to the Authority;

(f) Enter into agreements with the Authority respecting the elimination of unsafe, insanitary, or unfit dwellings; and

(g) Do any and all things necessary or convenient to aid and cooperate in the planning, undertaking, construction, or operation of such housing projects. (June 12, 1934, ch. 465, title II, § 204, as added June 25, 1938, 52 Stat. 1188, ch. 691, § 5.)

CHANGE OF NAME

For redesignation of Authority, see note under § 5–104.

§ 5–116. Loans authorized.

The commissioners of the District of Columbia are hereby authorized to lend to the Authority such amounts as may be necessary to enable the Authority to comply with the provisions of the United States Housing Act of 1937 and appropriations for such purpose are hereby authorized out of the revenues of the District of Columbia, and the Authority is empowered to accept such loans. (June 12, 1934, ch. 465, title II, § 205, as added June 25, 1938, 52 Stat. 1189, ch. 691, § 5.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in the text, is classified to 42 U.S.C. ch. 8.

CHANGE OF NAME

For redesignation of Authority, see note under § 5–104.

Chapter 2.—BUILDING LINES

Sec.
5–201. Building lines established on streets less than 90 feet wide.
5–202. Condemnation proceedings to be instituted.
5–203. Procedure.
5–204. Permits for extensions of buildings beyond building line.
5–205. Existing buildings may project beyond established building line—Commissioners to have control of parkings.
5–206. Appropriations available for establishing building lines.

§ 5–201. Building lines established on streets less than 90 feet wide.

The Commissioners of the District of Columbia are authorized to establish building lines on streets or parts of streets less than ninety feet wide, in the District of Columbia, upon the presentation to them of a plat of the street or part of street upon which such action is desired, showing the lots and the names of the record owners thereof, and accompanied by a petition of the owners of more than one-half of the real estate shown on said plat requesting that building lines be established, or when the commissioners deem that the public interest require that such building lines be established: *Provided,* That no such building lines shall be established on any part of street less than one block in length. (June 21, 1906, 34 Stat. 384, ch. 3505, § 1.)

CROSS REFERENCES

Acceptance as part of highway plans, see § 7–117.

Powers and duties of Commissioners concerning building regulations, see § 1–228,

Zoning and height of buildings, Zoning Commission, see §§ 5–401 to 5–430.

§ 5–202. Condemnation proceedings to be instituted.

Upon the filing of such plat and petition in the office of said commissioners, or when the commissioners shall deem that the public interests require it, the said commissioners shall institute condemnation proceedings in the United States District Court for the District of Columbia, by a petition in rem, particularly describing the land to be taken, which petition shall be accompanied by duplicate plats, to be prepared by the surveyor of said District, showing the location of said proposed building lines, the number of square feet to be taken from each lot or part of lot and the boundaries thereof in each square or block, and such other information as may be necessary for the purposes of such condemnation. Upon the filing of such petition, one copy of the plat, indorsed with the docket number of the case, shall be returned by the clerk of said court to the said surveyor for record in his office. (June 21, 1906, 34 Stat. 384, ch. 3505, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia." Words "sitting as a District Court" were omitted as unnecessary.

§ 5–203. Procedure.

The condemnation proceedings herein provided for shall be in accordance with the provisions of sections 7–315 to 7–318, 7–320 to 7–323, 7–325, 7–326, both inclusive, as far as the same are applicable; and the assessment proceedings and assessment area for the establishment of building lines herein provided for shall be the same as that provided in sections 7–318, 7–319 of this title for assessments in the opening, extension, widening, and straightening of alleys or minor streets, in the same manner as if the establishment of building lines had been included in said section. (June 21, 1906, 34 Stat. 384, ch. 3505, § 3.)

REFERENCES IN TEXT

Section 7–322, included within the reference to sections 7–320 to 7–323, was repealed by act July 30, 1951, 65 Stat. 126, ch. 248, § 1, and is now covered by § 7–213a.

NOTES TO DECISIONS

Notice

This statute does not require personal service, and newspaper publication of notice directed to all those owners who could be found is sufficient. *National Savings & Trust Co.* v. *Reichelderfer* (1932, 57 F. 2d 404, 61 App. D. C. 38).

§ 5–204. Permits for extensions of buildings beyond building line.

The action of the Commissioners of the District of Columbia in granting permits before March 3, 1891, for the extension of any building or buildings, or any part or parts thereof, in the District of Columbia, beyond the building line, and upon the streets and avenues of said District, is hereby ratified, without prejudice, however, to the legal rights of the government in the event of the destruction by fire, or otherwise, of any such structure. And after June 21, 1906, no such permits shall be granted except upon special application and with the concurrence of all of said commissioners, and where such extensions are to be placed upon buildings to be erected on land adjoining United States public reservations, the approval of the Director of the National Park Service. (Mar. 3, 1891, 26 Stat. 868, ch. 540; July 1, 1898, 30 Stat. 570, ch. 543, § 3; June 21, 1906, 34 Stat. 385, ch. 3506; Feb. 26, 1925, 43 Stat. 983, ch. 339, § 3; Ex. Ord. No. 6166, § 2, June 10, 1933; Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1.)

AMENDMENTS

1906—Act June 21, 1906, inserted in the last sentence the words "where such extensions are to be placed upon buildings to be erected on land adjoining United States public reservations."

1898—Act July 1, 1898, extended this section, which originally applied only to the city of Washington, to the entire District of Columbia.

TRANSFER OF FUNCTIONS

Act Feb. 26, 1925, and Ex. Ord. No. 6166 transferred the duties of the Secretary of War and other officials to the National Park Service, and the final phrase "the approval of the Secretary of War" has been changed to "the approval of the Director of the National Park Service."

Act Mar. 2, 1934, changed the "Office of National Parks, Buildings, and Reservations" to the "National Park Service" and provided that the "services of the Director and personnel of the Office of National Parks, Buildings, and Reservations shall be continued in the National Park Service under their present appointments."

CROSS REFERENCE

General provisions concerning streets, see § 7–102 and notes.

§ 5–205. Existing buildings may project beyond established building line—Commissioners to have control of parkings.

Said commissioners, whenever they deem it desirable in the interest of economy, may permit buildings existing at the time said building lines are established and which project beyond said lines to remain until such time as the owner of said buildings desires to reconstruct or substantially alter the said buildings: *Provided,* That section 5–204 shall apply to all parkings established under this chapter, and the control of said parkings otherwise shall be vested in the Commissioners of the District of Columbia, who are hereby authorized to make and enforce all reasonable and necessary regulations for their care and preservation. (June 21, 1906, 34 Stat. 385, ch. 3505, § 4.)

§ 5–206. Appropriations available for establishing building lines.

The appropriation available for opening alleys and minor streets in the District of Columbia is hereby made available for the purpose of establishing building lines as provided for in this chapter. (June 21, 1906, 34 Stat. 385, ch. 3505, § 5.)

CROSS REFERENCE

Provisions for opening alleys and minor streets, see § 7–301 et seq.

Chapter 3.—FIRE ESCAPES AND SAFETY PROVISIONS

Sec.

5–301. Fire escapes required on certain structures—Exceptions.
5–302. Fire escapes—Stairways—Hall and stair lights required on certain structures.
5–303. When ten or more persons employed, fire escapes and other safety measures required.
5–304. Alterations may be required to locate fire escapes or add additional ones.
5–305. Elevator and stairway extending to basement to terminate in fireproof compartment—Certain other safety requirements—Office buildings—Certain exemptions, safety devices.
5–306. Obstruction of halls and stairways prohibited.
5–307. Fire escapes and approaches not to be obstructed.
5–308. Penalty for violations.
5–309. Notice, what to contain.
5–310. Notice, when deemed served—Fire escapes and other safety appliances may be provided by commissioners, when owner neglects—Costs to be lien on property.
5–311. Use of premises may be enjoined if not properly equipped with safety devices.
5–312. Definitions.
5–313. Upon failure of owner to correct condition violative of law, commissioner may do so—Cost of correction, lien on property—Owner not relieved from criminal responsibility.
5–314. Authorities permitted to enter property to inspect and correct wrongful conditions—Unlawful to interfere with inspection or correction—Penalty
5–315. Notice to correct wrongful conditions—How given—Methods of service—Required contents.
5–316. Commissioners of the District of Columbia may prescribe fees for inspection of certain buildings—Schedule of fees to be displayed—Fees deposited in treasury
5–317. Means of egress and fire safety appliances required in certain public buildings.
5–318. Same—Occupancy prohibited after notice of noncompliance.
5–319. Same—Notice to owner requiring installation—Time for compliance.
5–320. Same—Penalty for noncompliance.
5–321. Same—Service of notice.
5–322. Same—Construction and installation by Commissioners on owner's noncompliance—Assessment of costs against buildings.
5–323. Same—Injunction against unlawful use or occupation of building.

§ 5–301. Fire escapes required on certain structures—Exceptions.

It shall be the duty of the owner entitled to the beneficial use, rental, or control of any building three or more stories in height, constructed or used or intended to be used as an apartment house, tenement house, flat, rooming house, lodging house, hotel,

hospital, seminary, academy, school, college, institute, dormitory, asylum, sanitarium, hall, place of amusement, office building, or store, or of any building three or more stories in height, or over thirty feet in height, other than a private dwelling, in which sleeping quarters for the accommodation of ten or more persons are provided above the first floor, to provide and cause to be erected and fixed to every such building one or more suitable fire escapes, connecting with each floor above the first floor by easily accessible and unobstructed openings, in such location and numbers and of such material, type, and construction as the Commissioners of the District of Columbia may determine; except that buildings designed and built as single-family dwellings, and converted to use as apartment-houses, in which not more than three families reside, including the owner or lessee, or rooming-houses in which sleeping accommodations are provided for less than ten persons above the first floor, not more than three stories nor more than forty feet in height, and having a total floor area not more than three thousand square feet above the first floor, shall be exempted from the provisions of this section; and except that buildings used solely as apartment-houses, not more than three stories nor more than forty feet in height, so arranged that not more than five apartments per floor open directly, without an intervening hall or corridor, on a fire-resistive stairway, three feet or more in width, enclosed with masonry walls in which fire-resistive doors are provided at all openings, shall be exempted from the provisions of this section. (Mar. 19, 1906, 34 Stat. 70, ch. 957, § 1; Mar. 2, 1907, 34 Stat. 1247, ch. 2566, § 1; June 4, 1934, 48 Stat. 843, ch. 388.)

AMENDMENT

1934—Act June 4, 1934, included rooming and lodging houses, and buildings three or more stories in height, or over thirty feet in height, other than private dwellings, in which were sleeping quarters for ten or more persons above the first floor, and excepted single family buildings converted to apartment houses, and buildings used solely as apartment houses, not more than three stories, nor more than forty feet in height.

CROSS REFERENCES

Building exempted, conditions of exemption, see § 5–305.

Definitions, see § 5–312.

Failure of owner to correct conditions, see § 5–313.

Inspection fees, see § 5–316.

Notice to erect fire escape or other appliances, contents of notice, time to comply, see § 5–309.

Powers and duties of commissioners concerning building regulations, see §§ 1–228, 5–412.

NOTES TO DECISIONS

Application of act

This chapter is in the nature of a police regulation and is intended to apply to both those buildings to be erected and those in existence and used for purposes named in this act. *Hill* v. *Raymond* (1936, 81 F. 2d 278, 65 App. D. C. 144).

Indictment sufficiency

Where manslaughter indictment charged that, by reason of failure of landlord, its vice president, and tenant, who operated rooming house, to provide a dumb-waiter shaft of fire-resistive materials, and a front fire escape, and by reason of their acts in permitting shaftway to be used as a trash receptacle a fire started and a named individual received fatal burns, the indictment was insufficient to charge that absence of fire escape contributed to the death. *United States* v. *Interstate Properties* (1946, 153 F. 2d 469, 80 U.S. App. D.C. 392).

Where manslaughter indictment charged landlord, its vice president, and tenant, who operated rooming house, with negligently failing to have a dumb-waiter shaft constructed of fire-resistive materials and negligently failing to provide a front fire escape, and that defendants were under duty to roomers to comply with all orders, rules, regulations, and ordinances relating to use, occupancy and safety of buildings, and particularly building code and elevator code of District of Columbia, and that regulations required dumb-waiter shaft to be of fire-resistive construction, the indictment did not sufficiently plead existence of applicable regulations requiring use of fire-resistive materials in dumb-waiter shafts and installation of front fire escape. *Id.*

Kind of fire escape

Before Commissioners can order the erection of fire escapes, they must first determine the number and character required. *Moore's Victoria Theatre Co.* v. *District of Columbia* (1924, 299 F. 923, 55 App. D.C. 46).

Negligence

Failure of owner to comply with statute is not conclusive evidence of negligence, but is question for jury. *Hill* v. *Raymond* (1936, 81 F. 2d 278, 65 App. D. C. 144).

Use of stairway by tenant when he is aware that owner has not complied with the statute is not contributory negligence as a matter of law but is a question of fact for the jury to determine. *Id.*

Regulations under § 5–317

Where, after institution of landlord's action for possession based on allegedly unlawful use of leased premises, rigid provisions of this section were relaxed and after entry of judgment for landlord, District Commissioners modified this section so that use complained of, which was the very use contemplated under original letting, was no longer unlawful, case was not "moot" and tenant was entitled on appeal to protection of regulations under § 5–317 and to reversal of judgment for landlord. *Cosby* v. *Shoemaker* (D. C. Mun. App. 1943, 34 A. 2d 27).

Voluntary erection by tenant

Tenant cannot voluntarily erect fire escapes and recover therefor from the landlord. *Goldwyn Distributing Corp.* v. *Carroll* (1922, 276 F. 63, 51 App. D. C. 75).

§ 5–302. Fire escapes—Stairways—Hall and stair lights required on certain structures.

It shall be the duty of the owner entitled to the beneficial use, rental, or control of any building already erected, or which may hereafter be erected, in which ten or more persons are employed at the same time in any of the stories above the second story, except three-story buildings used exclusively as stores or for office purposes, and having at least two stairways from the ground floor each three or more feet wide and separated from each other by a distance of at least thirty feet, from one of which stairways shall be easy access to the roof, to provide and cause to be erected and affixed thereto a sufficient number of the aforesaid fire escapes, the location and number of the same to be determined by the commissioners, and to keep the hallways and stairways in every such building as is used and occupied at night properly lighted, to the satisfaction of the commissioners, from sunset to sunrise. (Mar. 19, 1906, 34 Stat. 70, ch. 957, § 2; Mar. 2, 1907, 34 Stat. 1247, ch. 2566; June 4, 1934, 48 Stat. 843, ch. 388.)

AMENDMENTS

1934—Act June 4, 1934, omitted "said" before the first "Commissioners," and "of the District of Columbia" following the second "Commissioners."

1907—Act Mar. 2, 1907, added exception of stores and office buildings.

NOTES TO DECISIONS

Lights for buildings erected prior to act

Requirement as to lights in apartment-houses applies to buildings erected prior to passage of act. Contributory negligence of tenant with knowledge of condition. *Hill* v. *Raymond* (1936, 81 F. 2d 278, 65 App. D. C. 144).

§ 5–303. When ten or more persons employed, fire escapes and other safety measures required.

It shall be the duty of the owner entitled to the beneficial use, rental, or control of any building used or intended to be used as set forth in section 5–301 where fire escapes are required, or any building in which 10 or more persons are employed, as set forth in section 5–302, where fire escapes are required, also to provide, install, and maintain therein proper and sufficient guide signs, guide lights, exit lights, hall and stairway lights, standpipes, fire extinguishers, and alarm gongs and striking stations in such locations and numbers and of such type and character as the commissioners may determine; except that in buildings less than six stories in height, standpipes will not be required when fire extinguishers are installed in such numbers and of such type and character as the Commissioners may determine. (Mar. 19, 1906, 34 Stat. 70, ch. 957, § 3; Mar. 2, 1907, 34 Stat. 1247, ch. 2566; June 4, 1934, 48 Stat. 843, ch. 388.)

AMENDMENT

1934—Act June 4, 1934, added the requirement of standpipes in buildings where fire escapes are required, also alarm gongs and striking stations, except that standpipes will not be required where fire extinguishers are installed.

CROSS REFERENCE

Voluntary erection by tenant, see § 5–301 and notes.

§ 5–304. Alterations may be required to locate fire escapes or add additional ones.

The Commissioners are hereby authorized and directed to issue such orders and to adopt and enforce such regulations not inconsistent with law as may be necessary to accomplish the purposes and carry into effect the provisions of sections 5–301 to 5–312, and to require any alterations or changes that may become necessary in buildings now or hereafter erected, in order properly to locate or relocate fire escapes, or to afford access to fire escapes, and to require any changes or alterations in any building that may be necessary in order to provide for the erection of additional fire escapes, or for the installation of other appliances required by sections 5–301 to 5–312, when in the judgment of the commissioners such additional fire escapes or appliances are necessary. (Mar. 19, 1906, 34 Stat. 71, ch. 957, § 4; June 4, 1934, 48 Stat. 844, ch. 388.)

AMENDMENT

1934—Act June 4, 1934, authorized Commissioners to issue orders and regulations as necessary to carry into effect existing provisions of sections 5–301 to 5–312, and added the provisions for the installation of other appliances required by sections 5–301 to 5–312.

CROSS REFERENCE

Rules and regulations generally, see §§ 1–226, 1–228, 5–412, and notes.

§ 5–305. Elevator and stairway extending to basement to terminate in fireproof compartment—Certain other safety requirements—Office buildings—Certain exemptions, safety devices.

Each elevator shaft and stairway extending to the basement of the buildings heretofore mentioned shall terminate in a fireproof compartment or enclosure separating the elevator shaft and stairs from other parts of the basement, and no opening shall be made or maintained in such compartment or enclosure unless the same be provided with fireproof doors.

Such buildings as are used solely for office buildings above the second floor and defined under the building regulations of the District of Columbia to be fireproof are exempted from the requirements of sections 5–301 to 5–312 as to fire escapes, guide signs, and alarm gongs; but when the face of a wall of any such fireproof building is within thirty feet of a combustible building or structure, or when the side or sides, front or rear of such building or structure faces within thirty feet of a combustible building, or contains a light or air shaft or similar recess within thirty feet of a combustible building, then each and every window or opening in said wall or walls shall be protected from fire by automatic iron shutters or wire glass in fireproof sash and frames. (Mar. 19, 1906, 34 Stat. 71, ch. 957, § 5; Mar. 2, 1907, 34 Stat. 1247, ch. 2566; June 4, 1934, 48 Stat. 844, ch. 388.)

AMENDMENTS

1934—Act June 4, 1934, reenacted section without change.

1907—Act Mar. 2, 1907, added the second paragraph.

CROSS REFERENCE

General powers of Commissioners concerning regulation of elevators, see § 1–229.

NOTES TO DECISIONS

Indictment, sufficiency

Manslaughter indictment charging violations of elevator regulations should point out with particularity what regulations were violated and should plead facts concerning physical situation to show the regulations relied on where correctly applicable to the situation. *United States* v. *Interstate Properties* (1946, 153 F. 2d 469, 80 U.S. App. D.C. 392).

Where manslaughter indictment charged landlord, its vice president, and tenant, who operated rooming house, with negligently failing to have a dumb-waiter shaft constructed of fire-resistive materials and negligently failing to provide a front fire escape, and that defendants were under duty to roomers to comply with all orders, rules, regulations, and ordinances relating to use, occupancy and safety of buildings, and particularly building code and elevator code of District of Columbia, and that regulations required dumb-waiter shaft to be of fire-resistive construction, the indictment did not sufficiently plead existence of applicable regulations requiring use of fire-resistive materials in dumb-waiter shafts and installation of front fire escape. *Id.*

§ 5–306. Obstruction of halls and stairways prohibited.

It shall be unlawful to obstruct any hall, passageway, corridor, or stairway in any building enumerated in sections 5–301 to 5–312 with baggage, trunks, furniture, cans, or with any other thing whatsoever. (Mar. 19, 1906, 34 Stat. 71, ch. 957, § 6; June 4, 1934, 48 Stat. 844, ch. 388.)

AMENDMENT

1934—Act June 4, 1934, substituted "enumerated" for "mentioned."

§ 5–307. Fire escapes and approaches not to be obstructed.

No door or window leading to any fire escape shall be covered or obstructed by any fixed grating or barrier, and no person shall at any time place any encumbrance or obstacle upon any fire escape or

upon any platform, ladder, or stairway leading to or from any fire escape. (Mar. 19, 1906, 34 Stat. 71, ch. 957, § 7; June 4, 1934, 48 Stat. 844, ch. 388.)

AMENDMENT

1934—Act June 4, 1934, reenacted section without change.

§ 5–308. Penalty for violations.

Any person failing or neglecting to provide fire escapes, guide signs, guide lights, exit lights, hall and stairway lights, standpipes, fire extinguishers, alarm gongs, and striking stations, or other appliances required by sections 5–301 to 5–312 after notice from the Commissioners so to do, shall, upon conviction thereof, be punished by a fine of not less than $10.00 nor more than $100 and shall be punished by a further fine of $5.00 for each day that he fails to comply with such notice. Any person violating any other provision of sections 5–301 to 5–312 or regulations promulgated hereunder shall be punished, upon conviction thereof, by a fine of not less than $10.00 nor more than $100 for each offense. (Mar. 19, 1906, 34 Stat. 71, ch. 957, § 8; June 4, 1934, 48 Stat. 845, ch. 388.)

CODIFICATION

Former provisions of section 8 of act Mar. 19, 1906, were omitted by act June 4, 1934, which amended generally the entire law, but a similar provision was enacted in act July 1, 1932, 47 Stat. 550, ch. 366, par. 2. This section appears as § 47–2302. For other licensing provisions, see §§ 47–2344, 47–2345.

AMENDMENT

1934—Act June 4, 1934, added provisions as to guide lights, exit lights, hall and stairway lights, standpipes, and striking stations, and the provision as to regulations promulgated under sections 5–301 to 5–312.

NOTES TO DECISIONS

Motion to quash

Whether premises on which violations of rooming house regulations allegedly occurred were within the operation of such regulations though licensed as an apartment house could not be determined on motion to quash information. *District of Columbia* v. *Basiliko* (D. C. Mun. App. 1945, 44 A. 2d 407).

Premises included

That premises were licensed as an apartment house did not preclude prosecution for violations of rooming house regulations which allegedly occurred on such premises. *District of Columbia* v. *Basiliko* (D. C. Mun. App. 1945, 44 A. 2d 407).

§ 5–309. Notice, what to contain.

The notice from the Commissioners requiring the erection of fire escapes and other appliances enumerated in sections 5–301 to 5–312 shall specify the character and number of fire escapes or other appliances to be provided, the location of the same, and the time within which said fire escapes or other appliances shall be provided, and in no case shall more than ninety days be allowed for compliance with said notice unless the Commissioners shall, in their discretion, deem it necessary to extend their time. (Mar. 19, 1906, 34 Stat. 71, ch. 957, § 9; June 4, 1934, 48 Stat. 845, ch. 388.)

AMENDMENT

1934—Act June 4, 1934, substituted "notice from the Commissioners" for "said notice" and substituted "Commissioners" for "Commissioners of the District of Columbia."

NOTES TO DECISIONS

Opportunity to install

Owner of building is entitled to opportunity to install fire protection before proceedings are taken against him. *Moore's Victoria Theatre Co.* v. *District of Columbia* (1924, 299 F. 923, 55 App. D.C. 46).

§ 5–310. Notice, when deemed served—Fire escapes and other safety appliances may be provided by commissioners, when owner neglects—Costs to be lien on property.

Such notice shall be deemed to have been served if delivered to the person to be notified, or if left with any adult person at the usual residence or place of business of the person to be notified in the District of Columbia, or if no such residence or place of business can be found in said District by reasonable search, if left with any adult person at the office of any agent of the person to be notified, provided such agent has any authority or duty with reference to the building to which said notice relates, or if no such office can be found in said District by reasonable search if forwarded by registered mail or by certified mail to the last-known address of the person to be notified and not returned by the post-office authorities, or if no address be known or can by reasonable diligence be ascertained, or if any notice forwarded as authorized by the preceding clause of this section be returned by the post-office authorities, if published on ten consecutive days in a daily newspaper published in the District of Columbia, or if by reason of an outstanding unrecorded transfer of title the name of the owner in fact can not be ascertained beyond a reasonable doubt, if served on the owner of record in the manner hereinbefore in this section provided, or if delivered to the agent, trustee, executor, or other legal representative of the estate of such person. Any notice to a corporation shall, for the purposes of sections 5–301 to 5–312 be deemed to have been served on such corporation if served on the president, secretary, treasurer, general manager or any principal officer of such corporation in the manner hereinbefore provided for the service of notices on natural persons holding property in their own right, and notice to a foreign corporation shall, for the purposes of sections 5–301 to 5–312, be deemed to have been served if served on any agent of such corporation personally, or if left with any person of suitable age and discretion residing at the usual residence or employed at the usual place of business of such agent in the District of Columbia: *Provided,* That in case of failure or refusal of the owner entitled to the beneficial use, rental, or control of any buildings specified in sections 5–301 to 5–312, to comply with the requirements of the notice provided for in section 5–309, the commissioners are hereby empowered and it is their duty to cause such erection of fire escapes and other appliances mentioned in the notice provided for, and they are hereby authorized to assess the costs thereof as a tax against the buildings on which they are erected and the ground on which the same stands, and to issue tax-lien certificates against such building and grounds for the amount of such assessments, bearing interest at the rate of 10 per centum per annum, which certificates may be turned over by

the commissioners to the contractor for doing the work. (Mar. 19, 1906, 34 Stat. 71, ch. 957, § 10; Mar. 2, 1907, 34 Stat. 1248, ch. 2566, § 1; June 4, 1934, 48 Stat. 845, ch. 388; June 11, 1960, 74 Stat. 203, Pub. L. 86–507, § 1(42).)

AMENDMENTS

1960—Act June 11, 1960, inserted words "or by certified mail" following "registered mail."

1934—Act June 4, 1934, authorized delivery of notice to a representative of the estate of the owner of record, and in the proviso, substituted "owner entitled to the beneficial use, rental, or control" for "owner, lessee, occupant, or person having possession, charge, or control."

CROSS REFERENCE

For use of certified mail receipts as prima evidence of delivery, see § 14–506.

§ 5–311. Use of premises may be enjoined if not properly equipped with safety devices.

The United States District Court for the District of Columbia in term time or in vacation, may, upon a petition of the District of Columbia, filed by its said commissioners, issue an injunction to restrain the use or occupation of any building in the District of Columbia in violation of any of the provisions of sections 5–301 to 5–312. (Mar. 19, 1906, 34 Stat. 72, ch. 957, § 11; June 4, 1934, 48 Stat. 846, ch. 388; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENT

1934—Act June 4, 1934, reenacted section without change.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

FEDERAL RULES OF CIVIL PROCEDURE

Injunction, see Rule 65, 28 U.S.C. App.

NOTES TO DECISIONS

Condition precedent

Any person who may be proceeded against under this statute is entitled to know what is required of him before he can be penalized in a criminal proceeding, enjoined in equity, or assessed for work done on his property. *Moore's Victoria Theatre Co.* v. *District of Columbia* (1924, 299 F. 923, 55 App. D. C. 46).

§ 5–312. Definitions.

As used in sections 5–301 to 5–312—

(a) The terms "apartment-house," "tenement-house," and "flat" mean a building in which rooms in suites are provided for occupancy by three or more families.

(b) The term "rooming-house" means a building in which rooms are rented and sleeping quarters provided to accommodate ten or more persons, not including the family of the owner or lessee.

(c) The term "lodging-house" means a building in which sleeping quarters are provided to accommodate ten or more transients.

(d) The term "hotel" means a building in which meals are served and rooms are provided for the accommodation of ten or more transients.

(e) The term "elevator shaft" includes a dumbwaiter shaft.

(f) The term "fire escape" means an exterior open stairway or arrangement of ladders constructed entirely of incombustible materials and of approved design, or an interior or exterior stairway of fire-resistive construction with enclosing walls of masonry with fire-resistive doors and windows.

(g) The term "standpipe" means a vertical iron or steel pipe provided with hose connections and valves, so arranged as to supply water for fire-fighting purposes.

(h) The terms "fireproof" and "fire-resistive" have the same meaning as is ascribed to the term "fire-resistive" in the Building Code of the District of Columbia. (Mar. 19, 1906, ch. 957, § 12, as added June 4, 1934, 48 Stat. 846, ch. 388.)

§ 5–313. Upon failure of owner to correct condition violative of law, commissioner may do so—Cost of correction, lien on property—Owner not relieved from criminal responsibility.

Whenever the owner of any real property in the District of Columbia shall fail or refuse, after the service of reasonable notice in the manner provided in section 5–315 to correct any condition which exists on or has arisen from such property in violation of law or of any regulation made by authority of law, with the correction of which condition said owner is by law or by said regulation chargeable, or to show cause, sufficient in the judgment of the commissioners of said District, why he should not be required to correct such condition, then, and in that instance, the commissioners of the District of Columbia may, and they are authorized to, cause such condition to be corrected; assess the cost of correcting such condition and all expenses incident thereto (including the cost of publication, if any, herein provided for) as a tax against the property on which such condition existed or from which such condition arose, as the case may be; and carry such tax on the regular tax rolls of the District, and collect such tax in the same manner as general taxes in said District are collected: *Provided,* That the correction of any condition aforesaid by said commissioners under authority of this section shall not relieve the owner of the property on which such condition existed, or from which such condition arose, from criminal prosecution and punishment for having caused or allowed such unlawful condition to arise or for having failed or refused to correct the same. (Apr. 14, 1906, 34 Stat. 114, ch. 1626, § 1.)

§ 5–314. Authorities permitted to enter property to inspect and correct wrongful conditions—Unlawful to interfere with inspection or correction—Penalty.

For the purpose of carrying into effect section 5–313 the Commissioners of the District of Columbia and all other persons, including contractors and employees of contractors acting under their authority or by their direction are authorized to enter upon and into any lands and tenements in said District, during all reasonable hours, to inspect the same and to do whatever may be necessary to correct, in a good and workmanlike manner, any condition that exists on or has arisen from such lands or tenements in violation of law or of any regulation made by authority of law, with the correction of which condition the owner of said lands or tenements is by law or such regulation chargeable. Any person who shall hinder, interfere with, or prevent any inspection or work authorized by sections 5–313 to 5–315 shall,

upon conviction thereof, be punished by a fine not exceeding $100 or by imprisonment for a period not exceeding three months, or by both such fine and imprisonment, in the discretion of the court. (Apr. 14, 1906, 34 Stat. 115, ch. 1626, § 2.)

TRANSFER OF FUNCTIONS

Reorganization Order No. 55 of the Board of Commissioners dated June 30, 1953 established under the direction and control of a Commissioner, a Department of Licenses and Inspections headed by a Director. The order set out the purpose, organization, and functions of the new department. The order provided that all of the functions and positions of the following named organizations were transferred to the new Department of Licenses and Inspections: The Department of Inspections including the Engineering Section, the Building Inspection Section, the Electrical Section, the Elevator Inspection Section, the Fire Safety Inspection Section, the Plumbing Inspection Section, the Smoke and Boiler Inspection Section, and the Administrative Section; and similarly the Department of Weights, Measures and Markets, the License Bureau, the License Board, the License Committee, the Board of Special Appeals, the Board for the Condemnation of Dangerous and Unsafe Buildings, and the Central Permit Bureau. The order provided that in accordance with the provisions of Reorganization Plan No. 5 of 1952 the named organizations were abolished. The order and plan are set out in the Appendix to Title 1, Administration.

§ 5–315. Notice to correct wrongful conditions—How given—Methods of service—Required contents.

For the purposes of sections 5–313 to 5–315 any notice required by law or by any regulation aforesaid to be served shall be deemed to have been served (a) if delivered to the person to be notified, or if left at the usual residence or place of business of the person to be notified, with a person of suitable age and discretion then resident therein; or (b) if no such residence or place of business can be found in said District by reasonable search, if left with any person of suitable age and discretion employed therein at the office of any agent of the person to be notified, which agent has any authority or duty with reference to the land or tenement to which said notice relates; or, (c) if no such office can be found in said District by reasonable search, if forwarded by registered mail or by certified mail to the last-known address of the person to be notified and not returned by the post-office authorities; or (d) if no address be known or can by reasonable diligence be ascertained, or if any notice forwarded as authorized by the preceding clause of this section be returned by the post-office authorities, if published on three consecutive days in a daily newspaper published in the District of Columbia; or (e) if by reason of an outstanding, unrecorded transfer of title the name of the owner in fact can not be ascertained beyond a reasonable doubt, if served on the owner of record in the manner hereinbefore in this section provided. Any notice required by law or by any regulation aforesaid to be served on a corporation shall for the purposes of sections 5–313 to 5–315 be deemed to have been served on any such corporation if served on the president, secretary, treasurer, general manager, or any principal officer of such corporation in the manner hereinbefore provided for the service of notices on natural persons holding property in their own right; and, if required to be served on any foreign corporation, if served on any agent of such corporation personally, or if left with any person of suitable age and discretion residing at the usual residence or employed at the place of business of such agent in the District of Columbia. Every notice aforesaid shall be in writing or printing, or partly in writing and partly in printing; shall be addressed by name to the person to be notified; shall describe with certainty the character and location of the unlawful condition to be corrected, and shall allow a reasonable time to be specified in said notice, within which the person notified may correct such unlawful condition or show cause why he should not be required to do so. (Apr. 14, 1906, 34 Stat. 115, ch. 1626, § 3; June 11, 1960, 74 Stat. 203, Pub. L. 86–507, § 1(43).)

AMENDMENT

1960—Act June 11, 1960, inserted words "or by certified mail" following "registered mail" in cl. (c) of the first sentence.

CROSS REFERENCE

Certified mail receipts as prima-facie evidence of delivery, see § 14–506.

§ 5–316. Commissioners of the District of Columbia may prescribe fees for inspection of certain buildings—Schedule of fees to be displayed—Fees deposited in treasury.

The Commissioners of the District of Columbia are authorized and directed, from time to time, to prescribe a schedule of fees to be paid for inspecting passenger elevators and for inspecting hotels, public halls, moving-picture shows, theaters, and other places of amusement which are required to have annual licenses, and for inspecting buildings which are required by law to have fire escapes; and they are further authorized and directed to impose fees for all inspections or service to be performed by any public officer or employee of the District of Columbia under any law or regulation in force July 11, 1919, or thereafter enacted; said fees to cover the cost and expense of such inspections or service; and a schedule of such fees shall be printed and conspicuously displayed in the office of the said commissioners, and said fees shall be paid to the collector of taxes, District of Columbia, and paid for each fiscal year into the treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the treasury of the United States and the revenues of the District of Columbia. (July 11, 1919, 41 Stat. 69, ch. 7; Feb. 22, 1921, 41 Stat. 1144, ch. 70. § 7.)

CODIFICATION

Act July 11, 1919, provided that the fees paid to the collector of taxes should be deposited in the Treasury of the United States to the credit of the revenues of the District of Columbia and the United States in equal parts. Act February 22, 1921, provided that "on and after July 1, 1921, all fees, fines, and other miscellaneous items of revenue theretofore required by law to be paid into the Treasury of the United States to the credit of the United States and the District of Columbia in equal parts shall be paid for each fiscal year into the Treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the Treasury of the United States and the revenues of the District of Columbia."

PROPORTIONS IN APPROPRIATIONS

Proportions in appropriation acts for expenses of the government of the District of Columbia, see acts June 7, 1924, 43 Stat. 539, ch. 302; Mar. 3, 1925, 43 Stat. 1216 ch. 477; May 10, 1926, 44 Stat. 417, ch. 276; Mar. 3, 1927 44 Stat. 1297, ch. 271; May 21, 1928, 45 Stat. 645, ch. 259

The deficiency appropriation act of June 25, 1938, 52 Stat. 1125, ch. 681, § 1, and other such acts including the second deficiency appropriation act of June 27, 1940, 54 Stat. 639, ch. 437, contained the following language: "The foregoing sums for the District of Columbia, unless otherwise therein specifically provided, shall be paid out of the revenues of the District of Columbia and the Treasury of the United States in the manner prescribed by the District of Columbia Appropriation Acts for the respective fiscal years for which sums are provided."

CROSS REFERENCES

Disposition of fees, see § 47–126.
Lump-sum appropriation for District, see § 47–134.

§ 5–317. Means of egress and fire safety appliances required in certain public buildings.

The Commissioners of the District of Columbia, for protection against fire, are hereby authorized, after public hearing, to promulgate regulations to require the owner entitled to the beneficial use, rental, or control of any building now existing or hereafter erected, other than a private dwelling, which is three or more stories or over thirty feet in height, or is used as a hospital, school, asylum, sanitarium, convalescent home, or for similar use, or as a place of amusement, public assembly, restaurant, or for similar use, to provide, install and maintain sufficient and suitable means of egress, guide signs, guide lights, exit lights, hall and stairway lights, standpipes, fire extinguishers, alarm gongs and striking stations, and such other appliances as the Commissioners may deem necessary for such buildings. (Dec. 24, 1942, 56 Stat. 1083, ch. 818, § 1.)

EFFECTIVE DATE

Section 9 of act Dec. 24, 1942, provided that: "This Act [adding sections 5–317 to 5–323] shall take effect after ninety days from the date of its enactment [Dec. 24, 1942]."

REPEAL OF INCONSISTENT PROVISIONS

Section 8 of act Dec. 24, 1942, provided that: "All Acts, parts of Acts, and regulations promulgated thereunder inconsistent with this Act [sections 5–317 to 5–323] are hereby repealed."

NOTES TO DECISIONS

Constitutionality

Fire prevention provisions of the District of Columbia Building Code were not unconstitutional on theory of vagueness even though drawn in technical language which could not be understood by laymen, where such language was understandable by persons with knowledge in the field. *R. L. Jones et al.* v. *District of Columbia; The Ellen Real Estate Corp. et al.* v. *District of Columbia* (1963, 323 F. 2d 306, 116 U.S. App. D.C. 301).

Provisions of District of Columbia Building Code, like municipal ordinances, were protected by a presumption of constitutionality, and they could not be declared unconstitutional unless clearly arbitrary. *Id.*

Provisions of District of Columbia Building Code relative to fire safety were not unconstitutional merely because they granted discretion to an administrative officer to grant variances in limited cases. *Id.*

Facts as basis for regulation

Facts developed at public hearings held before promulgation of fire regulations under the District of Columbia Building Code did not necessarily have to support each and every provision of the regulations which resulted therefrom. *R. L. Jones et al.* v. *District of Columbia; The Ellen Real Estate Corp. et al.* v. *District of Columbia* (1963, 323 F. 2d 306, 116 U.S. App. D.C. 301).

Notice, publication of

Although act authorizing commissioners of the District of Columbia to promulgate regulations required a public hearing prior to promulgation of regulations, personal notice to property owners of public hearing was not necessary, and notice requirement was met by publication of notice of hearings in three newspapers of general circulation and by mailing of notice to 300 organizations which had requested notification. *R. L. Jones et al.* v. *District of Columbia; The Ellen Real Estate Corp. et al.* v. *District of Columbia* (1963, 323 F. 2d 306, 116 U.S. App. D.C. 301).

Purpose of law

Purpose of the Means of Egress Act was to protect the public, particularly that portion of the public living in or frequenting buildings covered by the act. *R. L. Jones et al.* v. *District of Columbia; The Ellen Real Estate Corp. et al.* v. *District of Columbia* (1963, 323 F. 2d 306, 116 U.S. App. D.C. 301).

Regulation; retroactive effect

Where, after institution of landlord's action for possession based on allegedly unlawful use of leased premises, rigid provisions of § 5–301 were relaxed and, after entry of judgment for landlord, District Commissioners modified said § 5–301 so that use complained of, which was the very use contemplated under original letting, was no longer unlawful, case was not "moot" and tenant was entitled on appeal to protection of regulations under this section and to reversal of judgment for landlord. *Cosby* v. *Shoemaker* (D. C. Mun. App. 1943, 34 A. 2d 27).

Regulations, validity of

Fire regulations promulgated by Commissioners of District of Columbia requiring the correction of deficiencies in existing rooming houses were not so burdensome as to make compliance unreasonably onerous or constitute a confiscation of property, especially where provision was made for an owner to apply to Board of Appeals and Review for the grant of a variance if compliance was deemed by owner to be unduly burdensome. *R. L. Jones et al., The Ellen Real Estate Corp. et al.* v. *The District of Columbia* (D.C.D.C. 1963, 212 F. Supp. 438).

Fire regulations promulgated by Commissioners of District of Columbia were not invalid as unenforceable for uncertainty and ambiguity where technical language was intrinsically necessary in order to carry out legislative purpose and where language used was reasonably understandable to one having knowledge in the field. *Id.*

Fire regulations promulgated by Commissioners of District of Columbia were not invalid on ground that appropriate public hearing had not been held where notice had been given and hearing had been held similar in character and purpose to hearings held by congressional committees, even though findings could not be made from the transcript to support each regulation adopted following the hearing. *Id.*

§ 5–318. Same—Occupancy prohibited after notice of noncompliance.

It shall be unlawful for any person to occupy any building thirty days after notice in writing from the Commissioners of the District of Columbia or their designated agents that the owner entitled to the beneficial use, rental, or control of any building has failed or neglected to comply with the notice provided for by section 5–319 to provide any such building with means of egress or appliances required by the regulations promulgated by the Commissioners of the District of Columbia under section 5–317. (Dec. 24, 1942, 56 Stat. 1083, ch. 818, § 2.)

EFFECTIVE DATE

See section 9 of act Dec. 24, 1942, set out as a note under section 5–317.

NOTES TO DECISIONS

Certificate of occupancy

Temporary certificates of occupancy issued to landlords did not relieve them from obtaining new certificates of occupancy under subsequently promulgated District of Columbia Building Code. *R. L. Jones et al.* v. *District of Columbia; the Ellen Real Estate Corp. et al.* v. *District of Columbia* (1963, 323 F. 2d 306, 116 U.S. App. D.C. 301).

§ 5–319. Same—Notice to owner requiring installation—Time for compliance.

The notice from the Commissioners requiring the erection of means of egress and other appliances required by the regulations promulgated under section 5–317 shall specify the character and number of means of egress or other appliances to be provided, the location of the same, and the time within which said means of egress or other appliances shall be provided, and in no case shall more than ninety days be allowed for compliance with said notice unless the Commissioners shall, in their discretion, deem it necessary to extend their time. (Dec. 24, 1942, 56 Stat. 1084, ch. 818, § 3.)

EFFECTIVE DATE

See section 9 of act Dec. 24, 1942, set out as a note under section 5–317.

§ 5–320. Same—Penalty for noncompliance.

Any owner entitled to the beneficial use, rental, or control of any building failing or neglecting to provide means of egress, guide signs, guide lights, exist[1] lights, halls and stairway lights, standpipes, fire extinguishers, alarm gongs and striking stations, or other appliances required by the regulations promulgated under sections 5–317 to 5–323 after notice from the Commissioners or their designated agents so to do, shall, upon conviction thereof, be punished by a fine of not less than $10 nor more than $100 per day for each and every day he fails to comply with such notice. Any person violating any other provision of sections 5–317 to 5–323 or regulations promulgated hereunder shall be punished, upon conviction thereof, by a fine of not less than $10 nor more than $100 per day for each and every day such violation exists. (Dec. 24, 1942, 56 Stat. 1084, ch. 818, § 4.)

EFFECTIVE DATE

See section 9 of act Dec. 24, 1942, set out as a note under section 5–317.

§ 5–321. Same—Service of notice.

Any notice required by sections 5–317 to 5–323 shall be deemed to have been served if delivered to the person to be notified or left with any adult person at the usual residence or place of business of the person to be notified in the District of Columbia, or, if no such residence or place of business can be found in said District of Columbia by reasonable search, if left with any adult person at the office of any agent of the person to be notified, provided such agent has any authority or duty with reference to the building to which said notice relates, or, if no such office can be found in said District, by reasonable search, if forwarded by registered mail or by certified mail to the last-known address of the person to be notified and not returned by the post-office authorities, or, if no address be known or can by reasonable diligence be ascertained, or if any notice forwarded as authorized by the preceding clause of this section be returned by the post-office authorities, if published on ten consecutive days in a daily newspaper published in the District of Columbia, or, if by reason of an outstanding unrecorded transfer of title, the name of the owner in fact cannot be ascertained beyond a reasonable doubt, if served on the owner of record in the manner hereinbefore provided or delivered to the agent, trustee, executor, or other legal representative of the estate of such person. Any notice to a corporation shall, for the purposes of sections 5–317 to 5–323, be deemed to have been served on such corporation if served on the president, secretary, treasurer, general manager, or any principal officer of such corporation in the manner hereinbefore provided for the services of notices on natural persons holding property in their own right, or if no such officer can be found in said District by reasonable search, then by publication for ten consecutive days in a daily newspaper published in the District of Columbia, and notice to a foreign corporation shall, for the purposes of sections 5–317 to 5–323, be deemed to have been served if served on any agent of such corporation personally or if left with any person of suitable age and discretion residing at the usual residence or employed at the usual place of business of such agent in the District of Columbia, or if published on ten consecutive days in a daily newspaper published in the District of Columbia. (Dec. 24, 1942, 56 Stat. 1084, ch. 818, § 5; June 11, 1960, 74 Stat. 203, Pub. L. 86–507, § 1(44).)

AMENDMENT

1960—Act June 11, 1960 inserted words "or by certified mail" following "registered mail."

EFFECTIVE DATE

See section 9 of act Dec. 24, 1942, set out as a note under section 5–317.

CROSS REFERENCE

Certified mail receipts as prima-facie evidence of delivery, see § 14–506.

§ 5–322. Same—Construction and installation by Commissioners on owner's noncompliance—Assessment of costs against buildings.

In case of failure or refusal of the owner entitled to the beneficial use, rental, or control of any building required by the regulations promulgated under sections 5–317 to 5–323 to comply with the requirements of the notice provided for in section 5–319, the Commissioners or their designated agents are hereby empowered to cause such construction and installation of means of egress and other appliances mentioned in the notice provided for, and the Commissioners are hereby authorized to assess the costs thereof as a tax against the buildings on which they are erected and the ground on which the same stands, said assessment to bear interest at the rate and be collected in the manner provided in section 47–1105. (Dec. 24, 1942, 56 Stat. 1084, ch. 818, § 6.)

EFFECTIVE DATE

See section 9 of act Dec. 24, 1942, set out as a note under section 5–317.

[1] So in original. Probably should be "exit."

§ 5–323. Same—Injunction against unlawful use or occupation of building.

The United States District Court for the District of Columbia, in term time or in vacation, may upon a petition of the District of Columbia filed by its said Commissioners, issue an injunction to restrain the use or occupation of any building in the District of Columbia in violation of any of the provisions of sections 5–317 to 5–323 or of the regulations promulgated under sections 5–317 to 5–323 by the owner, lessee, or occupant. (Dec. 24, 1942, 56 Stat. 1085, ch. 818, § 7; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

EFFECTIVE DATE

See section 9 of act Dec. 24, 1942, set out as a note under section 5–317.

Chapter 4.—ZONING AND HEIGHT OF BUILDINGS

Sec.

5–401. Height of certain nonfireproof dwellings limited.
5–402. Height of nonfireproof business buildings.
5–403. Fireproof materials required for buildings exceeding 60 feet in height—Hotels, apartment houses—Halls—Churches.
5–404. Additions—Towers, spires, and domes—Theaters.
5–405. Width of street to govern height—Business streets—Residence streets—Corner lots—Fireproof requirements—Dean Tract—Restrictions and limitations applicable to specific property.
5–406. Limit for frame dwellings.
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5–420. Board of Zoning Adjustment—Creation, membership—Tenure—Regulations to govern organization and procedure—Appeal—Procedure, powers—Majority vote necessary.
5–421. Maps and regulations of Zoning Commission—To be filed—Published.
5–422. Building permits—Construction without obtaining—Certificates of occupancy—Use without obtaining—Construction in violation of regulations—Enforcement—Actions, parties—Penalty.
5–423. Enforcement of regulations—Power to adopt municipal regulations.
5–424. Effect of regulations on future construction.
5–425. Terms defined.
5–426. Appropriations authorized for Zoning Commission—Authority to employ—Compensation of Board of Zoning Adjustment.
5–427. Laws repealed.
5–428. Federal public buildings excepted.
5–429. Commissioners of the District of Columbia to prescribe fees for permits, certificates, and transcripts by inspector of buildings—Schedule of fees to be displayed.
5–430 Building permits—May be canceled and tax refunded.

§ 5–401. Height of certain nonfireproof dwellings limited.

No combustible or nonfireproof building in the District of Columbia used or occupied or intended to be used or occupied as a dwelling, flat, apartment house, tenement, lodging or boarding house, hospital, dormitory, or for any similar purpose shall be erected, altered, or raised to a height of more than four stories, or more than fifty-five feet in height above the sidewalk, and no combustible or nonfireproof building shall be converted to any of the uses aforesaid if it exceeds either of said limits of height. (June 1, 1910, 36 Stat. 452, ch. 263, § 1; May 20, 1912, 37 Stat. 114, ch. 124.)

AMENDMENT

1912—Act May 20, 1912, changed the required height from 50 to 55 feet.

CROSS REFERENCES

Building regulations, promulgation by Commissioners, see § 1–228.

Power of Zoning Commission concerning regulations for the erection of buildings, see §§ 5–412 to 5–428.

Provisions concerning alley dwellings, see §§ 5–101 to 5–116.

NOTES TO DECISIONS

Legislative authority

Zoning regulations must bear substantial relation to public health, safety, morals, or general welfare. *Dorsey* v. *Gotwals* (1932, 57 F. 2d 407, 61 App. D. C. 41).

Review by court

Court had no right to substitute its judgment for that of District of Columbia Zoning Commission, and where nothing appeared to indicate that Commission's action in fixing minimum widths and sizes of residential lots was unreasonable or arbitrary, court could not enjoin enforcement of regulation. *Salyer* v. *McLaughlin et al.* (1957, 240 F. 2d 891, 100 U.S. App. D.C. 29).

§ 5–402. Height of nonfireproof business buildings.

No combustible or nonfireproof building in the District of Columbia used or occupied or intended to be used or occupied for business purposes only shall be erected, altered, or raised to a height of more than sixty feet above the sidewalk, and no combustible or nonfireproof building shall be converted to such use if it exceeds said height. (June 1, 1910, 36 Stat. 452, ch. 263, § 2.)

CROSS REFERENCE

Powers of Zoning Commission as to regulations for the erection of buildings, see §§ 5–412 to 5–428.

§ 5–403. Fireproof materials required for buildings exceeding 60 feet in height—Hotels, apartment houses—Halls—Churches.

All buildings of every kind, class, and description whatsoever, excepting churches only, erected, altered, or raised in any manner after June 1, 1910, as to exceed sixty feet in height shall be fireproof or noncombustible and of such fire-resisting materials, from the foundation up, as are now or at the time of the erecting, altering, or raising may be required by the building regulations of the District of Columbia.

Hotels, apartment houses, and tenement houses erected, altered or raised in any manner after June 1, 1910, so as to be three stories in height or over and buildings converted after June 1, 1910, to such uses shall be of fireproof construction up to and including the main floor, and there shall be no space on any floor of such structure of an area greater than two thousand five hundred square feet that is not completely inclosed by fireproof walls, and all doors through such walls shall be of noncombustible materials.

Every building erected after June 1, 1910, with a hall or altered so as to have a hall with a seating capacity of more than three hundred persons when computed, as provided by the building regulations, and every church thereafter erected or building converted after June 1, 1910, for use as a church, with such seating capacity, shall be of fireproof construction up to and including the floor of such hall or the auditorium of such church as the case may be. (June 1, 1910, 36 Stat. 452, ch. 263, § 3.)

CROSS REFERENCE

Powers of Zoning Commission as to regulations for the erection of buildings, see §§ 5–412 to 5–428.

§ 5–404. Additions—Towers, spires, and domes—Theaters.

Additions to existing combustible or nonfireproof structures after June 1, 1910, erected, altered, or raised to exceed the height limited by sections 5–401 to 5–408 for such structures shall be of fireproof construction from the foundation up, and no part of any combustible or nonfireproof building shall be raised above such limit or height unless that part be fireproof from the foundations up.

Towers, spires, or domes, thereafter constructed more than sixty feet above the sidewalk, must be of fireproof material from the foundation up, and must be separated from the roof space, choir loft, or balcony by brick walls without openings, unless such openings are protected by fireproof or metal-covered doors on each face of the wall. Full power and authority is hereby granted to and conferred upon every person, whose application was filed in the office of the commissioners of the District of Columbia prior to the adoption of the present building regulations of said District, to construct a steel fireproof dome on any buildings owned by such person, in square three hundred and forty-five of said District, as set forth in the plans and specifications annexed to or forming a part of such applications so filed, any other provision in sections 5–401 to 5–408 contained to the contrary notwithstanding. And the inspector of buildings of said District shall make no changes in said plans and specifications unless for the structural safety of the building it is necessary to do so.

Every theater erected after June 1, 1910, and every building converted thereafter to use as a theater, and any building or the part or parts thereof under or over the theater so erected or the buildings so converted, shall be of fireproof construction from the foundation up and have fireproof walls between it and other buildings connected therewith, and any theater damaged to one-half its value shall not be rebuilt except with fireproof materials throughout and otherwise in accordance with the building regulations of the District of Columbia. (June 1, 1910, 36 Stat. 453, ch. 263, § 4.)

CROSS REFERENCE

Powers of Zoning Commission as to regulations for the erection of buildings, see §§ 5–412 to 5–428.

§ 5–405. Width of street to govern height—Business streets—Residence streets—Corner lots—Fireproof requirements—Dean Tract—Restrictions and limitations applicable to specific property.

No building shall be erected, altered, or raised in the District of Columbia in any manner so as to exceed in height above the sidewalk the width of the street, avenue, or highway in its front, increased by twenty feet; but where a building or proposed building confronts a public space or reservation formed at the intersection of two or more streets, avenues, or highways, the course of which is not interrupted by said public space or reservation, the limit of height of the building shall be determined from the width of the widest street, avenue, or highway. Where a building is to be erected or removed from all points within the boundary lines of its own lots, as recorded, by a distance at least equal to its proposed height above grade the limits of height for fireproof or noncombustible buildings in residence sections shall control, the measurements to be taken from the natural grades at the buildings as determined by the Commissioners.

No buildings shall be erected, altered, or raised in any manner as to exceed the height of one hundred and thirty feet on a business street or avenue as the same is now or hereafter may be lawfully designated, except on the north side of Pennsylvania Avenue between First and Fifteenth Streets, northwest, where an extreme height of one hundred and sixty feet will be permitted.

On a residence street, avenue, or highway no building shall be erected, altered, or raised in any manner so as to be over ninety feet in height at the highest part of the roof or parapet, nor shall the highest part of the roof or parapet exceed in height the width of the street, avenue, or highway upon which it abuts, diminished by ten feet, except on a street, avenue, or highway sixty to sixty-five feet wide, where a height of sixty feet may be allowed; and on a street, avenue, or highway sixty feet wide or less, where a height equal to the width of the street may be allowed: *Provided,* That any church, the construction of which had been undertaken but not completed prior to June 1, 1910, shall be exempted from the limitations of this paragraph, and the Commissioners of the District of Columbia shall cause to be issued a permit

for the construction of any such church to a height of ninety-five feet above the level of the adjacent curb.

The height of a building on a corner lot will be determined by the width of the wider street.

On streets less than ninety feet wide where building lines have been established and recorded in the office of the surveyor of the District, and so as to prevent the lawful erection of a building in advance of said line, the width of the street, in so far as it controls the height of buildings under sections 5–401 to 5–409, shall be held to be the distance between said building lines.

On blocks immediately adjacent to public buildings or to the side of any public building for which plans have been prepared and money appropriated at the time of the application for the permit to construct said building, the maximum height shall be regulated by a schedule adopted by the Commissioners of the District of Columbia.

Buildings erected after June 1, 1910, to front or abut on the plaza in front of the new Union Station provided for by Act of Congress approved February 28, 1903, shall be fireproof and shall not be of a greater height than eighty feet.

Spires, towers, domes, minarets, pinnacles, penthouses over elevator shafts, ventilation shafts, chimneys, smokestacks, and fire sprinkler tanks may be erected to a greater height than any limit prescribed in sections 5–401 to 5–409 when and as the same may be approved by the Commissioners of the District of Columbia: *Provided, however,* That such structures when above such limit of height shall be fireproof, and no floor or compartment thereof shall be constructed or used for human occupancy above the top story of the building upon which such structures are placed: *And provided,* That penthouses, ventilation shafts, and tanks shall be set back from the exterior walls distances equal to their respective heights above the adjacent roof: *And provided further,* That a building be permitted to be erected to a height not to exceed one hundred and thirty feet on lots 15, 804, and 805, square 322, located on the southeast corner of Twelfth and E Streets Northwest, said building to conform in height and to be used as an addition to the hotel building located to the east thereof on lot 18, square 322: *And further provided,* That the building to be erected on lots 813, 814, and 820, in square 254, located on the southeast corner of Fourteenth and F Streets Northwest, be permitted to be erected to a height not to exceed one hundred and forty feet above the F Street curb: *And provided further,* That the building to be erected on property known as the Dean Tract, comprising nine and one-fourth acres, bounded on the west by Connecticut Avenue and Columbia Road, on the south by Florida Avenue, on the east by Nineteenth Street, and on the north by a property line running east and west five hundred and sixty-four feet in length, said building to cover an area not exceeding fourteen thousand square feet and to be located on said property not less than forty feet distant from the north property line, not less than three hundred and twenty feet distant from the Connecticut Avenue property line, not less than one hundred and sixty feet distant from the Nineteenth Street property line, and not less than three hundred and sixty feet distant from the Florida Avenue line, measured at the point on the Florida Avenue boundary where the center line of Twentieth Street meets said boundary, be permitted to be erected to a height not to exceed one hundred and eighty feet above the level of the existing grade at the center of the location above described: *And provided further,* That the design of said building and the layout of said ground be subject to approval by the Fine Arts Commission and the National Capital Park and Planning Commission, both of the District of Columbia: *And further provided,* That the building to be erected by the Georgetown University for a hospital as a part of the Georgetown University Medical School on parcels 28/31, 28/36 and 28/37 located on the south side of Reservoir Road Northwest in the District of Columbia, approximately opposite Thirty-ninth Street, plans for which building are on file in the office of the Inspector of Buildings of the District of Columbia, be permitted to be erected to a height of not to exceed one hundred and ten feet above the finished grade of the land, as shown on said plans, at the middle of the front of the building. (June 1, 1910, 36 Stat. 452, ch. 263, § 5; Dec. 30, 1910, 36 Stat. 891, ch. 8; June 7, 1924, 43 Stat. 647, ch. 340; Feb. 21, 1925, 43 Stat. 961, ch. 289; May 16, 1926, 44 Stat. 298, ch. 150; Apr. 29, 1930, 46 Stat. 258, ch. 220; Mar. 24, 1945, 59 Stat. 38, ch. 37; Sept. 22, 1961, 75 Stat. 583, Pub. L. 87–281, § 1.)

AMENDMENTS

1961—Act Sept. 22, 1961, 75 Stat. 583, Pub. L. 87–281, § 1, amended the third paragraph of the section by striking out the words, "over eight stories in height or".

1945—Act Mar. 24, 1945, added the last proviso.

1930—Act Apr. 29, 1930, added the fifth and sixth provisos.

1926—Act May 16, 1926, added the fourth proviso to the last paragraph.

1925—Act Feb. 21, 1925, substituted "eight stories in height or over ninety feet in height" for "eighty feet in height to the top of the highest ceiling joists or over eighty-five feet in height," in the third paragraph.

1924—Act June 7, 1924, added the third proviso in the last paragraph.

1910—Act Dec. 30, 1910, added the proviso at the end of the third paragraph.

TRANSFER OF FUNCTIONS

"National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in view of act June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission. See section 1–1009.

CROSS REFERENCE

Powers of Zoning Commission as to regulations for the erection of buildings, see §§ 5–412 to 5–428.

§ 5–406. Limit for frame dwellings.

No wooden or frame building erected, altered, or converted after June 1, 1910, for use as a human habitation shall exceed three stories or exceed forty feet in height to the roof. (June 1, 1910, 36 Stat. 454, ch. 263, § 6.)

CROSS REFERENCE

Powers of Zoning Commission as to regulations for the erection of buildings, see §§ 5–412 to 5–428.

§ 5–407. Basis of measurement—Parapet walls.

For the purposes of sections 5–401 to 5–409 the height of buildings shall be measured from the

level of the sidewalk opposite the middle of the front of the building to the highest point of the roof. If the building has more than one front, the height shall be measured from the elevation of the sidewalk opposite the middle of the front that will permit of the greater height. No parapet walls shall extend above the limit of height except on nonfireproof dwellings where a parapet wall or balustrade of a height not exceeding four feet will be permitted above the limit of height of building permitted under sections 5–401 to 5–409. (June 1, 1910, 36 Stat. 454, ch. 263, § 7; May 20, 1912, 37 Stat. 114, ch. 124.)

AMENDMENT

1912—Act May 20, 1912, permitted parapet walls not exceeding four feet in height, to extend beyond the building height of nonfireproof dwellings.

CROSS REFERENCE

Powers of Zoning Commission as to regulations for the erection of buildings, see §§ 5–412 to 5–428.

§ 5–408. Violations declared nuisance—Injunction proceedings—Penalty for contempt.

Buildings erected, altered, or raised or converted in violation of any of the provisions of sections 5–401 to 5–409 are hereby declared to be common nuisances; and the owner or the person in charge of or maintaining any such buildings, upon conviction on information filed in the District of Columbia Court of General Sessions by the corporation counsel or any of his assistants in the name of said District, and which said court is hereby authorized to hear and determine such cases, shall be adjudged guilty of maintaining a common nuisance, and shall be punished by a fine of not less than $10 nor more than $100 per day for each and every day such nuisance shall be permitted to continue, and shall be required by said court to abate such nuisance. The corporation counsel of the District of Columbia may maintain an action in the United States District Court for the District of Columbia in the name of the District of Columbia, to abate and perpetually enjoin such nuisance. The injunction shall be granted at the commencement of the action, and no bond shall be required. Any person violating the terms of any injunction granted in such proceeding shall be punished as for contempt by a fine of not less than $100 nor more than $500, or by imprisonment in the Washington Asylum and Jail for not less than thirty days nor more than six months, or by both such fine and imprisonment, in the discretion of the court. (June 1, 1910, 36 Stat. 454, ch. 263, § 8; June 25, 1936, 49 Stat. 1921, ch. 804; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CODIFICATION

The last sentence of this section originally provided for imprisonment in the United States jail. The jail and asylum were merged into one institution, to be known as the Washington Asylum and Jail, by act of Mar. 2, 1911, 36 Stat. 1003, ch. 192.

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, see Rule 65, 28 U.S.C. App.

§ 5–409. Right to alter or repeal reserved.

Congress reserves the right to alter, amend, or repeal sections 5–401 to 5–409. (June 1, 1910, 36 Stat. 455, ch. 263, § 9.)

§ 5–410. Applications for erection or alteration of buildings fronting on certain government property to be submitted to Commission of Fine Arts.

In view of the provisions of the Constitution respecting the establishment of the seat of the national government, the duties it imposed upon Congress in connection therewith, and the solicitude shown and the efforts exerted by President Washington in the planning and development of the capital city, it is declared that such development should proceed along the lines of good order, good taste, and with due regard to the public interests involved, and a reasonable degree of control should be exercised over the architecture of private or semipublic buildings adjacent to public buildings and grounds of major importance. To this end, when application is made for permit for the erection or alteration of any building, any portion of which is to front or abut upon the grounds of the Capitol, the grounds of the White House, the portion of Pennsylvania Avenue extending from the Capitol to the White House, Lafayette Park, Rock Creek Park, the Zoological Park, the Rock Creek and Potomac Parkway, Potomac Park, The Mall Park System and public buildings adjacent thereto, or abutting upon any street bordering any of said grounds or parks, the plans therefor, so far as they relate to height and appearance, color, and texture of the materials of exterior construction, shall be submitted by the commissioners of the District of Columbia to the Commission of Fine Arts; and the said commission shall report promptly to said commissioners its recommendations, including such changes, if any, as in its judgment are necessary to prevent reasonably avoidable impairment of the public values belonging to such public building or park; and said commissioners shall take such action as shall, in their judgment, effect reasonable compliance with such recommendation: *Provided,* That if the said Commission of Fine Arts fails to report its approval or disapproval of such plans within thirty days, its approval thereof shall be assumed and a permit may be issued. (May 16, 1930, 46 Stat. 366, ch. 291, § 1; July 31, 1939, 53 Stat. 1144, ch. 400.)

AMENDMENT

1939—Act July 31, 1939, included Lafayette Park.

CROSS REFERENCES

Commission of Fine Arts, generally, see 40 U.S.C. §§ 104—106.

Issuance of building permits, see § 5–422.

Powers and duties of the Zoning Commission, see §§ 5–412 to 5–428.

NOTES TO DECISIONS

Authority of Fine Arts Commission

Northeast corner of intersection of Thirteenth and E Streets NW., in District of Columbia, which was clearly in line of a well-nigh unobstructed view from Pennsylvania Avenue as well as in close proximity thereto, was within area of authority of Commission of Fine Arts. *Stanley Company of America et al.* v. *W. N. Tobriner et al., Commissioners, etc.* (1961, 298 F. 2d 318, 111 U.S. App. D.C. 404).

Interpretation of the phrase "to front" on Pennsylvania Avenue for a period over 30 years so as to include a certain corner within authority of Commission of Fine Arts would not be disturbed by courts unless the act, reasonably construed, so required. *Id.*

Purpose of act conferring authority upon Commission of Fine Arts to pass upon a permit where erection or alteration of any building, any portion of which is to front upon a certain portion of Pennsylvania Avenue, is to enhance and preserve beauty and aesthetic value of specified parts of Nation's Capital but Commission's authority does not extend to all buildings that can be seen from the specified portion of Pennsylvania Avenue. *Id.*

§ 5–411. Plats of restricted area to be prepared.

Said commissioners of the District of Columbia, in consultation with the National Capital Planning Commission, shall prepare plats defining the areas within which application for building permits shall be submitted to the Commission of Fine Arts for its recommendations. (May 16, 1930, 46 Stat. 367, ch. 291, § 2.)

TRANSFER OF FUNCTIONS

"National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission in view of act June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission. See section 1–1009.

CROSS REFERENCE

Issuance of building permits, see § 5–422.

NOTES TO DECISIONS

Adjacent

Under statute giving Commission of Fine Arts duty of approving alteration of buildings adjacent to public buildings of major importance and when part of property fronts or abuts on portion of Pennsylvania Avenue extending from Capitol to White House, property located on Thirteenth Street Northwest was "adjacent" and did "front" on Pennsylvania Avenue within contemplation of statute. *Stanley Company of America Inc., et al.* v. *R. E. McLaughlin et al.* (D.C.D.C. 1961, 195 F. Supp. 519).

Authority of Fine Arts Commission

Northeast corner of intersection of Thirteenth and E Streets NW., in District of Columbia, which was clearly in line of a well-nigh unobstructed view from Pennsylvania Avenue as well as in close proximity thereto, was within area of authority of Commission of Fine Arts. *Stanley Company of America et al.* v. *W. N. Tobriner et al., Commissioners, etc.* (1961, 298 F. 2d 318, 111 U.S. App. D.C. 404).

Interpretation of the phrase "to front" on Pennsylvania Avenue for a period over 30 years so as to include a certain corner within authority of Commission of Fine Arts would not be disturbed by courts unless the act, reasonably construed, so required. *Id.*

Purpose of act conferring authority upon Commission of Fine Arts to pass upon a permit where erection or alteration of any building, any portion of which is to front upon a certain portion of Pennsylvania Avenue, is to enhance and preserve beauty and aesthetic value of specified parts of Nation's Capital but Commission's authority does not extend to all buildings that can be seen from the specified portion of Pennsylvania Avenue. *Id.*

§ 5–412. Zoning Commission created—Membership—Assignment of employees.

To protect the public health, secure the public safety, and to protect property in the District of Columbia there is hereby created a Zoning Commission, which shall consist of the Commissioners of the District of Columbia, Director of the National Park Service and the Architect of the Capitol, which said commission shall have all the powers and perform all the duties hereinafter specified and shall serve without additional compensation. Such employees of the government of the District of Columbia as may be necessary to carry out the purposes of this section shall be assigned to such duty by the Commissioners of the District of Columbia without additional compensation. (Mar. 1, 1920, 41 Stat. 500, ch. 92, § 1; Mar. 3, 1921, 41 Stat. 1291, ch. 124; Feb. 26, 1925, 43 Stat. 983, ch. 339; Ex. Ord. No. 6166, June 10, 1933; Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1.)

TRANSFER OF FUNCTIONS

The title "Superintendent of the Capitol Building and Grounds" was changed to "Architect of the Capitol" by act of March 3, 1921.

Act Feb. 26, 1925, abolished the Office of Public Buildings and Grounds and transferred its functions to the Office of Public Buildings and Public Parks of the National Capital.

The Office of Public Buildings and Public Parks of the National Capital was abolished and all functions and duties were transferred to National Parks, Buildings, and Reservations, by Executive Order No. 6166, June 10, 1933.

The act of March 2, 1934, changed the name "National Parks, Buildings, and Reservations" to "National Park Service."

CROSS REFERENCES

Architect of the Capitol, generally, see 40 U.S.C. § 161 et seq.

Commissioners have general authority to make building regulations, see § 1–228.

Establishment of building lines on streets; procedure; special permits of buildings extending beyond line; parkways, see §§ 5–201 to 5–205.

Powers and duties of Commissioners as to condemnation of insanitary buildings, see § 5–616 et seq.

Provisions concerning alley dwellings, see §§ 5–101 to 5–116.

Safety provisions and fire escapes, see §§ 5–301 to 5–317.

NOTES TO DECISIONS

Basis of decisions

Zoning Commissioners of District of Columbia are entitled to consider entire situation in a particular locality and need not close their eyes to such factors as adequacy and good condition of existing buildings for uses to which they are presently being put, need of community for those uses, style and attractiveness of existing buildings and the like, since all of that is relevant to preservation of values of surrounding property. *Lewis et al.* v. *District of Columbia et al.* (1951, 190 F. 2d 25, 89 U.S. App. D.C. 72).

Refusal of Zoning Commission of District of Columbia to change classification of plaintiff's property from residential to commercial based, in part, on determination of eligibility of plaintiff's properties for limited commercial use and on fact that although classification of plaintiff's properties was residential certain of them on proper permit could lawfully be used for and by, educational or philanthropic institutions, trade associations, and professional persons, was not invalid as such uses are proper matters for consideration. *Id.*

Zoning Commission of District of Columbia was entitled to take into consideration in refusing plaintiff's request that their premises be changed in classification

from residential to commercial, fact that existing residential structures on plaintiff's premises included at least one substantial apartment house, that they were well occupied, and that structures formed a useful part of housing accommodations of community. *Id.*

Constitutionality

The action of zoning authorities, as of other administrative offices, is not to be declared unconstitutional unless court is convinced that it is clearly arbitrary and unreasonable, having no substantial relation to general welfare, and if question is fairly debatable, zoning stands. *Lewis et al.* v. *District of Columbia et al.* (1951, 190 F. 2d 25, 89 U.S. App. D.C. 72).

Act not deprivation of private property in violation of fifth amendment. *Larrabee* v. *Bell* (1926, 10 F. 2d 986, 56 App. D.C. 121).

Court review not appeal on merits

A suit to declare a zoning order void is not an appeal on the merits of the issues presented to the Zoning Commission of the District of Columbia at its hearing. *Lewis et al.* v. *District of Columbia et al.* (1951, 190 F. 2d 25, 89 U.S. App. D.C. 72).

Hearings of commission

Hearings of Zoning Commission; legality; conclusiveness. *Garrity* v. *District of Columbia* (1936, 86 F. 2d 207, 66 App. D.C. 256). See, also, *Hazen* v. *Hawley* (1936, 86 F. 2d 217, 66 App. D. C. 266, certiorari denied 57 S. Ct. 315, 299 U. S. 613, 81 L. Ed. 452).

New evidence

Where determination of Zoning Commission of District of Columbia that classification of plaintiff's property should not be changed from residential to commercial was made in year 1947, if after reasonable time elapsed a new application was made to Zoning Commission based on a showing of intervening occurrences and changed conditions, Commission would not be entitled to regard its previous action and the affirmance of its action by the court as conclusive against the plaintiffs. *Lewis et al* v. *District of Columbia et al.* (1951, 190 F. 2d 25, 89 U.S. App. D.C. 72).

Reasonableness

Zoning Commission of District of Columbia did not exceed its authority when it took into consideration fact that many properties in commercial areas neighboring plaintiff's premises were not yet used for business purposes, in refusing to change classification of plaintiff's property from residential to commercial. *Lewis et al.* v. *District of Columbia et al.* (1951, 190 F. 2d 25, 89 U.S. App. D.C. 72).

Where property situated across a street from that of plaintiff's was a vacant triangle of some two and one-half acres bounded by busy streets on which a residential development could not logically be expected and it appeared that location and characteristics of the two and one-half acre segment were such that its reclassification from residential to commercial would expose neighboring residential areas to a minimum of commercial encroachment, and where plaintiff's property was not similarly situated, differentiaton by Zoning Commission of District of Columbia in refusing to change classification of plaintiff's property from residential to commercial was not discriminatory so as to render Commission's action arbitrary per se. *Id.*

In the absence of evidence of unreasonableness in zoning regulations, the court will not presume arbitrariness. *Golf, Inc.* v. *District of Columbia* (1934, 67 F. 2d 575, 62 App. D.C. 309).

There is a presumption that the regulations and acts of the Zoning Commission of the District of Columbia are reasonable. *Hagans* v. *District of Columbia* (D. C. Mun. App. 1953, 97 A. 2d 922).

Regulations not contracts

Zoning regulations are not contracts by the Government and may be modified by Congress. *Reichelderfer* v. *Quinn* (1932, 53 S. Ct. 177, 287 U. S. 315, 77 L. Ed. 331, 83 A. L. R. 1429).

Remedy after refusal of permit

Remedy for refusal to issue permit to erect gasoline station is by appeal first, not mandamus. *United States ex rel. Connor* v. *District of Columbia* (1933, 61 F. 2d 1015, 61 App. D. C. 288).

Review by court

In reviewing exercise of discretion given to Zoning Commission for District of Columbia for establishment of a comprehensive zoning plan, it is not function of the Court to substitute its judgment for that of the Commission even for reasons which appear most persuasive. *Lewis et al.* v. *District of Columbia et al.* (1951, 190 F. 2d 25, 89 U.S. App. D.C. 72).

§ 5–413. Zoning regulations to be made by Zoning Commission—Uniformity.

To promote the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia and its planning and orderly development as the national capital, the Zoning Commission created by section 5–412, is hereby empowered, in accordance with the conditions and procedures specified in sections 5–413 to 5–428, to regulate the location, height, bulk, number of stories and size of buildings and other structures, the percentage of lot which may be occupied, the sizes of yards, courts, and other open spaces, the density of population, and the uses of buildings, structures, and land for trade, industry, residence, recreation, public activities, or other purposes; and for the purpose of such regulation said commission may divide the District of Columbia into districts or zones of such number, shape, and area as said Zoning Commission may determine, and within such districts may regulate the erection, construction, reconstruction, alteration, conversion, maintenance, and uses of buildings and structures and the uses of land. The said Zoning Commission shall also have power to promulgate regulations to require, with respect to buildings erected subsequent to the promulgation of such regulations, that facilities be provided and maintained either on the same lot with any such building, or on the same lot with any such building or elsewhere, for the parking of automobiles and motor vehicles of the owners, occupants, tenants, patrons, and customers of such building, and of the business, trades, and professions conducted therein. All such regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts. (June 20, 1938, 52 Stat. 797, ch. 534, § 1; Mar. 4, 1942, 56 Stat. 122, ch. 126.)

AMENDMENT

1942—Act Mar. 4, 1942, required the provision of parking facilities by buildings erected subsequent to the promulgation of regulations.

CROSS REFERENCES

Height of buildings, see §§ 5–401 to 5–409, 5–418.

Rules and regulations in general, see §§ 1–224, 1–226, 1–228.

NOTES TO DECISIONS

Abuse of discretion

Evidence of greater income from plaintiff's property if his property were rezoned as he wished, even if such evidence were not too speculative to support a finding, did not establish abuse of zoning commission's action in declining to rezone as requested. *Capital Properties, Inc.* v. *The Zoning Commission etc.* (D.C.D.C. 1964, 229 F. Supp. 255).

Where, pursuant to provision of zoning regulation authorizing District of Columbia Board of Zoning Adjustment to permit construction of office buildings and banks in certain residential area, owners of certain parcels of land in area had applied for and were granted permission to construct office buildings in area, in ab-

sence of evidence that conversion of plaintiffs' apartment building to office building would any more adversely affect present character and future development of neighborhood than did uses permitted by board of other properties in area, and in absence of evidence that use of plaintiffs' property would render less desirable, for residential purposes, other property used as such in area, board's refusal to grant plaintiffs' appeal for exception was without reasonable foundation and constituted manifest abuse of discretion. *Hyman et al.* v. *Coe et al.* (D.C.D.C. 1956, 146 F. Supp. 24).

Arbitrary or capricious

Where zoning regulation formulated certain standards to guide the actions of the Board of Zoning Adjustment in granting exceptions to zoning regulations, court could set aside an action of the board in denying an exception to the regulations if it found that its decision was "arbitrary or capricious"; the quoted phrase having no opprobrious connotation but in technical legal significance meaning an administrative action not supported by evidence, or lacking a rational basis. *O'Boyle etc.* v. *Coe et al.* (D.C.D.C. 1957, 155 F. Supp. 581).

Burden of proof

Property owner who appeals to District of Columbia Board of Zoning Adjustment for exception under zoning law and regulations has burden of showing existence of conditions warranting granting of such an exception. *Hyman et al.* v. *Coe et al.* (D.C.D.C. 1956, 146 F. Supp. 24).

Construction of zoning regulation

Provision of zoning regulation authorizing District of Columbia Board of Zoning Adjustment to permit construction of office buildings and banks in certain residential area if certain conditions were satisfied, was not directive to board to preserve residential character of area, especially in view of fact that board had already allowed in area many changes which could not be said to have preserved residential character of area. *Hyman et al.* v. *Coe et al.* (D.C.D.C. 1956, 146 F. Supp. 24).

Decisions under former law

Legislative power conferred by the act is in the Zoning Commission and not in the Commissioners of the District. *Schwartz* v. *Brownlow* (1921, 270 F. 1019, 50 App. D. C. 279, reversed on other grounds 43 S. Ct. 263, 261 U. S. 216, 67 L. Ed. 620).

Notice of hearing by Zoning Commission not necessarily signed by individuals. *Larrabee* v. *Bell* (1926, 10 F. 2d 986, 56 App. D.C. 121).

Court can not control reasonable exercise of power by Commission. *Id.*

An athletic field acquired for use accessory to and a part of a high school could be located in a residential district, when the regulations permitted institutions of an educational character in residential districts. *Commissioners of District* v. *Shannon & Luchs Constr. Co.* (1927, 17 F. 2d 219, 57 App. D. C. 67).

Evidence

Substantial evidence failed to sustain decision of the Board of Zoning Adjustment denying an exception to zoning regulations to permit the erection of a gasoline service station on the property of plaintiff, on the ground that the decision of the board denying the exception was arbitrary and capricious in the legal sense. *O'Boyle etc.* v. *Coe et al.* (D.C.D.C. 1957, 155 F. Supp. 581).

Exception

Whether exception should be granted for particular piece of property is within jurisdiction of board of zoning adjustment, subject to certain limitations. *Capital Properties, Inc.* v. *The Zoning Commission etc.* (D.C.D.C. 1964, 229 F. Supp. 255).

An "exception" in a zoning ordinance is one allowable where facts and conditions detailed in ordinance, as those upon which an exception may be permitted, are found to exist. *Hyman et al.* v. *Coe et al.* (D.C.D.C. 1956, 146 F. Supp. 24).

Intent of zoning regulation

It was not intent of zoning regulation, relating to authorization of District of Columbia Board of Zoning Adjustment to grant request for special exceptions in certain cases upon certain conditions, that appeal for exception must be granted if certain requirements are met. *Hyman et al.* v. *Coe et. al.* (D.C.D.C. 1956, 146 F. Supp. 24).

Power of commission

District of Columbia Zoning Commission had ample statutory authority for action taken in fixing minimum width and sizes of residential lots. *Salyer* v. *McLaughlin et al.* (1957, 240 F. 2d 891, 100 U.S. App. D.C. 29).

Under statute authorizing zoning commission to divide District of Columbia into height, area, and use districts and to regulate height and area of buildings and purposes for which buildings and premises therein may be used, commission had power to create residential re stricted zoning use district. *Hagans* v. *District of Columbia* (D. C. Mun. App. 1953, 97 A. 2d 922).

Reasons for decision

Ultimate factors established by zoning regulation as prerequisites for allowance of special exception permitting construction of private school in residential district must be satisfied before Board of Zoning Adjustment may lawfully issue decision on merits of application. *Robey et al., and Woodley Hill Area Home Owners Assn. et al.* v. *Schwab, Jr., et al., and Scrivener et al., As Members of Board, etc.* (1962, 307 F. 2d 198, 113 U.S. App. D.C. 241).

Parties protesting granting of exception to permit erection of private school in area zoned as residential were entitled to be given official notice of exact plans that Board of Zoning Adjustment would ultimately consider and must be accorded full opportunity to present evidence. *Id.*

"Full reasons" within section of zoning regulation to effect that full reasons for decisions of Board of Zoning Adjustment shall be entered in minutes book means that, in order to support its conclusions, board shall make basic findings of fact regarding special exceptions and, although finding need not amount to exhaustive summation of all evidence, board must state facts which persuaded it to arrive at its decision. *Id.*

Order of Board of Zoning Adjustment containing little more than reiteration of language of regulations insofar as they set forth conditions necessary for allowance of special exception to permit erection of private school in area zoned as residential was insufficient under zoning regulations requiring that full reasons for Board's decisions be entered in minutes book and case must be remanded to Board for findings of fact. *Id.*

Review by court

Scope of judicial review of actions of zoning commission is very narrow, and court may not set aside action of commission merely because court might have decided other way had court been member of commission. *Capital Properties, Inc.* v. *The Zoning Commission etc.* (D.C.D.C. 1964, 229 F. Supp. 255).

Whether mistakes were made in locating boundaries of sub-class of commercial district and whether, on change of character of neighborhood, the south side of a street should have been transferred from C–2 to C–3–B classification were matters of discretion for zoning commission, where questions of degree were involved and determinations of commission were not arbitrary. *Id.*

Court had no right to substitute its judgment for that of District of Columbia Zoning Commission, and where nothing appeared to indicate that Commission's action in fixing minimum widths and sizes of residential lots was unreasonable or arbitrary, court could not enjoin enforcement of regulation. *Salyer* v. *McLaughlin et al.* (1957, 240 F. 2d 891, 100 U.S. App. D.C. 29).

In action against the Board of Zoning Adjustment to set aside an order denying an application for permission to establish a gasoline service station, judicial review must be had solely on the record before the board and evidence not introduced before the board but presented to the court in the first instance could not be considered *O'Boyle etc.* v. *Coe et al.* (D.C.D.C. 1957, 155 F. Supp. 581).

Review of arbitrary decisions

Where decision of District of Columbia Zoning Adjustment Board, upon review, is clearly unreasonable and arbitrary, it will be set aside; court is not bound by arbitrary or capricious action of board, or where there

has been a manifest abuse of discretion. *Hyman et al.* v. *Coe et al.* (D.C.D.C. 1956, 146 F. Supp. 24).

Decisions of District of Columbia Zoning Adjustment Board are discretionary and should not be reversed by courts unless clearly arbitrary and unreasonable. *Id.*

Ordinarily, review by court of decision of Board of Zoning Adjustment of District of Columbia would be limited to Board's record of proceedings before it, and court would not be permitted to hear evidence dehors that record. *W. S. Jarrott, et al.* v. *S. Schivener Jr., et al., Members of Board of Zoning Adjustments et ano.* (D.C.D.C. 1964, 225 F. Supp. 827).

Where integrity of decision of Board of Zoning Adjustment of District of Columbia was questioned, court could go outside Board's record and receive independent evidence. *Id.*

Generally, correctness or incorrectness of decision of Board of Zoning Adjustment of District of Columbia is not one for judicial review if there is substantial evidence to support it and parties have been accorded due process of law. *Id.*

An action to review a decision of the Board of Zoning Adjustment differs from an action to review an order of the Zoning Commission in that latter suit involves the question of whether the property has been taken without due process of law. *O'Boyle etc.* v. *Coe et al.* (D.C.D.C. 1957, 155 F. Supp. 581).

Setting aside orders

Where a lot constituted the corner of less restricted zone, lot was separated on three sides by public park and on all four sides by a park or street or both, from all present and probable future housing, and owner's proposed apartment building would accommodate many more people than single dwellings which might be built on the lot, and enforcement of zoning commission's order restricting lot to single dwellings would greatly impair value of lot and would not increase value of adjoining property, zoning order was properly set aside. *Wolpe* v. *Poretsky* (1946, 154 F. 2d 330, 79 U.S. App. D. C. 141, certiorari denied 67 S. Ct. 69, 329 U. S. 724, 91 L. Ed. 627).

Use of hearsay evidence

On an administrative hearing with respect to granting an exception to the zoning regulations to permit the erection of a gasoline station, fact that letter opposing the grant of the application from the capital planning commission was apparently based on hearsay and that neither its writer nor the member of the staff who made the investigation was present for cross-examination did not affect the admissibility of the letter, as would be case at a trial before the judicial tribunal. *O'Boyle etc.* v. *Coe et al.* (D.C.D.C. 1957, 155 F. Supp. 581).

Use of property

Residential zoning is not invalidated by the fact that if the property were available for business purposes it would bring the owner more revenue. *Leventhal* v. *District of Columbia* (1939, 100 F. 2d 94, 69 App. D. C. 229).

§ 5–414. Purposes of zoning regulations.

Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the street, to secure safety from fire, panic, and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration of population and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein. (June 20, 1938, 52 Stat. 797, ch. 534, § 2.)

NOTES TO DECISIONS

In general

Restrictions can not be imposed on the use of property if they do not bear a substantial relation to the public health, safety, morals, or general welfare. *Bugher* v. *Gottwals* (1932, 54 F. 2d 451, 60 App. D. C. 340).

Comprehensive plan

Adoption of comprehensive plan and promulgation of regulations, accompanied by city-wide map, may all be single act, providing entire city is zoned on comprehensive basis. *Capital Properties, Inc.* v. *The Zoning Commission etc.* (D.C.D.C. 1964, 229 F. Supp. 255).

Injunction

A suit to enjoin zoning commission from carrying into effect a zoning order is not an appeal on the merits of the issues presented to the commission, and hence court should not substitute its judgment for that of the commission even for reasons which appear most persuasive. *Wolpe* v. *Poretsky* (1944, 144 F. 2d 505, 79 U. S. App. D. C. 141, certiorari denied 65 S. Ct. 190, 323 U. S. 777, 89 L. Ed. 621).

Persons bound by decree

Where adjoining property owners had not been parties to suit to enjoin zoning commission from carrying into effect a zoning order and zoning commission had failed to appeal from final decree enjoining enforcement of order, property owners were entitled as a matter of right to intervene in the proceeding, since they would otherwise be bound by the decree. *Wolpe* v. *Poretsky* (1944, 144 F. 2d 505, 79 U. S. App. D. C. 141, certiorari denied 65 S. Ct. 190, 323 U. S. 777, 89 L. Ed. 621).

In suit to enjoin members of zoning commission from carrying into effect a zoning order, zoning commission, in absence of intervention by adjoining property owners, sufficiently represented their interests so that a decree setting aside zoning order would be binding upon them. *Id.*

Power of commission

District of Columbia Zoning Commission had ample statutory authority for action taken in fixing minimum width and sizes of residential lots. *Salyer* v. *McLaughlin et al.* (1957, 240 F. 2d 891, 100 U.S. App. D.C. 29).

Purpose

Purpose of zoning is to create districts, large or small, and not to zone or rezone specific property. *Capital Properties, Inc.* v. *The Zoning Commission etc.* (D.C.D.C. 1964, 229 F. Supp. 255).

The two purposes of §§ 5–412 to 5–425 are to preserve character of a neighborhood by excluding new business and structures prejudicial to the restricted purposes of the area and gradual elimination of such existing structures and trades, and the protection of an owner's property or existing business from impairment which would result from enforced accommodation to new restrictions. *Wood* v. *District of Columbia* (D. C. Mun. App. 1944, 39 A. 2d 67).

Review by court

Court had no right to substitute its judgment for that of District of Columbia Zoning Commission, and where nothing appeared to indicate that Commission's action in fixing minimum widths and sizes of residential lots was unreasonable or arbitrary, court could not enjoin enforcement of regulation. *Salyer* v. *McLaughlin et al.* (1957, 240 F. 2d 891, 100 U.S. App. D.C. 29).

§ 5–415. Existing zoning regulations continued until amended—Public hearing on amendments—Notice—Contents.

The regulations prior to June 20, 1938, adopted by the Zoning Commission under the authority of section 5–412 and in force on June 20, 1938, including the maps which at said date accompany and are a part of such regulations, shall be deemed to have been made and adopted and in force under sections 5–413 to 5–428 and shall be and continue in force and effect until and as they may be amended by the Zoning Commission as authorized by said

sections 5–413 to 5–428. The Zoning Commission may from time to time amend the regulations or any of them or the maps or any of them. Before putting into effect any amendment or amendments of said regulations, or of said map or maps, the Zoning Commission shall hold a public hearing thereon. At least thirty days' notice of the time and place of such hearings shall be published at least once in a daily newspaper or newspapers of general circulation in the District of Columbia. Such published notice shall include a general summary of the proposed amendment or amendments of the regulation or regulations and the boundaries of the territory or territories included in the amendment or amendments of the map or maps, and the time and place of the hearing. The Zoning Commission shall give such additional notice of such hearing as it shall deem feasible and practicable. At such hearing it shall afford any person present a reasonable opportunity to be heard. Such public hearing may be adjourned from time to time and if the time and place of the adjourned meeting be publicly announced when the adjournment is had, no further notice of such adjourned meeting need be published. (June 20, 1938, 52 Stat. 798, ch. 534, § 3.)

CODIFICATION

Act Mar. 1, 1920, 41 Stat. 501, ch. 92, § 7, provided that: "Maps of the districts established by said Commission and copies of all orders and regulations as to the height and area of buildings to be erected therein and as to the uses to which such buildings may be lawfully devoted, and copies of all other official orders and regulations of the Commission shall be filed in the office of the Engineer Commissioner of the District of Columbia. Copies of all orders and regulations shall be published in one or more newspapers printed in the District of Columbia for the information of all concerned. (Mar. 1, 1920, 41 Stat. 501, ch. 92, § 7.)" This section was repealed by Act of June 20, 1938, see § 5–427.

CROSS REFERENCE

Establishment of parking facilities, see § 40–806.

NOTES TO DECISIONS

Purpose of hearings

A purpose of zoning hearings is to explore subject such as limitations with respect to floor area ratio or limitation of lot occupancy in connection with proposed changes in zoning regulations. *S. J. Aquino* v. *Tobriner et al., Commissioners etc.* (1961, 298 F. 2d 674, 112 U.S. App. D.C. 13).

That substantial changes were made in zoning proposals originally put forward did not invalidate changes in regulations rezoning as "R–4", wherein only certain types of residential construction were permitted, lots formerly zoned "first commercial", where rezoning was purpose of hearing, even though original proposals did not require limitation on floor area ratio or lot occupancy and rezoning as adopted did. *Id.*

Notice of hearing

Statutory requirement that District of Columbia Commissioners give such notice, in addition to notice published in newspaper, of zoning hearing as Commission deems feasible and practical is not mandatory, but whether and what kind of added notice will be given in particular case is in discretion of Commission. *S. J. Aquino* v. *Tobriner et al., Commissioners etc.* (1961, 298 F. 2d 674, 112 U.S. App. D.C. 13).

Zoning Commission's failure to give additional notice beyond newspaper publication of notice of hearing on zoning regulation changes was not abuse of discretion in absence of showing that giving of additional notice was feasible and practical, particularly in view of fact that hearing was attended by considerable publicity. *Id.*

§ 5–416. Majority vote required to amend zoning regulations—Maps.

Any amendment of the regulations or any of them or of the maps or any of them shall require the favorable vote of not less than a full majority of the members of the commission. (June 20, 1938, 52 Stat. 798, ch. 534, § 4.)

§ 5–417. Zoning Advisory Council—Creation—Membership—Submission of amendments to zoning regulations.

A Zoning Advisory Council is hereby created to be composed of a representative designated by the National Capital Planning Commission, a representative designated by the Zoning Commission of the District of Columbia, and a representative designated by the commissioners of the District of Columbia, all of whom shall be persons experienced in zoning practice and shall serve without additional compensation. No amendment of any zoning regulation or map shall be adopted by the Zoning Commission unless and until such amendment be first submitted to said Zoning Advisory Council and the opinion or report of such council thereon shall have been received by the commission: *Provided, however*, That if said council shall fail to transmit its opinion and advice within thirty days from the date of submission to it, then in such event the Zoning Commission shall have the right to proceed to act upon the proposed amendment without further waiting for the receipt of the opinion and advice of said council. (June 20, 1938, 52 Stat. 798, ch. 534, § 5.)

TRANSFER OF FUNCTIONS

"National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in view of act June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission. See section 1–1009.

NOTES TO DECISIONS

Evidence

Substantial evidence sustained findings of zoning commission on the basis of which it permitted change of zoning classification from special purposes zone which did not include as a matter of right permission for commercial use to zone in which commercial establishments including stores were allowed as matter of right. *Association for the Preservation of the 1700 Block of N. Street* v. *C. M. Duke* (1966, 356 F. 2d 344, 123 U.S. App. D.C. 5).

Review by court

District Court and Court of Appeals may not substitute their judgment for that of zoning commission and may not set aside its action unless it was clearly arbitrary, unreasonable and had no substantial relation to general welfare. *Association for the Preservation of the 1700 Block of N. Street* v. *C. M. Duke* (1966, 356 F. 2d 344, 123 U.S. App. D.C. 5).

Court had no right to substitute its judgment for that of District of Columbia Zoning Commission, and where nothing appeared to indicate that Commission's action in fixing minimum widths and sizes of residential lots was unreasonable or arbitrary, court could not enjoin enforcement of regulation. *Salyer* v. *McLaughlin et al. O'Boyle etc.* v. *Coe et al* (D.C.D.C. 1957, 155 F. Supp. 581).

§ 5–418. Maximum height of buildings—Restrictions on location and use of chanceries and embassies—Definitions.

(a) The permissible height of buildings in any district shall not exceed the maximum height of

buildings now authorized upon any street in any part of the District of Columbia by sections 5–401 to 5–409, regulating the height of buildings in the District of Columbia.

(b) After October 13, 1964, a foreign government shall be permitted to construct, alter, repair, convert, or occupy a building anywhere in the District of Columbia, other than a district or zone restricted in accordance with this Act to use for industrial purposes, for use by such government as an embassy.

(c) After October 13, 1964, except as otherwise provided in subsection (d) of this section, no foreign government shall be permitted to construct, alter, repair, convert, or occupy a building for use as a chancery where official business of such government is to be conducted on any land, regardless of the date such land was acquired, within any district or zone restricted in accordance with this Act to use for residential purposes.

(d) After October 13, 1964, a foreign government shall be permitted to construct, alter, repair, convert, or occupy a building for use as a chancery within any district or zone restricted in accordance with this Act to use for medium-high density apartments or high density apartments if the Board of Zoning Adjustment shall determine after a public hearing that the proposed use and the building in which the use is to be conducted are compatible with the present and proposed development of the neighborhood. In determining compatibility the Board of Zoning Adjustment must find that—

(1) in districts or zones restricted in accordance with this Act to use for medium-high density apartments, that off-street parking spaces will be provided at a ratio of not less than one such space for each twelve hundred square feet of gross floor area; and

(2) in districts or zones restricted in accordance with this Act to use for high density apartments, that off-street parking spaces will be provided at a ratio of not less than one such space for each one thousand eight hundred square feet of gross floor area; and

(3) the height of the building does not exceed the maximum permitted in the district or zone in which it is located; and

(4) the architectural design and the arrangement of all structures and off-street parking spaces are in keeping with the character of the neighborhood.

(e) As used in this section, the term—

(1) 'embassy' means a building used as the official residence of the chief of a diplomatic mission of a foreign government.

(2) "chancery means a building containing business offices of the chief of a diplomatic mission of a foreign government where official business of such government is conducted, and such term shall include any chancery annex, and the business offices of attachés of a foreign government who are under the personal direction and superintendence of the chief of mission of such government. Such term shall not include business offices of nondiplomatic missions of foreign governments such as purchasing, financial, educational, or other missions of comparable nondiplomatic nature.

(3) "person" means any individual who is subject to direction by the chief of mission of a foreign government and is engaged in diplomatic activities recognized as such by the Secretary of State.

(June 20, 1938, 52 Stat. 798, ch. 534, § 6; Oct. 13, 1964, 78 Stat. 1091, Pub. L. 88–659, § 1.)

REFERENCES IN TEXT

"This Act" referred to in text is the act of June 20, 1938, set out as sections 5–413 to 5–428, as amended.

AMENDMENT

1964—Section 1 of act Oct. 13, 1964, amended the section by inserting (a) at the beginning of the section and by adding subsections (b) to (e) thereto.

§ 5–418a. Continued use and maintenance of existing chanceries—Construction, reconstruction, expansion or alterations in accordance with permits issued on or before February 18, 1964.

Nothing in the amendments made by section 5–418 shall prohibit—

(1) the future or continued use of a building as a chancery or the making of ordinary repairs to any such building for which lawful use as a chancery existed on October 13, 1964, or

(2) the construction, reconstruction, expansion, or alteration in accordance with any permit issued by the Board of Commissioners of the District of Columbia on or before February 18, 1964, of any building used or to be used as a chancery.

(Oct. 13, 1964, 78 Stat. 1092, Pub. L. 88–659, § 2.)

§ 5–418b. Applicability of subsections 5–418 (b) to (e).

The amendments made by section 5–418 shall apply only to applications for special exemptions to the zoning regulations filed with the Board of Zoning Adjustment after May 1, 1964. (Oct. 13, 1964, 78 Stat. 1092, Pub. L. 88–659, § 3.)

§ 5–418c. Transfer or use of chanceries contrary to provisions of section 5–418 (a) to (e)—Exception.

After October 13, 1964, no building or chancery being used by a foreign government in the District of Columbia shall be transferred to or used by another foreign government unless such use is in accordance with section 5–418, as amended, or unless such use was in accordance with applicable law at the time of this enactment. (Oct. 13, 1964, 78 Stat. 1092, Pub. L. 88–659, § 4.)

§ 5–418d. Administration of sections 5–418 to 5–418c—Discrimination against foreign governments prohibited.

Sections 5–418 to 5–418d shall not be administered in such a way as to discriminate against any foreign government on the basis of the race, color, or creed of any of its citizens. (Oct. 13, 1964, 78 Stat. 1092, Pub. L. 88–659, § 5.)

§ 5–419. Use of existing buildings—Restrictions—Discretion of Zoning Commission—Extension of use.

The lawful use of a building or premises as existing and lawful at the time of the original adoption of any regulation heretofore adopted under the authority of section 5–412, or, in the case of any regulation adopted after June 20, 1938, under sections 5–413 to 5–428, at the time of such adoption, may be continued

although such use does not conform with the provisions of such regulation, provided no structural alteration, except such as may be required by law or regulation, or no enlargement is made or no new building is erected. The Zoning Commission may in its discretion provide, upon such terms and conditions as may be set forth in the regulations, for the extension of any such nonconforming use throughout the building and for the substitution of nonconforming uses. (June 20, 1938, 52 Stat. 798, ch. 534, § 7.)

NOTES TO DECISIONS

Abandonment of non-conforming use

The discontinuance of a non-conforming use under §§ 5–412 to 5–425 results from concurrence of the intent to abandon and some overt act or failure to act which carries the implication of abandonment. *Wood* v. *District of Columbia* (D. C. Mun. App. 1944, 39 A. 2d 67).

Fact that building which was equipped as a stable, and which had been used for the non-conforming use of buying and selling horses, had been vacant for about six years before being taken over by defendant, did not establish abandonment of the non-conforming use, where building during extended period of vacancy was retained in same condition and was being advertised for lease as a stable. *Id.*

Burden of proof

In prosecution for engaging in business of conducting rooming house without first having obtained license and for failure to obtain certificate of occupancy, if defendant wished to rely on prior nonconforming use provision of District of Columbia zoning statute, as a defense, burden was on defendant to prove that she was operating a rooming house prior to initial restriction of such use by zoning commission. *Hagans* v. *District of Columbia* (D. C. Mun. App. 1953, 97 A. 2d 922).

Continuance of non-conforming use

1938 District of Columbia Zoning Act providing, in effect, that lawful use of premises prior to adoption of any regulations under 1920 or 1938 District of Columbia Zoning Acts may be continued, although such use does not conform with provisions of such regulations is binding on Zoning Commission and if party can show prior nonconforming use, he is entitled to a certificate of occupancy. *Hagans* v. *District of Columbia* (D. C. Mun. App. 1953, 97 A. 2d 922).

Where building which was equipped as a stable had been used for non-conforming use of buying and selling horses, a subsequent use of premises for keeping horses for rent and boarding horses for others was a continuance of the prior non-conforming use. *Wood* v. *District of Columbia* (D. C. Mun. App. 1944, 39 A. 2d 67).

Decisions under former law

This section does not give authority to nullify an agreement between property owners fixing building-line restrictions. *Castleman* v. *Avignone* (1926, 12 F. 2d 326, 56 App. D.C. 253).

Where first floor of building in residence district had been used for some years as garage, without permit and without objection, expenditure of large sums for remodeling, in reliance on a permit to fireproof and repair premises and on a certificate of occupancy for use as a garage, the District may not revoke certificate of occupancy. *District of Columbia* v. *Cahill* (1932, 54 F. 2d 453, 60 App. D.C. 342).

Enlargement of non-conforming use

Where area to be occupied by restaurants' altered structure was enclosed on two sides by roofless structure consisting of high basket-weave type wooden fence and structure for which building permit was sought would completely enclose existing structure with four sides and roof and proposed alteration would not increase business of restaurant which operated drive-in service that was a non-conforming use proposed new structure did not constitute an enlargement barred by Code prohibiting enlargement of nonconforming use. *Hot Shoppes, Inc.*, v. *Robert O. Clouser et al., Members of District of Columbia Board of Zoning Adjustment* (D.C.D.C. 1964, 231 F. Supp. 825).

Proposed change of fenced-in structure to structure completely enclosed by four sides and roof constituted structural alteration within Zoning Act providing that nonconforming use may continue provided no structural alteration except such as may be required by law or regulation is erected. *Id.*

That Board of Zoning Adjustment stated that it made an inspection of property and that equipment required by Health Department to be enclosed could have been placed somewhere inside existing structure so that construction of building to enclosed equipment was not necessary, did not raise presumption that Board had facts to support its conclusion, where Board did not set forth facts upon which it relied on reaching conclusion that structure for which building permit was sought was not required. *Id.*

Purpose of zoning regulation giving applicant for building permit chance to make rebuttal after administrative officer and any interested property owners or other interested persons have stated their side of case is to give applicant opportunity to rebut findings including those made as result of inspection of applicant's property. *Id.*

Lease restrictions

Provision in lease requiring the tenant to use the basement for commercial purposes was a reasonable one in a residential area, as the nonconforming commercial use in a residential district enhances the value of the property and the landlord had the right to insist that this use be maintained in order that it not be lost by reason of the nonuse or abandonment. *Amos v. Cummings* (D. C. Mun. App. 1949, 67 A. 2d 87).

License

Even if refusal of zoning commissioners of District of Columbia to issue license to conduct rooming house to defendant was wrongful, defendant had no right to continue business without such license. *Hagans* v. *District of Columbia* (D. C. Mun. App. 1953, 97 A. 2d 922).

Procedures before board

Inspection of property, for which building permit was sought, by Zoning Board of Adjustment would constitute a "step taken" or "act done" within zoning regulation requiring Secretary of Board of Zoning Appeals to enter in docket all continuances, postponements and other steps taken or acts done by Board or officers on behalf Board. *Hot Shoppes, Inc.*, v. *Robert O. Clouser, et al., Members of District of Columbia Board of Zoning Adjustment* (D.C.D.C. 1964, 231 F. Supp. 825).

Failure to permit applicant for building permit to question and rebut any evidence gathered at any inspection of his property by Board of Zoning Adjustment and to make inspection itself a matter of record was a denial of due process to applicant. *Id.*

§ 5–420. Board of Zoning Adjustment—Creation, membership—Tenure—Regulations to govern organization and procedure—Appeal—Procedure, powers—Majority vote necessary.

A Board of Zoning Adjustment is hereby created which shall be composed of five members appointed by the Commissioners of the District of Columbia, namely, one member of the National Capital Planning Commission or a member of the staff thereof to be designated in either case by such commission; one member of the Zoning Commission or a member of the staff thereof to be designated in either case by such commission; and three other members, each of whom shall have been a resident of the District of Columbia for at least three years immediately preceding his appointment and at least one of whom shall own his own home.

The representative of the National Capital Planning Commission may be changed from time to time by such commission in its discretion and in case of a vacancy in the position by death, resignation, or other disability, a new representative

shall be designated by the said commission and appointed by the Commissioners of the District of Columbia to fill said vacancy. The representative of the Zoning Commission may be changed from time to time by such commission in its discretion and in case of a vacancy in the position by death, resignation, or other disability, a new representative shall be designated by the said commission and appointed by the Commissioners of the District of Columbia to fill said vacancy. The terms of the three members designated by the Commissioners of the District of Columbia shall be three years each, excepting that, in the case of the initial appointments, one shall be for a term of one year and one for a term of two years. In case of any vacancy in the position of any of the three members designated by the Commissioners of the District of Columbia, the same shall be filled for the remainder of the term.

The Zoning Commission may provide and specify in its zoning regulations general rules to govern the organization and procedure of the Board of Adjustment not inconsistent with the provisions of sections 5–413 to 5–428, and the Board of Adjustment may adopt supplemental rules of procedure which shall be subject to the approval of the Zoning Commission after public hearing thereon as provided in section 5–415. The Board of Adjustment shall choose its chairman and its other officers. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

The regulations adopted by the Zoning Commission may provide that the Board of Adjustment may, in appropriate cases and subject to appropriate principles, standards, rules, conditions, and safeguards set forth in the regulations, make special exceptions to the provisions of the zoning regulations in harmony with their general purpose and intent. The commission may also authorize the Board of Adjustment to interpret the zoning maps and pass upon disputed questions of lot lines or district boundary lines or similar questions as they arise in the administration of the regulations.

The Board of Adjustment shall not have the power to amend any regulation or map.

Appeals to the Board of Adjustment may be taken by any person aggrieved, or organization authorized to represent such person, or by any officer or department of the government of the District of Columbia or the federal government affected, by any decision of the inspector of buildings granting or refusing a building permit or granting or withholding a certificate of occupancy, or any other administrative decision based in whole or part upon any zoning regulation or map adopted under sections 5–413 to 5–428. The Commissioners of the District of Columbia may require and fix the fee to be charged for an appeal, which fee shall be paid, as directed by said commissioners, with the filing of the appeal: *Provided,* That no citizens' association, or association created for civic purposes and not for profit shall be required to pay said fee. There shall be a public hearing on appeal.

Upon appeals the Board of Adjustment shall have the following powers:

(1) To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal made by the inspector of buildings or the Commissioners of the District of Columbia or any other administrative officer or body in the carrying out or enforcement of any regulation adopted pursuant to sections 5–413 to 5–428.

(2) To hear and decide, in accordance with the provisions of the regulations adopted by the Zoning Commission, requests for special exceptions or map interpretations or for decisions upon other special questions upon which such board is required or authorized by the regulations to pass.

(3) Where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under sections 5–413 to 5–428 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, to authorize, upon an appeal relating to such property, a variance from such strict application so as to relieve such difficulties or hardship, provided such relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map.

(4) In exercising the above-mentioned powers the Board of Adjustment may, in conformity with the provisions of sections 5–413 to 5–428 reverse or affirm, wholly or partly, or may modify the order, requirement, decision, determination, or refusal appealed from or may make such order as may be necessary to carry out its decision or authorization, and to that end shall have all the powers of the officer or body from whom the appeal is taken.

The concurring vote of not less than a full majority of the members of the board shall be necessary for any decision or order.

Nothing herein contained shall prohibit the Zoning Commission from providing by regulation for appeals to it from any action of the Board of Zoning Adjustment. (June 20, 1938, 52 Stat. 799, ch. 534, § 8.)

TRANSFER OF FUNCTIONS

"National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in view of act June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission. See section 1–1009.

NOTES TO DECISIONS

Abuse of discretion

Evidence of greater income from plaintiff's property if his property were rezoned as he wished, even if such evidence were not too speculative to support a finding, did not establish abuse of zoning commission's action in

declining to rezone as requested. *Capital Properties, Inc.* v. *The Zoning Commission etc.* (D.C.D.C. 1964, 229 F. Supp. 255).

Where, pursuant to provision of zoning regulation authorizing District of Columbia Board of Zoning Adjustment to permit construction of office buildings and banks in certain residential area, owners of certain parcels of land in area had applied for and were granted permission to construct office buildings in area, in absence of evidence that conversion of plaintiffs' apartment building to office building would any more adversely affect present character and future development of neighborhood than did uses permitted by board of other properties in area, and in absence of evidence that use of plaintiffs' property would render less desirable, for residential purposes, other property used as such in area, board's refusal to grant plaintiffs' appeal for exception was without reasonable foundation and constituted manifest abuse of discretion. *Hyman et al.* v. *Coe et al.* (D.C.D.C. 1956, 146 F. Supp. 24).

Arbitrary or capricious

Board of zoning adjustment opinion that relief from zoning ordinance to permit use of house as professional office could not be granted without substantial detriment to public good and without substantially impairing intent, purpose, and integrity of zoning plan relating to neighborhood which largely conformed with its residential zoning was reasonable, and court erred in substituting its own contrary opinion. *R. O. Clouser et al., as Members of Board of Zoning etc.* v. *King David* (1962, 309 F. 2d 233, 114 U.S. App. D.C. 12).

Where zoning regulation formulated certain standards to guide the actions of the Board of Zoning Adjustment in granting exceptions to zoning regulations, court could set aside an action of the board in denying an exception to the regulations if it found that its decision was "arbitrary or capricious"; the quoted phrase having no opprobrious connotation but in technical legal significance meaning an administrative action not supported by evidence, or lacking a rational basis. *O'Boyle etc.* v. *Coe et al.* (D.C.D.C. 1957, 155 F. Supp. 581).

Burden of proof

Property owner who appeals to District of Columbia Board of Zoning Adjustment for exception under zoning law and regulations has burden of showing existence of conditions warranting granting of such an exception. *Hyman et al.* v. *Coe et al.* (D.C.D.C. 1956, 146 F. Supp. 24).

Construction of zoning regulation

Provision of zoning regulation authorizing District of Columbia Board of Zoning Adjustment to permit construction of office buildings and banks in certain residential area if certain conditions were satisfied, was not directive to board to preserve residential character of area, especially in view of fact that board had already allowed in area many changes which could not be said to have preserved residential character of area. *Hyman et al.* v. *Coe et al* (D.C.D.C. 1956, 146 F. Supp. 24).

Evidence

Substantial evidence failed to sustain decision of the Board of Zoning Adjustment denying an exception to zoning regulations to permit the erection of a gasoline service station on the property of plaintiff, on the ground that the decision of the Board denying the exception was arbitrary and capricious in the legal sense. *O'Boyle etc.* v. *Coe et al.* (D.C.D.C. 1957, 155 F. Supp. 581).

Exception

An "exception" in a zoning ordinance is one allowable where facts and conditions detailed in ordinance, as those upon which an exception may be permitted, are found to exist. *Hyman et al.* v. *Coe et al.* (D.C.D.C. 1956, 146 F. Supp. 24).

Function of board

In performance of adjudicatory function by Board of Zoning Adjustment of District of Columbia, parties whose rights are involved are entitled to same fairness, impartiality and independence of judgment as are expected in court of law. *W. S. Jarrott, et al.* v. *S. Scrivener Jr., et al., Members of Board of Zoning Adjustments et ano.* (D.C.D.C. 1964, 225 F. Supp. 827).

Upon appeal for exception, District of Columbia Board of Zoning Adjustment is to decide whether exception sought meets requirements of regulation; though this decision must result from exercise of sound discretion, that is, legal discretion, and must not be arbitrary, capricious or unreasonable. *Hyman et al.* v. *Coe et al.* (D.C.D.C. 1956, 146 F. Supp. 24).

Hardship

If there were not room inside restaurant to store commissary carts, restaurant owner which was directed by Health Department to store its commissary carts under cover would be entitled to building permit to construct structure to store carts, but, if there were room, application for building permit could be considered as request for variance requiring board to determine whether applicant had established hardship which would support issuance of variance. *Hot Shoppes, Inc.*, v. *R. O. Clouser, et al., Members of District of Columbia Board of Zoning Adjustments* (D.C.D.C. 1964, 231 F. Supp. 825).

Hardship not resulting from location, situation, or condition of property, but solely from owner's appropriation of it for commercial purposes without first having obtained necessary zoning change was not such "hardship" as to justify variance. *R. O. Clouser et al., as Member of Board of Zoning etc.* v. *King David* (1962, 309 F. 2d 233, 114 U.S. App. D.C. 12).

Intent of zoning regulation

It was not intent of zoning regulation, relating to authorization of District of Columbia Board of Zoning Adjustment to grant request for special exceptions in certain cases upon certain conditions, that appeal for exception must be granted if certain requirements are met. *Hyman et al.* v. *Coe et al.* (D.C.D.C. 1956, 146 F. Supp. 24).

Parking lot use

Zoning regulation empowering Board of Adjustment to permit, in residential district, "use of unimproved lot for temporary parking of motor vehicles" meant use for temporary parking and not temporary use for parking. *Selden et al.* v. *Capitol Hill Southeast Citizens Association et al.* (1954, 219 F. 2d 33, 95 U.S. App. D.C. 62).

Whether use of unimproved lot in residential district as parking lot would interfere "unreasonably" within meaning of zoning regulations, with use of neighborhood properties under zone plan, could only be determined in light of all circumstances, and these included critical parking problem. *Id.*

Reasons for decision

Ultimate factors established by zoning regulation as prerequisites for allowance of special exception permitting construction of private school in residential district must be satisfied before Board of Zoning Adjustment may lawfully issue decision on merits of application. *Robey et al. and Woodley Hill Area Home Owners Ass'n. et al.* v. *Schwab, Jr., et al., and Scrivener et al., as Members of Board etc.* (1962, 307 F. 2d 198, 113 U.S. App. D.C. 241).

Order of Board of Zoning Adjustment containing little more than reiteration of language of regulations insofar as they set forth conditions necessary for allowance of special exception to permit erection of private school in area zoned as residential was insufficient under zoning regulations requiring that full reasons for Board's decisions be entered in minutes book and case must be remanded to Board for findings of fact. *Id.*

"Full reasons" within section of zoning regulation to effect that full reasons for decisions of Board of Zoning Adjustment shall be entered in minutes book means that, in order to support its conclusions, board shall make basic findings of fact regarding special exceptions and, although findings need not amount to exhaustive summation of all evidence, board must state facts which persuaded it to arrive at its decision. *Id.*

Parties protesting granting of exception to permit erection of private school in area zoned as residential were entitled to be given official notice of exact plans that Board of Zoning Adjustment would ultimately consider and must be accorded full opportunity to present evidence. *Id.*

Review by court

Scope of judicial review of actions of zoning commission is very narrow, and court may not set aside

action of commission merely because court might have decided other way had court been member of commission. *Capital Properties, Inc.* v. *The Zoning Commission etc.* (D.C.D.C. 1964, 229 F. Supp. 255).

Whether mistakes were made in locating boundaries of sub-class of commercial district and whether, on change of character of neighborhood, the south side of a street should have been transferred from C–2 to C–3–B classification were matters of discretion for zoning commission, where questions of degree were involved and determinations of commission were not arbitrary. *Id.*

In action against the Board of Zoning Adjustment to set aside an order denying an application for permission to establish a gasoline service station, judicial review must be had solely on the record before the Board and evidence not introduced before the Board but presented to the court in the first instance could not be considered. *O'Boyle etc.* v. *Coe et al.* (D.C.D.C. 1957, 155 F. Supp. 581).

Review of arbitrary decisions

Where decision of District of Columbia Zoning Adjustment Board, upon review, is clearly unreasonable and arbitrary, it will be set aside; court is not bound by arbitrary or capricious action of board, or where there has been a manifest abuse of discretion. *Hyman et al.* v. *Coe et al.* (D.C.D.C. 1956, 146 F. Supp. 24).

Decisions of District of Columbia Zoning Adjustment Board are discretionary and should not be reversed by courts unless clearly arbitrary and unreasonable. *Id.*

Review of decision of board of zoning adjustment

Generally, remand to Board of Zoning Appeal for further proceedings is appropriate, but where abuse of discretion is manifest and it is clear that applicant has carried its burden of proof, then remand to Board with instructions to grant applicant's request is proper. *Hot Shoppes, Inc.*, v. *Robert O. Clouser, et al., Members of District of Columbia Board of Zoning Adjustment* (D.C.D.C. 1964, 231 F. Supp. 825).

Order of Zoning Board of Adjustment denying building permit would be vacated and case remanded to Board for further proceedings, where Board and, at least initially, applicant proceeded as if applicant were seeking only variance and applicant should have invoked not hardship but clear statutory right to erect proposed structure under Code. *Id.*

Greater discretion is vested in Board of Zoning Adjustment in granting or denying variance than there is in determining whether error had been committeed by any official such as inspector of buildings, particularly where alleged error was of statutory interpretation. *Id.*

An action to review a decision of the Board of Zoning Adjustment differs from an action to review an order of the Zoning Commission in that latter suit involves the question of whether the property has been taken without due process of law. *O'Boyle etc.* v. *Coe et al.* (D.C.D.C. 1957, 155 F. Supp. 581).

Review of unfair hearing

That three Board of Zoning Adjustment members of District of Columbia, two of whom were subordinate government employees, were secretly informed that highly placed persons in government wanted Board to grant foreign government's application for exception to erect embassy building in residential zone denied fair hearing, rendered favorable decision void and required rehearing by new board created for that purpose. *W. S. Jarrott, et al.*, v. *S. Scrivener Jr., et al., Members of Board of Zoning Adjustment et ano.* (D.C.D.C. 1964, 225 F. Supp. 827).

Review of zoning order

In proceeding wherein an order of Board of Zoning Adjustment was reviewed, evidence sustained board's findings that critical parking problem existed in neighborhood concerned and that use of unimproved lot in residence district for trial period of two years as parking lot would not interfere unreasonably with use of neighboring property under zone plan. *Selden et al.* v. *Capitol Hill Southeast Citizens Association et al.* (1954, 219 F. 2d 33, 95 U.S. App. D.C. 62).

Statutory right

Owner seeking building permit to erect utility building adjacent to restaurant as required by Health Department should not have invoked hardship but clear statutory right to erect proposed structure and owner should have invoked statutory right to appeal from refusal of building inspector to issue building permit. *Hot Shoppes, Inc.* v. *Robert O. Clouser, et al., Members of District of Columbia Board of Zoning Adjustment* (D.C.D.C. 1964, 231 F. Supp. 825).

Restaurant had statutory right to continue utilizing same floor and land area utilized at time use became nonconforming. *Id.*

Any complaints on part of neighbors to noise or other disturbances were wholly immaterial to initial issue before Board on application for permit filed by restaurant to build structure on ground that it was required by Health Department. *Id.*

Use of hearsay evidence

On an administrative hearing with respect to granting an exception to the zoning regulations to permit the erection of a gasoline station, fact that letter opposing the grant of the application from the capital planning commission was apparently based on hearsay and that neither its writer nor the member of the staff who made the investigation was present for cross-examination did not affect the admissibility of the letter, as would be case at a trial before the judicial tribunal. *O'Boyle etc.* v. *Coe et al.* (D.C.D.C. 1957, 155 F. Supp. 581).

§ 5–421. Maps and regulations of Zoning Commission—To be filed—Published.

A copy of any map established by said Zoning Commission and of its zoning regulations shall be filed in the office of the engineer commissioner of the District of Columbia. A copy of any regulation or any amendment adopted after June 20, 1938, shall be published once in one or more daily newspapers printed in the District of Columbia for the information of all concerned. (June 20, 1938, 52 Stat. 800, ch. 534, § 9.)

§ 5–422. Building permits—Construction without obtaining—Certificates of occupancy—Use without obtaining—Construction in violation of regulations—Enforcement—Actions, parties—Penalty.

It shall be unlawful to erect, construct, reconstruct, convert, or alter any building or structure or part thereof within the District of Columbia without obtaining a building permit from the inspector of buildings, and said inspector shall not issue any permit for the erection, construction, reconstruction, conversion, or alteration of any building or structure, or any part thereof, unless the plans of and for the proposed erection, construction, reconstruction, conversion, or alteration fully conform to the provisions of sections 5–413 to 5–428 and of the regulations adopted under said sections. In the event that said regulations provide for the issuance of certificates of occupancy or other form of permit to use, it shall be unlawful to use any building, structure, or land until such certificate or permit be first obtained. It shall be unlawful to erect, construct, reconstruct, alter, convert, or maintain or to use any building, structure, or part thereof or any land within the District of Columbia in violation of the provisions of said sections or of any of the provisions of the regulations adopted under said sections. The owner or person in charge of or maintaining any such building or land or any other person who erects, constructs, reconstructs, alters, converts, maintains, or uses any building or structure or part thereof or land in violation of said sections or of any regulation adopted under said sections, shall upon conviction for such violation on information filed in the District

of Columbia Court of General Sessions by the corporation counsel or any of his assistants in the name of said District and which court is hereby authorized to hear and determine such cases be punished by a fine of not more than $100 per day for each and every day such violation shall continue. The corporation counsel of the District of Columbia or any neighboring property-owner or occupant who would be specially damaged by any such violation may, in addition to all other remedies provided by law, institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate such violation or to prevent the occupancy of such building, structure, or land. (June 20, 1938, 52 Stat. 800, ch. 534, § 10; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

TRANSFER OF FUNCTIONS

See note under section 5–314 concerning the Department of Licenses and Inspections

CROSS REFERENCES

Certain applications for building permits required to be submitted to Commissioners and Commission of Fine Arts in certain cases, see §§ 5–410, 5–411.

Fees for permits, see §§ 5–429, 5–430.

Powers of assistant inspector of buildings, see § 1–728.

NOTES TO DECISIONS

Bar to prosecution

An acquittal on charge of using a single family dwelling without an occupancy permit between certain dates would not bar prosecution for use without a permit between subsequent dates, each information containing a continuando clause. *Savage* v. *District of Columbia* (D. C. Mun. App. 1947, 54 A. 2d 562, affirmed 169 F. 2d 889, 83 U. S. App. D. C. 401, certiorari denied 69 S. Ct. 654, 336 U. S 924, 93 L. Ed. 1086, rehearing denied 69 S. Ct. 810, 336 U. S. 947, 93 L. Ed. 1103).

An applicant who during a two year period failed to correct conditions which caused rejection of application for occupancy permit could not urge as bar to prosecution for operating without a permit that he was never given an opportunity to correct the conditions. *Id.*

Decisions under former law

To secure consent of owners for the building of a garage in a certain square, owners in another square separated by a street will not be considered although within the designated distance. *Hazard* v. *Blessing* (1925, 2 F. 2d 916, 55 App. D. C. 114).

Commissioners having issued permit to erect garage without the necessary consent of owners may be compelled to revoke it. *Id.*

When owner of garage in residential district made large expenditures to improve it after relying on the building inspector's permit, the District is estopped from revoking occupancy certificates. *District of Columbia* v. *Cahill* (1932, 54 F. 2d 453, 60 App. D. C. 342).

When the corporation converted the land into a public golf course without first obtaining a certificate of occupancy, it violated the provisions of the Zoning Act. *Golf, Inc.* v. *District of Columbia* (1934, 67 F. 2d 575, 62 App. D. C. 309).

Injunction

A suit to enjoin zoning commission from carrying into effect a zoning order is not an appeal on the merits of the issues presented to the commission, and hence court should not substitute its judgment for that of the commission even for reasons which appear most persuasive. *Wolpe* v. *Poretsky* (1944, 144 F. 2d 505, 79 U. S. App. D. C. 141, certiorari denied 65 S. Ct. 190, 323 U. S. 777, 89 L. Ed. 621).

Intervenors, rights of

Adjoining property owners intervening subsequent to entry of final decree in suit to enjoin zoning commission from carrying into effect a zoning order were possessed of all rights of a party at that stage of the proceedings, including right to appeal where time for appeal had not expired. *Wolpe* v. *Poretsky* (1944, 144 F. 2d 505, 79 U. S. App. D. C. 141, certiorari denied 65 S. Ct. 190, 323 U. S. 777, 89 L. Ed. 621).

The failure of zoning commission to take appeal from order enjoining commission from enforcing a zoning order constituted "inadequate representation" of interests of adjoining property owners who were not parties to the proceeding within Rule 24(a), Appendix to Title 28, U.S.C., providing for intervention in case of inadequate representation of an applicant's interests. *Id.*

Adjoining property owners have such a vital interest in result of suit to vacate a zoning order that they should be granted permission to intervene as a matter of course unless compelling reasons against such intervention are shown. *Id.*

An application by property owners to intervene in suit to enjoin zoning commission from carrying into effect a zoning order was timely even though final decree had been entered, where, because of failure of commission to appeal, intervention was necessary to protect property owners' right to appeal. *Id.*

Jurisdiction of Court of General Sessions

Decision of Federal District Court on issues involved in pending proceeding by plaintiffs for declaratory judgment to review determination of District of Columbia board of zoning adjustment that certificate of occupancy should not issue for premises leased to federal government could not affect function of District of Columbia Court of General Sessions in performing its duty of determining whether same plaintiffs had violated District of Columbia building restriction statute by acting before their rights were fully adjudicated, and plaintiffs were thus not entitled to injunction restraining further prosecution under statute. *T. D. McCloskey* v. *1717 Mass. Ave. NW. Inc., et ano.* (D.C.D.C. 1965, 238 F. Supp. 497).

Jury trial

Where accused was charged under three separate informations which were consolidated for trial, with using premises without a certificate of occupancy, operating the premises as a rooming house between certain dates without a license, and using the same premises as a rooming house without a license between certain other dates, jury trial was properly denied. *Savage* v. *District of Columbia* (D. C. Mun. App. 1947, 54 A. 2d 562, affirmed, 169 F. 2d 889, 83 U. S. App. D. C. 401, certiorari denied 69 S. Ct. 654, 336 U. S. 924, 93 L. Ed. 1086, rehearing denied 69 S. Ct. 810, 336 U. S. 947, 93 L. Ed. 1103).

Notice

An applicant for an occupancy permit under this chapter is entitled to notice of action thereon with reasons therefor, but having been given notice of rejection with reasons, applicant had duty to cease the use applied for. *Savage* v. *District of Columbia* (D. C. Mun. App. 1947, 54 A. 2d 562, affirmed 169 F. 2d 889, 83 U.S. App. D.C. 401, certiorari denied 69 S. Ct. 654, 336 U. S. 924, 93 L. Ed. 1086, rehearing denied 69 S. Ct. 810, 336 U. S. 947, 93 L. Ed. 1103).

Persons bound by decree

Where adjoining property owners had not been parties to suit to enjoin zoning commission from carrying into effect a zoning order and zoning commission had failed to appeal from final decree enjoining enforcement of order, property owners were entitled as a matter of right to intervene in the proceeding, since they would otherwise be bound by the decree. *Wolpe* v. *Poretsky* (1944, 144 F.

2d 505, 79 U. S. App. D. C. 141, certiorari denied 65 S. Ct. 190, 323 U. S. 777, 89 L. Ed. 621).

In suit to enjoin members of zoning commission from carrying into effect a zoning order, zoning commission, in absence of intervention by adjoining property owners, sufficiently represented their interests so that a decree setting aside zoning order would be binding upon them. *Id.*

Setting aside orders

Where a lot constituted the corner of less restricted zone, lot was separated on three sides by public park and on all four sides by a park or street or both, from all present and probable future housing, and owner's proposed apartment building would accommodate many more people than single dwellings which might be built on the lot, and enforcement of zoning commission's order restricting lot to single dwellings would greatly impair value of lot and would not increase value of adjoining property, zoning order was properly set aside. *Wolpe* v. *Poretsky* (1946, 154 F. 2d 330, 79 U. S. App. D. C. 141).

§ 5–423. Enforcement of regulations—Power to adopt municipal regulations.

The commissioners of the District of Columbia shall enforce the regulations adopted under the authority hereof. Nothing herein contained shall be construed to limit the authority of the commissioners of the District of Columbia to make municipal regulations which are not inconsistent with the provisions of sections 5–413 to 5–428 and the regulations adopted hereunder. (June 20, 1938, 52 Stat. 801, ch. 534, § 11.)

CROSS REFERENCE

Commissioners authorized to make building regulations, see § 1–228.

NOTES TO DECISIONS

Conflict of powers

The commissioners may not adopt a regulation which attempts to regulate the use to which a building could be put, i.e., a drug store, since this is the chief jurisdiction conferred upon the Zoning Commission. *Schwartz* v. *Brownlow* (1959, 270 F. 1019, 50 App. D.C. 279 reversed on other grounds 43 S. Ct. 263, 261 U.S. 216, 67 L. Ed. 620).

§ 5–424. Effect of regulations on future construction.

Wherever the regulations made under the authority of sections 5–413 to 5–428 require a greater width or size of yards, courts, or other open spaces, or require a lower height of buildings or smaller number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in or under any other statute or municipal regulations, the regulations made under authority of said sections shall govern. Wherever the provisions of any other statute or municipal regulations require a greater width or size of yards, courts, or other open spaces or require a lower height of buildings or smaller number of stories or require a greater percentage of lot to be left unoccupied or impose other higher standards than are required by the regulations made under authority of said sections, the provisions of such other statute or municipal regulation shall govern. (June 20, 1938, 52 Stat. 801, ch. 534, § 12.)

§ 5–425. Terms defined.

The word "amend," "amendment," "amendments," or "amended," when used in sections 5–413 to 5–428 in relation to the zoning regulations, shall be deemed to include any modification of the text or phraseology of the regulations or of any provision of the regulations or any regulations or any repeal or elimination of any regulation or regulations or part thereof or any addition to the regulations or any new regulation or any change of or in the wording or content of the regulations. The word "amend," "amendment," "amendments," or "amended," when used in said sections in relation to the zoning maps or any map, shall be deemed to include any change in the number, shape, boundary, or area of any district or districts, any repeal or abolition of any such map or any part thereof, any addition to any such map, any new map or maps, or any other change in the maps or any map. The words "administrative decision," "administrative officer," "administrative officer or body," when used in section 5–420 shall not be deemed to include the Zoning Commission. (June 20, 1938, 52 Stat. 801, ch. 534, § 13.)

§ 5–426. Appropriations authorized for Zoning Commission—Authority to employ—Compensation of Board of Zoning Adjustment.

Appropriations are hereby authorized to carry out the provisions of sections 5–413 to 5–428 for the fiscal year ending June 30, 1938, and thereafter the commissioners of the District of Columbia are authorized and directed to include in their annual estimates such amounts as may be required for salaries and expenses incident to such purposes. The commissioners are authorized to employ such personal services as may be necessary to carry out the provisions of sections 5–413 to 5–428, and the salaries of such employees, other than members of the Board of Zoning Adjustment, are to be fixed in accordance with the provisions of section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]. The commissioners shall fix the compensation of the members of the Board of Zoning Adjustment, without reference to said provisions of title 5, U.S. Code: *Provided, however,* That the compensation of any member shall not exceed $1,000 per annum: *And provided further,* That no compensation for service as a member of said board shall be provided for any member who holds a salaried public office or position in the District of Columbia or the federal government. (June 20, 1938, 52 Stat. 802, ch. 534, § 14; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a).)

CODIFICATION

The references in this section to "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code, relating to the classification of government employees and related matters," and to "said provisions of title 5, U.S. Code", were substituted for "the Classification Act of 1949, as amended" and "the provisions of the Classification Act", respectively, on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended, was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 59–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

AMENDMENT

1949—Act Oct. 28, 1949, § 1106(a), which was a part of the Classification Act of 1949, and which has since been repealed, substituted "Classification Act of 1949" for "Classification Act of 1923". See codification note above.

§ 5–427. Laws repealed.

The act of March 1, 1920 (41 Stat. 500, ch. 92), excepting the provisions of section 5–412 creating the Zoning Commission, providing for its membership and service without additional compensation, are hereby repealed. All laws or parts of other laws in conflict with the provisions of sections 5–413 to 5–428 are hereby repealed. (June 20, 1938, 52 Stat. 802, ch. 534, § 15.)

§ 5–428. Federal public buildings excepted.

The provisions of sections 5–413 to 5–428 shall not apply to federal public buildings: *Provided, however,* That, in order to insure the orderly development of the national capital, the location, height, bulk, number of stories, and size of federal public buildings in the District of Columbia and the provision for open space in and around the same will be subject to the approval of the National Capital Planning Commission. (June 20, 1938, 52 Stat. 802, ch. 534, § 16.)

TRANSFER OF FUNCTIONS

"National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in view of act June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission. See section 1–1009.

SEPARABILITY OF PROVISIONS

Act June 20, 1938, § 17, provided that: "If any provision contained in this Act [§§ 5–413 to 5–428] be declared invalid, such invalidity shall not be deemed to affect or impair the validity of the remainder or of any other part of this Act."

§ 5–429. Commissioners of the District of Columbia to prescribe fees for permits, certificates, and transcripts by inspector of buildings—Schedule of fees to be displayed.

The commissioners of the District of Columbia are hereby authorized and directed, from time to time, to prescribe a schedule of fees to be paid for permits, certificates, and transcripts of records issued by the inspector of buildings of the District of Columbia, for the erection, alteration, repair, or removal of buildings and their appurtenances, and for the location of certain establishments for which permits may be required under the building regulations of the District of Columbia, said fees to cover the cost and expense of the issuance of said permits and certificates and of the inspection of the work done under said permits; said schedule shall be printed and conspicuously displayed in the office of said inspector of buildings; said fees shall be paid to the collector of taxes of the District of Columbia and shall be deposited by him in the treasury of the United States to the credit of the revenues of the District of Columbia. (Mar. 3, 1909, 35 Stat. 689, ch. 250.)

CROSS REFERENCES

Disposition of fees, see § 47–126.
Issuance of building permits and certificates of occupancy, see § 5–422.

§ 5–430. Building permits—May be canceled and tax refunded.

In any case where building permits have been issued and no work has been begun thereunder, the person who has paid the fee for said permit may return said permit for cancellation, and upon the cancellation thereof there shall be refunded to him, in the manner prescribed by law for the refunding of erroneously paid taxes, the amount of said fee less the actual expense incident to the issuance of said permit, as determined by the inspector of buildings: *Provided,* That application for such refund shall be made within six months after the issuance of said permit. (Mar. 2, 1911, 36 Stat. 967, ch. 192.)

CROSS REFERENCE

Tax refunds, generally, see §§ 47–1016, 47–1017.

Chapter 5.—UNSAFE STRUCTURES

Sec.

5–501. Structure reported unsafe, to be examined by commissioners—If unsafe, notice to be given to make same secure—If safety requires, commissioners may make secure.
5–502. If dangers not remedied, premises to be surveyed by three disinterested persons—Report.
5–503. Commissioners to make structure safe if responsible person does not—Owners or other interested persons not to interfere with commissioners.
5–504. Nuisances to be abated—Notice given—Cost a lien on property—Penalty—Prosecution.
5–505. Costs and expenses of removing nuisances to be determined by commissioners and assessed against the property—Penalty for violation of Sections 5–501 to 5–503.
5–506. Payment and collection of costs and expenses—Interest—Sale of property for nonpayment after two years.
5–507. Notice—How served—Publication of when permissible.
5–508. Structures found to be unsafe—Notice to owners and occupants—Use of unsafe structures may be prohibited—Penalty for violation of Commissioners order.

§ 5–501. Structure reported unsafe, to be examined by Commissioners—If unsafe, notice to be given to make same secure—If safety requires, Commissioners may make secure.

If in the District of Columbia any building or part of a building, staging, or other structure, or anything attached to or connected with any building or other structure or excavation, shall, from any cause, be reported unsafe, the Commissioners shall examine such structure or excavation, and if, in their opinion, the same be unsafe, they shall immediately notify the owner, agent, or other persons having an interest in said structure or excavation, to cause the same to be made safe and secure, or that the same be removed, as may be necessary. The person or persons so notified shall be allowed until 12 o'clock noon of the day following the service of such notice in which to commence the securing or removal of the same; and he or they shall employ sufficient labor to remove or secure the said building or excavation as expeditiously as can be done; *Provided, however,* That in a case where the public safety requires immediate action the Commissioners may enter upon the premises, with such workmen and assistants as may be necessary, and cause the said unsafe structure or excavation to be shored up, taken down, or otherwise secured without delay, and a proper fence or boarding to be put up for the protection of passersby.

The term "Commissioners" means the Commissioners of the District of Columbia sitting as a board

or the agent or agents designated by them to perform any function vested in said Commissioners by this chapter. (Mar. 1, 1899, 30 Stat. 923, ch. 323, § 1; Apr. 5, 1935, 49 Stat. 105, ch. 41; Aug. 22, 1964, 78 Stat. 599, Pub. L. 88–486, § 1, 2.)

AMENDMENTS

1964—Section 1 of act Aug. 22, 1964, amended the section as follows: Substituted "Commissioners" for "inspector of buildings"; changed "his opinion" to "their opinion" and changed "he shall" to "they shall."

Section 2 of the same act added the last sentence.

1935—Act Apr. 5, 1935, added the provisions relative to excavations.

TRANSFER OF FUNCTIONS

See note under section 5–314 concerning the Department of Licenses and Inspections.

CROSS REFERENCE

Building regulations, see §§ 1–226, 1–228, 5–413.

NOTES TO DECISIONS

Abandonment of property

In suit by plaintiff, who was president and principal stockholder of corporate owner of building found to be in dangerous condition and ordered repaired or removed, for conversion of refrigerators belonging to plaintiff and found in building by defendants, who were employed by District of Columbia to raze the building, and who sent refrigerators to dump after plaintiff refused to get them from defendants' yard, finding that plaintiff had abandoned the refrigerators was sustained by the evidence. *Block* v. *Fisher* (D. C. Mun. App. 1954, 103 A. 2d 575).

Party wall

District of Columbia Code provision authorizing District to make structures safe at owners' expense applied to party wall which had been in unsafe condition before its condition was revealed by one owner's razing. *District of Columbia and First Baptist Church of the City of Washington, D.C.* v. *J. B. Wentworth* (1961, 288 F. 2d 421, 110 U.S. App. D.C. 19).

Priority of lien for cost of razing

The District of Columbia, under statutes pertaining to removal of buildings reported unsafe and to reimbursement of the District for cost of their removal, had a right to reimbursement for cost of razing a building declared so unsafe as to require immediate razing. *Brown, Paulson and 2501–3 Fourteenth Street Cooperative Ass'n.* v. *Tobriner et al., Commissioners etc.* (1962, 312 F. 2d 334, 114 U.S. App. D.C. 94).

Reimbursement for razing unsafe building

District of Columbia lien for reimbursement for razing a structure declared unsafe was entitled to priority over notes secured by a prior recorded second deed of trust on the property, where no true mortgagor-mortgagee relationship existed between purported mortgagees and occupants of the building as mortgagors, but arrangement was rather that of landlord and tenant. *Brown, Paulson and 2501–3 Fourteenth Street Cooperative Ass'n.* v. *Tobriner et al., Commissioners etc.* (1962, 312 F. 2d 334, 114 U.S. App. D.C. 94).

§ 5–502. If dangers not remedied, premises to be surveyed by three disinterested persons—Report.

When the public safety does not, in the judgment of the Commissioners, demand immediate action, if the owner, agent, or other party interested in said unsafe structure or excavation, having been notified, shall refuse or neglect to comply with the requirements of said notice within the time specified, then a careful survey of the premises shall be made by three disinterested persons, one to be appointed by the commissioners of the District of Columbia, one by the owner or other person interested, and the third to be chosen by these two, and the report of said survey shall be reduced to writing, and a copy served upon the owner or other interested party; and if said owner or other interested party refuse or neglect to appoint a member of said board of survey within the time specified in said notice, then the survey shall be made by the Commissioners and the person chosen by the commissioners, and in case of disagreement they shall choose a third person and the determination of a majority of the three so chosen shall be final. (Mar. 1, 1899, 30 Stat. 923, ch. 323, § 2; Apr. 5, 1935, 49 Stat. 106, ch. 41; Aug. 22, 1964, 78 Stat. 599, Pub. L. 88–486, § 1.)

AMENDMENTS

1964—Section 1 of act Aug. 22, 1964, amended the section by substituting "commission" for "inspector of buildings" in two places.

1935—Act Apr. 5, 1935, inserted "or excavation" following "in said unsafe structure."

NOTES TO DECISIONS

Party wall

District of Columbia Code provision authorizing District to make structures safe at owners' expense applied to party wall which had been in unsafe condition before its condition was revealed by one owners' razing. *District of Columbia and First Baptist Church of the City of Washington, D.C.* v. *J. B. Wentworth* (1961, 288 F. 2d 421, 110 U.S. App. D.C. 19).

§ 5–503. Commissioners to make structure safe if responsible person does not—Owners or other interested persons not to interfere with Commissioners.

Whenever the report of any such survey shall declare the structure or excavation to be unsafe, or shall state that structural repairs should be made in order to place the said structure or excavation in a fit condition for further occupancy or use, and the owner or other interested person shall for ten days neglect or refuse to cause such structure or excavation to be taken down or otherwise to be made safe, the Commissioners shall proceed to make such structure or excavation safe or remove the same. After the expiration of the ten days in which the owner or other interested person is given to make the structure or excavation safe, or to be taken down or removed, the owner or other interested person, having failed to comply with the provision of the report of the board of survey, shall not enter, or cause to be entered, the premises for the purpose of making the repairs ordered, or razing the building, as the case may be; or in any other way to interfere with the authorized agents of the District of Columbia in making the said structure or excavation safe, or in removing same, without first having obtained the written consent of the commissioners of the District of Columbia or their duly authorized representatives. (Mar. 1, 1899, 30 Stat. 923, ch. 323, § 3; Apr. 5, 1935, 49 Stat. 106, ch. 41; Aug. 22, 1964, 78 Stat. 599, Pub. L. 88–486, §§ 1, 3.)

AMENDMENTS

1964—Section 1 of act Aug. 22, 1964, substituted "Commissioners" for "inspector of buildings" in the first sentence.

Section 3 of the same act, struck out the last sentence.

1935—Act Apr. 5, 1935, inserted: "or shall state that structural repairs should be made in order to place the said structure or excavation in a fit condition for occupancy or use" in the first sentence, made the safety provisions apply to excavations as well as buildings, gave the owner 10 days instead of 3 to make the premises safe, and inserted as new matter the entire second sentence.

NOTES TO DECISIONS

Party wall

District of Columbia Code provision authorizing District to make structures safe at owners' expense applied to party wall which had been in unsafe condition before its condition was revealed by one owners' razing. *District of Columbia and First Baptist Church of the City of Washington, D.C.* v. *J. B. Wentworth* (1961, 288 F. 2d 421, 110 U.S. App. D.C. 19).

Priority of lien for cost of razing

District of Columbia lien for reimbursement for razing a structure declared unsafe was entitled to priority over notes secured by a prior recorded second deed of trust on the property, where no true mortgagor-mortgagee relationship existed between purported mortgagees and occupants of the building as mortgagors, but arrangement was rather that of landlord and tenant. *Brown, Paulson and 2501–3 Fourteenth Street Cooperative Ass'n.* v. *Tobriner et al., Commissioners etc.* (1962, 312 F. 2d 334, 114 U.S. App. D.C. 94).

Reimbursement for razing unsafe building

The District of Columbia, under statutes pertaining to removal of buildings reported unsafe and to reimbursement of the District for cost of their removal, had a right to reimbursement for cost of razing a building declared so unsafe as to require immediate razing. *Brown, Paulson and 2501–3 Fourteenth Street Cooperative Ass'n.* v. *Tobriner et al., Commissioners etc.* (1962, 312 F. 2d 334, 114 U.S. App. D.C. 94).

§ 5–504. Nuisances to be abated—Notice given—Cost a lien on property—Penalty—Prosecution.

(a) The existence on any lot or parcel of land, in the District of Columbia, of any uncovered well, cistern, dangerous hole, excavation, any dead, dangerous or diseased tree, or part thereof, or of any abandoned vehicles of any description or parts thereof, miscellaneous materials or debris of any kind, including substances that have accumulated as the result of repairs to yards or any building operations, insofar as they affect the public health, comfort, safety, and welfare is hereby declared a nuisance dangerous to life and limb, and any person, corporation, partnership, syndicate, or company, owning a lot or parcel of land in said District on which such a nuisance exists who shall neglect or refuse to abate the same to the satisfaction of the Commissioners of the District of Columbia, after five days' notice from them to do so, shall, on conviction in The District of Columbia Court of General Sessions be punished by a fine of not exceeding $50 for each and every day said person, corporation, partnership, or syndicate, fails to comply with such notice. In case the owner of, or agent or other party interested in, any lot or parcel of land in the District of Columbia, on which there exists an open well, cistern, dangerous hole, or excavation, or any dead, dangerous, or diseased tree or part thereof, or any abandoned or unused vehicles or parts thereof, or miscellaneous accumulation of material or debris which affects public safety, health, comfort, and welfare, shall fail, after notice aforesaid, to abate said nuisance within one week after the expiration of such notice, the said commissioners may cause the lot or parcel of land on which the nuisance exists to be secured by fences or otherwise enclosed, and the removal of any abandoned vehicles, or parts thereof, any miscellaneous accumulation of material or debris or any dead or dangerous tree or part thereof, or the removal or spraying of any diseased tree adversely affecting the public safety, health, comfort, and welfare, and the cost and expense thereof shall be assessed by said commissioners as a tax against the property on which such nuisance exists, and the tax so assessed shall be collected in the manner provided in section 5–506. Within the meaning of this section, a dead tree shall be any tree with respect to which the Commissioners of the District of Columbia or their designated agent have determined that no part thereof is living; a dangerous tree is any tree or part thereof, living or dead, which the said Commissioners or their designated agent shall find is in such condition and is so located as to constitute a danger to persons or property on public space in the vicinity of such tree; and a diseased tree shall be any tree on private property in such a condition of infection from a major pathogenic disease as to constitute, in the opinion of the said Commissioners or their designated agent, a threat to the health of any other tree.

(b) The authority conferred on the Commissioners under subsection (a) with respect to the removal of dangerous and diseased trees constituting a nuisance shall be exercised by the Commissioners only after every reasonable effort has been made to abate such nuisance other than by the removal of any such tree, or part thereof. (Mar. 1, 1899, 30 Stat. 923, ch. 323, § 4; Apr. 5, 1935, 49 Stat. 107, ch. 41; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; Aug. 22, 1964, 78 Stat. 599, Pub. L. 88–466, § 4; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

AMENDMENTS

1964—Section 4 of act Aug. 22, 1964, amended the section as follows: Inserted "(a)" in front of the first word; Inserted in the first sentence after the word excavation "any dead, dangerous, or diseased tree, or part thereof,"; Struck out "excavation" in the second sentence and inserted "excavation or any dead, dangerous or diseased tree or part thereof,"; Struck out "parts thereof or miscellaneous accumulation of material or debris" and inserted in lieu "or parts thereof, any miscellaneous accumulation of material or debris, or any dead or dangerous tree, or part thereof, or the removal or spraying of any diseased tree"; Struck out the phrase beginning with "bear interest" and ending with "general taxes" and inserting at that point the words "be collected in the manner provided in section 5–506."; Added the last sentence in subsection (a) starting with the words "Within the meaning" and added subsection (b).

1935—Act Apr. 5, 1935, omitted "unenclosed" before "lot"; added as nuisances, abandoned vehicles, debris, and materials left after repairs made; made the provision apply to the District of Columbia instead of the city of Washington; made the maximum fine $50 instead of $20; and omitted special provisions as to notice to nonresidents of the District.

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia." Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 5–505. Costs and expenses of removing nuisances to be determined by Commissioners and assessed against the property—Penalty for violation of sections 5–501 to 5–503.

The Commissioners shall determine the cost and expense of any work performed by them under the authority of sections 5–501 to 5–504, including the

cost of making good damaged to adjoining premises (except such as may have resulted from carelessness and willful recklessness in the demolition or removal of any structure) less the amount, if any, received from the sale of old material, and shall assess such cost and expense upon the lot or ground whereon such structure, excavation, or nuisance stands, stood, was dug, was located, or existed, and this amount shall be collected in the manner provided in section 5–506. Any person, corporation, partnership, syndicate, or company subject to the provisions of sections 5–501 to 5–503 who shall neglect or refuse to perform any act required by such sections shall be punished by a fine not exceeding $50 for each and every day said person, corporation, partnership, syndicate, or company fails to perform any act required by such sections. (Mar. 1, 1899, 30 Stat. 923, ch. 323, § 5, as added Aug. 22, 1964, 78 Stat. 600, Pub. L. 88–486, § 5.)

§ 5–506. Payment and collection of costs and expenses—Interest—Sale of property for nonpayment after two years.

Any tax authorized to be levied and collected under this chapter may be paid without interest within sixty days from the date such tax was levied. Interest of one-half of 1 per centum for each month or part thereof shall be charged on all unpaid amounts from the expiration of sixty days from the date such tax was levied. Any such tax may be paid in three equal installments with interest thereon. If any such tax or part thereof shall remain unpaid after the expiration of two years from the date such tax was levied, the property against which said tax was levied may be sold for such tax or unpaid portion thereof with interest and penalties thereon at the next ensuing annual tax sale in the same manner and under the same conditions as property sold for delinquent general real estate taxes, if said tax with interest and penalties thereon shall not have been paid in full prior to said sale. (Mar. 1, 1899, 30 Stat. 923, ch. 323, § 6, as added Aug. 22, 1964, 78 Stat. 600, Pub. L. 88–486, § 5.)

§ 5–507. Notice—How served—Publication of when permissible.

(a) Any notice required by this chapter to be served shall be deemed to have been served when served by any of the following methods: (1) When forwarded to the last known address of the owner as recorded in the real estate assessment records of the District of Columbia, by registered or certified mail, with return receipt, and such receipt shall constitute prima facie evidence of service upon such owner if such receipt is signed either by the owner or by a person of suitable age and discretion located at such address: *Provided,* That valid service upon the owner shall be deemed effected if such notice shall be refused by the owner and not delivered for that reason; or (2) when delivered to the person to be notified; or (3) when left at the usual residence or place of business of the person to be notified with a person of suitable age and discretion then resident or employed therein; or (4) if no such residence or place of business can be found in the District of Columbia by reasonable search, then if left with any person of suitable age and discretion employed at the office of any agent of the person to be notified, which agent has any authority or duty with reference to the land or tenement to which said notice relates; or (5) if any such notice forwarded by registered or certified mail be returned for reasons other than refusal, or if personal service of any such notice, as hereinbefore provided, cannot be effected, then if published on three consecutive days in a daily newspaper published in the District of Columbia; or (6) if by reason of an outstanding unrecorded transfer of title the name of the owner in fact cannot be ascertained beyond a reasonable doubt, then if served on the owner of record in a manner hereinbefore provided. Any notice to a corporation shall, for the purposes of this chapter be deemed to have been served on such corporation if served on the president, secretary, treasurer, general manager, or any principal officer of such corporation in the manner hereinbefore provided for the service of notices on natural persons holding property in their own right, and notices to a foreign corporation shall, for the purposes of this chapter, be deemed to have been served if served personally on any agent of such corporation, or if left with any person of suitable age and discretion residing at the usual residence or employed at the usual place of business of such agent in the District of Columbia.

(b) In case such notice is served by any method other than personal service. a copy of such notice shall also be sent to the owner by ordinary mail. (Mar. 1, 1899, 30 Stat. 923, ch. 323, § 5, as added Apr. 5, 1935, 49 Stat. 107, ch. 41; renumbered as § 7 and amended Aug. 22, 1964, 78 Stat. 600, Pub. L. 88–486, § 6.)

AMENDMENT

Section 6 of act Aug. 22, 1964, renumbered section 5 to section 7 and amended it generally.

§ 5–508. Structures found to be unsafe—Notice to owners and occupants—Use of unsafe structures may be prohibited—Penalty for violation of Commissioners order.

Whenever the Commissioners find that any building or part of a building, staging, or other structure, or anything attached to or connected with any building or other structure or excavation shall cause a building to be unsafe for human occupancy, they shall give notice of such fact to the owner or other person having an interest in such building, and to the occupant or occupants thereof. If within five days after such notice has been served upon such owner or other interested person, such building or part thereof has not been made safe for human occupany, the Commissioners may order the use of such building or part thereof discontinued until it has been made safe: *Provided,* That if in the opinion of the Commissioners the unsafe condition of the building or part thereof is such as to be imminently dangerous to the life or limb of any occupant, the Commissioners may order the immediate discontinuance of the use of such building or part thereof. Any person occupying, or permitting the occupancy of, such building or part thereof in violation of such order of the Commissioners shall be fined not more than $300 or imprisoned for not more than thirty days. (Mar. 1, 1899, 30 Stat. 923, ch. 323, § 8, as added Aug. 22, 1964, 78 Stat. 601, Pub. L. 88–486, § 8.)

RENUMBERING OF SECTION 6 OF ACT MAR. 1, 1899

Section 8 of act Aug. 22, 1964, renumbered section 6 of act Mar. 1, 1899, as added by act Apr. 5, 1935, 49 Stat. 107, ch. 47, to section 9. The section as so renumbered provides: "That all Acts and parts of Acts inconsistent with this Act, be and the same are hereby repealed."

Chapter 6.—INSANITARY BUILDINGS

Sec.

5–601 to 5–615. Omitted.
5–616. Inspection by Commissioners—Condemnation—Delegation of authority.
5–617. Board for the Condemnation of Insanitary Buildings—Condemnation Review Board—Members—Procedure.
5–618. Condemnation procedure—Notice—Order—Remedial action by owner—Occupancy of condemned buildings.
5–619. Occupancy of condemned building.
5–620. Repairs or changes—Demolition—District of Columbia Building Code.
5–621. Cancellation of condemnation order—Extensions of time.
5–622. Owner's failure to comply with order—Repair or demolition by Board for the Condemnation of Insanitary Buildings— Payment of Costs—Effect of appeal.
5–623. Litigation involving title to property—Notice—Report to Commissioners—Court order.
5–624. Infant owner—Person non compos mentis—Appointment of guardian.
5–625. Notice—Service.
5–626. Interference with work or inspection.
5–627. Destruction, removal or concealment of copy of order affixed to building.
5–628. Review of order—Application to Condemnation Review Board—Fee.
5–629. Appeal from order—District of Columbia Court of General Sessions—Modification or vacation by court.
5–630. Neglect by tenants or occupants of building.
5–631. Penalties.
5–632. Appropriations—Payment of expenses.
5–633. Definitions—"Commissioners"—"Owner".
5–634. Suits and proceedings under prior law—Time limits.

§§ 5–601 to 5–615. Omitted.

CODIFICATION

Act Aug. 28, 1954, 68 Stat. 884, ch. 1032, § 1, amended act May 1, 1906, 34 Stat. 157, ch. 2073, generally. Provisions of act May 1, 1906, formerly classified to §§ 5–601 to 5–615 are now covered by §§ 5–616 to 5–634.

The following table shows the disposition of former sections 5–601 to 5–615:

Former section:	*Now covered by—*
5–601	5–616, 5–617
5–602	5–617
5–603	5–617, 5–618
5–604	5–618, 5–619
5–605	5–618
5–606	5–620, 5–621
5–607	5–620
5–608	5–623
5–609	5–624
5–610	5–625
5–611	5–626
5–612	5–627
5–613	5–631
5–614	5–629
5–615	5–632

Section 5–603 was amended by act Dec. 17, 1942, 56 Stat. 1054, ch. 762, § 1.

Section 5–604 was amended by act Dec. 17, 1942, 56 Stat. 1055, ch. 762, § 2.

Section 5–605 was amended by act Dec. 17, 1942, 56 Stat. 1055, ch. 762, § 3.

Section 5–607 was amended by acts Apr. 5, 1935, 49 Stat. 108, ch. 42; Dec. 17, 1942, 56 Stat. 1055, ch. 762, § 4.

Section 5–608 was amended by act Dec. 17, 1942, 56 Stat. 1055, ch. 762, § 5.

Section 5–614 was amended by act Apr. 5, 1935, 49 Stat. 109, ch. 42, and repealed by act Dec. 17, 1942, 56 Stat. 1056, ch. 762, § 6.

Section 5–615 was amended by act Apr. 5, 1935, 49 Stat. 110, ch. 42.

TRANSFER OF FUNCTIONS

Reorganization Order No. 56 of the Board of Commissioners dated June 30, 1953, established as an independent Board, with the Department of Public Health furnishing fiscal and housekeeping services, a Board for the Condemnation of Insanitary Buildings, to be composed of an Assistant to the Engineer Commissioner who is to serve as chairman, a representative of the Department of Health, and a representative of the Department of Licenses and Inspections. The order reappointed the members of the previous board to the new Board for the Condemnation of Insanitary Buildings, and transferred to the new board all functions of the old Board for the Condemnation of Insanitary Buildings which was abolished by the order. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to Title 1, Administration.

§ 5–616. Inspection by Commissioners—Condemnation—Delegation of authority.

The Commissioners of the District of Columbia are authorized to examine into the sanitary condition of all buildings in said District, to condemn those building which are in such insanitary condition as to endanger the health or lives of the occupants thereof or persons living in the vicinity, and to cause all buildings to be put into sanitary condition or to be demolished and removed, as may be required by the provisions of sections 5–616 to 5–634. The Commissioners may authorize and direct the performance of the duties imposed on them by sections 5–616 to 5–634 by such officers, agents, employees, contractors, employees of contractors, and other persons as may be designated, detailed, employed, or appointed by the said Commissioners to carry out the purposes of sections 5–616 to 5–634. The Commissioners or their designated agent or agents are authorized to investigate, through personal inquiry and inspection, into the sanitary condition of any building or part of a building in said District, except such as are under the exclusive jurisdiction of the United States. The Commissioners, and all persons acting under their authority and the authority contained in sections 5–616 to 5–634, may, between the hours of 8 o'clock antemeridian and 5 o'clock postmeridian, peaceably enter into and upon any and all lands and buildings in said District for the purpose of inspecting the same. (May 1, 1906, 34 Stat. 157, ch. 2073, § 1, as amended Aug. 28, 1954, 68 Stat. 884, ch. 1032.)

EFFECTIVE DATE

Section 20 of act May 1, 1906, as added by act Aug. 28, 1954, provided that: "This Act [amending §§ 5–616 to 5–634] shall take effect thirty days after its approval [Aug. 28, 1954]."

CROSS REFERENCES

Alleys, alteration or removal of insanitary buildings from, see §§ 5–103 to 5–116.

Building regulations, see §§ 1–226, 1–228, 5–413.

Repair or removal of unsafe structures or excavation, see §§ 5–501 to 5–505.

§ 5–617. Board for the Condemnation of Insanitary Buildings—Condemnation Review Board—Members—Procedure.

(a) The Commissioners are directed to appoint or designate two separate boards, each to consist of not less than three members, to perform the duties

and functions required by sections 5–616 to 5–634 as follows:

(1) A Board for the Condemnation of Insanitary Buildings to examine into the sanitary condition of buildings in the District of Columbia, to determine which such buildings are in such insanitary condition as to endanger the lives or health of the occupants thereof or of persons living in the vicinity, and to issue appropriate orders of condemnation requiring the correction of such condition or conditions or to require the demolition of any building, in accordance with the provisions of sections 5–616 to 5–634.

(2) A Condemnation Review Board, no member of which shall act as a member of the Board for the Condemnation of Insanitary Buildings, to review, upon written request, any order of condemnation issued by the Board for the Condemnation of Insanitary Buildings, and to affirm, modify, or vacate such order of condemnation if the Condemnation Review Board shall find that the sanitary condition of the building under examination requires the affirmation, modification, or vacation of such order of condemnation. The Condemnation Review Board shall consist of at least three members and an alternate member for each of said members, at least two-thirds of such members and at least two-thirds of such alternate members to be residents of the District of Columbia and to be selected from among the persons designated under subsection (c) of this section, and not more than one-third of such members and one-third of such alternate members may be employed by the government of the District of Columbia.

(b) A majority of the members of each of the boards established by subsection (a) of this section shall constitute a quorum, and a majority vote of the members present shall be required in connection with any act of either of the said boards. No person shall act as a member of either of the said boards who has any property interest, direct or indirect, in his own right or through relatives or kin, in the building the sanitary condition of which is under consideration.

(c) The Commissioners shall designate a number of real property owning residents of the District of Columbia, not employed by the government of the District of Columbia or the Government of the United States, each of whom from time to time shall be designated by the Commissioners to act as a member or an alternate member of the Condemnation Review Board established under the authority of subsection (a) of this section. Each such person shall be entitled to a fee of $25 for each day he is actually engaged in discharging his duties as a member of said Board, or as an alternate member acting in the place of a member.

(d) The several provisions of sections 4–601, 4–602, and 4–603, shall be applicable to and enforceable in any proceeding conducted under the authority of sections 5–616 to 5–634. Each person acting as a member of either of the boards required to be established by this section, and each alternate member when acting in the stead of the member for whom he is alternate, is hereby authorized to administer oaths to witnesses summoned in any proceeding conducted by either of the said boards. Any fee which may be paid any witness summoned to appear before either of the said boards shall be assessed as a tax against the property the condition of which is under investigation, such tax to be collected in the manner provided in section 5–622: *Provided,* That whenever any order of condemnation is vacated or set aside, either by the Condemnation Review Board or by a court, the witness fee authorized by this subsection to be assessed against the property affected by such order of condemnation shall not be so assessed, but shall be paid by the government of the District of Columbia. (May 1, 1906, 34 Stat. 157, ch. 2073, § 2, as amended Aug. 28, 1954, 68 Stat. 884, ch. 1032; Nov. 7, 1965, 79 Stat. 1216, Pub. L. 89–326, § 1.)

AMENDMENT

1965—Section 1 act, Nov. 7, 1965, amended subsection (d) by striking "same manner as general taxes are collected in the District of Columbia" and inserted in lieu "manner provided in section 5–622."

EFFECTIVE DATE

Section effective thirty days after Aug. 28, 1954, see section 20 of act May 1, 1906, set out as a note under section 5–616.

ORDER ESTABLISHING BOARD FOR THE CONDEMNATION OF INSANITARY BUILDINGS

Organization Order No. 102, 54–2034, Sept. 27, 1954, as amended Mar. 18, 1958, June 10, 1958, May 26, 1960, and July 5, 1960, of the Board of Commissioners of the District of Columbia provided as follows:

BOARD FOR THE CONDEMNATION OF INSANITARY BUILDINGS

Pursuant to the authority contained in Public Law 681, 83rd Congress, it is hereby ordered:

PART I

Board for the Condemnation of Insanitary Buildings.—A. In accordance with section 2(a)(1) of Public Law 681, 83rd Congress, there is hereby established a Board for the Condemnation of Insanitary Buildings.

B. The Board for the Condemnation of Insanitary Buildings shall consist of five members who shall serve at the pleasure of the Board of Commissioners or until their successors are appointed: a representative of the Department of Licenses and Inspections, who shall serve as Chairman; a representative of the Department of Buildings and Grounds; two representatives of the Department of Public Health; and a representative of the Department of Sanitary Engineering.

C. No person shall act as a member of the Board for the Condemnation of Insanitary Buildings who has any property interest, direct or indirect, in his own right or through relatives or kin, in the building the sanitary condition of which is under consideration.

D. The Department of Licenses and Inspections shall furnish the Board for the Condemnation of Insanitary Buildings with such technical facilities, advice, and assistance, and with such administrative and fiscal services as may be required to permit the effective operation of said Board.

E. The Board for the Condemnation of Insanitary Buildings may in its discretion delegate to officials or employees of the Department of Licenses and Inspections such ministerial duties and responsibilities as said Board shall from time to time determine. This authority shall be exercised in accordance with applicable laws, rules, and regulations.

PART II

Purpose.—The Board for the Condemnation of Insanitary Buildings is established to examine into the sanitary condition of buildings in the District of Columbia, to determine which such buildings are in such insanitary condition as to endanger the lives or health of the occupants thereof or of persons living in the vicinity and, upon completion of an investigation by the Board of the premises in question, to issue appropriate orders of

condemnation requiring the correction of such condition or conditions or to require the demolition of any building, in accordance with the provisions of Public Law 681, 83rd Congress.

PART III

Powers, authorities, and jurisdiction.—All powers, authorities, and jurisdiction authorized by Public Law 681, 83rd Congress, to be exercised by the Board for the Condemnation of Insanitary Buildings are hereby assigned to such Board. The said Board shall have jurisdiction over all matters which as of the effective date of Public Law 681, 83rd Congress, were pending before the Board for the Condemnation of Insanitary Buildings established under Reorganization Order No. 56, dated June 30, 1953.

PART IV

Transfers to new Board.—All property and records of the present Board for the Condemnation of Insanitary Buildings established under Reorganization Order No. 56, dated June 30, 1953, as amended, shall be transferred to the new Board for the Condemnation of Insanitary Buildings established herein.

PART V

Abolition of existing Board.—The existing Board for the Condemnation of Insanitary Buildings established under Reorganization Order No. 56, dated June 30, 1953, as amended, is hereby abolished.

PART VI

Repeal of previous orders.—Reorganization Order No. 56, dated June 30, 1953, as amended, and all Commissioners' Orders in conflict with the provisions of this Order, are, to the extent of such conflict, repealed.

PART VII

Effective date.—This Order shall be effective on and after September 27, 1954.

ORDER ESTABLISHING CONDEMNATION REVIEW BOARD

Organization Order No. 103, Sept. 27, 1954, as amended Apr. 23, 1957, and July 14, 1960, of the Board of Commissioners of the District of Columbia provided as follows:

CONDEMNATION REVIEW BOARD

Pursuant to the authority contained in Public Law 681, 83rd Congress, it is hereby ordered:

PART I

Condemnation Review Board.—A. In accordance with section 2 (a) (2) of Public Law 681, 83rd Congress, there is hereby established a Condemnation Review Board.

B. The Condemnation Review Board shall consist of three members and an alternate member for each of said members, at least two of such members and at least two of such alternate members to be residents of the District of Columbia who own real property in the District of Columbia and are not employed by the District of Columbia or the Government of the United States.

C. No member or alternate member of the Condemnation Review Board shall act as a member of the Board for the Condemnation of Insanitary Buildings.

D. Each member of the Condemnation Review Board and each alternate member acting in place of a member, who is a resident of the District of Columbia owning real property in the District of Columbia and is not employed by the District of Columbia or the Government of the United States shall receive a fee of $25.00 for each day or part thereof he is actually engaged in discharging his duties as a member of said Board, or as an alternate member acting in the place of a member.

E. (1) Members and alternate members of the Condemnation Review Board shall be appointed by the Board of Commissioners, and shall be subject to removal at the discretion of the Board of Commissioners. The members of the Condemnation Review Board shall select one of their number to serve as chairman.

(2) After July 14, 1960, every appointment of a member or alternate member shall be for a term of three (3) years, and every vacancy shall be filled only for the unexpired portion of the term, but after the expiration of his term each such member and alternate member shall continue to serve until his successor is appointed and has qualified. Every person who, on July 14, 1960, is a member or alternate member shall continue to serve for the balance of the term to which he has been appointed (any vacancy in said balance of said term to be filled by appointment for the unexpired portion thereof) and upon the expiration of said term the three (3) year term herein provided shall immediately commence, but such member or alternate member shall continue to serve until his successor is appointed and has qualified.

(3) No person who has served six (6) years or more consecutively as a member shall be reappointed either as a member or as an alternate member until after the expiration of one (1) year from the end of such service. No person who has served six (6) years or more consecutively as an alternate member shall be reappointed as an alternate member until after the expiration of one (1) year from the end of such service, provided that appointment and service as an alternate member shall not disqualify a person from appointment as a member at any time. The provisions of this paragraph shall not apply to persons selected for membership from among officers and employees of the District of Columbia.

F. No person shall act as a member of the Condemnation Review Board who has any property interest, direct or indirect, in his own right or through relatives or kin, in the building the sanitary condition of which is under consideration.

G. The Department of Licenses and Inspections shall furnish the Condemnation Review Board with such clerical services and provide funds for such witness fees as may be required to permit the effective operation of said Board.

H. Members and alternate members of the Condemnation Review Board shall take an oath of office as follows:

"I, _____, having been duly appointed by the Board of Commissioners as a member (an alternate member) of the Condemnation Review Board, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member (an alternate member) of said Board to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties; so help me God."

PART II

Purpose.—The Condemnation Review Board, upon written request by an owner of property affected by any order of condemnation issued by the Board for the Condemnation of Insanitary Buildings, and upon the payment of the prescribed fee, shall review such order, shall view the property so affected, shall make findings of fact relating to the insanitary condition or conditions found to exist in or about such property, and, to the extent that the condition of the property under examination requires the affirmation, modification, or vacation of such order of condemnation, affirm, modify, or vacate such order. The Condemnation Review Board shall establish procedures for its review of orders of condemnation issued by the Board for the Condemnation of Insanitary Buildings, and shall prepare and publish rules relating to such procedures. All actions taken by the Condemnation Review Board shall be in accordance with the provisions of Public Law 681, 83d Cong.

PART III

Powers, authorities, and jurisdiction.—All powers, authorities, and jurisdiction authorized by Public Law 681, 83d Congress, to be exercised by the Condemnation Review Board are hereby assigned to such Board.

PART IV

Funds.—All funds necessary for the operations of the Condemnation Review Board, including fees to its members and alternate members, shall be provided out of appropriations for the Department of Licenses and Inspections.

PART V

Effective date.—This Order shall be effective on and after September 27, 1954.

CROSS REFERENCES

Alleys, alteration or removal of insanitary buildings, from, see §§ 5–103 to 5–116.

Building regulations, see §§ 1–226, 1–228, 5–413.

Powers and duties of assistant building inspector, see § 1–728.

Repair or removal of unsafe structures or excavation, see §§ 5–501 to 5–505.

§ 5–618. Condemnation procedure—Notice—Order—Remedial action by owner—Occupancy of condemned buildings.

Whenever the Board for the Condemnation of Insanitary Buildings shall find that any building or part of building is in such insanitary condition as to endanger the health or lives of the occupants thereof or persons living in the vicinity, the owner of such building shall be served with a notice requiring him to show cause, within a time to be specified in such notice, why such building or part of building should not be condemned. The time to be fixed in such notice shall not be less than ten days, exclusive of Sundays and legal holidays, after the date of service of said notice, unless the Board shall find that the insanitary condition of such building or part of building is such as to cause immediate danger to the health or lives of the occupants thereof or of persons living in the vicinity, in which case a lesser time may be specified in said notice. If within the time to show cause fixed by the Board, the owner shall fail to show cause sufficient in the opinion of the Board to prevent the condemnation of such building or part of building, the Board shall issue an order condemning such building or part of building and ordering the same to be put into sanitary condition or to be demolished and removed within a time to be specified in said order of condemnation, and shall cause a copy of such order to be served on the owner and a copy to be affixed to the building or part of building condemned. The Board shall give the owner reasonable time within which to put the building in sanitary condition, but such time shall be not less than six months after the date of service of said order on said owner, unless the Board shall find that the condition of said premises is such as to cause immediate danger to the health or lives of the occupants thereof or of persons living in the vicinity, in which event the Board may fix a lesser time. From and after fifteen days, exclusive of Sundays or legal holidays, or within such additional time as may be fixed by the Board, after a copy of any order of condemnation has been affixed to any condemned building or part of building, no person shall occupy such building or part of building. (May 1, 1906, 34 Stat. 157, ch. 2073, § 3, as amended Aug. 28, 1954, 68 Stat. 885, ch. 1032.)

EFFECTIVE DATE

Section effective thirty days after Aug. 28, 1954, see section 20 of act May 1, 1906, set out as a note under section 5–616.

NOTES TO DECISIONS

Affirmance on appeal

Conviction for occupying a building for human habitation subsequent to condemnation thereof was sustained by evidence. *Hammond* v. *District of Columbia* (D. C. Mun. App. 1956, 127 A. 2d 554).

Concession of guilt by counsel

In prosecution for occupying a building for human habitation subsequent to condemnation thereof, defendant's testimony that she had lived in building from period prior to its condemnation up until time of trial constituted an admission of guilt; and under such evidence and all circumstances of case, defendant's counsel's statement to court that he was satisfied of his client's guilt did not constitute such concession away of substantial rights of his client as would require reversal of conviction. *Hammond* v. *District of Columbia* (D. C. Mun. App. 1956, 127 A. 2d 554).

Constitutionality

Statute under which the board of condemnation proceeded against appellant's property is constitutional and was contitutionally applied, *Keyes* v. *Madsen* (1950, 179 F. 2d 40, 86 U.S. App. D.C. 24, certiorari denied 70 S. Ct. 628, 339 U.S. 928, 94 L. Ed. 546).

Sentence

Monetary portion of sentence of $150 or 30 days imprisonment, for occupying a building for human habitation subsequent to condemnation thereof, was excessive. *Hammond* v. *District of Columbia* (D. C. Mun. App. 1956, 127 A. 2d 554).

§ 5–619. Occupancy of condemned building.

No person having authority to prevent shall permit any building or part of building condemned to be occupied, except as specially authorized by the Board for the Condemnation of Insanitary Buildings under the authority contained in sections 5–616 to 5–634, after fifteen days, exclusive of Sundays and legal holidays, or within such additional time as may be fixed by the Board, from and after the date of service of a copy of the order of condemnation on the owner of such building; or, if a copy of such order of condemnation has been affixed to the condemned building or part of building at a date subsequent to the date of service of the notice on the owner, after fifteen days, exclusive of Sundays and legal holidays, or within such additional time as may be fixed by the Board, from the date on which said copy of such order of condemnation was so affixed. (May 1, 1906, 34 Stat. 158, ch. 2073, § 4, as amended Aug. 28, 1954, 68 Stat. 886, ch. 1032.)

EFFECTIVE DATE

Section effective thirty days after Aug. 28, 1954, see section 20 of act May 1, 1906, set out as a note under section 5–616.

§ 5–620. Repairs or changes—Demolition—District of Columbia Building Code.

The owner of any building or part of building condemned under the provisions of sections 5–616 to 5–634 shall, within the time specified by the Board for the Condemnation of Insanitary Buildings in the order of condemnation, or any extension of time which may be granted by the Board, (1) make such changes or repairs as will remedy the conditions which led to the condemnation of such building or part of building, or (2) cause such building or part of building to be demolished and removed: *Provided,* That any owner repairing a building or part of building in accordance with the provisions of sections 5–616 to 5–634 shall be required to make only those repairs which are reasonably related to a correction of the insanitary condition or conditions found by said Board to exist in or about said building, and nothing in sections 5–616 to 5–634 shall be construed as authorizing the Board to require any repair not reasonably related to the correction of any insanitary condition in or about such building, or to require such building to be brought fully into conformity with the District of Columbia

Building Code or other building regulations in effect at the time such repairs are made. Whenever any building is repaired or demolished in accordance with the requirements of this section, such repair or demolition shall be performed in such manner and under the authority of such permit as may be required by any applicable law or regulation. (May 1, 1906, 34 Stat. 158, ch. 2073, § 5, as amended Aug 28, 1954, 68 Stat. 886, ch. 1032.)

EFFECTIVE DATE

Section effective thirty days after Aug. 28, 1954, see section 20 of act May 1, 1906, set out as a note under section 5–616.

§ 5–621. Cancellation of condemnation order—Extensions of time.

If the owner of any building or part of building condemned under the provisions of sections 5–616 to 5–634 shall make such changes or repairs as will remedy in a manner satisfactory to the Board for the Condemnation of Insanitary Buildings the conditions which led to the condemnation of such building or part of building, the order of condemnation shall be canceled and the building may again be occupied. If the owner cannot make such changes or repairs within the period within which the owner may lawfully permit such building or part of building to be occupied under section 5–619, but proceeds with such changes or repairs with reasonable diligence during such period, said Board may, by special order, extend from time to time the period within which the occupants of said building or part of building may remain therein, and within which the owner of such building may permit the said occupants so to remain. (May 1, 1906, 34 Stat. 158, ch. 2073, § 6, as amended Aug. 28, 1954, 68 Stat. 886, ch. 1032.)

EFFECTIVE DATE

Section effective thirty days after Aug. 28, 1954, see section 20 of act May 1, 1906, set out as a note under section 5–616.

§ 5–622. Owner's failure to comply with order—Repair or demolition by Board for the Condemnation of Insanitary Buildings—Payment of costs—Effect of appeal.

(a) If the owner of any building or part of building condemned under the provisions of sections 5–616 to 5–634 shall fail to remedy in a manner satisfactory to the Board for the Condemnation of Insanitary Buildings the condition or conditions which led to the condemnation thereof, by failing to cause such building or part of building to be put into sanitary condition or to be demolished and removed within the time specified by said Board in the order of Condemnation or any extension thereof, he shall be deemed guilty of a misdemeanor and be liable to the penalties provided by section 5–631, and such building or part of building may be put into sanitary condition or be demolished and removed under the direction of said Board, and the cost of such repairs or such demolition and removal, including the cost of making good damage to adjoining premises (except such as may have resulted from carelessness or willful recklessness in the demolition or removal of such building), and the cost of publication, if any, herein provided for, less the amount, if any, received from the sale of the old material, shall be assessed by the Commissioners of the District of Columbia as a tax against the premises on which such building or part of building was situated, such tax to be collected as provided in this section: *Provided,* That the pendency of any review or appeal provided for by sections 5–628 and 5–629 shall stay the operation of any order issued by said Board, unless said Board shall find that the condition of said premises is such as to cause immediate danger to the health or lives of the occupants thereof or of persons living in the vicinity: *Provided further,* That the taxes authorized to be levied and collected under this chapter may be paid without interest within sixty days from the date such tax was levied. Interest of one-half of 1 per centum for each month or part thereof shall be charged on all unpaid amounts from the expiration of sixty days from the date such tax was levied. Any such tax may be paid in three equal installments with interest thereon. If any such tax or part thereof shall remain unpaid after the expiration of two years from the date such tax was levied, the property against which said tax was levied may be sold for such tax or unpaid portion thereof with interest and penalties thereon at the next ensuing annual tax sale in the same manner and under the same conditions as property sold for delinquent general real estate taxes, if said tax with interest and penalties thereon shall not have been paid in full prior to said sale.

(b) Any tax levied pursuant to this chapter as amended by the Act approved August 28, 1954, which was levied after the effective date of such Act of August 28, 1954, and prior to the effective date of this section, shall, for the purpose of computing interest thereon, be deemed to have been levied as of the effective date of this section. (May 1, 1906, 34 Stat. 158, ch. 2073, § 7, as amended Aug. 28, 1954, 68 Stat. 886, ch. 1032; Nov. 7, 1965, 79 Stat. 1216, Pub. L. 89–326, § 2.)

REFERENCES IN TEXT

The act of Aug. 28, 1954, referred to in subsection (b) is set out in sections 5–616 to 5–634.

AMENDMENT

1965—Section 2(a) act Nov. 7, 1965, amended the section now designated as (a) by striking "in the same manner as general taxes are collected in the District of Columbia" and inserting in lieu "as provided in this section" and added to subsection (a) the matter beginning with the words "Provided further". Section 2(b) is set out as subsection (b) to this section.

EFFECTIVE DATE OF ACT AUG. 28, 1954

Section 20 of act May 1, 1906, as added by act Aug. 28, 1954, provided that: "This Act [amending §§ 5–616 to 5–634] shall take effect thirty days after its approval [Aug. 28, 1954]."

§ 5–623. Litigation involving title to property—Notice—Report to Commissioners—Court order.

Whenever the Board for the Condemnation of Insanitary Buildings is in doubt as to the ownership of any building or part of a building, the condemnation of which is contemplated, because the title thereto is in litigation, said Board may notify all parties to the suit and may report the circumstances to the Commissioners of the District of Columbia, who may bring such circumstances to the attention of the court in which such litigation is pending for the

purpose of securing such order or decree as will enable said Board to continue such condemnation proceedings, and such court is hereby authorized to make such decrees and orders in such pending suit as may be necessary for that purpose. (May 1, 1906, 34 Stat. 158, ch. 2073, § 8, as amended Aug. 28, 1954, 68 Stat. 887, ch. 1032.)

EFFECTIVE DATE

Section effective thirty days after Aug. 28, 1954, see section 20 of act May 1, 1906, set out as a note under section 5–616.

§ 5–624. Infant owner—Person non compos mentis—Appointment of guardian.

Whenever the title to any building or part of building is vested in a person non compos mentis, or a minor child or minor children without legal guardian, the Board for the Condemnation of Insanitary Buildings shall report that fact to the Commissioners of the District of Columbia, who shall take due legal steps to secure the appointment of a guardian or guardians for such person non compos mentis, or minor child or children aforesaid, for the purpose of the condemnation proceedings authorized by sections 5–616 to 5–634, and any judge of the United States District Court for the District of Columbia is hereby authorized to appoint a guardian or guardians for such purpose. (May 1, 1906, 34 Stat. 159, ch. 2073, § 9, as amended Aug. 28, 1954, 68 Stat. 887, ch. 1032.)

EFFECTIVE DATE

Section effective thirty days after Aug. 28, 1954, see section 20 of act May 1, 1906, set out as a note under section 5–616.

§ 5–625. Notice—Service.

(a) Any notice required by this chapter to be served shall be deemed served when served by any of the following methods: (a) when forwarded to the last known address of the owner as recorded in the real estate assessment records of the District of Columbia by registered or certified mail, with return receipt, and such receipt shall constitute prima facie evidence of service upon such owner if such receipt is signed either by the owner or by a person of suitable age and discretion located at such address: *Provided,* That valid service upon the owner shall be deemed effected if such notice shall be refused by the owner and not delivered for that reason; or (b) when delivered to the person to be notified; or (c) when left at the usual residence or place of business of the person to be notified with a person of suitable age and discretion then resident or employed therein; or (d) if no such residence or place of busines can be found in the District of Columbia by reasonable search, then if left with any person of suitable age and discretion employed at the office of any agent of the person to be notified, which agent has any authority or duty with reference to the land or tenement to which said notice relates; or (e) if any such notice forwarded by registered or certified mail be returned for reasons other than refusal, or if personal service of any such notice, as hereinbefore provided, cannot be effected, then if published on three consecutive days in a daily newspaper published in the District of Columbia; or (f) if by reason of an outstanding unrecorded transfer of title the name of the owner in fact cannot be ascertained beyond a reasonable doubt, then if served on the owner of record in a manner hereinbefore provided. Any notice to a corporation shall, for the purposes of this chapter, be deemed to have been served on such corporation if served on the president, secretary, treasurer, general manager, or any principal officer of such corporation in the manner hereinbefore provided for the service of notices on natural persons holding property in their own right; and notices to a foreign corporation shall, for the purposes of this chapter, be deemed to have been served if served personally on any agent of such corporation, or if left with any person of suitable age and discretion residing at the usual residence or employed at the usual place of business of such agent in the District of Columbia.

(b) In case such notice is served by any method other than personal service, notice shall also be sent to the owner by ordinary mail. (May 1, 1906, 34 Stat. 159, ch. 2073, § 10, as amended Aug. 28, 1954, 68 Stat. 887, ch. 1032; Nov. 7, 1965, 79 Stat. 1216 Pub. L. 89–326, § 3.)

AMENDMENT

1965—Section 3 act Nov. 7, 1965, amended section generally.

EFFECTIVE DATE

Section effective thirty days after Aug. 28, 1954, see section 20 of act May 1, 1906, set out as a note under section 5–616.

§ 5–626. Interference with work or inspection.

No person shall interfere with the Commissioners or with any person acting under authority and by direction of said Commissioners in the discharge of his lawful duties, nor hinder, prevent, or refuse to permit any lawful inspection or the performance of any work authorized by sections 5–616 to 5–634 to be done by or by authority and direction of said Commissioners. (May 1, 1906, 34 Stat. 159, ch. 2073, § 11, as amended Aug. 28, 1954, 68 Stat. 888, ch. 1032.)

EFFECTIVE DATE

Section effective thirty days after Aug. 28, 1954, see section 20 of act May 1, 1906, set out as a note under section 5–616.

§ 5–627. Destruction, removal or concealment of copy of order affixed to building.

No person shall, without the consent of the Board for the Condemnation of Insanitary Buildings, deface, obliterate, remove, or conceal any copy of any order of condemnation which has been affixed to any building or part of building by order of the said Board; and the owner and the person having custody of any building or part of building to which a copy or copies of any such order has been affixed shall, if said copy of said order has been to his knowledge defaced, obliterated, or removed, forthwith report that fact in writing to the Board (unless he had good reason to believe that such copy of such an order has been removed by authority of the Board), and if such copy of such order has been concealed, he shall forthwith expose the same to view. (May 1, 1906, 34 Stat. 159, ch. 2073, § 12, as amended Aug. 28, 1954, 68 Stat. 888, ch. 1032.)

EFFECTIVE DATE

Section effective thirty days after Aug. 28, 1954, see section 20 of act May 1, 1906, set out as a note under section 5–616.

§ 5–628. Review of order—Application to Condemnation Review Board—Fee.

Any owner of property affected by an order of condemnation issued under the authority contained in sections 5–616 to 5–634 shall be entitled to a review of such order by the Condemnation Review Board established by the Commissioners in accordance with the provisions of section 5–617, upon making application to said Condemnation Review Board, in writing, within fifteen days from the date on which such owner has been served notice of such order of condemnation, and upon payment of a fee of $25. The said Condemnation Review Board shall be authorized by the Commissioners to affirm, modify, or vacate any order of condemnation issued under the authority contained in sections 5–616 to 5–634. (May 1, 1906, 34 Stat. 160, ch. 2073, § 13, as amended Aug. 28, 1954, 68 Stat. 888, ch. 1032.)

EFFECTIVE DATE

Section effective thirty days after Aug. 28, 1954, see section 20 of act May 1, 1906, set out as a note under section 5–616.

§ 5–629. Appeal from order—District of Columbia Court of General Sessions—Modification or vacation by court.

The owner of any building or part of building condemned under the provisions of sections 5–616 to 5–634 may, within fifteen days from the date on which such owner receives notice that such order of condemnation has been reviewed by the Condemnation Review Board established in accordance with section 5–617 and has been affirmed or modified by such Board, appeal to the District of Columbia Court of General Sessions for the modification or vacation of said order of condemnation. The District of Columbia Court of General Sessions shall give precedence to any such case, shall hear the testimony adduced therein, shall view the building or part of building affected by said order of condemnation, and thereafter shall affirm, modify, or vacate said order. In any proceeding instituted in accordance with the provisions of this subsection, such proceeding shall be conducted by the judge only, and nothing herein contained shall be construed as authorizing or entitling the owner of property affected by such order of condemnation to a trial by jury. (May 1, 1906, 34 Stat. 160, ch. 2073, § 14, as amended Aug. 28, 1954, 68 Stat. 888, ch. 1032; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

EFFECTIVE DATE

Section effective thirty days after Aug. 28, 1954, see section 20 of act May 1, 1906, set out as a note under section 5–616.

NOTES TO DECISIONS

Scope of review

Having failed to present the plea of unconstitutionality of a statute on its face to the district court, the appellant cannot urge it here since the rule is if the question is not raised in the trial court, it will not be considered on appeal. *Keyes* v. *Madsen* (1950, 179 F. 2d 40, 86 U.S. App. D.C. 24, certiorari denied 70 S. Ct. 628, 339 U.S. 928, 94 L. Ed. 546).

§ 5–630. Neglect by tenants or occupants of building.

Whenever any insanitary condition which has led to the condemnation of a building or part of building has been caused in any part by the action or by the neglect of the tenant or tenants, occupant or occupants thereof, such tenant, tenants, occupant, or occupants shall be guilty of a misdemeanor and be liable to the penalties provided in section 5–631. (May 1, 1906, ch. 2073, § 15, as added Aug. 28, 1954, 68 Stat. 889, ch. 1032.)

EFFECTIVE DATE

Section effective thirty days after Aug. 28, 1954, see section 20 of act May 1, 1906, set out as a note under section 5–616.

§ 5–631. Penalties.

Any person violating or aiding or abetting in violating sections 5–618, 5–619, 5–620, 5–622, 5–626, 5–627, or 5–630 shall, upon conviction thereof in the District of Columbia Court of General Sessions, upon information filed in the name of said District, be punished by a fine of not more than $100 or by imprisonment for not more than ninety days; and each day on which such unlawful act is done or during which such unlawful negligence continues shall constitute a separate and distinct offense. (May 1, 1906, 34 Stat. 161, ch. 2073, § 16, as added Aug. 28, 1954, 68 Stat. 889, ch. 1032; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

EFFECTIVE DATE

Section effective thirty days after Aug. 28, 1954, see section 20 of act May 1, 1906, set out as a note under section 5–616.

NOTES TO DECISIONS

Sentence

Monetary portion of sentence of $150 or 30 days imprisonment, for occupying a building for human habitation subsequent to condemnation thereof, was excessive. *Hammond* v. *District of Columbia* (D. C. Mun. App. 1956, 127 A. 2d 554).

§ 5–632. Appropriations—Payment of expenses.

Except as herein otherwise authorized all expenses incident to the enforcement of sections 5–616 to 5–634 shall be paid from appropriations made from time to time for that purpose in like manner as other appropriations for the expenses of the District of Columbia. (May 1, 1906, 34 Stat. 161, ch. 2073, § 17, formerly § 15, renumbered and amended Aug. 28, 1954, 68 Stat. 889, ch. 1032.)

EFFECTIVE DATE

Section effective thirty days after Aug. 28, 1954, see section 20 of act May 1, 1906, set out as a note under section 5–616.

§ 5–633. Definitions—"Commissioners"—"Owner".

(a) For the purposes of sections 5–616 to 5–634, the term "Commissioners" shall mean the Commissioners of the District of Columbia or their designated agent or agents; and the term "owner" shall mean (1) any person, or any one of a number of

persons, in whom is vested all or any part of the beneficial ownership, dominion, or title of the property found by the Commissioners to be in an insanitary condition; (2) the committee, conservator, or legal guardian of an owner who is non compos mentis, a minor child, or otherwise under a disability; or (3) a trustee elected or appointed, or required by law, to execute a trust, other than a trustee under a deed of trust to secure the repayment of a loan.

(b) Wherever under sections 5–616 to 5–634 any act is to be performed by, or any notice is to be given, an owner, such act may be performed by an agent of such owner, or such notice may be given to an agent of such owner who collects rent or otherwise acts as an agent for the owner in connection with said property. (May 1, 1906, ch. 2073, § 18, as added Aug. 28, 1954, 68 Stat. 889, ch. 1032.)

EFFECTIVE DATE

Section effective thirty days after Aug. 28, 1954, see section 20 of act May 1, 1906, set out as a note under section 5–616.

§ 5–634. Suits and proceedings under prior law—Time limits.

(a) All suits and proceedings instituted by or against the Board for the Condemnation of Insanitary Buildings in the District of Columbia created by section 5–601, or the Board for the Condemnation of Insanitary Buildings established by the Commissioners under the authority of Reorganization Plan Numbered 5 of 1952, prior to September 27, 1954, shall be deemed to have been taken by, or instituted by or against, the Commissioners of the District of Columbia.

(b) With respect to any building or part of building condemned by either of the Boards aforesaid prior to September 27, 1954, and which building or part of building stands condemned as of September 27, 1954, the six-month period provided by section 5–618 shall commence running from September 27, 1954.

(c) Wherever any provision of sections 5–616 to 5–634 refers to any order of the Board for the Condemnation of Insanitary Buildings, such provision shall mean the order of such Board, or, if such order be reviewed by the Condemnation Review Board, as such order has been affirmed or modified by the latter Board; and wherever sections 5–616 to 5–634 establishes any time limit within which there shall be compliance with an order of the Board for the Condemnation of Insanitary Buildings, such time limit shall begin running from the date on which the owner of the property affected by said order is served with notice thereof, or, if such order be reviewed by the Condemnation Review Board, from the date on which the owner of such property receives notice that such order has been affirmed or modified by the latter Board. (May 1, 1906, ch. 2073, § 19, as added Aug. 28, 1954, 68 Stat. 889, ch. 1032.)

EFFECTIVE DATE

Section effective thirty days after Aug. 28, 1954, see section 20 of act May 1, 1906, set out as a note under section 5–616.

Chapter 7.—HOUSING REDEVELOPMENT

Sec.
5–701. General purposes.
5–702. Definitions.
5–703. Establishment and powers of the Agency.
5–704. Power to acquire and assemble real property.
5–705. General and project area redevelopment plans—Shaw Junior High School.
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5–729. Same; relocation payments for reasonable and necessary moving expenses and actual direct losses of property resulting from displacement from property acquired by Commissioners for public works projects—Exception—Regulations—Limit on payments.
5–730. Determination of available housing, for displaced persons, to be made prior to acquisition of real property for public works.
5–731. District of Columbia Relocation Assistance Office—Establishment—Functions.
5–732. Commissioners authorized to make regulations.
5–733. Commissioners authorized and directed on behalf of the United States to transfer to District of Columbia Redevelopment Land Agency all right, title and interest of the United States to certain real property consisting of a part of Maryland Avenue and other streets in the southwest area.
5–734. Same; Agency authorized to lease or sell property described in section 5–733.
5–735. Same; Agency authorized to transfer to District of Columbia its interest in certain rights of way located on parts of Thirteen-and-a-Half Street, E Street and Thirteenth Street Southwest, for a consideration of $82,896.
5–736. Same; Local grant-in-aid restrictions.
5–737. Same; Definitions applicable to sections 5–733 to 5–737.

§ 5–701. General purposes.

It is hereby declared to be a matter of legislative determination that owing to technological and sociological changes, obsolete lay-out, and other factors, conditions existing in the District of Columbia with respect to substandard housing and blighted areas, including the use of buildings in alleys as dwellings for human habitation, are injurious to the public health, safety, morals, and welfare, and it is hereby declared to be the policy of the United States to protect and promote the welfare of the inhabitants of the seat of the Government by eliminating all such injurious conditions by employing all means necessary and appropriate for the purpose; and control by regulatory processes having proved inadequate and insufficient to remedy the evils, it is in the judgment of Congress necessary to acquire property in the District of Columbia by gift, purchase, or the use of eminent domain to effectuate the declared policy by the discontinuance of the use for human habitation in the District of Columbia of substandard dwellings and of buildings in alleys and blighted areas, and thereby to eliminate the substandard housing conditions and the communities in the inhabited alleys and blighted areas in such District; and it is necessary to modernize the planning and development of such portions of such District. The Congress finds that the foregoing cannot be accomplished by the ordinary operations of private enterprise alone without public participation in the planning and in the financing of land assembly for such development; and that for the economic soundness of this redevelopment and the accomplishment of the necessary social and economic benefits, and by reason of the close relationships between the development and uses of any part of an urban area with the development and uses of all other parts the sound replanning and redevelopment of an obsolescent or obsolescing portion of such District cannot be accomplished unless it be done in the light of comprehensive and coordinated planning of the whole of the territory of the District of Columbia and its environs; and that this comprehensive planning and replanning should proceed vigorously without delay; and to these ends it is necessary to enact the provisions hereinafter set forth; and that the acquisition and the assembly of real property and the leasing or sale thereof for redevelopment pursuant to a project area redevelopment plan, all as provided in sections 5–701 to 5–719, is hereby declared to be a public use. (Aug. 2, 1946, 60 Stat. 790, ch. 736, § 2.)

EFFECTIVE DATE

Section 23, formerly § 22, of act Aug. 2, 1946, as renumbered act July 15, 1949, 63 Stat. 441, ch. 338, title VI, § 609, provided that: "This Act [adding sections 5–701 to 5–719] shall take effect ninety days after the date of its approval [Aug. 2, 1946]."

SHORT TITLE

Section 1 of act Aug. 2, 1946, provided that sections 5–701 to 5–719 may be cited as the "District of Columbia Redevelopment Act of 1945."

NOTES TO DECISIONS

Commercial properties

In proceeding to condemn property as part of comprehensive plan to develop a waterfront area as well as blighted areas near it, plaintiff, whose properties lay between the waterfront and area of blight and were deemed necessary to the proper completion of the comprehensive plan, was not entitled to defeat the condemnation proceedings on the ground that properties were commercial in character, containing modern and attractive business buildings and were quite distinct from the nearby blighted areas. *Donnelly* v. *District of Columbia Redevelopment & Land Agency et al.* (1959, 269 F. 2d 546, 106 U.S. App. D.C. 99).

Constitutionality

Fifth Amendment to the Federal Constitution does not prohibit Congressional legislation to make Nation's capital beautiful as well as sanitary. *Berman* v. *Parker* (1954, 75 S. Ct. 98, 348 U. S. 26, 99 L. Ed. 27).

Tort actions

The District of Columbia Redevelopment Land Agency is a Federal agency within meaning of the Federal Tort Claims Act, and suits based on torts allegedly committed by the Agency or its employees acting in an official capacity are maintainable, if at all, under the Tort Claims Act, and must name the United States as defendant. *C. R. Goddard* v. *District of Columbia Redevelopment Land Agency etc.* (1961, 287 F. 2d 343, 109 U.S. App. D.C. 304).

§ 5–702. Definitions.

The following terms, whenever used or referred to in sections 5–701 to 5–719, shall, for the purposes of sections 5–701 to 5–719 and unless a different intent clearly appears from the context, be construed as follows:

(a) The term "Agency" means the District of Columbia Redevelopment Land Agency established by section 5–703.

(b) "District Commissioners" means the Board of Commissioners of the District of Columbia.

(c) "Housing" includes housing, dwelling, habitation, and residence.

(d) "Housing project" means any low-rent housing (as defined in the United States Housing Act of 1937, U. S. C., title 42, ch. 8), the development or administration of which is assisted by the United States Housing Authority.

(e) "Land" includes bare or vacant land, or the land under buildings, structures, or other improvements; also water and land under water. When employed in connection with "use," as for instance, "use of land" or "land use," "land" also includes buildings, structures, and improvements existing or to be placed thereon.

(f) "Low-rent housing" means safe and sanitary housing within the financial reach of families of comparatively low income and, as a guide for the standard of rental to be used as a maximum at the time of the enactment of this law but not necessarily thereafter, it is specified that such housing shall be rented at not more than $13 per room per month, excluding utilities.

(g) "Lessee" means an individual, partnership, corporation, religious organization, institution, or any other legal entity including, but not limited to, a redevelopment company, which has the power to conform to the applicable provisions of this chapter and to comply with the terms of the lease of a project area or part thereof, and includes the successors or assigns and successors in title of any lessee.

(h) "Planning Commission" means the National Capital Planning Commission.

(i) "Proceeds" means the money proceeds of sales or transfers by the Agency; and "net proceeds"

means the gross proceeds after deducting commissions or other expenses of the sales or transfers.

(j) "Project area" is an area of such extent and location as may be adopted by the Planning Commission and approved by the District Commissioners as an appropriate unit of redevelopment planning for a redevelopment project separate from the redevelopment projects for other parts of the District of Columbia. In the provisions of sections 5–701 to 5–719 relating to lease or sale by the Agency, for abbreviation "project area" is used for the remainder of the project area after taking out those pieces of property which in accordance with section 5–706(a) shall have been or are to be transferred for public uses.

(k) "Public low-rent housing" means low-rent housing, constructed by a public agency for families of low income, at rentals which (including the value or cost to tenants of heat, light, water, and cooking fuel) shall not exceed one-fifth of the highest net family income of families eligible for tenancy in such housing, as herein provided. The dwellings in public low-rent housing shall be available solely for such families of low income whose net family income does not exceed the maximum net family income falling within the lowest 20 per centum by number of all family incomes in the District of Columbia, as such maximum net family income shall have been determined, or from time to time redetermined after public hearing, by the District Commissioners. At the end of one year after the enactment of sections 5–701 to 5–719 this definition shall be reexamined by the Commissioners for the District of Columbia and a public hearing shall be held thereon to determine whether administrative or interpretive difficulties or unsatisfactory progress in the provision of low-rent housing requires a modification thereof. Upon the conclusion of such hearing the Commissioners shall forthwith make recommendations to Congress whether said definition should be modified and, if so, to what extent.

(*l*) "Purchaser" means an individual, partnership, corporation, religious organization, institution, or any other legal entity including, but not limited to, a redevelopment company, which has the power to conform to the applicable provisions of this chapter and to comply with the terms of the sale of a project area or part thereof and includes the successors or assigns and successors in title of any purchaser.

(m) "Real property" includes land; also includes land together with the buildings, structures, fixtures, and other improvements thereon; also includes liens, estates, easements, and other interests therein; and also includes restrictions or limitations upon the use of land, buildings, or structures other than those imposed by exercise of the police power.

(n) "Redevelopment" means replanning, clearance, redesign, and rebuilding of project areas, including open-space types of uses, such as streets, recreation and other public grounds, and spaces around buildings, as well as buildings, structures, and improvements, but not excluding the continuance of some of the existing buildings or uses in a project area. For the purposes of sections 5–701 to 5–719, "redevelopment" also includes the replanning, redesign, and original development of undeveloped areas which, by reason of street lay-out, lot lay-out, or other causes, are backward and stagnant and therefore blighted and for which replanning and land assembly are deemed necessary as a condition of sound development.

(*o*) "Redevelopment company" means a private or public corporation or body corporate, whether organized under the District of Columbia Code or the laws of the United States or any State, or an unincorporated association, trust, or other legal entity, which, by virtue of the statutes, charter, articles of incorporation, instruments of trust, or other instrument defining its powers, has the power to become a lessee or purchaser of a project area and to conform to the provisions of sections 5–701 to 5–719 and to perform fully and comply with the terms of the lease or sale of such area or part thereof to it.

(p) "Rentals" means the rents specified in a lease to be paid by the lessee to the Agency; "net rentals" means gross rentals after deducting taxes payable by the Agency.

(q) "Revenues" means the revenues or income received by the Agency from real property while held by it and operated or temporarily let by it and not yet leased, transferred, or sold by it; and "net revenues" means the gross revenues after deducting repair, management, maintenance, insurance, and other operating expenses and taxes paid or payable by the Agency.

(r) "Substandard housing conditions" means the conditions obtaining in connection with the existence of any dwelling, or dwellings, or housing accommodations for human beings, which because of lack of sanitary facilities, ventilation, or light, or because of dilapidation, overcrowding, faulty interior arrangement, or any combination of these factors, is in the opinion of the Commissioners detrimental to the safety, health, morals, or welfare of the inhabitants of the District of Columbia. (Aug. 2, 1946, 60 Stat. 791, ch. 736, § 3; Aug. 28, 1958, 72 Stat. 1102, Pub. L. 85–854, § 1 (1, 2, 3).)

AMENDMENT

1958—Subsec. (g) amended by act Aug. 28, 1958, § 1 (1), which included individuals, partnerships, corporations, religious organizations, institutions, redevelopment companies and any other legal entities.

Subsec. (j) was amended by act Aug. 28, 1958, § 1(2), which deleted "after public hearing" following "District Commissioners."

Subsec. (*l*) was amended by act Aug. 28, 1958, § 1(3), which included individuals, partnerships, corporations, religious organizations, institutions, redevelopment companies and any other legal entities.

EFFECTIVE DATE

Section effective ninety days after Aug. 2, 1946, see section 22 of act Aug. 2, 1946, set out as a note under section 5–701.

TRANSFER OF FUNCTIONS

"National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in view of act June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission. See section 1–1009.

NOTES TO DECISIONS

Aid of private enterprise

Where redevelopment of substandard housing and blighted areas falls within the scope of congressional authority, aid of private enterprise in redevelopment of

such areas may be sought. *District of Columbia Redevelopment Land Agency* v. *40 Parcels of Land etc.* (D.C.D.C. 1959, 171 F. Supp. 138).

Scope of judicial review

Wisdom or accuracy of decisions made by agencies set up by Congress to accomplish urban renewal are, for the most part, beyond scope of judicial review. *District of Columbia Redevelopment Land Agency* v. *40 Parcels of Land etc.* (D.C.D.C. 1959, 171 F. Supp. 138).

Slum

The word "slum" within meaning of the District of Columbia Redevelopment Act of 1945, authorizing seizure of realty for slum clearance and prevention, means conditions injurious to the public health, safety, morals, and welfare. *Schneider* v. *District of Columbia et al.* (D.C.D.C. 1953, 117 F. Supp. 705).

Urban renewal on area basis

Under the District of Columbia Redevelopment Land Act of 1945, urban renewal may be brought about on an area, rather than on a structure-by-structure basis, thus permitting acquisition of all property within a given project area even if particular parcels may not be liable to be classified as substandard. *District of Columbia Redevelopment Land Agency* v. *40 Parcels of Land etc.* (D.C.D.C. 1959, 171 F. Supp. 138).

§ 5–703. Establishment and powers of the Agency.

(a) The District of Columbia Redevelopment Land Agency is hereby established and shall be composed of five members. Two members shall be appointed by the President and three members shall be appointed by the District Commissioners, subject to confirmation by the Senate. One of the Presidential appointees may be an official of the United States Government; one appointee of the District Commissioners may be an official of the District of Columbia Government. Each nonofficial appointee shall have been a resident of the District of Columbia for at least the five next preceding years, and shall have been engaged or employed during such time in private business or industry, or the private practice of a profession, in the District of Columbia. The terms of members shall be for five years, except that the first appointment of one of the Presidential appointees shall be for three years and the other for five years; one of the first appointments of the District Commissioners shall be for four years, one for two years, and one for one year: *Provided,* That in the event any member shall cease to hold the official position held by him at the time of his designation or appointment, such cessation shall be deemed to create a vacancy in his membership on the Agency, such vacancy, as well as all vacancies from other causes, to be filled by designation or appointment by the President or District Commissioners for the unexpired term. The members shall receive no salary as such, but those members who hold no other salaried public position shall be paid a per diem of $20 for each day of service at meetings or on the work of the Agency.

(b) The said District of Columbia Redevelopment Agency is hereby made a body corporate of perpetual duration, the powers of which shall be vested in and exercised by the board of directors thereof, consisting of the five members thereof appointed as above set forth. It shall have the power to adopt, alter, and use a corporate seal which shall be judicially noticed; to make contracts; to sue and be sued, to complain and defend in its own name in any court of competent jurisdiction, State, Federal, or municipal; to make, deliver, and receive deeds, leases, and other instruments and to take title to real and other property in its own name; to adopt, prescribe, amend, repeal, and enforce bylaws, rules, and regulations for the exercise of its powers under sections 5–701 to 5–719 or governing the manner in which its business may be conducted and the powers granted to it by sections 5–701 to 5–719 may be exercised and enjoyed, including the selection of its chairman and other officers, together with provisions for such committees and the functions thereof as it may deem necessary for facilitation of its work; to protect and enforce any right conferred upon it by sections 5–701 to 5–719, or otherwise acquired, including any lease, sale, or other agreement made by or with it; and in general to exercise all the powers necessary or proper to the performance of its duties and functions under sections 5–701 to 5–719. (Aug. 2, 1946, 60 Stat. 793, ch. 736, § 4.)

EFFECTIVE DATE

Section effective ninety days after Aug. 2, 1946, see section 22 of act Aug. 2, 1946, set out as a note under section 5–701.

NOTES TO DECISIONS

Administrative determination

In condemnation proceeding under the District of Columbia Redevelopment Act, District Court could not substitute its judgment for that of the legally authorized administrative agencies as to whether the properties sought to be seized were slum properties. *District of Columbia Redevelopment Land Agency* v. *70 Parcels of Land, etc.* (D.C.D.C. 1954, 153 F. Supp. 840).

The necessity for seizure of title to realty by the District of Columbia Redevelopment Land Agency under the District of Columbia Redevelopment Act of 1945 involves facts and judgment that are essentially for the administrators of the act, and function of the courts is limited to determining whether conclusions of the administrators are within reason on the record and within the congressional delegation of authority. *Schneider* v. *District of Columbia et al.* (D.C.D.C. 1953, 117 F. Supp. 705).

Aid of private enterprise

Where redevelopment of substandard housing and blighted areas falls within the scope of congressional authority, aid of private enterprise in redevelopment of such areas may be sought. *District of Columbia Redevelopment Land Agency* v. *40 Parcels of Land etc.* (D.C.D.C. 1959, 171 F. Supp. 138).

Juudgment of three judge court

Where three-judge District Court upheld, with certain limitations, constitutionality of District of Columbia Redevelopment Act and appeal was pending in Supreme Court, the one-judge District Court hearing the summary judgment motion of the District of Columbia Redevelopment Land Agency was bound by the judgment of the three-judge District Court. *District of Columbia Redevelopment Land Agency* v. *70 Parcels of Land, etc.* (D.C.D.C. 1954, 153 F. Supp. 840).

Power of Congress

Congress has the power to delegate to the District of Columbia the power to clear slums. *Schneider* v. *District of Columbia et al.* (D.C.D.C. 1953, 117 F. Supp. 705).

Scope of judicial review

Wisdom or accuracy of decisions made by agencies set up by Congress to accomplish urban renewal are, for the most part, beyond scope of judicial review. *District of Columbia Redevelopment Land Agency* v. *40 Parcels of Land etc.* (D.C.D.C. 1959, 171 F. Supp. 138).

Summary judgment

On motion for summary judgment in condemnation proceeding under District of Columbia Redevelopment Act, record disclosed no genuine issue of fact as to whether the authorized officials acted beyond the scope of the act, in including the property sought to be taken

within the project area. *District of Columbia Redevelopment Agency* v. *70 Parcels of Land, etc.* (D.C.D.C., 1954, 153 F. Supp. 840).

Title to property

Under District of Columbia Redevelopment Act of 1945, the redevelopment land agency created by the act had right and power to take full title to realty involved in all cases in which it considered such acquisition necessary to carry out project. *Berman* v. *Parker* (1954, 75 S. Ct. 98, 348 U.S. 26, 99 L. Ed. 27).

Whether acquisition of full title to real property involved in condemnation proceedings was necessary to carry out project was a question for the redevelopment land agency created by the District of Columbia Redevelopment Act of 1945, and it was not within the province of the courts to determine such necessity. *Id.*

Urban renewal on area basis

Under the District of Columbia Redevelopment Land Act of 1945, urban renewal may be brought about on an area, rather than on a structure-by-structure basis thus permitting acquisition of all property within a given project area even if particular parcels may not be liable to be classified as substandard. *District of Columbia Redevelopment Land Agency* v. *40 Parcels of Land etc.* (D.C.D.C. 1959, 171 F. Supp. 138).

§ 5–704. Power to acquire and assemble real property.

(a) Subject to and in accordance with the procedures, conditions, and other provisions of sections 5–701 to 5–719, the Agency is hereby granted the power to further the redevelopment of blighted territory in the District of Columbia and the prevention, reduction, or elimination of blighting factors or causes of blight and for that purpose to acquire and assemble real property by purchase, exchange, gift, dedication, or eminent domain, and including the power to rent, maintain, manage, operate, repair, clear, transfer, lease, and sell such real property, but excluding the power to build new structures thereon (other than the improvements mentioned in section 5–706 (i) or the power to enlarge, extend, or make major structural improvements of existing buildings).

(b) Condemnation proceedings for the acquisition of real property for said purposes shall be conducted in accordance with the procedural provisions of sections 16–619 to 16–644. The title to properties acquired under sections 5–701 to 5–719 shall be taken by and in the name of the Agency and proceedings for condemnation or other acquisition of property shall be brought by and in the name of the Agency. (Aug. 2, 1946, 60 Stat. 793, ch. 736, § 5.)

REFERENCES IN TEXT

Sections 16–619 and 16–644, referred to in subsec. (b) were repealed by act Dec. 23, 1963, 72 Stat. 620, Pub. L. 88–241, § 21(a), and are now covered by §§ 16–1301 and 16–1351 et seq.

EFFECTIVE DATE

Section effective ninety days after Aug. 2, 1946, see section 22 of act Aug. 2, 1946, set out as a note under section 5–701.

NOTES TO DECISIONS

Aid of private enterprise

Where redevelopment of substandard housing and blighted areas falls within the scope of congressional authority, aid of private enterprise in redevelopment of such areas may be sought. *District of Columbia Redevelopment Land Agency* v. *40 Parcels of Land etc.* (D.C.D.C. 1959, 171 F. Supp. 138).

Commercial properties

In proceeding to condemn property as part of comprehensive plan to develop a waterfront area as well as blighted areas near it, plaintiff, whose properties lay between the waterfront and area of blight and were deemed necessary to the proper completion of the comprehensive plan, was not entitled to defeat the condemnation proceedings on the ground that properties were commercial in character, containing modern and attractive business buildings and were quite distinct from the nearby blighted areas. *Donnelly* v. *District of Columbia Redevelopment Land Agency et al.* (1959, 269 F. 2d 546, 106 U.S. App. D.C. 99).

In view of fact that the District of Columbia Redevelopment Act of 1945 applies alike to all realty, which meets the conditions laid down in the act, and authorizing acquisition by condemnation of realty for purpose of the act without differentiating between kinds of realty, application of the act to commercial properties is not without due process of law, on ground that it is not authorized by the act. *Schneider* v. *District of Columbia et al.* (D.C.D.C. 1953, 117 F. Supp. 705).

Constitutionality

In determining constitutionality of housing redevelopment legislation, in action to enjoin condemnation of property, Supreme Court would not pass upon issue whether particular housing project was or was not desirable. *Berman* v. *Parker* (1954, 75 S. Ct. 98, 348 U.S. 26, 99 L. Ed. 27).

Rights of property owners who were defendants in condemnation proceedings instituted pursuant to District of Columbia Redevelopment Act of 1945 were satisfied upon receipt of just compensation for the taking, as required by the Fifth Amendment to the Federal Constitution. *Id.*

The District of Columbia Redevelopment Act of 1945 goes no further than to permit the District of Columbia Redevelopment Land Agency to seize title to realty, on which slums exist or on which a slum may be foreseen, for purpose of eliminating or preventing conditions injurious to the public health, safety, morals, or welfare. and therefore the act is valid. *Schneider* v. *District of Columbia et al.* (D.C.D.C. 1953, 117 F. Supp. 705).

Eminent domain

Claim by property owner that action of District of Columbia redevelopment land agency was arbitrary and capricious in that purpose for which her property was seized was not a public purpose and that the taking was therefore illegal, presented no issue of fact precluding the granting of summary judgment. *Mamer* v. *District of Columbia Redevelopment Land Agency* (C.A. D.C. 1960, 284 F. 2d 221).

The clearance of a slum is a public purpose, and condemnation of improvements, which create hazards to health, safety, etc., is within the power of eminent domain. *Schneider* v. *District of Columbia et al.* (D.C.D.C. 1953, 117 F. Supp. 705).

The District of Columbia Redevelopment Land Agency had power under the District of Columbia Redevelopment Act of 1945 to acquire by eminent domain realty to be devoted to streets, schools, recreation centers, parks, for construction of low-cost housing, and other public uses. *Id.*

Congress did not in the District of Columbia Redevelopment Act of 1945 confer power on the District of Columbia Redevelopment Land Agency to seize realty beyond reasonable necessities of slum clearance and prevention. *Id.*

Police power

The power of the District of Columbia Redevelopment Land Agency to clear slums lies within the well-established concepts of police power, which is the protection of the public health, safety, morals, and welfare. *Schneider* v. *District of Columbia et al.* (D.C.D.C. 1953, 117 F. Supp. 705).

Scope of judicial review

Wisdom or accuracy of decisions made by agencies set up by Congress to accomplish urban renewal are, for the most part, beyond scope of judicial review. *District of Columbia Redevelopment Land Agency* v. *40 Parcels of Land etc.* (D.C.D.C. 1959, 171 F. Supp. 138).

Standards

Standards contained in District of Columbia Redevelopment Act of 1945 were sufficiently definite and adequate to sustain delegation of authority, to agencies concerned. for execution of plan to eliminate not only slums but

also blighted areas which tend to produce slums. *Berman* v. *Parker* (1954, 75 S. Ct. 98, 348 U.S. 26, 99 L. Ed. 27).

Tort actions

The District of Columbia Redevelopment Land Agency is a Federal agency within meaning of the Federal Tort Claims Act, and suits based on torts allegedly committed by the Agency or its employees acting in an official capacity are maintainable, if at all, under the Tort Claims Act, and must name the United States as defendant. *C. R. Goddard* v. *District of Columbia Redevelopment Land Agency etc.* (1961, 287 F. 2d 343, 109 U.S. App. D.C. 304).

Urban renewal on area basis

Under the District of Columbia Redevelopment Land Act of 1945, urban renewal may be brought about on an area, rather than on a structure-by-structure basis thus permitting acquisition of all property within a given project area even if particular parcels may not be liable to be classified as substandard. *District of Columbia Redevelopment Land Agency* v. *40 Parcels of Land etc.* (D.C.D.C. 1959, 171 F. Supp. 138).

Verdict

In proceeding to condemn property under urban redevelopment plan, evidence sustained amount of verdict. *Brabner-Smith* v. *Dist. of Columbia Redevelopment Land Agency* (C.A. D.C. 1960, 284 F. 2d 229).

§ 5–705. General and project area redevelopment plans—Shaw Junior High School.

(a) The Planning Commission is hereby directed to make and, from time to time, develop a comprehensive or general plan of the District of Columbia, including the appropriate maps, charts, tables, and descriptive, interpretative, and analytical matter, which plan is intended to serve as a general framework or guide of development within which the various project areas may be more precisely planned and calculated, and which comprehensive or general plan shall include at least a land-use plan which designates the proposed general distribution and general locations and extents of the uses of the land for housing, business, industry, recreation, education, public buildings, public reservations, and other general categories of public and private uses of the land.

(b) For the exercise of the powers granted to the Agency by sections 5–701 to 5–719 for the acquisition and disposition of real property for the redevelopment of a project area, the following steps and plans shall be requisite, namely:

(1) Adoption by the Planning Commission of the boundaries of the project area proposed by it, submission of such boundaries to the District Commissioners, and approval thereof by said Commissioners.

(2) Adoption by the Planning Commission and submission to, and, after a public hearing thereon, approval by the District Commissioners, of the redevelopment plan of the project area which shall contain a site and use plan for the redevelopment of the area, including the approximate locations and extents of the land uses proposed for and within the area, such as public buildings, streets, and other public works and utilities, housing, recreation, business, industry, schools, public and private open spaces, and other categories of public and private uses. Such plan shall also contain specifications of standards of population density and building intensity. Any such plan may also specify, by means of specification of maximum rentals or other basis, the amount or character or class of any low-rent housing for which the area or part thereof is proposed to be redeveloped.

(c) In relation to the location and extent of public works and utilities, public buildings, and other public uses in the general plan or in a project area plan, the Planning Commission is directed to confer with the Federal and District public officials, boards, authorities, and agencies under whose administrative jurisdictions such uses respectively fall. In the project area planning, the Planning Commission is directed to consult from time to time with the Agency, and the Agency shall be free at all times to submit to the Planning Commission suggestions regarding both the location and extent of project areas and the use and site plans of project areas.

(d) After a project area redevelopment plan shall have been adopted by the Planning Commission and approved by the District Commissioners, the Planning Commission shall forthwith certify said plan to the Agency, whereupon said Agency shall proceed to the exercise of the powers granted to it in sections 5–701 to 5–719 for the acquisition and assembly of the real property of the area. Following such certification, no new construction shall be authorized by the District Commissioners in such area, including substantial remodeling or conversion or rebuilding, enlargement or extension or major structural improvements on existing buildings, but not including ordinary maintenance or remodeling or changes necessary to continue the occupancy.

(e) Prior to the adoption of an urban renewal plan by the Planning Commission and approval by the District Commissioners, the Agency may exercise the powers granted to it by sections 5–701 to 5–719, for the acquisition and disposition of real property, the demolition and removal of buildings or structures, the relocation of site occupants, and the construction of site improvements for the purpose of providing a site for a new facility to replace Shaw Junior High School within the boundaries which may be established for any urban renewal project area: *Provided,* That (1) the District Commissioners, after a public hearing, and the Planning Commission approve the acquisition and disposition of all such property or properties; and (2) the District Commissioners agree to assume the responsibility to bear any loss that may arise as a result of the exercise of authority under this subsection in the event that the property is not used for urban renewal purposes because the urban renewal plan is not approved by all appropriate authorities or because such urban renewal plan, as approved by all appropriate authorities does not include such property or properties or is amended to omit any of the acquired property, or is abandoned for any reason. The District Commissioners and the appropriate agencies operating within the District of Columbia are authorized to do any and all things necessary to secure financial assistance under title I of the Housing Act of 1949, as amended, to acquire and prepare a site for a new facility to replace Shaw Junior High School. The District Commissioners are authorized to assume the responsibilities described in this subsection and, to carry out the purposes of this subsection, the District Commissioners and the Agency are

authorized to borrow money pursuant to the early land acquisition provisions of title I of the Housing Act of 1949, as amended, and to issue obligations evidencing such loans and to make such pledges as may be required to secure such loans. (Aug. 2, 1946, 60 Stat. 794, ch. 736, § 6; Sept. 12, 1966, 80 Stat. 758, Pub L. 89–569, § 1.)

REFERENCES IN TEXT

Title I of the Housing Act of 1949, as amended, referred to in subsec. (e) of this section, is classified to 42 U.S.C. § 1450 et seq.

AMENDMENTS

1966—Act Sept. 12, 1966, added subsec. (e).

EFFECTIVE DATE

Section effective ninety days after Aug. 2, 1946, see section 22 of act Aug. 2, 1946, set out as a note under section 5–701.

NOTES TO DECISIONS

Aid of private enterprise

Where redevelopment of substandard housing and blighted areas falls within the scope of congressional authority, aid of private enterprise in redevelopment of such areas may be sought. *District of Columbia Redevelopment Land Agency* v. *40 Parcels of Land etc.* (D.C.D.C. 1959, 171 F. Supp. 138).

Area planning

Congress had power, in enacting housing legislation applicable to District of Columbia, to provide that whole area should be redesigned, notwithstanding contention of owner of commercial structure sought to be condemned that his particular building did not imperil health or safety nor contribute to making of slum or blighted area. *Berman* v. *Parker* (1954, 75 S. Ct. 98, 348 U. S. 26, 99 L. Ed. 27).

Basis for seizure

Title to realty cannot be seized by the Government merely because a slum presently exists on the realty, and some further necessitous circumstance must exist to validate such a seizure, and it must be either that the clearance of the slum is impracticable without taking title to realty or that proposed restrictions, which can be imposed only through medium of resale, are fairly calculated to prevent recurrence of slum conditions. *Schneider* v. *District of Columbia et al.* (D.C.D.C. 1953, 117 F. Supp. 705).

Diversification for future use

Diversification in future use of entire area for new homes, schools, churches, parks, streets and shopping centers was relevant to maintenance of desired housing standards and was therefore within congressional power in enactment of redevelopment legislation applicable to District of Columbia. *Berman* v. *Parker* (1954, 75 S. Ct. 98, 348 U.S. 26, 99 L. Ed. 27).

Property included

Property which, standing by itself, is innocuous and unoffending may be taken for redevelopment pursuant to District of Columbia Redevelopment Act of 1945. *Berman* v. *Parker* (1954, 75 S. Ct. 98, 348 U.S. 26, 99 L. Ed. 27).

Public hearing

Question of necessity for public hearing antecedent to designation of urban renewal project area became moot when designation was rescinded and, accordingly, the Court of Appeals was precluded from reviewing that question on appeal from summary judgment for defendants in suit challenging action of Commissioners of District of Columbia in designating area, and appropriate procedure was for Court of Appeals to direct that judgment in favor of defendants be vacated and that case be remanded to District Court for dismissal of complaint. *Gudelsky et al.* v. *Spencer et al.* (1957, 242 F. 2d 29, 100 U.S. App. D.C. 56).

Redevlopment area

The District of Columbia Redevelopment Act of 1945 does not authorize the seizure, redevelopment and sale of all realty in any area that the District of Columbia Redevelopment Land Agency might select as appropriate, merely because the area includes a slum area. *Schneider* v. *District of Columbia et al.* (D.C.D.C. 1953, 117 F. Supp. 705).

Congress, in enacting the District of Columbia Redevelopment Act, had no power to authorize seizure by eminent domain of realty for sole purpose of redeveloping area according to the judgment of the administrators of the act as to what a well-developed, well-balanced neighborhood would be, if no slum existed in the area and the seizure was not for public use. *Id.*

Scope of judicial review

Wisdom or accuracy of decisions made by agencies set up by Congress to accomplish urban renewal are, for the most part, beyond scope of judicial review. *District of Columbia Redevelopment Land Agency* v. *40 Parcels of Land etc.* (D.C.D.C. 1959, 171 F. Supp. 138).

Urban renewal on area basis

Under the District of Columbia Redevelopment Land Act of 1945, urban renewal may be brought about on an area, rather than on a structure-by-structure basis thus permitting acquisition of all property within a given project area even if particular parcels may not be liable to be classified as substandard. *District of Columbia Redevelopment Land Agency* v. *40 Parcels of Land etc.* (D.C.D.C. 1959, 171 F. Supp. 138).

§ 5–706. Transfer, lease, or sale of real property in project area for public and private uses.

(a) After any real property in the project area shall have been acquired by the Agency, the Agency shall have the power to transfer to and shall at a practicable time or times transfer by deeds to the United States or to the District of Columbia, or to the appropriate Federal or District public body, department, or agency, those pieces of real property which, in accordance with the approved project area redevelopment plan, are to be devoted to public uses (other than public housing) falling within the construction or administrative jurisdiction of Federal or District agencies, such as streets and other utilities and works, Federal and District public buildings, public recreational spaces, and schools. The Federal agencies and the public agencies of the District of Columbia are hereby empowered, respectively, to acquire real property from the Agency for the uses respectively specified in the project area plan and to pay for same out of their funds duly appropriated for such acquisition. Excepting for such property as may be transferred by dedication, gift, or exchange, the transferee agency shall pay to the Agency such sum as may be agreed upon or, in the absence of agreement, as may be fixed by the Chief Judge of the United States District Court for the District of Columbia.

(b) The Agency, after it has acquired any or all of the real property in the project area, shall have the power to lease or sell so much thereof as is not to be devoted to public use, as an entirety or parts thereof separately to lessees or purchasers. Said real property may include streets or parts thereof which in accordance with the plan are to be closed or vacated or other than publicly owned properties; and the Federal and District departments and agencies are empowered to transfer said spaces or properties to the Agency for such sums or other consideration as may be agreed upon.

(c) Any such lease or sale may be made without public bidding but only after a public hearing, after

ten days' public notice, by the Agency upon the proposed lease or sale and the provisions thereof.

(d) The term of any such lease shall be fixed by the Agency and the instrument of lease may provide for renewals upon reappraisals and with rentals and other provisions adjusted to such reappraisals. Every such lease and every contract of sale and deed shall provide that the lessee or purchaser shall (1) devote the real property to the uses specified in the approved project area redevelopment plan or approved modifications thereof; (2) begin within a reasonable time any improvements on the real property required by the plan; and (3) comply with such other conditions as the Agency may find necessary to carry out the purposes of sections 5–701 to 5–719: *Provided,* That clause (2) of this sentence shall not apply to a mortgagee or trustee under deed of trust or others who acquire an interest in such real property as the result of the enforcement of any lien or claim thereon. In the instrument, or instruments, of lease or sale, the Agency may include such other terms, conditions, and provisions as in its judgment will provide reasonable assurance of the priority of the obligations of the lease or sale and of conformance to the plan over any other obligations of the lessee or purchaser and also assurance of the financial and legal ability of the lessee or purchaser to carry out and conform to the plan and the terms and conditions of the lease or sale; also, such terms, conditions, and specifications concerning buildings, improvements, subleases, or tenancies, maintenance and management, and any other related matters as the Agency may reasonably impose or approve, including provisions whereby the obligations to carry out and conform to the project area plan shall run with the land. In the event that maximum rentals to be charged to tenants of housing be specified, provision may be made for periodic reconsideration of such rental bases, with a view to proposing modification of the project area plan with respect to such rentals.

(e) Until the Agency certifies that all building constructions and other physical improvements specified to be done and made by the purchaser of the area have been completed, the purchaser shall have no power to convey (except to a mortgagee or trustee under a deed of trust) the area, or any part thereof, without the consent of the Agency; and no such consent shall be given unless the grantee of the purchaser obligates itself or himself by written instrument to the Agency to carry out that portion of the redevelopment plan which falls within the boundaries of the conveyed property, and also that the grantee, his or its heirs, representatives, successors, and assigns, shall have no right or power to convey, lease, or let the conveyed property or any part thereof or erect or use any building or structure erected thereon free from the obligation and requirement to conform to the approved project area redevelopment plan or approved modifications thereof.

(f) No lease or sale of any project area or portion thereof shall be made by the Agency to any public redevelopment company unless the terms of such lease or sale shall provide greater compensation to the Agency than any offer or combination of offers based on substantially the same area and substantially the same redevelopment plan which shall be received from any responsible private sources (eligible as purchasers or lessees under sections 5–701 to 5–719) within a reasonable announced period of time (not less than thirty days) after the public hearing on such proposed lease or sale. It is the intent of this provision that private enterprise as represented through a responsible private lessee or purchaser shall be given a preference over any public redevelopment company in such lease or sale provided such preference can be given, in the judgment of the Agency, consistently with the protection of the public interest and consistently with a purpose to resort to a public redevelopment company only in the event that private enterprise shall not reasonably be available for the development of the project area or the part thereof under consideration.

(g) The Agency may itself demolish any existing structure or clear the area or any part thereof, or may specify the demolition and clearance to be performed by a lessee or purchaser within a reasonable time after such lease or purchase. The Agency may specify a reasonable time schedule and reasonable conditions for the construction of buildings and other improvements by a lessee or purchaser: *Provided,* That any such time schedule or condition shall be specified prior to the offering of the area or part thereof for lease or sale, and shall be equally binding upon any purchaser or lessee, public or private. The cost of demolition or clearance made by the Agency pursuant to this subsection shall be treated as an item of cost of the acquisition of the area.

(h) In order to facilitate the lease or sale of a project area or, in the event that the lease or sale is of parts of an area, then to facilitate the leases or sales of such parts, the Agency shall have the power to include in the cost payable by it the cost of the construction of local streets and sidewalks within the area or of grading and other local public surface or subsurface facilities necessary for shaping the area as the site of the redevelopment of the area. The Agency may arrange with the appropriate Federal or District agencies for the reimbursement of such outlays from funds or assessments raised or levied for such purposes.

(i) In the lease or sale of a project area or part thereof which is designated for commercial or industrial use under the project area redevelopment plan, the Agency shall establish a policy which in its judgment will provide, to business concerns which are displaced from a project area, a priority of opportunity to relocate in commercial or industrial facilities provided in connection with such development. (Aug. 2, 1946, 60 Stat. 795, ch. 736, § 7; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 28, 1958, 72 Stat. 1103, Pub. L. 85–854, § 1 (4—11).)

AMENDMENT

1958—Subsec. (a) was amended by act Aug. 28, 1958, § 1(4), which substituted "After any real property in the project area shall have been acquired" for "After the real property in the project area shall have been assembled."

Subsec. (b) was amended by act Aug. 28, 1958, § 1(5)(6), which substituted "The Agency, after it has acquired any or all of the real property in the project area, shall have the power to lease or sell so much thereof as is not to be devoted to public use, as an entirety or parts thereof separately to lessees or purchasers" for "The

Agency shall have the power to lease or sell the remainder of the project area as an entirety to a redevelopment company or to an individual or a partnership," and "real property" for "remainder."

Subsec. (d) was amended by act Aug. 28, 1958, § 1(7), which substituted "Every such lease and every contract of sale and deed shall provide that the lessee or purchaser shall (1) devote the real property to the uses specified in the approved project area redevelopment plan or approved modifications thereof; (2) begin within a reasonable time any improvements on the real property required by the plan; and (3) comply with such other conditions as the Agency may find necessary to carry out the purposes of this chapter: *Provided,* That clause (2) of this sentence shall not apply to a mortgagee or trustee under deed of trust or others who acquire an interest in such real property as the result of the enforcement of any lien or claim thereon" for "Every such lease or sale shall provide that the lessee or purchaser shall carry out or cause to be carried out the approved project area redevelopment plan or approved modifications thereof and that no use shall be made of any land or real property included in the lease or sale nor any building or structure erected thereon which does not conform to such approved plan or approved modifications thereof."

Subsec. (e) was amended by act Aug. 28, 1958, § 1(8), which inserted the parenthetical clause relating to mortgagees and trustees, and deleted "or mortgagee" which followed "grantee."

Subsec. (f), formerly (g), so redesignated by act Aug. 28, 1958, § 1(9)(10), and amended by substituting "lessee or purchaser" for "redevelopment company, individual or partnership." Former subsec. (f) was repealed by act Aug. 28, 1958.

Subsec. (i) was added by act Aug. 28, 1958, § 1(11).

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia", and "Chief Judge" for "Chief Justice."

EFFECTIVE DATE

Section effective ninety days after Aug. 2, 1946, see section 22 of act Aug. 2, 1946, set out as a note under section 5–701.

NOTES TO DECISIONS

Aid of private enterprise

Where redevelopment of substandard housing and blighted areas falls within the scope of congressional authority, aid of private enterprise in redevelopment of such areas may be sought. *District of Columbia Redevelopment Land Agency* v. *40 Parcels of Land etc.* (D.C.D.C. 1959, 171 F. Supp. 138).

Commercial properties

In proceeding to condemn property as part of comprehensive plan to develop a waterfront area as well as blighted areas near it, plaintiff, whose properties lay between the waterfront and area of blight and were deemed necessary to the proper completion of the comprehensive plan, was not entitled to defeat the condemnation proceedings on the ground that properties were commercial in character, containing modern and attractive business buildings and were quite distinct from the nearby blighted areas. *Donnelly* v. *District of Columbia Redevelopment Land Agency et al.* (1959, 269 F. 2d 546, 106 U.S. App. D.C. 99).

Declaratory judgment

Where plaintiff's tenant operating a restaurant on part of premises taken for a redevelopment plan applied to the Agency for space in the area when redeveloped and proposal at which plaintiff was present in opposition was tentatively accepted and the plaintiff's request for the same site was rejected subject to condition to submit a specific proposal to the Agency, plaintiff was not entitled to a declaratory judgment seeking to exclude the tenant from consideration and obtain the site tentatively allocated to it, where the plaintiff did not name the tenant as a party defendant in her complaint. *Donnelly* v. *District of Columbia Redevelopment Land Agency et al.* (1959, 269 F. 2d 546, 106 U.S. App. D.C. 99).

Private use

Congressional legislation authorizing community redevelopment in the District of Columbia was not unconstitutional as taking from one business man for the benefit of another, though it authorized condemnation of commercial structures and use of private enterprise for redevelopment, and permitted certain property owners in area to repurchase their property for redevelopment in harmony with overall plan. *Berman* v. *Parker* (1954, 75 S. Ct. 98, 348 U. S. 26, 99 L. Ed. 27).

Scope of judicial review

Wisdom or accuracy of decisions made by agencies set up by Congress to accomplish urban renewal are, for the most part, beyond scope of judicial review. *District of Columbia Redevelopment Land Agency* v. *40 Parcels of Land etc.* (D.C.D.C. 1959, 171 F. Supp. 138).

Subsequent use

If realty is seized by the District of Columbia Redevelopment Land Agency under the District of Columbia Redevelopment Act of 1945 for purpose of eliminating or preventing slums, fact that realty may be sold subsequently to private persons does not vitiate the validity of the seizure. *Schneider* v. *District of Columbia et al.* (D.C.D.C. 1953, 117 F. Supp. 705).

The taking of title to realty by the District of Columbia Redevelopment Land Agency under the District of Columbia Redevelopment Act of 1945 for public purpose of eliminating or preventing slums is within the power of eminent domain, even though use to which realty is put after seizure is not a public use, provided that seizure of title is necessary for elimination of slums, or that proposed disposition of title may reasonably be expected to prevent the otherwise probable development of a slum. *Id.*

Urban renewal on area basis

Under the District of Columbia Redevelopment Land Act of 1945, urban renewal may be brought about on an area, rather than on a structure-by-structure basis thus permitting acquisition of all property within a given project area even if particular parcels may not be liable to be classified as substandard. *District of Columbia Redevelopment Land Agency* v. *40 Parcels of Land etc.* (D.C.D.C. 1959, 171 F. Supp. 138).

§ 5–707. Housing for displaced families.

(a) Prior to approval by the District Commissioners, pursuant to subparagraph (2) of section 5–705 (b), of any redevelopment plan, the District Commissioners shall satisfy themselves (and shall so state at the public hearing required by such subparagraph) that decent, safe, and sanitary housing, substantially equal in quantity to the number of substandard dwelling units to be removed or demolished within the project area, under the proposed redevelopment plan, are available or will be provided (by construction pursuant to the redevelopment plan, or otherwise) in localities, and at rents or prices, within the reach of the low-income families displaced or to be displaced (temporarily or permanently), pursuant to the redevelopment plan, from the project area.

(b) Families displaced by slum clearance or redevelopment under sections 5–701 to 5–719 shall be given preference as tenants to fill vacancies occurring in housing owned or operated within the District of Columbia by Federal or District of Columbia governmental agencies until appropriate housing is available to such families. (Aug. 2, 1946, 60 Stat. 797, ch. 736, § 8.)

EFFECTIVE DATE

Section effective ninety days after Aug. 2, 1946, see section 22 of act Aug. 2, 1946, set out as a note under section 5–701.

§ 5–708. Acquisition of property from prospective lessee or purchaser.

As an aid in the acquisition of the real property of a project area, the Agency may accept a fund or, at an agreed value, any parcel or parcels of property within such area, from any redevelopment company or partnership or individual, subject to a provision that in the event the supplier of any such fund or the conveyor of such property shall become the purchaser of the project area or any part or parts thereof such fund or the agreed value of such property shall be credited on the purchase price of such area or part thereof and if there be an excess above the cost of acquisition of the area such excess shall be returned, and that in the event that such supplier or conveyor does not become the purchaser of such area or any part thereof, the amount of the fund or the agreed value of such property (as the case may be) shall be paid to such supplier or conveyor. (Aug. 2, 1946, 60 Stat. 797, ch. 736, § 9.)

EFFECTIVE DATE

Section effective ninety days after Aug. 2, 1946, see section 22 of act Aug. 2, 1946, set out as a note under section 5–701.

§ 5–709. Use-value appraisals.

Before leasing or selling any piece or tract of land in the project area which is to be used for private uses or for low rent housing, the Agency shall, as an aid to it in determining the rentals and other terms upon which it will lease or the price at which it will sell the area or parts thereof, place a use-value upon such piece or tract of land, such use-value to be based on the planned use; and, for the purpose of this use valuation, it shall cause a use-value appraisal to be made by two or more land-value experts employed by it for the purpose; but nothing contained in this section shall be construed as requiring the Agency to base its rentals or selling prices upon such appraisal.

The aggregate use-values placed by the Agency upon pieces or tracts of land within a particular project area leased or sold by the Agency for private uses and for low-rent housing, shall not be less than one-third of the aggregate cost to the Agency of acquiring such land (excluding the cost of old buildings destroyed and the demolition and clearance thereof). (Aug. 2, 1946, 60 Stat. 797, ch. 736, § 10; Aug. 28, 1958, 72 Stat. 1103, Pub. L. 85–854, § 1 (12).)

AMENDMENT

1958—Act Aug. 28, 1958, § 1(12), amended section by substituting "Before leasing or selling any piece or tract of land in the project area which is to be used for private uses or for low rent housing, the Agency" for "After the Agency shall have assembled and acquired the real propert (sic) of a project area, it", and "such piece or tract of land" for "each piece or tract of land within the area which, in accordance with the plan is to be used for private uses or for low-rent housing", and "The aggregate use-values placed by the Agency upon pieces or tracts of land within a particular project area leased or sold by the Agency for private uses and for low-rent housing, shall not be less than one-third of the aggregate cost to the Agency of acquiring such land (excluding the cost of old buildings destroyed and the demolition and clearance thereof)" for "The aggregate use value placed, for purposes of lease or sale, upon all land, within a particular project area, leased or sold by the Agency pursuant to this Act shall be not less than one-third of the aggregate cost to the Agency of acquiring all such land (excluding the cost of old buildings destroyed and the demolition and clearance thereof)".

EFFECTIVE DATE

Section effective ninety days after Aug. 2, 1946, see section 22 of act Aug. 2, 1946, set out as a note under section 5–701.

§ 5–710. Protection of redevelopment plan.

(a) Previous to the execution and delivery by the Agency of a lease or conveyance to a redevelopment company or previous to the consent by the Agency to an assignment or conveyance by a lessee or purchaser to a redevelopment company, the articles or certificate of incorporation or association or charter or other basic instrument of such company shall contain provisions so defining, limiting, and regulating the exercise of the powers of the company that neither the company nor its stockholders, its officers, its directors, its members, its beneficiaries, its bondholders, or other creditors or other persons shall have any power to amend or to effect the amendment of the terms and conditions of the lease or the terms and conditions of the sale without the consent of the Agency or, in relation to the project area redevelopment plan, without the approval of any proposed modification in accordance with the provisions of section 5–711; and no action of stockholders, officers, directors, bondholders, creditors, partners or other persons, nor any reorganization, dissolution, receivership, consolidation, foreclosure, or any other change in the status or obligation of any redevelopment company, partnership, or individual in any litigation or proceeding in any Federal or other court shall effect any release or any impairment or modification of the lease or terms of sale or of the project area redevelopment plan unless such consent or approval be obtained.

(b) Redevelopment corporations may be organized under the provisions of chapter 2 of title 29; and said corporations shall have the power to be redevelopment companies under sections 5–701 to 5–719 and to acquire and hold real property for the purposes set forth in sections 5–701 to 5–719 and to exercise all other powers granted to redevelopment companies in sections 5–701 to 5–719 subject to the provisions, limitations, and obligations set forth in sections 5–701 to 5–719.

(c) The Agency may require that any lessee or purchaser to which any project area or part thereof is leased or sold under sections 5–701 to 5–719 shall keep books of account of its operations of or transactions relating to such area or part thereof entirely separate and distinct from its or his accounts of and for any other project area or part thereof or any other real property or enterprise; and the Agency may, in its discretion, require, for such period as it may specify, that no lien or other interest shall be placed upon any real property in said area to secure any indebtedness or obligation of the lessee or purchaser incurred for or in relation to any property or enterprise outside of said area. (Aug. 2, 1946, 60 Stat. 798, ch. 736, § 11; Aug. 28, 1958, 72 Stat. 1104, Pub. L. 85–854, § 1 (13).)

AMENDMENT

1958—Act Aug. 28, 1958, § 1(13), substituted "The Agency may require that any lessee or purchaser to which any project area or part thereof is leased or sold under

this chapter shall keep books of account of its operations of or transactions relating to such area or part thereof entirely separate and distinct from its or his accounts of and for any other project area or part thereof or any other real property or enterprise; and the Agency may, in its discretion, require, for such period as it may specify, that no lien or other interest shall be placed upon any real property in said area to secure any indebtedness or obligation of the lessee or purchaser incurred for or in relation to any property or enterprise outside of said area", for "A redevelopment company, individual, or partnership to which any project area or part thereof is leased or sold under sections 5–701 to 5–719 shall keep books of account of its operations of or transactions relating to such area or part thereof entirely separate and distinct from its or his accounts of and for any other project area or part thereof or any other real property or enterprise; and no lien or other interest shall be placed upon any real property in said area to secure any indebtedness or obligation of the redevelopment company, individual, or partnership incurred for or in relation to any property or enterprise outside of said area."

EFFECTIVE DATE

Section effective ninety days after Aug. 2, 1946, see section 22 of act Aug. 2 1946, set out as a note under section 5–701.

§ 5–711. Modification of redevelopment plans.

An approved project area redevelopment plan may be modified at any time or times: *Provided,* That any such modification as it may affect an area or part thereof which has been sold or leased shall not become effective without the consent in writing of the purchaser or lessee thereof: *Provided further,* That such modification may be effected only through adoption by the Planning Commission and subsequent submission to and approval by the District Commissioners, as hereinafter provided. Before approval, the District Commissioners shall hold a public hearing on the proposed modification after ten days' public notice. The District Commissioners may refer back to the Planning Commission any project area redevelopment plan, project area boundaries, or modification submitted to it, together with their recommendation for changes in such plan, boundaries, or modification, and, if such recommended changes be adopted by the Planning Commission and be in turn approved by the District Commissioners, the plan, boundaries, or modification as thus changed shall be and become the approved plan, boundaries, or modification. (Aug. 2, 1946, 60 Stat. 798, ch. 736, § 12; Aug. 28, 1958, 72 Stat. 1104, Pub. L. 85–854, § 1 (14).)

AMENDMENT

1958—Act Aug. 28, 1958, § 1(14), substituted "after ten day's public notice" for "notice of the time and place of which shall be given by mail sent at least ten days prior to the hearing to the then owners of the real properties in the project area and of the real properties immediately adjoining or across the street from the project area."

EFFECTIVE DATE

Section effective ninety days after Aug. 2, 1946, see section 22 of act Aug. 2, 1946, set out as a note under section 5–701.

§ 5–712. Limitation upon tax exemption.

Nothing contained in sections 5–701 to 5–719 shall be construed to authorize or require the exemption of any real property from taxation. No real property acquired by the Agency under sections 5–701 to 5–719 shall be exempt from taxation by reason of such acquisition or by reason of the holding thereof by the Agency; and, in the case of any piece of real property, which, under the project area redevelopment plan, is designated to be used for Federal or District or other tax-exempt uses, the exemption of such real property from taxation granted by or in sections 47–801a to 47–801b, or other statute, shall not commence until title thereto shall have been transferred from the Agency to the United States or the District of Columbia or to a Federal or District public agency as provided in section 5–706 or sold or leased to a public redevelopment company or other public corporation or tax-exempt agency and may thereby become exempt from taxation by reason of the provisions of statutes other than sections 5–701 to 5–719; the intention being that ownership or operation by the Agency in the exercise of its power under sections 5–701 to 5–719 shall not, in and of itself, produce tax exemption. (Aug. 2, 1946, 60 Stat. 799, ch. 736, § 13.)

EFFECTIVE DATE

Section effective ninety days after Aug. 2, 1946, see section 22 of act Aug. 2, 1946, set out as a note under section 5–701.

§ 5–713. Administrative expenditure and employment.

The Agency is hereby authorized and empowered—

(a) to procure services or make any purchase without regard to the provisions of section 5 of title 41, U.S. Code, provided the aggregate amount involved is not more than $100;

(b) to secure planning, land economics and valuation services, and other expert services related to the acquisition and disposition of real property, by contract or otherwise, at rates of pay or fees not to exceed those usual for similar services elsewhere, and without regard to section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters] and to section 5 of title 41, U.S. Code: *Provided,* That this exemption shall not apply to persons employed by the Agency on a permanent basis;

(c) to appoint and employ such officers and employees as it may find necessary for the proper performance of its duties under sections 5–701 to 5–719 and to prescribe their authorities, duties, responsibilities, and tenures and fix their compensations; such appointments and employments to be made in conformance with the civil-service laws and section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]; and

(d) to make such expenditures, subject to audit under the general law, for the acquisition and maintenance of adequate vehicles, furnishings, equipment, supplies, books of reference, directories, periodicals, newspapers, printing and binding, and for such other expenses as may from time to time be found necessary for the proper administration of sections 5–701 to 5–719. (Aug. 2, 1946, 60 Stat. 799, ch. 736, § 14; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a).)

REFERENCES IN TEXT

The "civil-service laws", referred to in this section, are set forth in title 5, U.S.C. See, particularly, Parts II and III of that title.

CODIFICATION

In subsecs. (b) and (c), the references "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]" were substituted for "the Classification Act of 1949" and "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

AMENDMENT

1949—Act Oct. 28, 1949, § 1106(a), which was a part of the Classification Act of 1949, and which has since been repealed, substituted "Classification Act of 1949" for "Classification Act of 1923". See codification note above.

EFFECTIVE DATE

Section effective ninety days after Aug. 2, 1946, see section 22 of act Aug. 2, 1946, set out as a note under section 5–701.

§ 5–714. Annual report.

On or before the last day of September of each year the Agency shall make an annual report to Congress of its operations and expenditures for the immediately preceding fiscal year, said report to include a financial balance sheet of its entire operations hereunder, and a recital in such particularity as is feasible of what the Agency proposes to do during the next succeeding fiscal year. The Agency shall make such other and further reports, in such form and at such times as the Congress by concurrent resolution shall require. (Aug. 2, 1946, 60 Stat. 800, ch. 736, § 15.)

EFFECTIVE DATE

Section effective ninety days after Aug. 2, 1946, see section 22 of act Aug. 2, 1946, set out as a note under section 5–701.

§ 5–715. Appropriations authorized.

(a) There is hereby authorized to be appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated, whatever amounts are necessary to the Planning Commission, in addition to other funds which may be appropriated to it or private funds made available to it (the acceptance of which is hereby authorized), for the making or modification of a general or comprehensive plan and the making or modification of project area redevelopment plans and for surveys as authorized in sections 5–701 to 5–719, and other administrative expenses in connection therewith. The Commission is also authorized to receive any grants that the Congress may appropriate for said purposes to the various States and municipalities and the District of Columbia.

(b) There is further authorized to be appropriated out of any moneys in the Treasury of the United States not otherwise appropriated, the sum of $20,000,000, which sum shall be placed to the credit of a special trust fund to be established for the purposes hereinafter set out. There shall be deposited in the Treasury of the United States and credited to said special trust fund all revenues, rentals, proceeds, and other funds received by the Agency. The said special trust fund is hereby made available to the Agency for the purpose of acquiring real property and performing any act required or authorized by sections 5–701 to 5–719. The Agency shall from time to time submit to the District Commissioners estimates of amounts for the reasonable and necessary expenses of the Agency, including personal services, and such amounts as may be approved by the District Commissioners shall be available from the said special trust fund for such expenses.

(c) As of the last day of the tenth fiscal year beginning after approval of sections 5–701 to 5–719, or as of such later date as may be fixed by the Congress, there shall be transferred and credited to miscellaneous receipts of the United States the balance in the said special trust fund after deducting (a) such amount as may be necessary for the completion of any approved project the acquisition of which has been begun and (b) such amount for operating expenses of the Agency for one year as may be approved by the District Commissioners. If the balance so transferred and credited be insufficient to reimburse the United States for appropriations made pursuant to paragraph (b) of this section, then an amount equal to 50 per centum of the deficit shall be payable to the United States from revenues of the District of Columbia in installments of equal amounts for each of ten years. The District Commissioners shall include in their annual estimates of appropriations items for the payment of such installments. The aforesaid deficit shall be determined by deducting from the total of said appropriations an amount equal to (a) the fund transferred and credited to miscellaneous receipts of the United States, (b) the cost to the Agency of the real property owned by it on said date, and (c) the reserve for completion of approved projects. All subsequent proceeds, revenues, and rentals from said real property shall be credited to the said special trust fund, to be disposed of as the Congress may direct. (Aug. 2, 1946, 60 Stat. 800, ch. 736, § 16.)

EFFECTIVE DATE

Section effective ninety days after Aug. 2, 1946, see section 22 of act Aug. 2, 1946, set out as a note under section 5–701.

NOTES TO DECISIONS

Tort actions

The District of Columbia Redevelopment Land Agency is a Federal agency within meaning of the Federal Tort Claims Act, and suits based on torts allegedly committed by the Agency or its employees acting in an official capacity are maintainable, if at all, under the Tort Claims Act, and must name the United States as defendant. *C. R. Goddard* v. *District of Columbia Redevelopment Land Agency etc.* (1961, 287 F. 2d 343, 109 U.S. App. D.C. 304).

§ 5–716. Acquisition under District of Columbia Alley Dwelling Act.

From and after the termination of the period of one year, beginning August 2, 1946, all authority granted by sections 5–103 to 5–105, and 5–106 to 5–116, to acquire, by purchase, condemnation, or gift, lands, buildings and structures, or any interest therein, is hereby transferred to and vested in the Agency created by sections 5–701 to 5–719. During said one-year period said authority may be exercised by the National Capital Housing Authority only for projects that shall have been approved by the Planning Commission and the District Commissioners: *Provided, however,* That failure of the Planning

Commission or the District Commissioners to approve or disapprove in writing within sixty days after the submission by the National Capital Housing Authority shall be equivalent to a formal approval. Nothing contained in sections 5–103 to 5–105, and 5–106 to 5–116 or in sections 5–701 to 5–719 shall be interpreted as precluding the inclusion at any time of any alley or inhabited alley or alley dwelling or dwelling or square containing an inhabited alley in a project area to be planned, acquired, and disposed of under the provisions of sections 5–701 to 5–719. Any real property acquired by the Agency under the authority of sections 5–103 to 5–105, and 5–106 to 5–116 may be transferred or may be sold or leased by the Agency as provided in sections 5–701 to 5–719 for real property acquired for a project area redevelopment. The National Capital Housing Authority is hereby declared to be a redevelopment company and is hereby granted the power to purchase or lease redevelopment areas or parts thereof from the Agency in accordance with the provisions of sections 5–701 to 5–719. The National Capital Housing Authority shall keep regular books of account in accordance with standard auditing practices, covering all properties operated by it, showing detailed construction costs, management costs, repairs, maintenance, other operating costs, rents, subsidies, grants, allowances and exemptions; such books shall be subject to annual audit by the General Accounting Office; and the annual report of the National Capital Housing Authority shall include a summary of all transactions covered by such books and shall be made available to the public upon request. (Aug. 2, 1946, 60 Stat. 801, ch. 736, § 17.)

EFFECTIVE DATE

Section effective ninety days after Aug. 2, 1946, see section 22 of act Aug. 2, 1946, set out as a note under section 5–701.

§ 5–717. Encouragement and aid to private lending institutions.

(a) To provide for and to facilitate the improvement of housing and other improved real estate in the District of Columbia, Federal savings and loan associations of the District of Columbia and building associations and building and loan associations operating under the laws of the District of Columbia are authorized, notwithstanding any other provision of law, to make loans for the improvement of homes or other improved real estate in the District of Columbia without security: *Provided,* That no such loan without security shall be made in a sum in excess of $2,500 unless insured as provided in title I of the National Housing Act, as amended.

(b) Any financial institution or other lending organization operating under the laws of the United States or the District of Columbia is authorized, notwithstanding any other law or regulation, to make loans to redevelopment corporations to finance the improvement of any project area as provided in sections 5–701 to 5–719. Any life-insurance company organized under the laws of the District or formed or organized under an Act of Congress is authorized, notwithstanding any other provision of law, to make loans or advances for the purpose of making repairs, alterations, additions, or improvements to homes or other buildings on improved real estate upon which it then holds a first lien to secure a loan previously made, without additional security: *Provided,* That no such loan or advance shall be made in a sum in excess of $2,500 unless insured as provided in title I of the National Housing Act, as amended: *And provided further,* That the amount of such loan or advance when added to the balance due on the original indebtedness shall not exceed the amount originally secured by the first lien. (Aug. 2, 1946, 60 Stat. 801, ch. 736, § 19; Aug. 2, 1954, 68 Stat. 630, ch. 649, title III, § 315.)

REFERENCES IN TEXT

Title I of the National Housing Act, referred to in the text, is classified to 12 U.S.C. § 1702 et seq.

AMENDMENT

1954—Act Aug. 2, 1954, substituted "$2,500 unless insured as provided in title I of the National Housing Act, as amended" for "$2,000" wherever appearing.

EFFECTIVE DATE

Section effective ninety days after Aug. 2, 1946, see section 22 of act Aug. 2, 1946, set out as a note under section 5–701.

NOTES TO DECISIONS

Commercial properties

In proceeding to condemn property as part of comprehensive plan to develop a waterfront area as well as blighted areas near it, plaintiff, whose properties lay between the waterfront and area of blight and were deemed necessary to the proper completion of the comprehensive plan, was not entitled to defeat the condemnation proceedings on the ground that properties were commercial in character, containing modern and attractive business buildings and were quite distinct from the nearby blighted areas. *Donnelly* v. *District of Columbia Redevelopment Land Agency et al.* (1959, 269 F. 2d 546, 106 U.S. App. D.C. 99).

§ 5–717a. Acceptance of financial assistance authorized.

(a) As an alternative method of financing its authorized operations and functions under the provisions of sections 5–701 to 5–719 (in addition to that provided in section 5–715), the Agency is hereby authorized and empowered to accept financial assistance from the Housing and Home Finance Administrator (hereafter in this section referred to as the Administrator), in the form of advances of funds, loans, and capital grants pursuant to title I of the Housing Act of 1949, as amended, to assist the Agency in acquiring real property for redevelopment of project areas and carrying out any functions authorized under sections 5–701 to 5–719 for which advances of funds, loans, or capital grants may be made to a local public agency under title I of the Housing Act of 1949, as amended, and the Agency, subject to the approval of the District Commissioners and subject to such terms, covenants, and conditions as may be prescribed by the Administrator pursuant to title I of the Housing Act of 1949, as amended, may enter into such contracts and agreements as may be necessary, convenient, or desirable for such purposes.

(b) Subject to the approval of the District Commissioners, the Agency is authorized to accept from the Administrator advances of funds for surveys and plans in preparation of a project or projects authorized by sections 5–701 to 5–719 which may be assisted under title I of the Housing Act of 1949, as amended, and the Agency is authorized to transfer

to the Planning Commission so much of the funds so advanced as the District Commissioners shall determine to be necessary for the Planning Commission to carry out its functions under sections 5–701 to 5–719 with respect to the project or projects to be assisted under title I of the Housing Act of 1949, as amended.

(c) The District Commissioners are authorized to include in their annual estimates of appropriations items for administrative expenses which, in addition to loan or other funds available therefor, are necessary for the Agency in carrying out its functions under this section.

(d) Notwithstanding the limitation contained in the last sentence of section 110 (d) or in any other provision of title I of the Housing Act of 1949, as amended, the Administrator is authorized to allow and credit to the Agency such local grants-in-aid as are approvable pursuant to said section 110 (d) with respect to any project or projects undertaken by the Agency under a contract or contracts entered into under this section and assisted under title I of the Housing Act of 1949, as amended. In the event such local grants-in-aid as are so allowed by the Administrator are not sufficient to meet the requirements for local grants-in-aid pursuant to title I of the Housing Act of 1949, as amended, the District Commissioners are hereby authorized to enter into agreements with the Agency, upon which agreements the Administrator may rely, to make cash payments of such deficiencies from funds of the District of Columbia. The District Commissioners shall include items for such cash payments in their annual estimates of appropriations, and there are hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the amounts necessary to provide for such cash payments. Any amounts due the Administrator pursuant to any such agreements shall be paid promptly from funds appropriated for such purpose.

(e) All receipts of the Agency in connection with any project or projects financed in accordance with this section with assistance under title I of the Housing Act of 1949, as amended, whether in the form of advances of funds, loans, or capital grants made by the Administrator to the Agency, or in the form of proceeds, rentals, or revenues derived by the Agency from any such project or projects, shall be deposited in the Treasury of the United States to the credit of a special fund or funds, and all moneys in such special fund or funds are hereby made available for carrying out the purposes of sections 5–701 to 5–719 with respect to such project or projects, including the payment of any advances of funds or loans, together with interest thereon, made by the Administrator or by private sources to the Agency. Expenditures from such fund shall be audited, disbursed, and accounted for as are other funds of the District of Columbia.

(f) With respect to any project or projects undertaken by the Agency which are financed in accordance with this section with assistance under title I of the Housing Act of 1949, as amended—

(1) sections 5–702 (f), 5–702 (k), and 5–706 (g), and the last sentence of section 5–705 (b)

(2) shall not be applicable to those pieces of real property which, in accordance with the approved project area redevelopment plan, are to be devoted to public housing to be undertaken under Public Law 307, Seventy-third Congress, approved June 12, 1934, as amended;

(2) the site and use plan for the redevelopment of the area, included in the redevelopment plan of the project area pursuant to section 5–705 (b) (2), shall include the approximate extent and location of any land within the area which is proposed to be used for public housing to be undertaken under Public Law 307, Seventy-third Congress, approved June 12, 1934, as amended;

(3) notwithstanding any other provisions of sections 5–701 to 5–719 the Agency, pursuant to section 5–706 (a), shall have power to transfer to and shall at a practicable time or times transfer by deeds to the National Capital Housing Authority those pieces of real property which, in accordance with the approved project area redevelopment plan, are to be devoted to public housing to be undertaken under Public Law 307, Seventy-third Congress, approved June 12, 1934, as amended, and, in accordance with the requirements of section 107 of the Housing Act of 1949, the National Capital Housing Authority shall pay for the same out of any of its funds available for such acquisition.

(g) It is the purpose and intent of this section to authorize the District Commissioners and the appropriate agencies operating within the District of Columbia to do any and all things necessary to secure financial aid under title I of the Housing Act of 1949, as amended. The District of Columbia Redevelopment Land Agency is hereby declared to be a local public agency for all of the purposes of title I of the Housing Act of 1949, as amended. As such a local public agency for all of the purposes of title I of the Housing Act of 1949, as amended, the Agency is also authorized to borrow money from the Administrator or from private sources as contemplated by title I of the Housing Act of 1949, as amended, to issue its obligations evidencing such loans, and to pledge as security for the payment of such loans, and the interest thereon, the property, income, revenues, and other assets acquired in connection with the project or projects financed in accordance with this section with assistance under title I of the Housing Act of 1949, as amended, but such obligations or such pledge shall not constitute a debt or obligation of either the United States or of the District of Columbia.

(h) Nothing contained in this section or in sections 5–701 to 5–719 shall relieve the Administrator of his responsibilities and duties under section 105 (c) or any other section of the Housing Act of 1949, as amended. The Administrator shall not enter into any contract of financial assistance under title I of this Act with respect to any project of the District of Columbia Redevelopment Land Agency for which a budget estimate of appropriation was transmitted pursuant to law and for which no appropriation was made by the Congress.

(i) In addition to its authority under any other provision of sections 5–701 to 5–719, the Agency is hereby authorized to plan and undertake urban renewal projects (as such projects are defined in title

I of the Housing Act of 1949, as amended), and in connection therewith the Agency, the District Commissioners, the National Capital Planning Commission, and the other appropriate agencies operating within the District of Columbia shall have all of the rights and powers which they have with respect to a project or projects financed in accordance with the preceding subsections of this section: *Provided,* That for the purpose of this subsection the word "redevelopment" wherever found in sections 5–701 to 5–719 (except in section 5–702 (n)) shall mean "urban renewal", and the references in section 5–705 to the acquisition, disposition, or assembly of real property for a project shall mean the undertaking of an urban renewal project.

(j) The District Commissioners are hereby authorized to prepare a workable program as prescribed by section 101 (c) of the Housing Act of 1949, as amended, and are also authorized to request the necessary funds for the preparation of said workable program. The Commissioners may request the participation of the Agency in the preparation of said workable program and may include in their annual estimates of appropriations such funds as may be required by the Commissioners or the Agency, or both, for this purpose. The District Commissioners are hereby authorized, with or without reimbursement, to cooperate with the Agency in carrying out urban renewal projects and to utilize for that purpose the facilities and personnel of the District of Columbia under agreement with the Agency. (Aug. 2, 1946, ch. 736, § 20 as added July 15, 1949, 63 Stat. 441, ch. 338, title VI, § 609, and amended Aug. 2, 1954, 68 Stat. 630, ch. 639, title III, § 316.)

REFERENCES IN TEXT

Title I of the Housing Act of 1949, referred to in the text, is classified to 42 U.S.C. §§ 1451 to 1460.

Sections 101(c), 105(c), 107, and 110(d), of the Housing Act of 1949, referred to in the text, are classified respectively to 42 U.S.C. §§ 1451(c), 1455(c), 1457, and 1460(d).

AMENDMENT

1954—Act Aug. 2, 1954, added "as amended" after "1949" wherever appearing, and added subsecs. (i) and (j).

NOTES TO DECISIONS

Commercial properties

In proceeding to condemn property as part of comprehensive plan to develop a waterfront area as well as blighted areas near it, plaintiff, whose properties lay between the waterfront and area of blight and were deemed necessary to the proper completion of the comprehensive plan, was not entitled to defeat the condemnation proceedings on the ground that properties were commercial in character, containing modern and attractive business buildings and were quite distinct from the nearby blighted areas. *Donnelly* v. *District of Columbia Redevelopment Land Agency et al.* (1959, 269 F. 2d 546, 106 U.S. App. D.C. 99).

§ 5–718. Effect upon existing statutes.

(a) In the making and approval of project area redevelopment plans, the Planning Commission and the District Commissioners shall not be limited or bound by the provisions of sections 7–108, 7–117, 7–122, and 7–301 relating to width, location, and length of streets and highways. No department, instrumentality, agency, or official of the Federal Government or of the District of Columbia shall have any power to release or modify or depart from any feature or detail of an approved redevelopment plan or part thereof unless such release, modification, or departure be adopted by the Planning Commission and approved by the District Commissioners in accordance with the provisions of section 5–711 or unless the modification or departure be approved by Act of Congress.

(b) Any power granted the District Commissioners or any District or Federal agency by the District of Columbia Code or by any statute, may, in addition to the purposes now specified, be exercised in furtherance of the protection or carrying out of any redevelopment plan or modification made and approved under sections 5–701 to 5–719. (Aug. 2, 1946, 60 Stat. 802, ch. 736, § 21, formerly § 20, as renumbered July 15, 1949, 63 Stat. 441, ch. 338, title VI, § 609.)

EFFECTIVE DATE

Section effective ninety days after Aug. 2, 1946, see section 22 of act Aug. 2, 1946, set out as a note under section 5–701.

§ 5–719. Separability of provisions.

If any provisions of sections 5–701 to 5–719 or the application thereof to any body, agency, situation, or circumstances be held invalid, the remainder of sections 5–701 to 5–719 and the application of such provision to other bodies, agencies, situations, or circumstances shall not be affected thereby. (Aug. 2, 1946, 60 Stat. 802, ch. 736, § 22, as renumbered July 15, 1949, 63 Stat. 441, ch. 338, title VI, § 609.)

EFFECTIVE DATE

Section effective ninety days after Aug. 2, 1946, see section 22 of act Aug. 2, 1946, set out as a note under section 5–701.

§ 5–720. Commissioners authorized to transfer to District of Columbia Redevelopment Land Agency certain property located in Maine Avenue area.

Subject to the provisions of sections 5–720 to 5–727 the Commissioners of the District of Columbia are authorized on behalf of the United States to transfer to the District of Columbia Redevelopment Land Agency established by section 5–703, all right, title, and interest of the United States in and to part or all of certain property in the said District, as follows: The area bounded by the east line of Fourteenth Street Southwest, the existing southerly (or westerly) building line of Maine Avenue Southwest, the northerly line of Fort Lesley J. McNair at P Street Southwest, and the bulkhead line established pursuant to the Rivers and Harbors Act of 1899 (30 Stat. 1151), as amended, together with any land area extending channelward from said bulkhead line. (Sept. 8, 1960, 74 Stat. 871, Pub. L. 86–736, § 1.)

§ 5–721. Same; determination of necessity.

The said Commissioners shall, prior to transferring to the Agency right, title, and interest in and to any of the said property described in section 5–720, determine whether such property is necessary to the redevelopment of the southwest section of the District of Columbia in accordance with an urban renewal plan approved by them, and, if they so find, they shall, acting on behalf of the United States, transfer and donate to the Agency all right, title, and interest of the United States in and to so much

of said property as they determine is necessary to carry out such urban renewal plan. (Sept. 8, 1960, 74 Stat. 871, Pub. L. 86–736, § 2.)

§ 5–722. Same; transfer of jurisdiction to Agency.

Subject to the provisions of section 5–724, the Commissioners shall, at the time of transferring to the Agency right, title, and interest in and to any of the property described in section 5–720, also transfer to the Agency their jurisdiction as provided by section 9–101 over so much of the said property as may be so transferred. (Sept. 8, 1960, 74 Stat. 871, Pub. L. 86–736, § 3.)

§ 5–723. Same; Agency authorized to lease property—Limitations on other transfers—No transfer of funds required if property is acquired by District or Agency of United States—Owners of displaced business concerns to have priority in leasing privileges—Notification.

(a) The Agency is hereby authorized, in accordance with sections 5–701 to 5–719, to lease to a redevelopment company or other lessee such real property as may be transferred to the Agency under the authority of sections 5–720 to 5–727 but may not otherwise dispose of such property except to the United States or any department or agency thereof, or to the District of Columbia, in accordance with section 5–724. In the event that real property acquired by the Agency from the United States pursuant to sections 5–720 to 5–727 is transferred to the District of Columbia or to any department or agency of the United States pursuant to this section, such transfer shall be without reimbursement or transfer of funds.

(b) In connection with the leasing of the real property transferred to the Agency under the authority of sections 5–720 to 5–727, together with the leasing of any real property lying between such real property so transferred and the southerly or westerly line of Maine Avenue as the same may be relocated in connection with carrying out an urban renewal plan, the Agency is authorized and directed to provide to the owner or owners of any business concern displaced by reason of the enactment of section 7–134, from the area described in section 5–720, a priority of opportunity to lease, either individually or as a redevelopment company solely owned by the owner or owners of one or more such business concerns, so much of such real property lying channelward of the southerly or westerly line of Maine Avenue as so relocated, at a rental based on the use-value of the real property so leased determined in accordance with the provisions of section 5–709, and section 1460(c)(4) of title 42, U.S. Code, as may be required for the construction of commercial facilities at least substantially equal to the facilities from which such business concern was so displaced. When the real property affected by the provisions of this subsection becomes available for leasing by the Agency, the Agency shall notify, in writing, the owners of the business concerns displaced by reason of the operation of section 7–134, as to the availability of such real property for leasing to such owners in accordance with the provisions of this subsection. The Agency shall give such owners so notified a period of one hundred and eighty days to notify the Agency, in writing, of their intention to proceed in accordance with the general development plan of the Agency for the area lying channelward of Maine Avenue, as so relocated, and to demonstrate to the Agency their ability to carry out so much of such plan as may be embraced within the area which they desire to lease. If at the end of such period of one hundred and eighty days, such owners have failed to make a demonstration to that effect which is satisfactory to the Agency, the priority of opportunity provided by this subsection shall no longer continue to be available to such owners. (Sept. 8, 1960, 74 Stat. 871, Pub. L. 86–736, § 4.)

§ 5–724. Same; reversion provisions.

Notwithstanding sections 5–720 to 5–723, if any of the real property transferred to the Agency under the authority of sections 5–720 to 5–727 is not leased by the Agency in accordance with an urban renewal plan approved by the Commissioners, or otherwise disposed of, on or before the date the Housing and Home Finance Administrator makes the final Federal capital grant payment to the Agency for the project pursuant to title I of the Housing Act of 1949, as amended, then the right, title, and interest in and to so much of the said real property as is not so leased or otherwise disposed of by such date shall revert to the United States, subject to the exclusive control and jurisdiction of the Commissioners of the District of Columbia, and subject to the provisions of sections 8–115 and 8–116. (Sept. 8, 1960, 74 Stat. 872, Pub. L. 86–736, § 5.)

REFERENCES IN TEXT

Title I of the Housing Act of 1949, as amended, referred to in the text, is classified to 42 U.S.C. § 1450 et seq.

§ 5–725. Same; Commissioners may not be required to transfer property needed for municipal purposes.

Nothing contained in sections 5–720 to 5–727 shall be construed as requiring the said Commissioners to transfer the right, title, and interest in and to so much of the property described in section 5–720 as the Commissioners may determine, in their discretion, is required for municipal purposes or is to continue to be owned by the United States under the jurisdiction of the Commissioners, for the benefit of the District of Columbia. (Sept. 8, 1960, 74 Stat. 872, Pub. L. 86–736, § 6.)

§ 5–726. Same; grant-in-aid restrictions.

No transfer or donation of any interest in real property under the authority of sections 5–720 to 5–727 shall constitute a local grant-in-aid in connection with any urban renewal project being undertaken with Federal assistance under title I of the Housing Act of 1949, as amended. (Sept. 8, 1960, 74 Stat. 872, Pub. L. 86–736, § 7.)

REFERENCES IN TEXT

Title I of the Housing Act of 1949, as amended, referred to in the text, is classified to 42 U.S.C. § 1450 et seq.

§ 5–727. Same; definitions.

As used in sections 5–720 to 5–727, the terms "Agency", "lessee", "real property", "redevelopment", and "redevelopment company" shall have the respective meanings provided for such terms by section 5–702. (Sept. 8, 1960, 74 Stat. 872, Pub. L. 86–736, § 8.

§ 5–728. Commissioners of the District of Columbia authorized to provide relocation services to displaced persons and concerns as a result of actions by the United States or District Governments—Displaced persons to be given preference in vacancies occurring in Government houses within the District—Housing surveys authorized.

The Commissioners of the District of Columbia are hereby authorized to provide such relocation services as they shall determine to be reasonable and necessary to individuals, families, business concerns, and nonprofit organizations which may be or have been displaced from real property by actions of the United States or of the government of the District of Columbia, except the District of Columbia Redevelopment Land Agency, such actions to include, but not be limited to, acquisition of property for public works projects, condemnation of unsafe and insanitary buildings, and enforcement of the laws and regulations relating to housing. The Commissioners shall provide that such individuals and families so displaced shall be given the same preference with respect to vacancies occurring in housing owned or operated within the District of Columbia by Federal or District of Columbia governmental agencies as is provided in section 5–707(b). The Commissioners are authorized to make housing surveys in order to carry out sections 5–728 to 5–732. (Oct. 6, 1964, 78 Stat. 1004, Pub. L. 88–629, § 1.)

EFFECTIVE DATE

Section 6 of act Oct. 6, 1964, provided: "This Act [sections 5–728 to 5–732] shall take effect sixty days after the date of its approval". [Oct. 6, 1964.]

§ 5–729. Same; relocation payments for reasonable and necessary moving expenses and actual direct losses of property resulting from displacement from property acquired by Commissioners for public works projects—Exception—Regulations—Limit on payments.

The Commissioners are hereby authorized to make relocation payments to individuals, families, business concerns, and nonprofit organizations for their reasonable and necesary moving expenses and any actual direct losses of property except goodwill or profit caused by their displacement from real property acquired by the Commissioners after the effectice date of sections 5–728 to 5–732 for public works projects of the government of the District of Columbia, except the District of Columbia Redevelopment Land Agency. No such payment shall be made in any case where a payment for a similar purpose is authorized by any other Act. Such relocation payments shall be made in accordance with regulations prescribed by the Commissioners and shall not for any one relocation exceed $200 in the case of an individual or family or $3,000 (or, if greater, the total certified actual moving expense not to exceed $25,000) in the case of a business concern or nonprofit organization. (Oct. 6, 1964, 78 Stat. 1004, Pub. L. 88–629, § 2.)

EFFECTIVE DATE

See note to section 5–728.

§ 5–730. Determination of available housing, for displaced persons, to be made prior to acquisition of real property for public works.

Prior to the acquisition of real property for any public works project of the government of the District of Columbia the Commissioners shall make the same determinations with respect to the availability of housing for displaced individuals and families as is required by section 5–707(a). (Oct. 6, 1964, 78 Stat. 1004, Pub. L. 88–629, § 3.)

EFFECTIVE DATE

See note to section 5–728.

§ 5–731. District of Columbia Relocation Assistance Office—Establishment—Functions.

There is hereby established within the District of Columbia Redevelopment Land Agency an office to be known as the District of Columbia Relocation Assistance Office (hereinafter referred to as the "Office"). The Office shall provide the reloaction services authorized by section 5–728, administer the payments authorized by section 5–729 and provide the relocation assistance which the District of Columbia Redevelopment Land Agency is authorized to provide by 5–701 to 5–719 and any other Act. (Oct. 6, 1964, 78 Stat. 1004, Pub. L. 88–629, § 4.)

EFFECTIVE DATE

See note to section 5–728.

§ 5–732. Commissioners authorized to make regulations.

The Commissioners are hereby authorized to make regulations to carry out the purposes of sections 5–728 to 5–732. (Oct. 6, 1964, 78 Stat. 1004, Pub. L. 88–629, § 5.)

EFFECTIVE DATE

See note to section 5–728.

§ 5–733. Commissioners authorized and directed on behalf of the United States to transfer to District of Columbia Redevelopment Land Agency all right, title and interest of the United States to certain real property consisting of a part of Maryland Avenue and other streets in the southwest area.

In accordance with the provisions of sections 5–733 to 5–737, the Commissioners of the District of Columbia, consistent with their approval of the urban renewal plan requiring such action, are authorized and directed on behalf of the United States of America to transfer to the Agency all right, title, and interest of the United States in and to the following real properties in the District of Columbia:

(a) Part of Maryland Avenue Southwest, of Thirteen-and-a-Half Street Southwest, and of Thirteenth Street Southwest, described as follows:

Beginning for the same at the intersection of the northerly line of Maryland Avenue Southwest, with the east line of Fourteenth Street Southwest, and running thence along the said northerly line of Maryland Avenue in a northeasterly direction 256.25 feet to the west line of Thirteen-and-a-Half Street Southwest;

thence along the said line of Thirteen-and-a-Half Street due north 251.67 feet to the south line of D Street Southwest;

thence due east 70.0 feet to the east line of Thirteen-and-a-Half Street;

thence along the said east line of Thirteen-and-a-Half Street due south 226.50 feet to the northerly line of Maryland Avenue;

thence along the said line of Maryland Avenue in a northeasterly direction 256.50 feet to the west line of Thirteenth Street Southwest;

thence along the said west line of Thirteenth Street due north 140.92 feet to the south line of D Street;

thence due east 110.0 feet to the east line of Thirteenth Street Southwest;

thence along the said line of Thirteenth Street due south 101.67 feet to the northerly line of Maryland Avenue;

thence along the northerly line of Maryland Avenue in a northeasterly direction 255.85 feet;

thence leaving the said line of Maryland Avenue and running along the arc of a circle, the radius of which is 811.27 feet, a central angle of 1 degree 40 minutes 55 seconds, deflecting to the left an arc distance of 23.82 feet;

thence south 70 degrees 00 minutes 00 seconds west 592.28 feet;

thence south 64 degrees 54 minutes 00 seconds west 146.81 feet;

thence along the arc of a circle, the radius of which is 60.0 feet, a central angle of 60 degrees 36 minutes 40 seconds, deflecting to the right an arc distance of 63.47 feet to a point of tangent;

thence south 60 degrees 36 minutes 40 seconds west 184.47 feet;

thence north 51 degrees 37 minutes 00 seconds west 38.0 feet to a point of curve;

thence along the arc of a circle, the radius of which is 47.0 feet, a central angle of 51 degrees 37 minutes, deflecting to the right an arc distance of 42.34 feet to a point of tangent;

thence due north 30.06 feet to the point of beginning, containing 61,786.20 square feet;

all as shown on plat of survey recorded in the Office of the Surveyor of the District of Columbia in survey book 173, page 458.

(b) Part of Thirteenth Street Southwest, closed, part of Thirteen-and-a-Half Street Southwest, closed, and part of E Street Southwest, closed, as per plat recorded in the Office of the Surveyor of the District of Columbia in book 140, page 73, described in one piece, as follows:

Beginning for the same at a point in the southerly line of Maryland Avenue Southwest, said point being south 70 degrees 28 minutes 40 seconds west 361.01 feet from the intersection of the west line of Twelfth Street Southwest, with the said southerly line of Maryland Avenue, said point being also the northwesterly corner of original square 299; and running thence along the east line of Thirteenth Street Southwest, closed, due south 409.71 feet;

thence due west 95.59 feet;

thence north 71 degrees 17 minutes 15 seconds west 15.21 feet to the west line of said Thirteenth Street closed;

thence along said line due north 79.47 feet to the south line of E Street Southwest, closed, said point being also the northeast corner of original square 270;

thence along the south line of said E Street closed due west 234.62 feet;

thence north 71 degrees 17 minutes 15 seconds west 106.13 feet;

thence north 51 degrees 37 minutes 00 seconds west 90.15 feet to the north line of said E Street closed;

thence along said line due east 94.12 feet to the west line of Thirteenth-and-a-Half Street Southwest, closed, said point being also the southeast corner of original square east-of-267;

thence along the west line of said Thirteen-and-a-Half Street closed due north 85.83 feet to the said southerly line of Maryland Avenue;

thence along said line north 70 degrees 28 minutes 40 seconds east 74.27 feet to the east line of said Thirteen-and-a-Half Street closed, said point being also the northwesterly corner of original square 269;

thence along the east line of Thirteen-and-a-Half Street closed due south 110.65 feet to the north line of said E Street closed;

thence along said line due east 241.66 feet to the west line of Thirteenth Street closed;

thence along said line due north 196.33 feet to the southerly line of said Maryland Avenue;

thence along said line north 70 degrees 28 minutes 40 seconds east 116.71 feet to the point of beginning, containing 80,206.53 square feet;

all as shown on plat of computation recorded in the Office of the Surveyor of the District of Columbia in survey book 183, page 81.

(c) Part of Maryland Avenue Southwest, described as follows:

Beginning for the same at the intersection of the west line of Twelfth Street Southwest, with the southerly line of Maryland Avenue Southwest, said point being also the northeasterly corner of original square 299; and running thence along the said southerly line of Maryland Avenue south 70 degrees 28 minutes 40 seconds west 889.79 feet;

thence north 53 degrees 21 minutes 10 seconds east 104.83 feet;

thence north 72 degrees 43 minutes 00 seconds east 790.21 feet to the point of beginning, containing 13,733.95 square feet;

all as shown on plat of computation recorded in the Office of the Surveyor of the District of Columbia in survey book 183, page 81.

(d) Parts of Third Street Southwest, Fourth Street Southwest, and Virginia Avenue Southwest, abutting square 537, described in one piece as follows:

Beginning for the same at the intersection of the north line of E Street Southwest, with the west line of Third Street Southwest, said point also being the southeast corner of said square 537, and running thence along the said line of Third Street, due north 122.08 feet to the southerly line of Virginia Avenue Southwest;

thence along said line of Virginia Avenue in a northwesterly direction 598.0 feet to the east line of Fourth Street Southwest;

thence along said line of Fourth Street due south 323.33 feet to the southwest corner of said square 537;

thence due west 13.0 feet;

thence due north 373.68 feet;

thence in a southeasterly direction, parallel with and 16.0 feet southwestwardly at right angles

from the centerline of track numbered 1 of railroad of the Philadelphia, Baltimore, and Washington Railroad Company, 633.12 feet;

thence due south 160.60 feet;

thence due west 19.36 feet to the point of beginning, containing 33,698.44 square feet;

all as shown on plat of survey recorded in the Office of the Surveyor of the District of Columbia in survey book 174, page 413.

(e) Parts of Third Street Southwest, Virginia Avenue Southwest, and public space abutting square N–583, described in one piece, as follows:

Beginning for the same at the intersection of the north line of E Street Southwest, with the east line of Third Street Southwest, said point also being the southwest corner of square N–583, and running thence due west 20.42 feet;

thence due north 135.50 feet;

thence in a southeasterly direction, parallel with and 16.0 feet southwestwardly at right angles from the centerline of track numbered 1 of railroad of the Philadelphia, Baltimore, and Washington Railroad Company, 390.04 feet;

thence due south 4.23 feet;

thence due west 225.71 feet to the southeast corner of said square N–583;

thence along said square due north 40.0 feet to the southwesterly line of Virginia Avenue Southwest;

thence along said line in a northwesterly direction 128.33 feet to the said east line of Third Street;

thence along said line due south 82.67 feet to the point of beginning, continuing 18,229.36 square feet;

all as shown on plat of survey recorded in the Office of the Surveyor of the District of Columbia in survey book 174, page 413.

(f) Part of Virginia Avenue, Sixth Street, and public space abutting square S–463, described as follows:

Beginning for the same at the intersection of the west line of Sixth Street, southwest, with the northerly line of Virginia Avenue, said point of beginning being also the most southerly corner of square S–463; and running thence along the said west line of Sixth Street due north 75.33 feet;

thence due east 9.25 feet;

thence due south 106.15 feet;

thence in a northwesterly direction along the line 25.90 feet from and parallel to the said northerly line of Virginia Avenue north 70 degrees 17 minutes 40 seconds west 522.42 feet;

thence due north 20.0 feet;

thence due east 134.24 feet to the northwest corner of said square S–463;

thence along the west line of said square due south 40.58 feet to the said northerly line of Virginia Avenue;

thence in a southeasterly direction along the said northerly line of Virginia Avenue south 70 degrees 17 minutes 40 seconds east 370.0 feet to the point of beginning, containing 16,461.50 square feet;

all as shown on plat of survey recorded in the Office of the Surveyor of the District of Columbia in survey book 176, page 372.

(g) Part of D Street and Maryland Avenue, Southwest, described as follows:

Beginning for the same at the southeast corner of square 386, and running thence due south 14.26 feet;

thence due west 605.71 feet to a point of curve;

thence along the arc of a circle, the radius of which is 600.0 feet, deflecting to the left an arc distance of 125.58 feet;

thence north 70 degrees 28 minutes 00 seconds east 774.97 feet;

thence due south 47.51 feet to the northeast corner of said square 386;

thence along the northwesterly boundary of said square in a southwesterly direction 432.25 feet to the northwest corner of said square;

thence due south 40.0 feet to the southwest corner of said square;

thence along the southerly boundary of said square due east 407.42 feet to the point of beginning, containing 39,922.0 square feet;

all as shown on plat of survey recorded in the Office of the Surveyor of the District of Columbia in survey book 173, page 396. (Nov. 2, 1965, 79 Stat. 1180, Pub. L. 89–317, § 1.)

§ 5–734. Same; Agency authorized to lease or sell property described in section 5–733.

The Agency is hereby authorized in accordance with sections 5–701 to 5–719 to lease or sell, as an entirety or parts thereof separately, to one or more redevelopment companies or other lessees or purchasers, such real property as may be transferred to the Agency under the authority of sections 5–733 to 5–737. (Nov. 2, 1965, 79 Stat. 1184, Pub. L. 89–317, § 2.)

§ 5–735. Same; Agency authorized to transfer to District of Columbia its interest in certain rights of way located on parts of Thirteen-and-a-Half Street, E Street and Thirteenth Street Southwest, for a consideration of $82,896.

The Agency is authorized to transfer to the government of the District of Columbia all right, title, and interest of the Agency in that portion of the right-of-way formerly occupied by the railroads, which is now a part of the land included in the District of Columbia highway system, for which the Agency compensated the railroads and acquired the interest of said railroads, and the Commissioners of the District of Columbia are hereby authorized in this instance to pay the Agency the sum of $82,896 for said sites, which are described as follows:

(a) Part of Thirteen-and-a-Half Street Southwest, and E Street Southwest described in one piece as follows:

Beginning for the same at the intersection of the east line of Thirteen-and-a-Half Street Southwest with the northeasterly line of Maine Avenue Southwest; and running thence north 51 degrees 37 minutes 00 seconds west 119.22 feet to the southerly line of said Thirteen-and-a-Half Street and E Street closed by plat recorded in the Office of the Surveyor of the District of Columbia in book 140, page 73;

thence along said line south 71 degrees 17 minutes 15 seconds east 106.13 feet to the south line of said E Street;

thence along said line due west 7.04 feet to the east line of said Thirteen-and-a-Half Street;

thence along said line due south 40.0 feet to the point of beginning containing 1,990.50 square feet;

all as shown on plat of computation recorded in the Office of the Surveyor of the District of Columbia in survey book 174, page 308.

(b) Part of Thirteenth Street Southwest, described as follows:

Beginning for the same at the intersection of the east line of Thirteenth Street Southwest with the northeasterly line of Maine Avenue Southwest; and running thence north 71 degrees 17 minutes 15 seconds west 116.14 feet to the west line of said Thirteenth Street;

thence along said line due north 42.37 feet to the southerly line of Thirteenth Street closed by plat recorded in the Office of the Surveyor of the District of Columbia in book 140, page 73;

thence along said line south 71 degrees 17 minutes 15 seconds east 15.21 feet;

thence still along said line due east 95.59 feet to the said east line of Thirteenth Street;

thence along said line due south 74.75 feet to the point of beginning containing 6,209.20 square feet;

all as shown on plat of computation recorded in the Office of the Surveyor of the District of Columbia in survey book 174, page 308. (Nov. 2, 1965, 79 Stat. 1184, Pub. L. 89–317, § 3.)

§ 5–736. Same; Local grant-in-aid restrictions.

No transfer or donation of any interest in real property under the authority of sections 5–733 to 5–737 shall constitute a local grant-in-aid in connection with any urban renewal project being undertaken with Federal assistance under title I of the Housing Act of 1949, as amended. (Nov. 2, 1965, 79 Stat. 1184, Pub. L. 89–317, § 4.)

REFERENCES IN TEXT

Title I of the Housing Act of 1949, as amended, referred to in text, is classified to 42 U.S.C. § 1450 et seq.

§ 5–737. Same; Definitions applicable to sections 5–733 to 5–737.

As used in sections 5–733 to 5–737 the terms "Agency", "lessee", "purchaser", "real property", "redevelopment", and "redevelopment company" shall have the respective meanings provided for such terms by section 5–702. (Nov. 2, 1965, 79 Stat. 1185, Pub. L. 89–317, § 5.)

Chapter 8.—PRESERVATION OF HISTORIC PLACES AND AREAS IN THE GEORGETOWN AREA

Sec.

5–801. Old Georgetown district created and defined.
5–802. Restrictions imposed on alteration of buildings.
5–803. Review board established.
5–804. Survey of district authorized.
5–805. Construction with other laws.
5–806. Old Georgetown Market as historic landmark—Use as public market.
5–807. Appropriations to carry out section.

§ 5–801. Old Georgetown district created and defined.

There is hereby created in the District of Columbia a district known as "Old Georgetown" which is bounded on the east by Rock Creek and Potomac Parkway from the Potomac River to the north boundary of Dumbarton Oaks Park, on the north by the north boundary of Dumbarton Oaks Park, Whitehaven Street and Whitehaven Parkway to Thirty-fifth Street, south along the middle of Thirty-fifth Street to Reservoir Road, west along the middle of Reservoir Road to Archbold Parkway, on the west by Archbold Parkway from Reservoir Road to the Potomac River, on the south by the Potomac River to the Rock Creek Parkway. (Sept. 22, 1950, 64 Stat. 903, ch. 984, § 1.)

§ 5–802. Restrictions imposed on alteration of buildings.

In order to promote the general welfare and to preserve and protect the places and areas of historic interest, exterior architectural features and examples of the type of architecture used in the National Capital in its initial years, the Commissioners of the District of Columbia, before issuing any permit for the construction, alteration, reconstruction, or razing of any building within said Georgetown district described in section 5–801 shall refer the plans to the National Commission of Fine Arts for a report as to the exterior architectural features, height, appearance, color, and texture of the materials of exterior construction which is subject to public view from a public highway. The National Commission of Fine Arts shall report promptly to said Commissioners of the District of Columbia its recommendations, including such changes, if any, as in the judgment of the Commission are necessary and desirable to preserve the historic value of said Georgetown district. The said Commissioners shall take such actions as in their judgment are right and proper in the circumstances: *Provided,* That, if the said Commission of Fine Arts fails to submit a report on such plans within forty-five days, its approval thereof shall be assumed and a permit may be issued. (Sept. 22, 1950, 64 Stat. 904, ch. 984, § 2.)

§ 5–803. Review board established.

In carrying out the purpose of this chapter, the Commission of Fine Arts is hereby authorized to appoint a committee of three architects, who shall serve as a board of review without expense to the United States and who shall advise the Commission of Fine Arts, in writing, regarding designs and plans referred to it. (Sept. 22, 1950, 64 Stat. 904, ch. 984, § 3.)

§ 5–804. Survey of district authorized.

Said Commissioners of the District of Columbia, with the aid of the National Park Service and of the National Capital Planning Commission, shall make a survey of the "Old Georgetown" area for the use of the Commission of Fine Arts and of the building permit office of the District of Columbia, such survey to be made at a cost not exceeding $8,000, which amount is hereby authorized. (Sept. 22, 1950, 64 Stat. 904, ch. 984, § 4.)

TRANSFER OF FUNCTIONS

"National Capital Planning Commission" was substituted for "National Park and Planning Commission" in view of act June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission. See section 1–1009.

§ 5–805. Construction with other laws.

Nothing contained in this chapter shall be construed as superseding or affecting in any manner any Act of Congress heretofore enacted relating to the alteration, repair, or demolition of insanitary or unsafe dwellings or other structures. (Sept. 22, 1950, 64 Stat. 904, ch. 984, § 5.)

§ 5–806. Old Georgetown Market as historic landmark—Use as public market.

That the real property, together with all structures thereon on September 21, 1966, described as lot 800, square 1186, of the District of Columbia, commonly known as the Old Georgetown Market, is hereby declared a historic landmark, and the Board of Commissioners of the District of Columbia are authorized and directed to preserve such property as a historic landmark and to operate and maintain it as a public market, except that the Board is authorized to enter into an agreement with the Secretary of the Interior to provide for the use of a portion of such property as a museum to be operated by the Secretary in connection with the Chesapeake and Ohio Canal. Such property shall not be used under authority of any provision of law for any purpose not provided in this section unless (1) such law is enacted after September 21, 1966 and (2) specifically authorizes such property to be used for such other purpose. (Sept. 21, 1966, 80 Stat. 829, Pub. L. 89–600, § 1.)

CODIFICATION

This section and § 5–807 are not a part of act Sept. 22, 1950, ch. 984, which constitutes "this chapter" as used in other sections of this chapter.

§ 5–807. Appropriations to carry out section 5–806.

For the purpose of carrying out the provisions of section 5–806, there are authorized to be appropriated to the District of Columbia such sums as may be necessary, but not to exceed in the aggregate, $150,000. (Sept. 21, 1966, 80 Stat. 830, Pub. L. 89–600, § 2.)

Chapter 9.—HORIZONTAL PROPERTY REGIMES

Sec.
5–901. Short title—Citation of chapter.
5–902. Definitions.
5–903. Horizontal property regimes.
5–904. Status of condominium units within a horizontal property regime.
5–905. Joint tenancies, tenancies in common, tenancies by the entirety.
5–906. Ownership of condominium units, of common elements—Declaration—Voting—Individual unit deeds.
5–907. Indivisibility of common elements—Limitation upon partition.
5–908. Use of elements held in common, right to repair common elements.
5–909. Condominium subdivision.
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5–911. Termination and waiver of regime.
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5–922. Sharing of reconstruction cost where building is not insured or insurance indemnity is insufficient.
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5–924. Actions—Right to separate release of judgment.
5–925. Mechanics' and materialmen's liens, enforcement thereof—Removal from lien—Effect of part payment.
5–926. Nonapplication of rule against perpetuities and of rule against unreasonable restraints on alienation to horizontal property regimes.
9–927. Supplement of existing code provisions.
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5–930. Supplemental provisions relating to sewer and water services.
5–931. Authority of Board of Commissioners under Reorganization Plan Numbered 5 of 1952.
5–932. Severability.
5–933. Effective date.

§ 5–901. Short title—Citation of chapter.

This chapter, including the following table of contents, may be cited as the "Horizontal Property Act of the District of Columbia". (Dec. 21, 1963, 77 Stat. 449, Pub. L. 88–218, § 1.)

REFERENCES IN TEXT

The "following table of contents" refers to the section analysis set out preceeding this section.

EFFECTIVE DATE

See section 5–933.

§ 5–902. Definitions.

Unless it is plainly evident from the context that a different meaning is intended, as used herein—

(a) "Unit" or "condominium unit" means an enclosed space, consisting of one or more rooms, occupying all or part of one or more floors in buildings of one or more floors or stories regardless of whether it be designed for residence, for office, for the operation of any industry or business, or for any other type of independent use, and shall include such accessory units as may be appended thereto, such as garage space, storage space, balcony, terrace or patio: *Provided,* that said unit has a direct exit to a thoroughfare or to a given common space leading to a thoroughfare.

(b) "Condominium" means the ownership of single units in a multiunit structure with common elements.

(c) "Condominium project" means a real estate condominium project; a plan or project whereby five or more apartments, rooms, office spaces, or other units in existing or proposed buildings or structures are offered or proposed to be offered for sale.

(d) "Co-owner" means a person, persons, corporation, trust, or other legal entity, or any combination thereof, that owns a condominium unit within the building.

(e) "Council of co-owners" means the co-owners as defined in subsection (d) of this section, acting as a group in accordance with the provisions of this chapter and the bylaws and declaration established thereunder; and a majority, as defined in subsection (h) of this section, shall, except as otherwise provided in this chapter, constitute a quorum for the adoption of decisions.

(f) "General common elements" except as otherwise provided in the plat of condominium subdivision, means and includes—

(1) the land on which the building stands in fee simple or leased provided that the leasehold interest of each unit is separable from the leasehold interests of the other units;

(2) the foundations, main walls, roofs, halls, columns, girders, beams, supports, corridors, fire escapes, lobbies, stairways, and entrance and exit or communication ways;

(3) the basements, flat roofs, yards, and gardens except as otherwise provided or stipulated;

(4) the premises for lodging of janitors or persons in charge of the building, except as otherwise provided or stipulated;

(5) the compartments or installations of central services such as power, light, gas, cold and hot water, heating, central air conditioning or central refrigeration, swimming pools, reservoirs, water tanks and pumps, and the like;

(6) the elevators, garbage and trash incinerators and, in general, all devices or installations existing for common use; and

(7) all other elements of the building rationally of common use or necessary to its existence, upkeep, and safety.

(g) "Limited common elements" means and includes those common elements which are agreed upon by all the co-owners to be reserved for the use of a certain number of condominium units, such as special corridors, stairways, and elevators, sanitary services common to the apartments of a particular floor, and the like.

(h) "Majority of co-owners", "two-thirds of the co-owners", and "three-fourths of the co-owners" mean, respectively, 51, 66⅔, and 75 per centum or more of the votes of the co-owners computed in accordance with their percentage interests as established under section 6 of this chapter.

(i) "Plat of condominium subdivision" means the plat of the surveyor of the District of Columbia establishing the condominium units, accessory units, general common elements, and limited common elements.

(j) "Person" means a natural individual, corporation, trustee, or other legal entity or any combination thereof.

(k) "Developer" means a person that undertakes to develop a real estate condominium project

(*l*) "Property" means and includes the lands whether leasehold, if separable as defined in (f)(1) of this section, or in fee simple, the building, all improvements and structures thereon, and all easements, rights, and appurtenances thereunto belonging.

(m) "To record" means to record in accordance with the provisions of section 45–501.

(n) "Common expenses" means and includes—

(1) all sums lawfully assessed against the unit owners by the council of co-owners;

(2) expenses of administration, maintenance, repair, or replacement of the common areas and facilities, including repair and replacement funds as may be established;

(3) expenses agreed upon as common expenses by the council of co-owners;

(4) expenses declared common expenses by the provisions of this chapter or by the bylaws.

(*o*) "Common profits" means the balance of all income, rents, profits, and revenues from the common areas and facilities remaining after deduction of the common expenses.

(p) All words used herein include the masculine, feminine, and neuter genders and include the singular or plural numbers, as the case may be. (Dec. 21, 1963, 77 Stat. 449, Pub. L. 88–218, § 2; Aug. 21, 1964, 78 Stat. 586, Pub. L. 88–475, § 1(a)(b).)

AMENDMENTS

1964—Section 1(a)(b) of act Aug. 21, 1964, amended paragraph (a) by striking "a floor" and inserting in lieu thereof "one or more floors," also amended paragraph (e) by striking the reference (k) and inserting in lieu thereof (h).

EFFECTIVE DATE

See section 5–933.

§ 5–903. Horizontal property regimes.

Whenever the owners or the co-owners of any square or lot shall subdivide the same into a condominium project in conformity with section 5–909 with a plat of condominium subdivision there shall be established a horizontal property regime. (Dec. 21, 1963, 77 Stat. 451, Pub. L. 88–218, § 3.)

EFFECTIVE DATE

See section 5–933.

§ 5–904. Status of condominium units within a horizontal property regime.

Once the property is subdivided into the horizontal property regime, a condominium unit in the building may be individually conveyed, leased, and encumbered and may be inherited or devised by will, as if it were sole and entirely independent of the other condominium units in the building of which it forms a part; the said separate units shall have the same incidents as real property and the corresponding individual titles and interests therein shall be recordable. (Dec. 21, 1963, 77 Stat. 451, Pub. L. 88–218, § 4.)

EFFECTIVE DATE

See section 5–933.

§ 5–905. Joint tenancies, tenancies in common, tenancies by the entirety.

Any condominium unit may be held and owned by more than one person as joint tenants, as tenants in common, as tenants by the entirety (in the case of husband and wife), or in any other real property tenancy relationship recognized under the laws of the District of Columbia. (Dec. 21, 1963, 77 Stat. 451, Pub. L. 88–218, § 5.)

EFFECTIVE DATE

See section 5–933.

§ 5–906. Ownership of condominium units, of common elements—Declaration—Voting—Individual unit deeds.

(a) A condominium unit owner shall have the exclusive fee simple ownership of his unit and shall have a common right to a share, with the other co-owners, of an undivided fee simple interest in the common elements of the property, equivalent to the percentage representing the value of the unit to the value of the whole property.

(b) Said percentage interest shall not be separated from the unit to which it appertains.

(c) The individual percentages shall be established at the time the horizontal property regime is constituted by the recording among the land records of the District of Columbia, of a declaration setting forth said percentages, shall have a permanent character, and shall not be changed without the acquiescence of the co-owners representing all the condominium units in the building, which said change shall be evidenced by an appropriate amendatory declaration to such effect recorded among the land records of the District of Columbia. Said share interest shall be set forth of record, in the initial individual condominium unit deeds. Said share interests in the common elements shall, nevertheless, be subject to mutual rights of ingress, egress, and regress of use and enjoyment of the other co-owners and a right of entry to officers, agents, and employees of the Government of the United States and the government of the District of Columbia acting in the performance of their official duties.

(d) The said basic value of said undivided common interest shall be fixed for the purposes of this chapter and shall not fix the market value of the individual condominium units and undivided share interests and shall not prevent each co-owner from fixing a different circumstantial value to his condominium unit and undivided share interest in the common elements, in all types of acts and contracts.

(e) In addition to the foregoing provisions, the declaration may contain other provisions and attachments relating to the condominium and to the units which are not inconsistent with this chapter.

(f) Voting at all meetings of the co-owners shall be on a percentage basis, and the percentage of the vote to which each co-owner is entitled shall be the individual percentage assigned to his unit in the declaration.

(g) Individual condominium unit deeds may make reference to this chapter, the condominium subdivision and land subdivision plats referred to in section 5–910 hereof, the declaration provided for in this section, the bylaws of the council of co-owners, and the deeds may include any further details which the grantor and grantee may deem desirable to set forth consistent with the declaration and this chapter. (Dec. 21, 1963, 77 Stat. 451, Pub. L. 88–218, § 6.)

EFFECTIVE DATE

See section 5–933.

§ 5–907. Indivisibility of common elements—Limitation upon partition.

(a) The common elements, both general and limited, shall remain undivided. No unit owner, or any other person, shall bring any action for partition or division of the co-ownership permitted under section 93 and related provisions of the Act of March 3, 1901 (31 Stat. 1203), as amended by the Act of June 30, 1902 (32 Stat. 523, ch. 1329), against any other owner or owners of any interest or interests in the same horizontal property regime so as to terminate the regime.

(b) Nothing contained in this section shall be construed as a limitation on partition by the owners of one or more units in a regime as to the individual ownership of such unit or units without terminating the regime or as to the ownership of property outside the regime: *Provided,* That upon partition of any such individual unit the same shall be sold as an entity and shall not be partitioned in kind. (Dec. 21, 1963, 77 Stat. 452, Pub. L. 88–218, § 7.)

REFERENCES IN TEXT

The section of the act referred to in the text is now set out as section 16–2901 of the Code.

EFFECTIVE DATE

See section 5–933.

§ 5–908. Use of elements held in common, right to repair common elements.

(a) Each co-owner may use the elements held in common in accordance with the purposes for which they are intended, without hindering or encroaching upon the lawful rights of the other co-owners.

(b) The manager, board of directors or of administration, as the case may be, shall have an irrevocable right and an easement to enter units to make repairs to common elements or when repairs reasonably appear to be necessary for public safety or to prevent damage to property other than the unit. (Dec. 21, 1963, 77 Stat. 452, Pub. L. 88–218, § 8.)

EFFECTIVE DATE

See section 5–933.

§ 5–909. Condominium subdivision.

(a) Whenever the owner or the co-owners of any square or lot duly subdivided in conformity with section 1–620 or other applicable laws of the District of Columbia, shall deem it necessary to subdivide the same into a condominium project of convenient condominium units for sale and occupancy and means of access for their accommodation, he may cause a plat or plats to be made by the surveyor of the District of Columbia, on which said plats, together, shall be expressed—

(1) the ground dimensions as set forth under such section 1–620 and the exterior lengths of all lines of the building;

(2) for each floor or floors, in the instance of condominium units consisting of more than one floor, of the condominium subdivision, the number or letter, dimensions, and lengths of finished interior surfaces of unit dividing walls of the individual condominium units; the elevations (or average elevation, in case of slight variance) from a fixed known point, of finished floors and of finished ceilings of such condominium units situate upon the same floor, and further expressing the area, the relationship of each unit to the other upon the same floor and their relationship to the common elements upon said floor: *Provided,* That when a

unit is situated on more than one floor, access shall be provided within the unit between the portion of the unit on any one floor and the portion of the unit on any other floor in addition to any outside access which might be provided to any portion of the unit;

(3) the dimensions and lengths of the interior finished surface of walls, elevations, from said same fixed known point, of the finished floors and of the finished ceilings of the general common elements of the building, and, in proper case, of the limited common elements restricted to a given number of condominium units, expressing which are those units;

(4) any other data necessary for the identification of the individual condominium units and the general and limited common elements.

(b) And said owners or co-owners may certify such condominium subdivisions under their hands and seals in the presence of two credible witnesses, upon the same plat or on a paper or a parchment attached thereto. And the same shall thereupon be put up, labeled, indexed, and preserved for record and deposit with the office of the surveyor for the District of Columbia in like manner as land subdivisions have been heretofore recorded or in such other books as the said surveyor may prescribe. (Dec. 21, 1963, 77 Stat. 452, Pub. L. 88–218, § 9; Aug. 21, 1964, 78 Stat. 586, Pub. L. 88–475, § 1(c).)

AMENDMENTS

1964—Section 1(c) of act Aug. 21, 1964, amended subseciton (a)(2) by inserting after "for each floor", the words, "or floors, in the instance of condominium units consisting of more than one floor," and by adding at the end the Proviso clause.

EFFECTIVE DATE

See section 5–933.

§ 5–910. Reference to plat.

When a plat of a condominium project and subdivision shall be so certified, examined, and recorded, the purchaser of any condominium unit thereof or any person interested therein, may refer to the plat and record for description in the same manner as to squares and lots divided between the Commissioners and the original proprietors and in the same manner as has been heretofore the practice for land subdivisions: *Provided,* That said purchaser or other person interested therein shall also make reference to the plat of land subdivision appearing prior to the establishment of the condominium subdivision thereupon. Any such conveyance of an individual condominium unit shall be deemed to also convey the undivided interest of the owner in the common elements, both general and limited, and of any accessory units, if any, appertaining to said condominium unit without specifically or particularly referring to the same. (Dec. 21, 1963, 77 Stat. 453, Pub. L. 88–218, § 10.)

EFFECTIVE DATE

See section 5–933.

§ 5–911. Termination and waiver of regime.

(a) All the co-owners or the sole owner of a building constituted into a horizontal property regime may terminate and waive this regime and regroup or merge the individual and several condominium units with the principal property; such termination and waiver shall be by certification to such effect upon the plat of condominium subdivision establishing the particular horizontal property regime under the hands and seals of the said sole owner or co-owners, in the presence of two credible witnesses, upon the same plat or upon a paper or parchment attached thereto: *Provided,* That the said individual condominium units are unencumbered, or if encumbered, that the creditors in whose behalf the encumbrances are recorded agree to accept as security the undivided interest in the property of the debtor co-owner and said creditors or trustees under duly recorded deeds of trust, shall signify their assent to such termination and waiver upon the aforesaid plat, paper, or parchment: *Provided further,* That should the buildings or other improvements in a condominium project be more than two-thirds destroyed by fire or other disaster, the co-owners of three-fourths of the condominium project may waive and terminate the horizontal property regime and may certify to such termination and waiver: *Provided further,* That if within ninety days of the date of such damage or destruction:

(1) the council of co-owners does not determine to repair, reconstruct or rebuild as provided in sections 5–921 and 5–922 or,

(2) the insurance indemnity is delivered pro rata to the co-owners in conformity with the provisions of section 5–921 and if the co-owners do not terminate and waive the regime in conformity with this section, then any unit owner or any other person aggrieved thereby may file a petition in the United States District Court for the District of Columbia, setting forth under oath such facts as may be necessary to entitle the petitioner to the relief prayed and praying judicial termination of the horizontal property regime. Said petition may be served on the person designated in the by-laws in conformity with section 5–914(a)(7). The court may thereupon lay a rule upon the council of co-owners, unless they shall voluntarily appear and admit the allegations of the petition, to show cause, under oath, on or before the tenth day, exclusive of Sundays and legal holidays, after service of such rule, why the prayers of said petition should not be granted. If no cause be shown against the prayer of the petition by the council of co-owners, or by any one of the co-owners, the court may determine in a summary way whether the facts warrant termination and thereupon the court may decree the particular horizontal property regime terminated.

(b) In the event a horizontal property regime is terminated or waived, the property shall be deemed to be owned in common by the co-owners, and the undivided interest in the property owned in common which shall appertain to each co-owner shall be the percentage of undivided interest previously owned by such co-owner in the common elements in the property as set forth in the declaration under section 6 hereof.

(c) Upon such termination and waiver the provisions of section 5–910 shall no longer be applicable

and reference to the principal property thereupon, shall be to the plat and record of the prior land subdivision and thereupon the restraint against partition or division of the co-ownership imposed by section 5–907 shall no longer apply. In the event of such partition suit the net proceeds shall be divided among all the unit owners, in proportion to their respective undivided ownership of the common elements, after first paying off, out of the respective shares of the unit owners, all liens on the unit of each unit owner. To be valid such termination shall be recorded among the land records of the District of Columbia. (Dec. 21, 1963, 77 Stat. 453, Pub. L. 88–218, § 11; Aug. 21, 1964, 78 Stat. 586, Pub. L. 88–475, § 1(d).)

AMENDMENT

1964—Section 1(d) of act Aug. 21, 1964, amended subsection (a)(2) by striking out "as provided in section 5–914(g)" and inserted in lieu thereof "on the person designated in the bylaws in conformity with section 5–914(a)(7)."

EFFECTIVE DATE

See section 5–933.

§ 5–912. Merger no bar to reconstitution.

The merger provided for in the preceding section shall in no way bar the subsequent constitution of the property into another horizontal property regime whenever so desired and upon observance of the provisions of this chapter. (Dec. 21, 1963, 77 Stat. 454, Pub. L. 88–218, § 12.)

EFFECTIVE DATE

See section 5–933.

§ 5–913. Bylaws, availability for examination.

(a) The administration of every building constituted into a horizontal property regime shall be governed by the bylaws as the council of co-owners may from time to time adopt, which said bylaws together with the declaration, including recorded attachments thereto, referred to in section 5–906 shall be available for examination by all the co-owners, their duly authorized attorneys or agents, at convenient hours on working days that shall be set and announced for general knowledge.

(b) A true copy of said bylaws shall be annexed to the declaration referred to in section 5–906 and made a part thereof. No modification of or amendment to the bylaws shall be valid unless set forth in an amendment to the declaration and such amendment is duly recorded.

(c) Each unit owner shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time. Failure to comply with any of the same shall be ground for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the manager, the administrator, board of directors or of administration, or as specified in the bylaws or in proper case, by an aggrieved unit owner. (Dec. 21, 1963, 77 Stat. 454, Pub. L. 88–218, § 13.)

EFFECTIVE DATE

See section 5–933.

§ 5–914. Necessary contents of bylaws—Modification of system.

(a) The bylaws must necessarily provide for at least the following:

(1) Form of administration, indicating whether this shall be in charge of an administrator, manager, or of a board of directors, or of administration, or otherwise, and specifying the powers, manner of removal, and, where proper, the compensation thereof.

(2) Method of calling or summoning the co-owners to assemble; that a majority of co-owners is required to adopt decisions, except as otherwise provided in this chapter; who is to preside over the meeting and who will keep the minute book wherein the resolutions shall be recorded.

(3) Care, upkeep, and surveillance of the building and its general or limited common elements and services.

(4) Manner of collecting from the co-owners for the payment of common expenses.

(5) Designation, hiring, and dismissal of the personnel necessary for the good working order of the building and for the proper care of the general or limited common elements and to provide services for the building.

(6) Such restrictions on or requirements respecting the use and maintenance of the units and the use of the common elements as are designed to prevent unreasonable interference with the use of the respective units and of the common elements by the several unit owners.

(7) Designation of person authorized to accept service of process in any action relating to two or more units or to the common elements as authorized under section 5–924. Such person must be a resident of and maintain an office in the District of Columbia.

(8) Notice as to the existence or nonexistence of a declaration in trust for the enforcement of the lien for common expenses permitted under section 5–919.

(b) The sole owner of the building, or if there be more than one, the co-owners representing two-thirds of the votes provided for in section 5–906 may at any time modify the system of administration, but each one of the particulars set forth in this section shall always be embodied in the bylaws. (Dec. 21, 1963, 77 Stat. 455, Pub. L. 88–218, § 14.)

EFFECTIVE DATE

See section 5–933.

§ 5–915. Books of receipts and expenditures—Availability for examination.

The manager, administrator, or the board of directors, or of administration, or other form of administration specified in the bylaws, shall keep books with detailed accounts in chronological order, of the receipts and of the expenditures affecting the building and its administration and specifying the maintenance and repair expenses of the common elements and any other expenses incurred. Both said books and the vouchers accrediting the entries made thereupon shall be available for examination by the co-owners, their duly authorized agents or attorneys, at convenient hours on working days that shall be set and announced for general knowledge. All books

and records shall be kept in accordance with good accounting practice and shall be audited at least once a year by an auditor outside the organization. (Dec. 21, 1963, 77 Stat. 455, Pub. L. 88–218, § 15.)

EFFECTIVE DATE

See section 5–933.

§ 5–916. Common profits, contributions for payment of common expenses of administration and maintenance.

(a) The common profits of the property shall be distributed among and the common expenses shall be charged to the unit owners according to the percentages established by section 5–906: *Provided,* That for purposes of the application of the District of Columbia Income and Franchise Tax Act of 1947 (61 Stat. 331), as amended, the council of co-owners shall, in accordance, with the provisions of said Act, be regarded as constituting an unincorporated business and shall file returns and pay taxes upon the taxable income derived from the common areas without regard to the "common profits" as defined in this chapter.

(b) All co-owners are bound to contribute in accordance with the said percentages toward the expenses of administration and of maintenance and repairs of the general common elements, and, in proper case, of the limited common elements of the building and toward any other expenses lawfully agreed upon by the council of co-owners.

(c) No owner shall be exempt from contributing toward such common expenses by waiver of the use or enjoyment of the common elements both general and limited, or by the abandonment of the condominium unit belonging to him.

(d) Said contribution may be determined, levied, and assessed as a lien on the first day of each calendar or fiscal year, and may become and be due and payable in such installments as the bylaws may provide, and said bylaws may further provide that upon default in the payment of any one or more of such installments, the balance of said lien may be accelerated at the option of the manager, board of directors, or of management and be declared due and payable in full. (Dec. 21, 1963, 77 Stat. 456, Pub. L. 88–218, § 16.)

REFERENCES IN TEXT

The Franchise Tax Act referred to in subsection (a) is the act described in the note to section 47–1551 under the heading "Short Title".

EFFECTIVE DATE

See section 5–933.

§ 5–917. Priority of liens.

The lien determined, levied and assessed in accordance with section 5–916 shall have preference over any other assessments, liens, judgments, or charges of whatever nature, except the following:

(a) Real estate taxes, other taxes arising out of or resulting from the ownership, use, or operation of the common areas, special assessments, including, but not limited to, special assessments for sewer mains, water mains, curbs, gutters, sidewalks, alleys, paving of streets, roads and avenues, removal or abatement of nuisances, and special assessments levied in connection with condemnation proceedings instituted by the District of Columbia, and water charges and sanitary sewer service charges levied on the condominium unit, and judgments, liens, preferences, and priorities for any tax assessed against a co-owner by the United States or the District of Columbia or due from or payable by a co-owner to the United States or the District of Columbia, and judgments, liens, preferences, and priorities in favor of the District of Columbia for assessments or charges referred to in this subparagraph.

(b) The liens of any deeds of trust, mortgage instruments, or encumbrances duly recorded on the condominium unit prior to the assessment of the lien thereon or duly recorded on said unit after receipt of a written statement from the manager, board of directors, or of management reflecting that payments on said lien were current as of the date of recordation of said deed of trust, mortgage instrument, or encumbrance.

Upon a voluntary sale or conveyance of a condominium unit all unpaid assessments against a grantor co-owner for his pro rata share of the expenses to which section 5–916 refers shall first be paid out of the sales price or by the grantee in the order of preference set forth above. Upon an involuntary sale through foreclosure of a deed of trust, mortgage, or encumbrance having preference as set forth in subparagraph (b) of this section a purchaser thereunder shall not be liable for any installments of such lien as became due prior to his acquisition of title. Such arrears shall be deemed common expenses, collectible from all co-owners, including such purchaser. (Dec. 21, 1963, 77 Stat. 456, Pub. L. 88–218, § 17.)

EFFECTIVE DATE

See section 5–933.

§ 5–918. Joint and several liability of purchaser and seller for amounts owing under section 5–916—Purchaser's recovery, purchaser's or lender's right to a statement setting forth amount due.

The purchaser of a condominium unit in a voluntary sale shall be jointly and severally liable with the seller for the amounts owing by the latter under section 5–916 upon his interest in the condominium unit up to the time of conveyance; without prejudice to the purchaser's right to recover from the other party the amounts paid by him as such joint debtor: *Provided,* That any such purchaser, or a lender under a deed of trust, mortgage, or encumbrance, or parties designated by them, shall be entitled to a statement from the manager, board of directors, or of administration, as the case may be, setting forth the amount of unpaid assessments against the seller or borrower, and the unit conveyed or encumbered shall not be subject to a lien for any unpaid assessment in excess of the amount set forth. (Dec. 21, 1963, 77 Stat. 457, Pub. L. 88–218, § 18.)

EFFECTIVE DATE

See section 5–933.

§ 5–919. Supplemental method of enforcement of lien.

(a) In addition to proceedings available at law or equity for the enforcement of the lien established by section 5–916, all the owners of property constituted into a horizontal property regime may execute bonds

conditioned upon the faithful performance and payment of the installments of the lien permitted by section 5–916 and may secure the payment of such obligations by a declaration in trust recorded among the land records of the District of Columbia, granting unto a trustee or trustees appropriate powers to the end that upon default in the performance of such bond, said declaration in trust may be foreclosed by said trustee or trustees, acting at the direction of the manager, board of directors, or of management, as is proper practice in the District of Columbia in foreclosing a deed of trust.

(b) And the bylaws may require in the event such bonds have been executed and such declaration in trust is recorded that any subsequent purchaser of a condominium unit in said horizontal property regime shall take title subject thereto and shall assume such obligations: *Provided,* That the said lien, bond, and declaration in trust shall be subordinate to and a junior lien to liens for real estate taxes and other taxes arising out of or resulting from the ownership, use, or operation of the common areas, liens for special assessments, including, but not limited to, special assessments for sewer mains, water mains, curbs, gutters, sidewalks, alleys, paving of streets, roads, and avenues, removal or abatement of nuisances, and special assessments levied in connection with condemnation proceedings instituted by the District of Columbia, and liens for water charges and sanitary sewer service charges levied on the condominium unit, and to judgments, liens, preferences, and priorities for any tax assessed against a co-owner by the United States or the District of Columbia or due from or payable by a co-owner to the United States or the District of Columbia, and to judgments, liens, preferences, and priorities in favor of the District of Columbia for assessments or charges referred to in this section then or thereafter accruing against the unit and to the lien of any duly recorded deeds of trust, mortgages, or encumbrances previously placed upon the unit and said lien, bond, and declaration in trust shall be and become subordinate to any subsequently recorded deeds of trust, mortgages, or encumbrances: *Provided,* That the lender thereunder shall first obtain from the manager, board of directors, or of administration a written statement as provided in section 5–918 reflecting that payments due under this lien are current as of the date of recordation of such subsequent deed of trust, mortgage, or encumbrance. (Dec. 21, 1963, 77 Stat. 457, Pub. L. 88–218, § 19.)

EFFECTIVE DATE

See section 5–933.

§ 5–920. Insuring building against risks—Individual rights of co-owners.

The manager or the board of directors, if required by the bylaws or by a majority of the co-owners, or at the request of a mortgagee having a first mortgage of record covering a unit, shall have the authority to, and shall, obtain insurance for the property against loss or damage by fire and such other hazards under such terms and for such amounts as shall be required or requested. Such insurance coverage shall be written on the property in the name of such manager or of the board of directors of the council of co-owners, as trustee for each of the unit owners in the percentages established in the declaration. Premiums shall be common expenses. Provision for such insurance shall be without prejudice to the right of each unit owner to insure his own unit for his benefit. (Dec. 21, 1963, 77 Stat. 458, Pub. L. 88–218, § 20.)

EFFECTIVE DATE

See section 5–933.

§ 5–921. Application of insurance proceeds to reconstruction—Pro rata distribution in certain cases—Rules governing.

(a) In case of fire or other disaster the insurance indemnity shall, except as provided in the next succeeding paragraph of this section, be applied to reconstruct the building.

(b) Reconstruction shall not be compulsory where destruction comprises the whole or more than two-thirds of the buildings and other improvements in a condominium project. In such cases, and unless otherwise unanimously agreed upon by the co-owners, the indemnity shall be delivered pro rata to the co-owners entitled to it in accordance with provisions made by the bylaws or in accordance with a decision of three-fourths of the co-owners, if there be no bylaw provision, after first paying off, out of the respective shares of the unit owners, to the extent sufficient for the purpose, all liens on the unit of each co-owner. Should it be proper to proceed with the reconstruction, the provision for such eventuality made in the bylaws shall be observed, or in lieu thereof, the decision of the council of co-owners shall prevail, subject to all provisions of law and regulations of the District of Columbia then in effect. (Dec. 21, 1963, 77 Stat. 458, Pub. L. 88–218, § 21.)

EFFECTIVE DATE

See section 5–933.

§ 5–922. Sharing of reconstruction cost where building is not insured or insurance indemnity is insufficient.

Where the building is not insured or where the insurance indemnity is insufficient to cover the cost of reconstruction the new building costs shall be paid by all the co-owners in the same proportion as their proportionate ownership of the common elements of the condominium project, and if any one or more of those composing the minority shall refuse to make such payments, the majority may proceed with the reconstruction at the expense of all the co-owners and the share of the resulting common expense may be assessed against all the co-owners and such assessment for this expense shall have the same priority as provided under section 5–917. (Dec. 21, 1963, 77 Stat. 458, Pub. L. 88–218, § 22.)

EFFECTIVE DATE

See section 5–933.

§ 5–923. Separate taxation.

(a) For the purposes of assessment and taxation of property constituted into a horizontal property regime and to conform to the system of numbering squares, lots, blocks, and parcels for taxation purposes in effect in the District of Columbia, each condominium unit duly situate upon a subdivided lot and square shall bear a number or letter that will distinguish it from every other condominium unit situate in said lot and square.

(b) Each of said condominium units shall be carried on the records of the District of Columbia as a separate and distinct entity and all real estate taxes, other taxes arising out of or resulting from the ownership, use, or operation of the common areas, special assessments, including, but not limited to, special assessments for sewer mains, water mains, curbs, gutters, sidewalks, alleys, paving of streets, roads, and avenues, removal or abatement of nuisances, and special assessments levied in connection with condemnation proceedings instituted by the District of Columbia, shall be assessed, levied, and collected against each of said several separate and distinct units in conformity with the percentages of co-ownership established by section 5–906, and in accordance with the provisions of law in effect in the District of Columbia relating to assessment, levying, and collection of real property taxes.

(c) The council of co-owners shall be liable for the filing of returns and payment of the tax on personal property located in the common areas and held for use or used in a trade or business or held for sale or rent.

(d) The title to an individual condominium unit shall not be divested or in anywise affected by the forfeiture or sale of any or all of the other condominium units for delinquent real estate taxes, other taxes arising out of or resulting from the ownership, use, or operation of the common areas; special assessments, including, but not limited to, special assessments for sewer mains, water mains, curbs, gutters, sidewalks, alleys, paving of streets, roads and avenues, removal or abatement of nuisances, special assessments levied in connection with condemnation proceedings instituted by the District of Columbia, or water charges and sanitary sewer service charges: *Provided,* That the real estate taxes, the duly levied share of such other taxes and of such special assessments, and the water and sanitary sewer service charges on or against said individual condominium unit are currently paid. (Dec. 21, 1963, 77 Stat. 458, Pub. L. 88–218, § 23.)

EFFECTIVE DATE

See section 5–933.

§ 5–924. Actions—Right to separate release of judgment.

(a) Without limiting the right of any co-owner, actions may be brought on behalf of two or more of the unit owners, as their respective interests may appear, by the manager, or board of directors, or of administration with respect to any cause of action relating to the common elements or more than one unit.

(b) Service of process on two or more unit owners in any action relating to the common elements may be made on the person designated in the bylaws in conformity with section 5–914(a)(7).

(c) In the event of entry of a final judgment as a lien against two or more unit owners, the unit owners of the separate units may remove their unit and their percentage interest in the common elements from the lien thereof by payment of the fractional proportional amounts attributable to each of the units affected. Said individual payment shall be computed by reference to the percentage established pursuant to section 5–906. After such partial payment, partial discharge, or release or other satisfaction, the unit and its percentage interest in the common elements shall thereafter be free and clear of the lien of such judgment.

(d) Such partial payment, satisfaction, or discharge shall not prevent such a judgment creditor from proceeding to enforce his rights against any unit and its percentage interest in the common elements not so paid, satisfied, or discharged. (Dec. 21, 1963, 77 Stat. 459, Pub. L. 88–218, § 24; Aug. 21, 1964, 78 Stat. 586, Pub. L. 88–475, § 1(e).)

AMENDMENT

1964—Section 1(e) of act Aug. 21, 1964, amended the setcion by striking out "section 5–914(g)" and inserting "section 5–914(a)(7)."

EFFECTIVE DATE

See section 5–933.

§ 5–925. Mechanics' and materialmen's liens, enforcement thereof—Removal from lien—Effect of part payment.

(a) Subsequent to establishment of a horizontal property regime as provided in this chapter, and while the property remains subject to this chapter, no lien shall thereafter arise or be effective against the property. During such period liens or encumbrances shall arise or be created and enforced only against each unit and the percentage of undivided interest in the common areas and facilities appurtenant to such unit in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel or real property subject to individual ownership: *Provided,* That no labor performed or materials furnished with the consent or at the request of a unit owner or his agent or his contractor or subcontractor, shall be the basis for the filing of a lien pursuant to the provisions of section 38–101, against the unit or any other property of any other unit owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by the owner of any unit in the case of emergency repairs thereto. Labor performed or materials furnished for the common areas and facilities, if duly authorized by the council of co-owners, the manager, or board of directors in accordance with this chapter, the declaration or bylaws, shall be deemed to be performed or furnished with the express consent of each unit owner and shall be the basis for the filing of a lien pursuant to the provisions of section 38–101, against each of the units and shall be subject to the provisions of subparagraph (b) hereunder. Notice of said lien may be served on the person designated in conformity with section 5–914(a)(7).

(b) In the event of filing of a lien against two or more units and their respective percentage interest in the common elements, the unit owners of the separate units may remove their unit and their percentage interest in the common elements appurtenant thereto from the said lien by payment, or may file a written undertaking with surety approved by the court as provided in section 38–118, of the fractional or proportional amounts attributable to each of the units affected. Said individual payment, or amount of bond, shall be computed by

reference to the percentage established pursuant to section 5–906. After such partial payment, filing of bond, partial discharge, or release, or other satisfaction, the unit and its percentage interest in the common elements shall thereafter be free and clear of such lien. Such partial payment, indemnity, satisfaction, or discharge shall not prevent the lienor from proceeding to enforce his rights against any unit and its percentage interest in the common elements not so paid, indemnified, satisfied, or discharged. (Dec. 21, 1963, 77 Stat. 459, Pub. L. 88–218, § 25; Aug. 21, 1964, 78 Stat. 586, Pub. L. 88–475, § 1(f).)

AMENDMENT

1964—Section 1(f) act Aug. 21, 1964, amended subsection (a) by striking out "section 5–915(g)" and inserting "section 5–914(a)(7)."

EFFECTIVE DATE

See section 5–933.

§ 5–926. Nonapplication of rule against perpetuities and of rule against unreasonable restraints on alienation to horizontal property regimes.

The rule of property known as the rule against perpetuities, and the rule of property known as the rule restricting unreasonable restraints on alienation, sections 45–102 and 45–104, shall not be applied to defeat any of the provisions of this chapter, or of any declaration, bylaws, or other document executed in accordance with this chapter as to the condominium project. This exemption shall not apply to estates in the individual condominium units. (Dec. 21, 1963, 77 Stat. 460, Pub. L. 88–218, § 26.)

§ 5–927. Supplement of existing code provisions.

The provisions of the chapter shall be in addition to and supplemental to all other provisions of law of the District of Columbia and wheresoever there appears in the provisions the words "square", "lot", "land", "ground", "parcel", "property", "block", or other designation denoting a unit of land, where appropriate to implement this chapter, after such descriptive terms, there shall be deemed inserted reference to a condominium unit, condominium subdivision, or horizontal property regime, whichever shall be appropriate to effect the ends and purposes of this chapter: *Provided,* That wherever the application of the provisions of this chapter conflict with the application of such other provisions, the provisions of law generally applicable to buildings in like use in the District of Columbia shall prevail. (Dec. 21, 1963, 77 Stat. 460, Pub. L. 88–218, § 27.)

EFFECTIVE DATE

See section 5–933.

§ 5–928. Regulations of the Board of Commissioners and the zoning commission.

In order to bring horizontal property regimes into compliance with the laws and regulations in effect in the District of Columbia, the Board of Commissioners of the District of Columbia and the Zoning Commission of the District of Columbia are each hereby authorized to adopt and enforce such regulations as either deems proper, within its respective general authority. (Dec. 21, 1963, 77 Stat. 461, Pub. L. 88–218, § 28.)

EFFECTIVE DATE

See section 5–933.

§ 5–929. Interpretation.

(a) This chapter shall be interpreted in such a manner as to require each condominium unit and each horizontal property regime to be in compliance with all District of Columbia laws and regulations relating to property of like type, whether it be designed for residence, for office, for the operation of any industry or business, or for any other use. The owner of each condominium unit shall be responsible for the compliance of his unit with such laws and regulations, and the council of co-owners and any person designated by them to manage the regime shall be jointly and severally liable for compliance with all such laws and regulations in all matters relating to the common elements of the regime.

(b) Notwithstanding any provision of this chapter, the owner of each condominium unit shall have the same responsibility for the payment of all taxes, assessments, and other charges due to the District of Columbia as does any other person or property owner similarly situated.

(c) Notwithstanding any provision of this chapter, the method of enforcement available to the District of Columbia to collect any tax or assessment or any charge from any individual property owner or any building owner shall be available to collect taxes, assessments, and charges from individual condominium unit owners and from the council of co-owners.

(d) Nothing contained in this chapter shall in any way be construed as affecting the right to institute and maintain eminent domain proceedings. (Dec. 21, 1963, 77 Stat. 461, Pub. L. 88–218, § 29.)

EFFECTIVE DATE

See section 5–933.

§ 5–930. Supplemental provisions relating to sewer and water services.

(a) Notwithstanding any provision of this chapter, the developer or co-owners of any horizontal property regime shall have the right to have installed for each and every individual unit a separately metered water service. Such installations shall be subject to all laws and regulations then or thereafter in effect in the District of Columbia. Upon the establishment of such separate water services each unit owner and his successor in title and persons occupying such units shall be responsible for the payment to the District of Columbia of all water and sewer charges rendered and the Commissioners of the District of Columbia are authorized to enforce any and all of the remedies for collection of such charges as are authorized by law.

(b) A common water service is hereby expressly authorized for any horizontal property regime and in the event that a horizontal property regime is provided with a common water service to the charges for sewer and water service shall be billed to the person designated by the co-owners, pursuant to the bylaws, to manage the regime. In the event that the entire sewer and water charges are not paid within the time specified by law for the payment of sewer and water charges, the Commissioners shall be authorized to enforce payment in any manner authorized by law, including, but not limited to, the assessment of an additional charge for late payment,

the shutting off of water to the regime and the enforcement of the liens for nonpayment of such charges against the individual units in conformity with the percentage of co-ownership established by section 5–906. (Dec. 21, 1963, 77 Stat. 461, Pub. L. 88–218, § 30.)

EFFECTIVE DATE

See section 5–933.

§ 5–931. Authority of Board of Commissioners Under Reorganization Plan Numbered 5 of 1952.

Nothing in this chapter or in any amendments made by this chapter shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this chapter in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan. (Dec. 21, 1963, 77 Stat. 462, Pub. L. 88–218, § 31.)

EFFECTIVE DATE

See section 5–933.

§ 5–932. Severability.

If any provision of this chapter, or any section, sentence, clause, phrase, or word or the application thereof, in any circumstances is held invalid, the validity of the remainder of this chapter, and of the application of any such provision, section, sentence, clause, phrase, or word in any other circumstances shall not be affected thereby and to this end, the provisions of this chapter are declared severable. (Dec. 21, 1963, 77 Stat. 462, Pub. L. 88–218, § 32.)

EFFECTIVE DATE

See section 5–933.

§ 5–933. Effective date.

This chapter shall take effect one hundred and twenty days after its enactment. [December 21, 1963.] (Dec. 21, 1963, 77 Stat. 462, Pub. L. 88–218, § 33.)

TITLE 6.—HEALTH AND SAFETY

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Chapter 1.—HEALTH DEPARTMENT—ORGANIZATION

Sec.
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6–102. Director of public health to enforce vital statistics regulations.
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6–119d. Unlawful leave.
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6–119i. Persons relying on spiritual cures of disease.
6–119j. "Director of public health" defined.
6–119j–1. Immediate treatment of minor with venereal disease.
6–119k. Construction of provisions.

§ 6–101. Director of public health—Appointment and duties.

The Commissioners of the District of Columbia shall appoint a physician as director of public health, whose duty it shall be, under the direction of the said commissioners, to execute and enforce all laws and regulations relating to the public health and vital statistics, and to perform all such duties as may be assigned to him by said commissioners. (June 11, 1878, 20 Stat. 107, ch. 180, § 8; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

Section 1 of act Aug. 1, 1950, provided: "That the Health Officer of the District of Columbia shall be known as the Director of Public Health and the Assistant Health Officer of the District of Columbia shall be known as the Assistant Director of Public Health." "Director of public health" was substituted in the text for "health officer" to conform to act Aug. 1, 1950.

TRANSFER OF FUNCTIONS

Reorganization Order No. 57 of the Board of Commissioners dated June 30, 1953, and Reorganization Order No. 52 dated June 30, 1953, District of Columbia Pound, combined and redesignated Organization Order No. 141 dated Feb. 11, 1964, established under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D. C. Code. The order prior to redesignation abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board and transferred their functions and positions to the new department. The organization of the new department was set out in the order which was issued pursuant to Reorganization Plan No. 5 of 1952. The redesignated order and plan are set out in the Appendix to Title 1, Administration.

See note under section 4–510 concerning membership of the Director of Public Health on the Police and Firemen's Retirement and Relief Board.

CROSS REFERENCES

Alteration or removal of buildings under District of Columbia Alley Dwelling Act, see §§ 5–103 to 5–116.

Certification of necessity for connection of vacant lots to public sewers, see § 6–401.

Certifying necessity for opening, extension, widening, or straightening of alley or minor street, see § 7–301.

Criminal penalty for impersonating inspector of health department, see § 22–1305.

Designation of medical inspector to certify to fitness of minor for work permit, see §§ 36–210, 36–211.

Duties as to interment or disinterment of dead bodies, see §§ 27–116 to 27–125.

Duties concerning persons found guilty under laws against prostitution, see § 22–2703.

Duties of director of public health in the prevention of blindness of new-born infants, see §§ 6–201 to 6–204.

Duty to adopt and enforce rules and regulations to prevent adulteration of food and drugs, investigation of violations, see §§ 33–104, 33–105.

Enforcement of laws and regulations governing manufacture, renovation, and sale of mattresses, see §§ 6–601 to 6–608.

Enforcement of smoke-prevention laws and regulations, see § 6–804.

Examination of food and drugs, see §§ 33–106, 33–108.

Examination of teacher to determine retirement, see § 31–704.

Ex officio member of Anatomical Board, see § 2–201.

Ex officio secretary and treasurer of Commission on Licensure to Practice the Healing Art, see § 2–103.

General limitation on power of Commissioner, see § 1–801.

Inspection and enforcement of rules and regulations for private hospital and asylums, see § 32–302.

Issuance of permits to maintain privies, see § 6–702.

Jurisdiction and control over production and sale of milk, cream, and ice cream, permits, rules and regulations. see § 33–301 et seq.

Licensing of business of operating abattoirs and slaughterhouses to be approved by director of public health, see § 47–2316.

Member of Board for Condemnation of Insanitary Buildings, see § 5–617.

Member of Board of Podiatry Examiners, see § 2–701.

Notice for removal of weeds, see § 6–901.

Register of dental hygienists, see § 2–324.

Register of dentists, see § 2–309.

Register of podiatrists, see § 2–706.

Rules and regulations by Commissioners, see §§ 6–114, 6–118.

Rules and regulations generally, see § 1–226.

Sanitary regulations in beauty shops and manicuring establishments, see § 2–1321.

Sanitary regulations under Barber Law, see § 2–1103.

Sending contagious disease cases to Providence Hospital and Garfield Memorial Hospital, see § 32–316.

§ 6–102. Director of public health to enforce vital statistics regulations.

It shall be the duty of the director of public health of the District of Columbia to enforce regulations to secure a full and correct record of vital statistics, including the registration of deaths and the interment of the dead in said District. (June 23, 1874, 18 Stat. 283, ch. 490; June 11, 1878, 20 Stat. 107, ch. 180, § 8; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

AMENDMENT

1878—Act June 11, 1878, provided that in lieu of the Board of Health the Commissioners of the District should appoint a physician as health officer, and abolished the Board of Health.

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

CROSS REFERENCES

Other provisions requiring director of public health to keep record of vital statistics, see § 6–112.

Provisions for promulgation of rules and regulations by Health Department, see § 6–101.

Record of marriages, see §§ 30–114, 30–115.

Report of births, see §§ 6–301 to 6–304.

Report of deaths, see § 27–120.

NOTES TO DECISIONS

Death certificate as evidence

Death certificate is public record and admissible in evidence. *Labofish* v. *Berman* (1932, 55 F. 2d 1022, 60 App. D.C. 397).

Effect of this section is to make death certificates, public records, and not mere police regulations, and, being such public records, we think they may be offered in evidence for the purpose of proving, prima facie, the time, place, and cause of death. *Id.*

§ 6–103. Repealed. Aug. 21, 1959, 73 Stat. 414, Pub. L. 86–178, § 1.

Section, act Mar. 3, 1897, 29 Stat. 695, ch. 393, related to issuance of transcripts for birth, death, and marriage records, and is now covered by section 1–244(g).

EFFECTIVE DATE OF REPEAL

Repeal of section effective 60 days after Aug. 21, 1959, see note under section 1–244.

§ 6–104. Sanitary inspectors, appointment, qualifications—Removal of subordinates.

There may be appointed by the commissioners of the District of Columbia, on the recommendation of the director of public health, a reasonable number of sanitary inspectors for said District, to hold such appointment at any one time, of whom two may be physicians, and one shall be a person skilled in the matters of drainage and ventilation; and said commissioners may remove any of the subordinates, and from time to time may prescribe the duties of each. (June 11, 1878, 20 Stat. 107, ch. 180, § 9; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

CROSS REFERENCE

General limitation on power of Commissioners, see § 1–801.

§ 6–105. Reports by sanitary inspectors.

Said inspectors shall be respectively required to make, at least once in two weeks, a report to said director of public health, in writing, of their inspections, which shall be preserved on file. (June 11, 1878, 20 Stat. 107, ch. 180, § 9; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

§ 6–106. Report by director of public health.

Said director of public health shall report in writing annually to said commissioners of the District of Columbia, and so much oftener as they shall require. (June 11, 1878, 20 Stat. 107, ch. 180, § 9; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

§ 6–107. Clerks to director of public health—Appointment.

The commissioners may appoint, on the like recommendation of the director of public health, a reasonable number of clerks, but no greater number shall be appointed, and no more persons shall be employed under said director of public health, than the public interests demand and the appropriation shall justify. (June 11, 1878, 20 Stat. 107, ch. 180, § 10; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

CROSS REFERENCE

General limitation on power of Commissioners, see § 801.

§ 6–108. Chief clerk and chief inspector of health department not to act as deputy.

After April 2, 1938, neither the chief clerk nor the chief inspector of the Health Department of the District of Columbia shall act as a deputy to the director of public health of said District. (July 14, 1892, 27 Stat. 162, ch. 171, § 1; April 2, 1938, 52 Stat. 153, ch. 60; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

AMENDMENT

1938—Act Apr. 2, 1938, amended section which directed the chief clerk to act as a deputy to the health officer, by forbidding the chief clerk and the chief inspector to act as such deputy after Apr. 2, 1938.

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

§ 6–109. Assistant director of public health to be physician and discharge duties of health officer during his absence or disability.

The assistant director of public health shall be a physician, and during the absence of or disability of the director of public health shall act as director of public health and discharge the duties incident to that position. (Mar. 4, 1913, 37 Stat. 961, ch. 150; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer", and "assistant director of public health" for "assistant health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

§ 6–110. Duties and authority of inspectors of fish and marine products vested in sanitary and food inspectors.

The duties and the authority conferred by law upon the inspector of fish and other marine products on May 26, 1908, are hereby vested in each of the sanitary and food inspectors. (May 26, 1908, 35 Stat. 299, ch. 198.)

§ 6–111. Certain ordinances of Board of Health legalized.

The ordinances of the late Board of Health of the District of Columbia, as revised, amended, and adopted, November 19, 1875, entitled "An ordinance to revise, consolidate, and amend the ordinances of the board of health, to declare what shall be deemed nuisances injurious to health, and to provide for the removal thereof," as printed in the report of said late Board of Health made to the first session of the Forty-Fourth Congress, being Executive Document Number 1, part 8, are hereby legalized; and the respective penalties therein prescribed for violations thereof may be imposed and enforced for the respective offenses therein described, excepting the sections of said ordinance following, namely: Sections 7, 9, and 14, which said sections are not hereby legalized. (Apr. 24, 1880, 21 Stat. 304, Res. No. 25, § 1.)

§ 6–112. Certain ordinances, rules, and regulations of Board of Health legalized and made valid.

The ordinances, rules, and regulations of said late Board of Health contained in the report mentioned in section 6–111 and printed in the said executive document therein mentioned, namely:

First. "An ordinance to amend an ordinance to prevent domestic animals from running at large within the cities of Washington and Georgetown, passed by the board of health May nineteenth, eighteen hundred and seventy-one";

Second. "An ordinance to prevent the sale of unwholesome food, in the cities of Washington and Georgetown";

Third. "An ordinance to provide for the inspection of streets, food, live stock, fish and other marine products, in the cities of Washington and Georgetown, and to define the duties of inspectors and other officers of the board of health";

Fourth. "An ordinance to amend section ten of the code so as to read";

Fifth. "An ordinance to amend an ordinance passed May thirteenth, eighteen hundred and seventy-three, to read as follows";

Sixth. "An ordinance to prevent committing or creating nuisances in or about public urinal or urinals located within the cities of Washington and Georgetown";

Seventh. "Rules and regulations in regard to smallpox";

Eighth. "Regulations to secure a full and correct record of vital statistics, including the registration of marriages, births, and deaths, the interment, disinterment, and removal of the dead in the District of Columbia," are hereby legalized and made valid; and the penalties therein provided respectively for violations thereof, may be imposed and enforced for the violations of the same respectively, as provided by section 27 of the ordinances passed November 19, 1875. (Apr. 24, 1880, 21 Stat. 305, Res. No. 25, § 2.)

PARTIAL REPEAL

Commissioners order dated Aug. 14, 1962, number 62–1459, repealed sections 12 and 12a of the Health Regulation, as amended, known as "An Ordinance to prevent the sale of unwholesome food in the cities of Washington and Georgetown". This repeal was made pursuant to authority of section 6–114.

CROSS REFERENCE

Other provisions requiring record of vital statistics, see §§ 6–101 and 6–102.

NOTES TO DECISION

Effect of records

Effect of this act is to make death certificates public records, and not mere police regulations, and, being such public records, they may be offered in evidence for the purpose of proving, prima facie, the time, place, and cause of death. *Labofish* v. *Berman* (1932, 55 F. 2d 1022, 60 App. D.C. 397).

§ 6–113. Certain health ordinances to have force and effect of Acts of Congress—Exception—Industries established August 7, 1894.

Except as provided in section 6–112, the ordinances of the late Board of Health of the District of Columbia, as legalized by sections 6–111, 6–112, are hereby declared to have the same force and effect within the District of Columbia as if enacted by Congress in the first instance, and the powers and duties imposed upon the late Board of Health, in and by the said ordinances, are hereby conferred upon the director of public health of said District, and all prosecutions for violations of said ordinances and regulations shall be in the District of Columbia Court of General Sessions in the name of the said District: *Provided,* That said regulations shall not be

enforced against industries established on Aug. 7, 1894, which are not a nuisance in fact. (Aug. 7, 1894, 28 Stat. 257, ch. 232; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; Aug. 1, 1950, 64 Stat. 393, ch. 513; § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

"Municipal Court for the District of Columbia" was substituted for "police court of the district of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11–901.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 6–114. Commissioners authorized to make health regulations and alter, amend, or repeal certain legalized ordinances.

The Commissioners of the District of Columbia are hereby authorized and empowered, in making regulations under the authority conferred by Congress, to alter, amend, or repeal any of the ordinances of the late Board of Health of said District which were legalized by sections 6–111, 6–112, whenever in their judgment the public interest requires it. (Feb. 28, 1889, 30 Stat. 1390, Joint Res. No. 21.)

CROSS REFERENCE

Authority of commissioners to make and enforce police regulations for protection of health generally, see § 1–226.

NOTES TO DECISIONS

Constitutionality

Generally, health laws and ordinances are liberally construed, but when they appear to violate a constitutional right, courts must carefully weigh value of the end accomplished. When abatement of a nuisance is provided for only after notice and hearing, health officers cannot inspect, when challenged, without the ordinary preliminary steps for search in the absence of immediate danger or nuisance per se. *Little* v. *District of Columbia* (D. C. Mun. App. 1948, 62 A. 2d 874, affirmed 178 F. 2d, 13, 85 U.S. App. D.C. 242, affirmed 70 S. Ct. 468, 339 U. S. 1, 94 L. Ed. 424).

Police power

It is within the police power of municipal corporations to control and regulate the manner of collection and disposition of garbage, refuse and filth, and in so doing they may provide for the inspection of premises as a health measure but must not unduly infringe upon individual rights in absence of immediate danger or nuisance per se. *Little* v. *District of Columbia* (D. C. Mun. App. 1948, 62 A. 2d 874, affirmed 178 F. 2d 13, 85 U. S. App. D. C. 242, affirmed 70 S. Ct. 468, 339 U. S. 1, 94 L. Ed. 424).

Search and seizure

When abatement of a nuisance is provided for only after notice and hearing, health officers, when challenged, cannot inspect without the ordinary preliminary step for search in the absence of immediate danger or nuisance per se. *Little* v. *District of Columbia* (D. C. Mun. App. 1948, 62 A. 2d 874, affirmed 178 F. 2d 13, 85 U. S. App. D. C. 242, affirmed 70 S. Ct. 468, 339 U. S. 1, 94 L. Ed. 424).

Summary action

Unless the condition which is the object of inspection amounts to an immediate danger or a dangerous nuisance per se, municipal authorities would be acting beyond their power in taking any summary action. *Little* v. *District of Columbia* (D. C. Mun. App. 1948, 62 A. 2d 874, affirmed 178 F. 2d 13, 85 U. S. App. D. C. 242, affirmed 70 S. Ct. 468, 339 U. S. 1, 94 L. Ed. 424).

§ 6–115. Director of public health to provide containers for reception, burial, and identification of ashes of certain cremated indigent persons.

The director of public health is authorized to provide and furnish proper containers for the reception, burial, and identification of the ashes of all human bodies of indigent persons that are cremated at the public crematorium, which ashes remain unclaimed after twelve months from date of such cremation. (May 21, 1928, 45 Stat. 669, ch. 659; July 3, 1930, 46 Stat. 975, ch. 848; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

§ 6–116. Dairy inspectors may act as inspectors of livestock.

Any inspector of dairies and dairy farms may act as inspector of livestock when directed by the director of public health. (Mar. 2, 1911, 36 Stat. 993, ch. 192; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

§ 6–117. Tuberculosis Sanatoria under direction of Health Department.

The following hospital and sanatoria, on and after July 1, 1937, shall be under the direction and control of the health department of the District of Columbia and subject to the supervision of the Board of Commissioners: Tuberculosis Sanatoria and Gallinger Municipal Hospital. (June 29, 1937, 50 Stat. 376, ch. 403, § 1.)

TRANSFER OF FUNCTIONS

Reorganization Order No. 57 of the Board of Commissioners dated June 30, 1953, and Reorganization Order No. 52 District of Columbia Pound dated June 30, 1953, combined and redesignated Organization Order No. 141 dated Feb. 11, 1964, established under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical functions. The order abolished the previously existing Health Department and Glenn Dale Sanatorium and transferred their positions and functions to the new department. It further provided that within the department the Glenn Dale Hospital performs all of the functions previously performed by Glenn Dale Sanatorium. The order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to Title 1, Administration.

CROSS REFERENCE

Commissioners may regulate admission of paying patients to tuberculosis hospital, see § 32–310.

§ 6–118. Commissioners to promulgate regulations to prevent spread of diseases.

The Commissioners of the District of Columbia are hereby authorized and empowered to promulgate and enforce all such reasonable rules and regulations as they may deem necessary to prevent and control the spread of communicable diseases in the District of Columbia, including the authority and power to provide for the isolation, quarantine, and restriction of the movements of persons affected by or believed, upon probable cause, to be affected by communicable disease and of persons who are or are believed, upon

probable cause, to be carriers of communicable disease. (Aug. 11, 1939, 53 Stat. 1408, ch. 691, § 1; Aug. 8, 1946, 60 Stat. 919, ch. 871, § 1.)

AMENDMENT

1946—Act Aug. 8, 1946, authorized the Commissioners to provide for isolation, quarantine, and restriction of persons affected by, or who are carriers of, communicable disease.

CROSS REFERENCES

Authority to make regulations for protection of life, health, and property, see § 1–226.

Commissioners may make rules and regulations to govern small-pox hospitals, see § 32–306.

Providence and Garfield Hospitals to accept contagious disease cases sent by Commissioners, see § 32–316.

NOTES TO DECISIONS

Burden of proof

Where a person is charged with being one suspected of being infected with a communicable disease and refusing to submit to an examination and accuracy of charge or reasonableness of suspicion is put in issue, except in the case of a common prostitute, the burden is upon health officer and not upon person suspected. *Huffman* v. *District of Columbia* (D. C. Mun. App. 1944, 39 A. 2d 558). See, also, *District of Columbia* v. *Huffman* (D. C. Mun. App. 1945, 42 A. 2d 502).

Constitutionality

This section authorizing commissioners of District of Columbia to promulgate and enforce reasonable rules and regulations to prevent and control spread of communicable and preventable disease is not objectionable as containing language too broad in its delegation of power to commissioners. *Huffman* v. *District of Columbia* (D.C. Mun. App. 1944, 39 A. 2d 558). See, also, *District of Columbia* v. *Huffman* (D.C. Mun. App. 1945, 42 A. 2d 502).

Legislation designed to prevent the spread of communicable disease will be upheld so long as it is not oppressive, arbitrary, or unreasonable. *Id.*

Examination of persons

Where defendant's attorney offered to prove to health officer that his client was free from all infection with communicable disease and offered to submit client for additional examination by any doctor in city selected at random by health department, there was no basis for a reasonable suspicion that defendant was infected so as to sustain a charge that defendant, a person suspected of being infected with a communicable disease, refused to submit to an examination. *Huffman* v. *District of Columbia* (D.C. Mun. App. 1944, 39 A. 2d 558). See also, *District of Columbia* v. *Huffman* (D.C. Mun. App. 1945, 42 A. 2d 502).

Evidence which disclosed that health department physician had no reasonable suspicion that defendant was infected with venereal disease was insufficient to sustain conviction of charge that defendant was a person suspected by health department of being infected and refused to submit to an examination. *Id.*

Police power

This section authorizing commissioners of District of Columbia to promulgate and enforce reasonable rules and regulations to prevent and control spread of communicable and preventable diseases constitutes a legitimate exercise of the police power. *Huffman* v. *District of Columbia* (D. C. Mun. App. 1944, 39 A. 2d 558). See, also, *District of Columbia* v. *Huffman* (D.C. Mun. App. 1945, 42 A. 2d 502).

§ 6–119. "Communicable disease" defined.

The words "communicable disease" when hereinafter used shall mean such communicable diseases as the Commissioners by regulation shall denominate as such. (Aug. 11, 1939, 53 Stat. 1408, ch. 691, § 2; Aug. 8, 1946, 60 Stat. 919, ch. 871, § 2.)

AMENDMENT

1946—Act Aug. 8, 1946, substituted "The words 'communicable disease' when hereinafter used shall mean such communicable diseases as the Commissioners by regulation shall denominate as such", for "The said Commissioners are authorized to prescribe a reasonable penalty of fine, not to exceed $100, or of imprisonment, not to exceed thirty days, or both, for the violation of any rule or regulation promulgated under the authority of this Act, and all prosecutions for violations of such rules and regulations shall be in the police court of the District of Columbia in the name of the District of Columbia upon information filed by the corporation counsel of the District of Columbia or any of his assistants."

§ 6–119a. Removal of persons believed to be carriers.

Whenever the director of public health has probable cause to believe that any person is affected with any communicable disease or is a carrier of communicable disease and that the continuance of such person in the place where he may be is likely to be dangerous to the lives or health of other persons, or that by reason of the noncooperation or carelessness of such person the public health is likely to be endangered, the director of public health may by written order direct the removal of any designated officer or employee of the Health Department or by any member of the Metropolitan Police force of such person to and the detention of such person in any place or institution in the District of Columbia designated by the director of public health, or any institution located without the District of Columbia which may be designated by the director of public health and which is under the supervision of the government of the District of Columbia or any agency thereof. Such officer, employee, or member so designated in such order shall take such person into his custody and shall remove such person to such place or institution as may be designated in such order. Such officer, employee, or member shall immediately make known to such person the contents of such order, and also shall deliver to such person a true copy of such order. (Aug. 11, 1939, ch. 691, § 3, as added Aug. 8, 1946, 60 Stat. 919, ch. 871, § 2, and amended Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

NOTES TO DECISIONS

Habeas Corpus

Habeas corpus was available to relator, being detained in hospital section of jail on grounds that he would endanger health if left at large, to test the place of detention. *Benton* v. *Reid* (1956, 231 F. 2d 780, 98 U.S. App. D.C. 27).

Where relator was incorrectly denied habeas corpus to secure his release from detention in hospital section of District of Columbia Jail as a person who would endanger public health if left at large, Court of Appeals would remand case with directions to issue the writ and discharge relator from the custody of jail, without prejudice to District of Columbia's right to transfer relator to a hospital or other proper place of detention. *Id.*

§ 6–119b. Authority for detention—Expiration of order—Hearing—Minors.

A copy of the order provided for in section 6–119a hereof shall be delivered to the person in charge of such place or institution to which the person taken into custody may be removed and shall constitute the authority for the detention of such person in such place or institution until such order expires or until such person is discharged in the manner set forth in this section or section 6–119c. Such

order shall expire forty-eight hours (exclusive of Sundays and holidays) after such officer, employee, or member shall take into his custody such person as provided in section 6–119a, unless it shall be continued in force and effect by a judge of the District of Columbia Court of General Sessions, or unless such detained person shall stipulate in writing that the order be continued in force and effect. Such order shall be continued in force and effect if it shall appear to said judge by affidavit that the probable cause, required by section 6–119a, exists. If the judge continue in force and effect the order of the director of public health, the judge at that time shall set a date for a hearing upon the question of whether the person detained is at the time of such hearing affected with any communicable disease or is a carrier of communicable disease and, if so affected, upon the further question whether his release would be likely to endanger the lives or health of any other person. If such person be not sooner discharged such hearing shall be had within ten days of the date of the order of the court continuing in force and effect the order of the director of public health unless such hearing be continued by the court, or unless the detained person shall, in writing, waive such hearing, which waiver shall be filed with the court. Such hearing shall be in or out of the presence of the detained person, in the discretion of the court. If, after such hearing, the court shall find that the detained person is not affected with any communicable disease and is not a carrier of communicable disease, or that the discharge of such person, even though affected with, or a carrier of, a communicable disease is not likely to endanger the lives or health of any other person the court shall order such detained person to be discharged, otherwise the court shall continue in force and effect the order of the director of public health until such person be discharged in the manner set forth in section 6–119c. If a minor is detained pursuant to this section or section 6–119e hereof, or is found guilty and sentence is suspended as provided in section 6–119g hereof, and such minor is in need of treatment for the communicable disease with which he is affected or of which he is a carrier, the court is empowered to authorize the director of public health to administer such treatment or cause the same to be administered. No person under eighteen years of age detained under sections 6–119a, 6–119b, 6–119c or 6–119e, shall be detained in a room in which a person over that age is so detained. (Aug. 11, 1939, ch. 691, § 4, as added Aug. 8, 1946, 60 Stat. 919, ch. 871, § 2, and amended Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

NOTES TO DECISIONS

Congressional intent

In the absence of specific language, Court of Appeals would not infer that Congress intended to enact a statute providing that a person who would endanger public health if left at large but who was neither indicted for nor convicted of any crime could be confined in a penal institution to suffer the social stigma and bad associations resulting therefrom. *Benton* v. *Reid* (1956, 231 F. 2d 780, 98 U. S. App. D. C. 27).

Constitutionality

It was duty of Court of Appeals in interpreting statute authorizing Director of Public Health to designate a place for detention of persons who would endanger public health if left at large, to avoid doubts as to constitutional validity of such statute. *Benton* v. *Reid* (1956, 231 F. 2d 780, 98 U. S. App. D. C. 27).

Place of detention

Statute authorizing Director of Public Health to designate as a place for detention of a person who would endanger public health if left at large, any place or institution in the District did not authorize detention of such a person in a place of imprisonment or a jail. *Benton* v. *Reid* (1956, 231 F. 2d 780, 98 U. S. App. D. C. 27).

§ 6–119c. Examination and diagnosis—Discharge or detention for quarantine—Application for discharge—Hearing.

It shall be the duty of the director of public health to make or cause to be made by a physician such examination or examinations of such person as may be necessary to determine the existence or nonexistence of such communicable disease in such person or whether such person is a carrier of communicable disease. The diagnosis resulting from such examination or examinations shall be reduced to writing and signed by such examining physician within ten days after the removal of such person to such place or institution and a copy thereof shall be filed in the office of the person in charge of such place or institution and a copy in the office of the director of public health. If such diagnosis does not disclose that such person is affected with such communicable disease or that such person is a carrier of communicable disease, such person shall be discharged from such place or institution forthwith. If the diagnosis does disclose that such person is affected with such communicable disease or that such person is a carrier of communicable disease, the person in charge of the place or institution to which the infected person has been removed shall, subject to the provisions of section 6–119b, detain such person for such reasonable time as may be fixed by regulation under the authority of sections 6–118 to 6–119k as is deemed necessary in the interest of public health and safety for the isolation, quarantine, and restriction of movement of persons affected by the particular communicable disease or of persons found to be carriers of the particular communicable disease, unless sooner discharged by the director of public health or the District of Columbia Court of General Sessions. A person so detained, however, may apply at any time to the person in charge of such place or institution for his discharge, and the person in charge of such place or institution shall deliver the application for discharge to the director of public health, who shall give to such person an opportunity to be heard before the director of public health. If after hearing held by the director of public health, the director of public health be of the opinion that such person is not affected with such communicable disease and that such person is not a carrier of communicable disease, then such person shall be discharged. If

denied his discharge such detained person may apply to the District of Columbia Court of General Sessions for such discharge and the hearing on such application shall be in or out of the presence of the detained person, in the discretion of the court. Only such persons as have a direct interest in the case and their representatives shall be admitted to any hearing held pursuant to this section or section 6–119b: *Provided,* That if the detained person shall request a public hearing then the general public shall be admitted thereto. (Aug. 11, 1939, ch. 691, § 5, as added Aug. 8, 1946, 60 Stat. 920, ch. 871, § 2, and amended Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 6–119d. Unlawful leave.

It shall be unlawful for a person detained in a place or institution pursuant to an order of the director of public health to leave said place or institution unless discharged in the manner provided in sections 6–119b or 6–119c. (Aug. 11, 1939, ch. 691, § 6, as added Aug. 8, 1946, 60 Stat. 921, ch. 871, § 2, and amended Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

§ 6–119e. Warrant for arrest—Affidavit—Service and execution of warrant—Records.

(a) In aid of the powers vested in the director of public health to cause the removal to and detention in a place or institution of a person who is affected or is believed, upon probable cause, to be affected with any communicable disease or is or is believed, upon probable cause, to be a carrier of communicable disease as provided in sections 6–118 to 6–119k, the District of Columbia Court of General Sessions, or any judge thereof, is authorized to issue a warrant for the arrest of such person and his removal to a place or institution as defined in section 6–119a, which warrant shall be directed to the Major and Superintendent of Police. When such person has been removed to such place or institution under authority of a warrant issued pursuant to this section, such person shall not be discharged from such place or institution except in the manner provided in section 6–119c.

(b) No such warrant of arrest and removal shall be issued except upon probable cause supported by affidavit or affidavits particularly describing the person to be taken, which said affidavit or affidavits shall set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.

(c) A warrant may in all cases be served by the Major and Superintendent of Police or by any officer or member of the Metropolitan Police, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

(d) The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

(e) A warrant must be returned to the court within ten days after its date; after the expiration of this time the warrant, unless executed, is void.

(f) It shall be the duty of the said court to maintain and keep records of all warrants issued and the returns thereon. (Aug. 11, 1939, ch. 691, § 7, as added Aug. 8, 1946, 60 Stat. 921, ch. 871, § 2, and amended Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

TRANSFER OF FUNCTIONS

Chief of Police as successor to Major and Superintendent of Police, see note under section 4–103.

§ 6–119f. Access to buildings by director of public health.

The director of public health may, without fee or hindrance, enter, examine, and inspect all vessels, premises, grounds, structures, buildings, and every part thereof in the District of Columbia for the purpose of carrying out the provisions of sections 6–118 to 6–119k and the regulations issued hereunder. The owner or his agent or representative and the lessee or occupant of any such vessel, premises, grounds, structure, or building, or part thereof, and every person having the care and management thereof shall at all times when required by any such officer or employee give them free access thereto and refusal so to do shall be punishable as a violation of sections 6–118 to 6–119j. (Aug. 11, 1939, ch. 691, § 8, as added Aug. 8, 1946, 60 Stat. 921, ch. 871, § 2, and amended Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

§ 6–119g. Interference unlawful.

It shall be unlawful for any person knowingly to obstruct, resist, oppose, or interfere with any person performing any duty or function under the authority of sections 6–118 to 6–119k or any regulation promulgated thereunder. (Aug. 11, 1939, ch. 691, § 9, as added Aug. 8, 1946, 60 Stat. 922, ch. 871, § 2.)

§ 6–119h. Penalties—Prosecutions—Imposition of conditions by court.

Any person who violates any of the provisions of section 6–119d, 6–119f or 6–119g shall be punished by a fine of not more than $300 or by imprisonment for not longer than ninety days, or both such fine and imprisonment, in the discretion of the court. The Commissioners of the District of Columbia shall have

power to prescribe penalties of fine not to exceed $300 or imprisonment not to exceed ninety days, or both, in the discretion of the court for the violation of any regulation promulgated under section 6–119d, 6–119f or 6–119g. All prosecutions for violations of section 6–119d, 6–119f or 6–119g or the regulations promulgated thereunder shall be in the Criminal Division of the District of Columbia Court of General Sessions, in the name of the District of Columbia upon information filed by the corporation counsel of the District of Columbia or any of his assistants. The court may impose conditions upon any person found guilty under the aforesaid provisions and so long as such person shall comply therewith to the satisfaction of the court the imposition or execution of sentence may be suspended for such period as the court may direct; and the court may at or before the expiration of such period vacate such sentence or cause it to be executed. Conditions thus imposed by the court may include submission to medical and mental examination, diagnosis, and treatment by proper public health and welfare authorities or by any licensed physician approved by the court, and such other terms and conditions as the court may deem best for the protection of the community and the punishment, control, and rehabilitation of the defendant. The director of public health of the District of Columbia, the Metropolitan Police force, and employees of the Board of Public Welfare are authorized and directed to perform such duties as may be directed by the court in effectuating compliance with the conditions so imposed upon any defendant. (Aug. 11, 1939, ch. 691, § 10, as added Aug. 8, 1946, 60 Stat. 922, ch. 871, § 2, and amended Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under section 3–102.

§ 6–119i. Persons relying on spiritual cures of disease.

With respect to all persons who, either on behalf of themselves or their minor children or wards, rely in good faith upon spiritual means or prayer in the free exercise of religion to prevent or cure disease, nothing in sections 6–118 to 6–119k shall have the effect of requiring or giving any health officer or other person the right to compel any such person, minor child or ward, to go to or be confined in a hospital or other medical institution unless no other place for quarantine of such person, minor child or ward can be secured, nor to compel any such person, child or ward to submit to any medical treatment. (Aug. 11, 1939, ch. 691, § 11, as added Aug. 8, 1946 60 Stat. 922, ch. 871, § 2.)

§ 6–119j. "Director of public health" defined.

Wherever the term "director of public health" is used in sections 6–118 to 6–119k it shall mean the director of public health of the District of Columbia and his duly authorized agents. (Aug. 11, 1939, ch. 691, § 12, as added Aug. 8, 1946, 60 Stat. 922, ch. 871, § 2, and amended Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

§ 6–119j–1. Immediate treatment of minor with venereal disease.

If a minor appears in any clinic, hospital, or other facility of the Department of Public Health of the government of the District of Columbia, and the Director of Public Health or his authorized agent, after having caused a medical examination to be made of such minor, has probable cause to believe that such minor is affected with a venereal disease or is a carrier of a venereal disease, and if, as a result of such examination, the Director of Public Health or his authorized agent determines that immediate medical treatment of the minor will adequately control the disease of the minor so as to protect his health and the health of others without having said minor detained as provided in sections 6–118 to 6–119k, the Director of Public Health or his authorized agent shall present to such minor a paper, upon which such minor shall state either (1) that he consents to such treatment, in which event such treatment shall be given to the minor forthwith, or (2) that he refuses to consent to such treatment, in which event no such treatment shall be given to him pursuant to this section. The Director of Public Health or his authorized agent shall exercise reasonable diligence in ascertaining the whereabouts of a parent, or of a person standing in loco parentis to such minor, and if such whereabouts are ascertained shall as soon as practical notify such parent or loco parentis that such minor is affected with a venereal disease, or is a carrier of a venereal disease, and whether he has received or refused such treatment. (Aug. 11, 1939, ch. 691, § 13, as added Oct. 11, 1963, 77 Stat. 246, Pub. L. 88–137, § 1.)

COMMISSIONERS AUTHORITY NOT AFFECTED

Section 3 of act Oct. 11, 1963, provides as follows:

Nothing in this Act [renumbering section 13 as 14 (6–119k) adding a new section 13 (6–119j–1)] shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this Act in the Board of Commissioners, or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan.

§ 6–119k. Construction of provisions.

Each and every provision of section 6–118 to 6–119k shall be construed liberally in aid of the powers vested in the public authorities looking to the protection of the public health, comfort, and welfare and not by way of limitation. (Aug. 11, 1939, ch. 691, § 14, as added Aug. 8, 1946, 60 Stat. 922, ch. 871; § 2; renumbered Oct. 11, 1963, 77 Stat. 246, Pub. L. 88–137, § 1.)

AMENDMENTS

1963—Section 1 of act Oct. 11, 1963, amended section by changing the section number from 13 to 14 and inserting a new section 13 classified as section 6–119j–1. Section 2 of the same act, amended section 3 of the act of Aug. 8, 1946, 60 Stat. 919, so that the words in section 3 reading "renumbered as section 13" now reads "renumbered as section 15."

Chapter 2.—BLINDNESS IN INFANTS—PREVENTION

Sec.
6–201. Prevention of blindness in infants born in the District of Columbia—Prophylactic to be provided.
6–202. Information of eye inflammation transmitted to director of public health—Duties—Hospital care.
6–203. Treatment by other than registered physician.
6–204. Penalty.

§ 6–201. Prevention of blindness in infants born in the District of Columbia—Prophylactic to be provided.

The director of public health of the District of Columbia shall cause to be provided in suitable containers a 1 per centum solution of silver nitrate or other preparation which in his opinion is suitable for use as a prophylactic against inflammation of the eyes of the new-born child, the contents of each container being the exact quantity necessary for the treatment of one eye and two such containers shall be furnished for use in each case of childbirth. It shall be the duty of each physician, midwife, or other person in attendance upon any case of childbirth to administer immediately upon delivery such solution as a prophylactic against inflammation of the eyes of said new-born child. It shall be the duty of each midwife or other person, except licensed physicians to secure containers of such solution from the director of public health for use in each case of childbirth. (Apr. 27, 1937, 50 Stat. 120, ch. 144, § 1; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

§ 6–202. Information of eye inflammation transmitted to director of public health—Duties—Hospital care.

Whenever any physician, midwife, or other person in attendance upon any case of childbirth finds that the new-born child has inflammation of the eyes, attended by a discharge therefrom, such physician, midwife, or other person shall communicate such fact in writing to the director of public health, within six hours after the existence of such discharge becomes known to such physician, midwife, or other person. Upon receipt of such communication the director of public health unless he finds such report to be incorrect, shall issue an order directing the parents of such child (or other person charged with its care) either to (1) place such child in the care of a registered physician or (2) submit immediately satisfactory proof of inability to pay for such medical service. If the director of public health finds that the parents or such other person are unable to pay for such medical treatment, he shall order the parents (or such other person) to place the child in a hospital to be designated by the Board of Public Welfare and at the expense of said board. (Apr. 27, 1937, 50 Stat. 120, ch. 144, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under section 3–102.

§ 6–203. Treatment by other than registered physician.

No person other than a registered physician shall treat any case of inflammation of the eyes, attended by a discharge therefrom, of a new-born child for any period longer than may be necessary to obtain the services of a registered physician. (Apr. 27, 1937, 50 Stat. 120, ch. 144, § 3.)

§ 6–204. Penalty.

Any person convicted of violating any provision of sections 6–201 to 6–203 or any order or regulation issued pursuant to the provisions of said sections, shall be fined not more than $100 or imprisoned not more than thirty days, or both. (Apr. 27, 1937, 50 Stat. 120, ch. 144, § 4.)

Chapter 3.—VITAL STATISTICS

Sec.
6–301. Births to be reported—Details of report—Certain stillbirths not to be reported—Receipt of report to be acknowledged to parent—Name of child—Delayed registrations—Definitions.
6–302. False reports of births prohibited—Certificates not to be altered—False or fictitious transcript of record of birth or marriage prohibited.
6–303. Reports to be part of records—Records open to person interested—Custodian of reports—Abstracts and analysis of data to be published annually.
6–304. Penalties—Prosecutions—Evidence.

§ 6–301. Births to be reported—Details of report—Certain stillbirths not to be reported—Receipt of report to be acknowledged to parent—Name of child—Delayed registrations—Definitions.

(a) Any physician or midwife who attends at the birth of any child within the District of Columbia, and any person whosoever who, in the absence of a physician or midwife, performs any of the offices usually rendered by such shall execute or cause to be executed and shall file with the Director of public health of said District not later than the Saturday first ensuing after the expiration of three secular days immediately following the date of such birth a proper report thereof, written in ink, on a blank furnished by said Director of public health, embodying all such data as may be necessary for the purposes of the Bureau of the Census of the Department of Commerce, and such other data, if any, as the commissioners of said District deem needful. So far as relates to any data aforesaid not based upon the personal observation of the physician, midwife, or other person by whom report is made, every such report shall show the name and address of the informant and the relationship of said informant to the child born: *Provided, however,* That if the child born be illegitimate it shall in no case be

necessary for any physician, midwife, or other person to indicate on any report required by sections 6–301 and 6–302 any fact or facts whereby the identity of the father or of the mother or of the child born will be disclosed: *And provided further,* That no report need be made of stillbirths when the fetus delivered has apparently not passed the fifth month of utero-gestation.

Upon receipt of any report aforesaid, the Director of Public Health shall forward to the father of the child, or, if his address be unknown, to the mother, an acknowledgment of the receipt of such report, and if the infant delivered be not stillborn, and such report does not contain the given name of the child born, a blank form on which the father or mother may certify over his or her signature the name of such child, which form, if thus executed and returned to said Director, shall be a part of the official record of such birth. In those cases in which no given name of a child has been certified to said Director, and a certificate cannot be executed by a parent because both parents are deceased, unknown, or physically or mentally incapacitated, the Director is authorized to accept and make a part of the official record of the birth of such child a certificate made in accordance with such rules and regulations as may be promulgated by the Commissioners of the District of Columbia, who are hereby authorized to make rules and regulations governing the certification of the given name of a child where the birth record pertaining to such child does not include such given name.

(b) The Commissioners of the District of Columbia are hereby authorized and empowered to adopt rules and regulations governing the filing of reports of births and the issuance of delayed birth registration certificates, in those cases where certificates of birth have not been recorded pursuant to subsection (a) of this section.

(c) Wherever in this chapter the terms "health officer", "Director of Public Health", or "Director" are used, such terms shall mean the Director of the Department of Public Health of the District of Columbia established by the Commissioners of the District of Columbia pursuant to the authority contained in Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). (Mar. 1, 1907, 34 Stat. 1010, ch. 2280, § 1; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; July 2, 1956, 70 Stat. 487, ch. 498, § 1; June 27, 1960, 74 Stat. 221, Pub. L. 86–524, §§ 1, 2.)

AMENDMENTS

1960—Subsec. (a) amended by act June 27, 1960, § 1, which empowered the Director to accept a certificate of a given name of a child in those cases in which no given name has been certified and a certificate cannot be executed by a parent because both parents are dead.

Subsec. (c) added by act June 27, 1960, § 2.

1956—Act July 2, 1956, designated existing provisions as subsec. (a), and added subsec. (b).

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See subsec. (c) of this section and note set out under section 6–101.

AUTHORITY OF BOARD OF COMMISSIONERS

Section 3 of act June 27, 1960, provided that: "This Act [amending this section] shall not be considered as affecting the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), and the performance of any function vested by said plan in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners in accordance with section 3 of such plan. Any function vested by this Act in any office or agency established pursuant to such plan shall be deemed to be vested in said Board of Commissioners and shall be subject to delegation in accordance with said plan."

CROSS REFERENCES

Duty of director of public health to secure full and correct record of vital statistics, see § 6–102.

Records of adoption proceedings, see § 16–314.

NOTES TO DECISIONS

Illegitimacy proceedings

In illegitimacy proceeding, birth certificate in which attending physician reported that name of father was unknown and that mother was physician's informant was not competent to show paternity, but certificate did indicate that mother, who testified as to father's identity, had informed physician that father's name was unknown, and hence certificate should have been admitted as bearing on mother's credibility, and its exclusion was reversible error. *Lee* v. *District of Columbia* (D. C. Mun. App. 1955, 117 A. 2d 922).

Previous inconsistent statement

In illegitimacy proceeding, mother is not bound by a previous inconsistent statement as to father's identity, even though given to physician legally required to make official report, and she may explain why she made previous statement, and whether her explanation is satisfactory is question for trier of facts. *Lee* v. *District of Columbia* (D. C. Mun. App. 1955, 117 A. 2d 922).

§ 6–302. False reports of births prohibited—Certificates not to be altered—False or fictitious transcript of record of birth or marriage prohibited.

No person shall, in the District of Columbia, wilfully or negligently certify falsely to any fact whatsoever upon any report of a birth. And after any such report has been received by the director of public health of said District no person shall alter the same otherwise than by amendments written independently of the body of the report and properly dated, signed, and witnessed. No person shall in said District make any false or fictitious report of a birth or any false or fictitious transcript of any record of a birth or of a marriage. (Mar. 1, 1907, 34 Stat. 1010, ch. 2280, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See section 6–301 (c) and note set out under section 6–101.

§ 6–303. Reports to be part of records—Records open to persons interested—Custodian of reports—Abstracts and analysis of data to be published annually.

The reports required by this chapter shall, when duly filed with the director of public health of the District of Columbia, be a part of the public records of said District, and any person having an interest in any particular matter contained or reasonably believed to be contained therein, shall be permitted to inspect such certificates and reports, during all reasonable hours, without charge, so far as can be done without interfering with the official use of such certificates by employees of the health department. The director of public health aforesaid shall be the custodian of all reports filed under the provisions of sections 6–301, 6–302 and annually, and at such other times as the commissioners of said District

may direct, shall make and publish abstracts and analysis of the data therein contained. (Mar. 1, 1907, 34 Stat. 1011, ch. 2280, § 3; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See section 6–301 (c) and note set out under section 6–101.

CROSS REFERENCE

Fees for copies of records, see § 1–244.

§ 6–304. Penalties—Prosecutions—Evidence.

Any person violating any of the provisions of sections 6–301 to 6–303 or aiding or abetting in any violation thereof shall be punished by a fine not exceeding two hundred dollars or by imprisonment for a period not exceeding ninety days, or by both such fine and imprisonment, in the discretion of the court. And if any report required by sections 6–301, 6–302 to be made within a specified time be not made within the time so specified each week or part of a week thereafter during which such report has not been made shall constitute a separate and distinct offense: *Provided, however,* That no report aforesaid nor any information which has been obtained by the prosecuting officer on the basis of such report shall be receivable in evidence against the person filing the same in any prosecution of such person for failure to file such report within the time allowed by law. Prosecutions under sections 6–301 to 6–303 shall be in the District of Columbia Court of General Sessions on informations signed by the corporation counsel of said District or by one of his assistants. (Mar. 1, 1907, 34 Stat. 1011, ch. 2280, § 4; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11–901.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

Chapter 4.—DRAINAGE OF LOTS

Sec.

6–401. Buildings to be connected with water-mains and lots drained into public sewers.
6–402. Notice to connect with water-mains and sewers to be given by Commissioners.
6–403. Penalty for failure to connect with water-main and sewer.
6–404. Notice to nonresident—How given—Upon failure of owner, Commissioners to make such connections—Cost of connections by Commissioners' lien on property.

§ 6–401. Buildings to be connected with water-mains and lots drained into public sewers.

Each original lot or subdivisional lot situated on any street in the District of Columbia where there is a public sewer shall be connected with said sewer in such manner that any and all of the drainage of such lot, whether water or liquid refuse of any kind, except human urine and fecal matter, shall flow into said sewer; and if such original lot or subdivisional lot is situated on any street in said District where there is a public sewer and water-main, such original lot or subdivisional lot shall be connected with said sewer and also with said water-main in such manner that any and all of the drainage of such lot, whether water or liquid refuse of any kind shall flow into said sewer: *Provided,* That the connections required to be made by this section shall be made under the following conditions: When there is on any such original lot or subdivisional lot aforesaid any building used or intended to be used as a dwelling, or in which persons are employed or intended to be employed in any manufacture, trade, or business, or any stable, shed, pen, or place where cows, horses, mules, or other animals are kept, then, and in that instance, such original lot or subdivisional lot shall be connected with a public sewer and water main or with a public sewer, as may be required with this section; and whenever there is no such building, stable, shed, pen, or place, as aforesaid, on such original lot or subdivisional lot, then such lot shall be required to be connected with a public sewer only when it has been certified by the director of public health of said District that such connection is necessary to public health. (May 19, 1896, 29 Stat. 125, ch. 206, § 1; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

TRANSFER OF FUNCTIONS

Reorganization Order No. 28 of the Board of Commissioners dated Apr. 3, 1953, redesignated Organization Order No. 147 dated Aug. 19, 1965, established a Department of Sanitary Engineering headed by a Director. The new department is to perform sanitary engineering services and operations for the District including water distribution, sanitary, storm, and combined sewer systems, sewage treatment, and collection and disposal of waste material. The office of the Water Registrar and the previously existing Department of Sanitary Engineering were abolished and their functions transferred to the new department. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The plan and the redesignated order are set out in the Appendix to Title 1, Administration.

See also Reorganization Order No. 55 relating to the Department of Licenses and Inspections, and Reorganization Order No. 57 relating to the Department of Public Health which are set out in the Appendix to Title 1, Administration.

CROSS REFERENCE

Drainage of burial lots, see § 27–105.

NOTES TO DECISIONS

Constitutionality

This section is not unconstitutional as depriving nonresident owners of property without due process of law nor does it deny them equal protection of the laws although different methods are used for enforcing the law against nonresident and resident owners. *District of Columbia* v. *Brooke* (1908, 29 S. Ct. 560, 214 U.S. 138, 53 L. Ed. 941).

Fraud

Where purchaser asked vendor particularly about wiring and plumbing in house and vendor replied that it was all right but said nothing about fact that plumbing was connected to septic tank rather than to public sewer, vendor's conduct would give purchaser right of action for deceit on part of vendor, when failure to disclose fact was considered in connection with code sections requiring connection to be made with public sewers. *Kraft* v. *Lowe et al.* (D.C. Mun. App. 1951, 77 A. 2d 554).

Who may challenge validity

Owner of improved property can not challenge validity of provision affecting only owners of unimproved property. *District of Columbia* v. *Brooke* (1908, 29 S. Ct. 560, 214 U.S. 138, 53 L. Ed. 941).

§ 6–402. Notice to connect with water-mains and sewers to be given by Commissioners.

It shall be the duty of the commissioners of said District to notify the owner or owners of every lot required by section 6–401 to be connected with a public sewer or water-main, as the case may be, to so connect such lot, the work to be done in accordance with the regulations governing plumbing and house drainage in said District. (May 19, 1896, 29 Stat. 125, ch. 206, § 2.)

TRANSFER OF FUNCTIONS

Reorganization of the Department of Sanitary Engineering, see note under section 6–401.

CROSS REFERENCE

Power of Commissioners to make regulations governing plumbing and house drainage, see § 1–725.

NOTES TO DECISIONS

Breach of contract

Where sewer was available in 1939, but no notice was given by District to connect to sewer until October 1946, purchasers to whom home was conveyed in 1943 would have no right of action against vendors for breach of contract provision requiring vendors to comply with all notices of violations against or affecting property at date of settlement. *Kraft* v. *Lowe et al.* (D.C. Mun. App. 1951, 77 A. 2d 554).

§ 6–403. Penalty for failure to connect with water-main and sewer.

If the owner or owners of any such lot neglect or refuse to make such connections as are required by section 6–401 within thirty days after the receipt of such notice, such owner or owners shall be deemed guilty of a misdemeanor, and shall, on conviction in the District of Columbia Court of General Sessions, be punished by a fine of not less than one dollar nor more than five dollars for each day he, she, or they fail or neglect to make such connections. (May 19, 1896, 29 Stat. 126, ch. 206, § 3; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court of said District" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11–901.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 6–404. Notice to nonresident—How given—Upon failure of owner, Commissioners to make such connections—Cost of connections by Commissioners' lien on property.

In case the owner or owners of any such lot be a nonresident or nonresidents of the District of Columbia, or can not be found therein, then, and in that case, the said commissioners shall give notice, by publication twice a week for two weeks in some daily newspaper published in the city of Washington, to such owner, directing the connection of such lot with such public sewer or with such public sewer and water-main, as the case may be: *Provided, however,* That if the residence or place of abode of the said nonresident lot owner be known or can be ascertained on reasonable inquiry, then, and in that case, a copy of the aforesaid notice shall be mailed to said nonresident, addressed to him in his proper name at his said place of residence or abode, with legal postage prepaid; and in case such owner or owners shall fail or neglect to comply with the notice aforesaid within thirty days it shall be the duty of said commissioners to cause such connection to be made, the expense to be paid out of the emergency fund; such expense, with necessary expense of advertisement, shall be assessed as a tax against such lot, which tax shall be carried on the regular tax roll of the District of Columbia, and shall be collected in the manner provided for the collection of other taxes. (May 19, 1896, 29 Stat. 126, ch. 206, § 4.)

CROSS REFERENCE

Collection of taxes, see § 47–301 et seq.

NOTES TO DECISIONS

Constitutionality

This section is not unconstitutional as depriving nonresident owners of property without due process of law nor does it deny them equal protection of the laws although different methods are used for enforcing the law against nonresident and resident owners. *District of Columbia* v. *Brooke* (1908, 29 S. Ct. 560, 214 U.S. 138, 53 L. Ed. 941).

Application of act

Test of the application of this section is whether the property owner can be found in the District. *District of Columbia* v. *Brooke* (1908, 29 S. Ct. 560, 214 U.S. 138, 53 L. Ed. 941).

Chapter 5.—GARBAGE

Sec.
6–501. Regulations for the collection and disposal of garbage to be made by Commissioners—Penalties.
6–502. Commissioners may contract for collection and disposal of garbage and refuse.
6–503. Disposition by feeding to live stock.
6–504. Collection and disposal of refuse a municipal function—Facilities to be purchased or leased—Sale of products—Employees to accept no gratuities—Penalty.
6–505. Incinerators for combustible refuse—Condemnation of site authorized—Alleys, highways.
6–506. Construction of incinerator authorized.
6–507. Commissioners to fix time when plant shall begin to function—Other methods of disposal prohibited—Sale of salvageable material—Rules and regulations.
6–508. Penalties.
6–509. Machinery and personnel authorized.
6–510. Appropriation authorized—Abandonment of leased plant.
6–511. Use of incinerator by certain Maryland and Virginia municipalities authorized.

§ 6–501. Regulations for the collection and disposal of garbage to be made by Commissioners—Penalties.

The Commissioners of the District of Columbia are hereby authorized to make necessary regulations for the collection and disposition of garbage in the District of Columbia, and to annex to said regulations such penalties as will secure the enforcement thereof. (Mar. 2, 1895, 28 Stat. 758, ch. 176.)

TRANSFER OF FUNCTIONS

Reorganization of Department of Sanitary Engineering, see note under section 6–401.

CROSS REFERENCES

Construction and operation of incinerators for combustible refuse, see §§ 6–505 to 6–511.

Cleaning streets and alleys declared to be a municipal function, sale of sweepings, see §§ 1–235, 1–236.

Duty of police to enforce garbage regulations, see § 4–119.

NOTES TO DECISIONS

Constitutionality

Generally, health laws and ordinances are liberally construed but when they appear to violate a constitutional right, court must carefully weigh value of the end accomplished. When abatement of a nuisance is provided for only after notice and hearing, health officers cannot inspect, when challenged, without the ordinary preliminary step for search in the absence of immediate danger or nuisance per se. *Little* v. *District of Columbia* (D. C. Mun. App. 1948, 62 A. 2d 874, affirmed 178 F. 2d 13, 85 U. S. App. D. C. 242, affirmed 70 S. Ct. 468, 339 U. S. 1, 94 L. Ed. 424).

Police power

It is within the police power of municipal corporations to control and regulate the manner of collection and disposition of garbage, refuse and filth, and in so doing, they may provide for the inspection of premises as a health measure but must not unduly infringe upon individual rights, in absence of immediate danger or nuisance per se. *Little* v. *District of Columbia* (D. C. Mun. App. 1948, 62 A. 2d 874, affirmed 178 F. 2d 13, 85 U. S. App. D. C. 242, affirmed 70 S. Ct. 468, 339 U. S. 1, 94 L. Ed. 424).

Summary action

Unless the condition which is the object of inspection amounts to an immediate danger or a dangerous nuisance per se, municipal authorities would be acting beyond their power in taking any summary action. *Little* v. *District of Columbia* (D. C. Mun. App. 1948, 62 A. 2d 874, affirmed 178 F. 2d 13, 85 U. S. App. D. C. 242, affirmed 70 S. Ct. 468, 339 U. S. 1, 94 L. Ed. 424).

§ 6–502. Commissioners may contract for collection and disposal of garbage and refuse.

The Commissioners of the District of Columbia are authorized to enter into contract or contracts for the collection and disposal of garbage, miscellaneous refuse, ashes, night soil, and dead animals, for periods not exceeding five years, subject to annual appropriations by Congress, under such conditions and specifications as they may prescribe. Night soil may be collected and disposed of by any process satisfactory to the commissioners. (May 18, 1910, 36 Stat. 389, ch. 248; Mar. 3, 1915, 38 Stat. 904, ch. 80.)

AMENDMENT

1915—Act Mar. 3, 1915, added "Night soil may be collected and disposed of by any process satisfactory to the commissioners."

CROSS REFERENCE

Contracting power of Commissioners in general, see §§ 1–801 to 1–819.

§ 6–503. Disposition by feeding to live stock.

Should the Commissioners of the District of Columbia find that the garbage in the District can be disposed of in a sanitary manner and as economically by feeding it to pigs, live stock, and poultry on the land of the Home for the Aged and Infirm, located at Blue Plains, District of Columbia, or on the land of the workhouse and reformatory, of the District of Columbia, located at Occoquan and Lorton, Virginia, or both, or on such other land as the said commissioners may be able to acquire by purchase or lease in the States of Virginia or Maryland, the said commissioners are authorized to use either or all of said designated lands, or to purchase or lease land in the States of Virginia or Maryland for the purpose, and to adopt the pig, live stock, or poultry feeding method of disposal. (May 6, 1918, 40 Stat. 541, ch. 67, § 6.)

§ 6–504. Collection and disposal of refuse a municipal function—Facilities to be purchased or leased—Sale of products—Employees to accept no gratuities—Penalty.

The commissioners are authorized, if in their opinion such action shall be to the best interests of the District of Columbia, after July 11, 1919, to conduct any or all of the operations involved in the collection and disposal of city refuse of every kind as municipal functions, and for that purpose to purchase or lease the necessary plants, buildings, and land, to purchase or hire horses and horse-drawn vehicles, passenger-carrying and other motor-propelled vehicles, equipment, and machinery, and to employ expert and other personal services, and labor, and to pay traveling, maintenance, incidental, and contingent expenses: *Provided,* That products arising from such operations conducted as authorized herein may be sold and the proceeds arising therefrom shall be paid for each fiscal year into the treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the treasury of the United States and the revenues of the District of Columbia: *Provided further,* That any or all operations herein authorized to be conducted as municipal functions may be put into effect as such upon the expiration of any of the contracts existing July 11, 1919, for the collection and disposal of city refuse or upon the failure of any of the contractors existing July 11, 1919 to properly perform the work covered by their contracts existing July 11, 1919: *Provided further,* That it shall be unlawful for any employee of the District of Columbia engaged in the removal of garbage, ashes, miscellaneous refuse, dead animals, or night soil, or for any employee of a contractor doing such work for the District of Columbia, to accept any gift, except from his employer, in money or any other thing of value for any service performed in connection with the removal of city refuse as hereinbefore described; and it shall be unlawful for any person, firm, or corporation, except such employer, to pay or offer to pay, any money or to make any gift to any such employee for such service; that any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and shall, upon conviction, be fined in a sum of not less than $5 nor more than $40 for each such offense. (July 11, 1919, 41 Stat. 39, ch. 6; Feb. 22 1921, 41 Stat. 1144, ch. 70, § 7.)

AMENDMENT

1921—Act Feb. 22, 1921, inserted "for each fiscal year" following "proceeds arising therefrom shall be paid", and substituted "the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the treasury of the United States and the revenues of the District of Columbia" for "equal parts."

CROSS REFERENCES

Cleaning streets and alleys declared to be a municipal function, sale of sweepings, see §§ 1–235, 1–236.

Lump-sum appropriation for the District, see § 47–134.

NOTES TO DECISIONS

Collection governmental function

The collection of garbage by the District of Columbia is a function governmental in nature, and the District was not liable for damages sustained by passenger in street car which collided with garbage truck. *Loube* v. *District of Columbia* (1937, 92 F. 2d. 473, 67 App. D.C. 322).

§ 6–505. Incinerators for combustible refuse—Condemnation of site authorized—Alleys, highways.

The Commissioners of the District of Columbia are authorized to acquire, by purchase at such price or prices as, in their judgment, they may deem reasonable and fair, or in the discretion of the commissioners, by condemnation, in accordance with the provisions of sections 16–601 to 16–611, under a proceeding or proceedings in rem instituted in the United States District Court for the District of Columbia, two suitable and properly located sites in the District of Columbia, one in the southeastern section not exceeding one hundred thousand square feet in area, and one in Georgetown, not exceeding forty-nine thousand square feet in area: *Provided,* That the location of said sites shall be approved by the National Capital Planning Commission before purchase or the institution of proceedings for condemnation thereof: *Provided,* That if the said sites or any part thereof be condemned the said commissioners shall be entitled to enter immediately into possession of any property for which an award shall have been made by paying the amount of such award into the registry of the United States District Court for the District of Columbia: *Provided further,* That authority is hereby granted to occupy in addition to the site to be acquired in the southeastern section, such public highways and alleys or parts of public highways and alleys as abut or fall within said site, but the owners of abutting property shall not be denied the use of such highways or parts of highways for ingress and egress. (Mar. 4, 1929, 45 Stat. 1549, ch. 688, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

REFERENCES IN TEXT

Sections 16–601 to 16–611, referred to in this section, were repealed by act Dec. 23, 1963, 77 Stat. 620, Pub. L. 88–241, § 21(a), and are now covered by §§ 16–1301 and 16–1311 et seq.

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

TRANSFER OF FUNCTIONS

"National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in view of act June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission. See section 1–1009.

APPROPRIATIONS FOR THE ACQUISITION OF INCINERATOR SITES

Acts Mar. 26, 1930, 46 Stat. 97, ch. 92, and Feb. 2, 1932, 47 Stat. 18, ch. 12, provided for the acquisition of sites for, and the construction of, high-temperature incinerators for the destruction of combustible refuse, and set maximum limits upon the funds which could be spent for the employment of expert and personal services for the preparation of construction plans, and for the construction and equipment of the incinerators, and also set maximum spatial limits for the areas of the sites.

Act June 16, 1933, 48 Stat. 232, ch. 93, provided that no part of the appropriated funds were to be available for the operation of a high-temperature incinerator in the southeast section of the District of Columbia.

§ 6–506. Construction of incinerator authorized.

The said commissioners are authorized to erect upon each of said sites a modern, high-temperature refuse incinerator and the necessary equipment for its efficient operation, the combined capacity of such incinerators to be sufficient to consume the entire production of combustible refuse, including street sweepings, in the District of Columbia; and the said commissioners are further authorized to do such grading and fencing of the sites as may be necessary, and to construct buildings for the storage of equipment. (Mar. 4, 1929, 45 Stat. 1549, ch. 688, § 2.)

§ 6–507. Commissioners to fix time when plant shall begin to function—Other methods of disposal prohibited—Sale of salvageable material—Rules and regulations.

The said commissioners shall give reasonable public notice thereof and shall fix a date after which all combustible refuse collected by public or private agencies in the District of Columbia shall be delivered at the incinerators herein provided for, for disposal, except that hotels, apartment houses, business houses, or residences may dispose of their own refuse in their own incinerators: *Provided,* That such incinerators are inspected and approved for use by the proper agency of the District of Columbia; and after such date it shall be unlawful for any person, firm, company, or corporation to dispose of any combustible refuse in any other manner or at any other place than that prescribed by the said commissioners: *Provided, however,* That nothing in sections 6–505 to 6–510 shall prohibit or prevent the sale of salvageable material by the owners thereof or by the commissioners of the District of Columbia. The said commissioners are hereby empowered and authorized to make and enforce such regulations as they may deem necessary and proper to carry out the purposes of sections 6–505 to 6–510. (Mar. 4, 1929, 45 Stat. 1549, ch. 688, § 3.)

CROSS REFERENCES

Authority of Commissioners to make health and safety regulations, see § 1–226.

Cleaning streets and alleys declared to be a municipal function, sale of sweepings, see §§ 1–235, 1–236.

§ 6–508. Penalties.

From and after the date when the incinerators herein authorized to be constructed shall be in operation it shall be unlawful for any person, firm, company, or corporation to burn or in any way dispose of combustible refuse in any manner or at any place other than that prescribed by the said commissioners, except as hereinbefore designated. A violation of the provisions of sections 6–505 to 6–510 shall be a misdemeanor; and, upon conviction thereof, the person, firm, company, or corporation so charged shall be fined not more than $100 for each and every offense, or confined in the District of Columbia jail for a period not exceeding sixty days, or both, in the discretion of the courts. (Mar. 4, 1929, 45 Stat. 1549, ch. 688, § 4.)

§ 6–509. Machinery and personnel authorized.

In order to dispose of combustible refuse in the manner provided by sections 6–505 to 6–510, the commissioners are authorized to purchase motor trucks and trailers and other means of transportation, to install additional equipment, buildings, and machinery, and to employ personal services and labor. (Mar. 4, 1929, 45 Stat. 1550, ch. 688, § 5.)

§ 6–510. Appropriation authorized—Abandonment of leased plant.

A sum not exceeding $850,000 is hereby authorized to be appropriated, in like manner as other appropriations, for the expenses of the District of Columbia, for sites, buildings, equipment, and other construction work authorized by sections 6–505 to 6–510, of which amount $25,000 or so much thereof as may be necessary may be expended for the employment of one or more experts for engineering for preparation of plans and specifications; and, upon completion of the incinerators herein provided for, the said commissioners shall abandon the use of the leased plant at Montello Avenue and Mount Olivet Road northeast. (Mar. 4, 1929, 45 Stat. 1550, ch. 688, § 6.)

§ 6–511. Use of incinerator by certain Maryland and Virginia municipalities authorized.

The commissioners of the District of Columbia are authorized to enter into agreement with the Board of County Commissioners of Montgomery County, state of Maryland; the Board of County Commissioners of Prince Georges County, state of Maryland; the Board of Supervisors of Arlington County, state of Virginia, and/or with the several municipalities, taxing areas, and communities within the counties aforesaid having power and authority to enter into such agreements, said agreements to permit said counties, municipalities, taxing areas, and communities to dispose of combustible material in the incinerators built by the District of Columbia under authority of section 6–506, in such kind and quantities, at such times, and for such fees as the said commissioners of the District of Columbia shall specify: *Provided,* That said counties, municipalities, taxing areas, and communities shall make collections of such material with their own equipment and shall obtain permits from the District of Columbia for hauling or transporting the material over routes within the District of Columbia to be designated by the said commissioners. The commissioners shall have the right to suspend or revoke such agreements if found necessary for the proper and successful operation of these incinerators, or for any other reason. (May 15, 1930, 46 Stat. 334, ch. 286.)

CROSS REFERENCES

Agreements with State of Maryland for the use of District sewers, see § 1–817.

Sewerage agreement with Virginia authorized, see § 1–817c.

Chapter 6.—MANUFACTURE, RENOVATION, AND SALE OF MATTRESSES

Sec.

6–601. Definitions.
6–602. Sale without label—False label—Use of materials from mattress used in hospital, sanitarium or by person with contagious disease forbidden—Offering renovated mattress for sale as new—Removing, defacing, or concealing label.
6–603. Tag requirements.
6–604. Guaranty from manufacturer to protect dealer—Prosecution of manufacturer outside the District of Columbia.
6–605. Penalties, prosecutions.
6–606. Administration by director of public health—Commissioners to make regulations.
6–607. Investigation of supposed violations—Authority to enter buildings—Evidence.
6–608. Seizure and destruction of mattresses—Order.

§ 6–601. Definitions.

As used in this chapter—

(a) The term "mattress" includes any quilt, comfort, pad, pillow, cushion, or bag stuffed with hair, down, feathers, wool, cotton, excelsior, jute, or any other soft material and designed for use for sleeping or reclining purposes.

(b) The term "person" means individual, partnership, corporation, or association.

(c) The term "commissioners" means the Board of Commissioners of the District of Columbia. (July 3, 1926, 44 Stat. 838, ch. 768, § 1.)

CROSS REFERENCE

License required, additional definitions, see § 47–2318.

§ 6–602. Sale without label—False label—Use of materials from mattress used in hospital, sanitarium or by person with contagious disease forbidden—Offering renovated mattress for sale as new—Removing, defacing, or concealing label.

No person in the District of Columbia—

(a) Who is a manufacturer or renovator of, or dealer in, mattresses shall sell, exchange, give away, or offer or have in his possession for sale, exchange, or gift, any mattress which bears any false or misleading label, statement, design, or device, in respect of its material or processes of manufacture or renovation, or which is not labeled as provided in section 6–603.

(b) Who is a renovator of mattresses shall use in whole or in part, in the renovation of any mattress, material which has formed part of any mattress theretofore used in or about any sanitarium or hospital, or used by any individual having an infectious or contagious disease.

(c) Who is a manufacturer of mattresses shall use in whole or in part any second-hand material in the manufacture of mattresses sold, exchanged, or given away, or to be offered for sale, exchange, or gift, as new mattresses.

(d) Shall knowingly sell, exchange, give away, or offer or have in his possession for sale, exchange, or gift, (1) any mattress which has been used, or is composed in whole or in part from material which has formed part of any mattress theretofore used in any sanitarium or hospital or by any individual having an infectious or contagious disease, or (2) any mattress which is composed in whole or in part of second-hand material which has not been thoroughly sterilized and disinfected by a process approved by the director of public health of the District of Columbia.

(e) Who is a manufacturer or renovator of, or a dealer in, mattresses, shall remove, conceal, or deface, or cause or permit to be removed, concealed, or defaced, any label placed, in accordance with the

provisions of this chapter, upon any mattress. (July 3, 1926, 44 Stat. 838, ch. 768, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

§ 6–603. Tag requirements.

The label required by section 6–602 shall consist of a tag which shall be sewed or otherwise securely attached to the mattress. In case the mattress has not been renovated the label shall contain in plain, legible print in the English language a statement showing (a) the name and address of the manufacturer, (b) a description of the materials used in the manufacture of such mattress, and (c) whether such materials are in whole or in part second-hand. In case the mattress has been renovated the label shall contain in such print the word "Renovated" and a statement of (1) the name and address of the renovator, and (2) a description of the materials used in the renovated mattress. For the purposes of this chapter the materials so used shall be described in such manner as the commissioners shall by regulation prescribe. (July 3, 1926, 44 Stat. 839, ch. 768, § 3.)

CROSS REFERENCE

Authority of Commissioners to make health and safety regulations, see § 1–226.

§ 6–604. Guaranty from manufacturer to protect dealer—Prosecution of manufacturer outside the District of Columbia.

No dealer shall be prosecuted under the provisions of this chapter when he can establish a guaranty signed by the manufacturer residing in the United States from whom he purchases mattresses to the effect that the statements contained on the labels attached to such mattresses are true. Such guaranty, to afford protection, shall contain the name and address of the manufacturer making the sale of such mattresses to the dealer, and in such case the manufacturer shall be amenable to the prosecutions, fines, and other penalties which would attach, in due course, to the dealer under the provisions of this chapter. In case the manufacturer resides outside the District of Columbia it shall be the duty of each United States attorney to whom the director of public health of the District of Columbia shall report the violation to cause appropriate proceedings to be commenced and prosecuted against the manufacturer without delay in the proper courts of the United States. (July 3, 1926, 44 Stat. 839, ch. 768, § 4; June 25, 1948, 62 Stat. 909, ch. 646, § 1; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States Attorney" for "United States District Attorney." See U.S. Code, title 28, § 501.

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

§ 6–605. Penalties, prosecutions.

Any person violating any provision of section 6–602 or section 6–607 shall, upon conviction thereof, be punished by a fine of not more than $500, or by imprisonment for not more than six months, or both. All prosecutions under this chapter, except as provided in section 6–604, shall be in the District of Columbia Court of General Sessions upon information by the corporation counsel or one of his assistants. (July 3, 1926, 44 Stat. 839, ch. 768, § 5; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 6–606. Administration by director of public health—Commissioners to make regulations.

Except as provided in section 6–605, the administration of this chapter shall be in charge of the director of public health of the District of Columbia under the supervision of the commissioners. The commissioners are authorized to make such regulations as may be necessary for the efficient administration of this chapter. (July 3, 1926, 44 Stat. 839, ch. 768, § 6; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

CROSS REFERENCE

Authority of Commissioners to make health and safety regulations, see § 1–226.

§ 6–607. Investigation of supposed violations—Authority to enter buildings—Evidence.

It shall be the duty of the director of public health of the District of Columbia, whenever he has reason to believe that any provision of this chapter is being or has been violated, to cause an investigation to be made. For the purpose of such investigation the director of public health, or any of his assistants designated by him in writing, shall have authority at all times during the ordinary business hours to enter any building or other place in the District of Columbia where mattresses are manufactured, renovated, or held for sale, exchange, or gift, or delivery in pursuance thereof. No person shall refuse or obstruct such inspection. Evidence obtained by the director of public health or his assistants of any violations of this chapter shall be furnished the corporation counsel. (July 3, 1926, 44 Stat. 839, ch. 768, § 7; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

§ 6–608. Seizure and destruction of mattresses—Order.

If on inspection the director of public health or his assistants find in the District of Columbia any mattress held for sale, exchange, or gift, or delivery in pursuance thereof, which has been used or is composed in whole or in part of materials which have formed part of any mattress used in or about any sanitarium or hospital or by any individual having an infectious or contagious disease, or is composed in whole or in part of second-hand material which has

not been thoroughly sterilized and disinfected by a process approved by the director of public health, or if the director of public health or his assistants find in the District of Columbia any such materials held for use in the manufacture or renovation of any mattress, the director of public health shall, after first making and filing in the public records of his office a written order stating the reason therefor, thereupon without further notice cause such mattress or material intended to be used in the manufacture of any mattress to be seized, removed, and destroyed by summary action. (July 3, 1926, 44 Stat. 839, ch. 768, § 8; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

Chapter 7.—PRIVIES

Sec.
6–701. Water-closets required where public sewer and water available.
6–702. Permit to maintain privy—When required.
6–703. Regulation of construction and maintenance.
6–704. Penalty for violation.

§ 6–701. Water-closets required where public sewer and water available.

It shall be unlawful for any person or persons to maintain, upon any original lot or any subdivisional lot, situated on any street in the District of Columbia, where there is a public sewer and water-main available for the use of such lot, any system of disposal of human excreta except by means of water-closets connected with such sewer and water-main. (Apr 22, 1940, 54 Stat. 155, ch. 131, § 2.)

TRANSFER OF FUNCTIONS

Reorganization of the Department of Sanitary Engineering, see note under section 6–401.

NOTES TO DECISIONS

Fraud by vendor

Where purchaser asked vendor particularly about wiring and plumbing in house and vendor replied that it was all right but said nothing about fact that plumbing was connected to septic tank rather than to public sewer, vendor's conduct would give purchaser right of action for deceit on part of vendor, when failure to disclose fact was considered in connection with code sections requiring connection to be made with public sewers. *Kraft* v. *Lowe et al.* (D.C. Mun. App. 1951, 77 A. 2d 554).

§ 6–702. Permit to maintain privy—When required.

No person shall, in the District of Columbia, erect or maintain a privy, or other means or system for the disposal of human excreta, except by means of water-closets connected with a sewer and water-main, without having secured from the director of public health a permit so to do. (Apr. 22, 1940, 54 Stat. 155, ch. 131, § 3; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

§ 6–703. Regulation of construction and maintenance.

The Commissioners of the District of Columbia are hereby authorized and empowered to make and enforce any such regulations as they deem necessary to regulate the design, construction, and maintenance of any system of disposal of human excreta, and the handling, storage, treatment, and disposal of human body wastes. (Apr. 22, 1940, 54 Stat. 155, ch. 131, § 4.)

CROSS REFERENCE

Authority of Commissioners to make health and safety regulations, see § 1–226.

§ 6–704. Penalty for violation.

Any person who shall violate or aid or abet in violating any of the provisions of sections 6–701 to 6–703 or of the regulations promulgated by the Commissioners of the District of Columbia under said sections shall be punished by a fine of not more than $50 or by imprisonment for not exceeding fifteen days. (Apr. 22, 1940, 54 Stat. 155, ch. 131, § 5.)

Chapter 8.—SMOKE PREVENTION

Sec.
6–801 Emission of smoke and other foreign substances—Liability—Removal of debris to prevent accumulation—Escape and discharge of material and odors.
6–802 Commissioners to make regulations.
6–803. Penalty
6–804. Enforcement—Appropriations for.

§ 6–801. Emission of smoke and other foreign substances—Liability—Removal of debris to prevent accumulation—Escape and discharge of material and odors.

No person shall cause, suffer, or allow dense smoke to be discharged from any building, stationary or locomotive engine, or motor vehicle, place, or premises within the District of Columbia. All persons participating in any violation of this provision, either as proprietors, owners, tenants, managers, superintendents, captains, engineers, firemen, or motor-vehicle operators, or otherwise, shall be severally liable therefor. The owners, lessees, tenants, occupants, and managers of every building, or place in or upon which a locomotive or stationary engine, furnace, or boiler is used shall cause all ashes, cinders, rubbish, dirt, and refuse to be removed to some proper place, so that the same shall not accumulate, nor shall any person cause, suffer, or allow cinders, dust, gas, steam, or offensive nor noisome odors to escape or to be discharged from any such building, or place, to the detriment or annoyance of any person or persons not being therein or thereupon engaged. (Aug. 15, 1935, 49 Stat. 653, ch. 549, § 1.)

§ 6–802. Commissioners to make regulations.

The Commissioners of the District of Columbia are hereby authorized and directed to make and promulgate reasonable classifications and regulations for the installation and operation of combustion and all other devices susceptible for use in such manner as to violate the purposes of this chapter, and the said commissioners may from time to time alter, amend, or rescind such regulations and promulgate such amended or additional regulations as they may in their discretion deem necessary. (Aug. 15, 1935, 49 Stat. 653, ch. 549, § 2.)

CROSS REFERENCE

Authority of Commissioners to make health, safety, and welfare regulations, see § 1–226.

§ 6–803. Penalty.

Enforcement of this chapter shall be upon information by the corporation counsel in the District

of Columbia Court of General Sessions. Any person convicted of violating this chapter or any regulation of the commissioners made hereunder shall be punished by a fine not to exceed $500 for each and every such offense. (Aug. 15, 1935, 49 Stat. 654, ch. 549, § 3; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L 88–60, § 1.)

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

NOTES TO DECISIONS

Review of conviction

A conviction by a police court of the District for a violation of this act, affirmed by the Court of Appeals of the District. can not be reviewed by writ of error to the Supreme Court under act of March 3, 1901. *Sinclair* v. *District of Columbia* (1904, 24 S. Ct. 212, 192 U.S. 16, 48 L. Ed. 322).

§ 6–804. Enforcement—Appropriations for.

The Commissioners of the District of Columbia shall be responsible for the enforcement of this chapter and may direct the police department, the health department, or any officer or employee of the government of the District of Columbia to perform such service as necessary in connection with such enforcement. Appropriations are hereby authorized to be made to carry out the purposes of this chapter, and the commissioners of the District of Columbia are authorized to include in their annual estimates provision for the expenses incident to such purposes and for personnel subject to the limitations of section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]. (Aug. 15, 1935, 49 Stat. 654, ch. 549, § 4; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a).)

CODIFICATION

The reference in this section to "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

AMENDMENT

1949—Act Oct. 28, 1949, § 1106(a), which was a part of the Classification Act of 1949, and which has since been repealed, substituted "Classification Act of 1949" for "Classification Act of 1923". See codification note above.

Chapter 9.—WEEDS AND PLANT DISEASES

Sec.

6–901 Weeds four or more inches high to be cut by person in charge of property—Notice—Penalty
6–902. Removal of weeds by Commissioners.
6–903. Prosecutions.
6–904. Plant diseases and insect pest control.
6–905. Penalty

§ 6–901. Weeds four or more inches high to be cut by person in charge of property—Notice—Penalty.

It shall be the duty of the owner, occupant, or agent in charge of any land in the city of Washington, or in the more densely populated suburbs of said city to remove from such land any weeds thereon of four or more inches in height within seven days (Sundays and legal holidays excepted) after notice from the director of public health so to do, and upon failure to comply with such notice he or she shall, on conviction thereof, be punished by a fine of not more than ten dollars for each day said notice is not complied with. (Mar. 1, 1899, 30 Stat. 959, ch. 326, § 1; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

§ 6–902. Removal of weeds by Commissioners.

Whenever there are upon any unoccupied land aforesaid weeds of four or more inches in height, and no person can be found in the District of Columbia who either is or claims to be the owner thereof, or who either represents or claims to represent such owner as aforesaid. the commissioners of said District shall give notice. by publication twice a week in one daily newspaper published in the city of Washington aforesaid, requiring their removal. Said notice shall specify the land from which such weeds are to be removed, the character of the work to be done, and the time allowed for doing the same; and if such weeds be not removed within the time so specified it shall be the duty of said commissioners to cause their removal; and the cost of such removal, including the cost of advertising, shall be a lien upon and shall be assessed by said commissioners as a tax against the property on which said weeds were located, and the said tax so assessed shall bear interest at the rate of ten per centum per annum till paid, and shall be carried on the regular tax rolls of said District and be collected in the manner provided for the collection of general taxes. (Mar. 1, 1899, 30 Stat. 959, ch. 326, § 2.)

CROSS REFERENCE

Authority of Commissioners to make health, safety, and welfare regulations, see § 1–226.

§ 6–903. Prosecutions.

Prosecutions under sections 6–901 to 6–903 shall be in the District of Columbia Court of General Sessions, upon information filed by the corporation counsel for said District or one of his assistants. (Mar. 1, 1899, 30 Stat. 959, ch. 326, § 3; Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 932; June 30, 1902, 32 Stat. 537, ch. 1329; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub L. 88–60, § 1.)

CODIFICATION

Act Mar. 3, 1901, changed the designation of "attorney for the District" to "city solicitor", and act June 30, 1902, changed "city solicitor" to "corporation counsel."

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court of said District" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the

District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 6–904. Plant diseases and insect pest control.

In order further to control and eradicate and to prevent the dissemination of dangerous plant diseases and insect infections and infestations no plant or plant products for or capable of propagation, including nursery stock, hereinafter referred to as plants and plant products, shall be moved or allowed to be moved, shipped, transported, or carried by any means whatever into or out of the District of Columbia, except in compliance with such rules and regulations as shall be prescribed by the Secretary of Agriculture as hereinafter provided. Whenever the Secretary of Agriculture, after investigation, shall determine that any plants and plant products in the District of Columbia are infested or infected with insect pests and diseases and that any place, articles, and substances used or connected therewith are so infested or infected, written notice thereof shall be given by him to the owner or person in possession or control thereof, and such owner or person shall forthwith control or eradicate and prevent the dissemination of such insect pest or disease and shall remove, cut, or destroy such infested and infected plants, plant products, and articles and substances used or connected therewith, which are hereby declared to be nuisances, within the time and in the manner required in said notice or by the rules and regulations of the Secretary of Agriculture. Whenever such owner or person can not be found, or shall fail, neglect, or refuse to comply with the foregoing provisions of this section, the Secretary of Agriculture is hereby authorized and required to control and eradicate and prevent dissemination of such insect pest or disease and to remove, cut, or destroy infested or infected plants and plant products and articles and substances used or connected therewith, and the United States shall have an action of debt against such owner or persons for expenses incurred by the Secretary of Agriculture in that behalf. Employees of the Bureau of Entomology and Plant Quarantine are hereby authorized and required to inspect places, plants, and plant products and articles and substances used or connected therewith whenever the Secretary of Agriculture shall determine that such inspections are necessary for the purposes of this section. For the purpose of carrying out the provisions and requirements of this section and of the rules and regulations of the Secretary of Agriculture made hereunder, and the notices given pursuant thereto, employees of the Bureau of Entomology and Plant Quarantine shall have power with a warrant to enter into or upon any place and open any bundle, package, or other container of plants or plant products whenever they shall have cause to believe that infections or infestations of plant pests and diseases exist therein or thereon, and when such infections or infestations are found to exist, after notice by the Secretary of Agriculture to the owner or person in possession or control thereof and an opportunity by said owner or person to be heard, to destroy the infected or infested plants or plant products contained therein. The District of Columbia Court of General Sessions shall have power, upon information supported by oath or affirmation showing probable cause for believing that there exists in any place, bundle, package, or other container in the District of Columbia any plant or plant product which is infected or infested with plant pests or disease, to issue warrants for the search for and seizure of all such plants and plant products.

It shall be the duty of the Secretary of Agriculture, and he is hereby required, from time to time, to make and promulgate such rules and regulations as shall be necessary to carry out the purposes of this section, and any person who shall move or allow to be moved, or shall ship, transport, or carry, by any means whatever, any plant or plant products from or into the District of Columbia, except in compliance with the rules and regulations prescribed under this section, shall be punished, as is provided in section 6–905. (Aug. 20, 1912, ch. 308, § 15, as added May 31, 1920, 41 Stat. 726, ch. 217, and amended May 16, 1928, 45 Stat. 565, ch. 572; July 7, 1932, 47 Stat. 640, ch. 443; Mar. 26, 1934, 48 Stat. 486, ch. 89; Apr. 1, 1942, 56 Stat. 190, 192, ch. 207, §§ 1—4; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CODIFICATION

Section is also classified to 7 U.S.C. § 167.

Provisions which empowered the police court to issue warrants for the search and seizure of plants and plant products were omitted in view of act Apr. 1, 1942, which consolidated the police court and the municipal court for the District of Columbia.

CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

TRANSFER OF FUNCTIONS

"Bureau of Entomology and Plant Quarantine" was substituted for "Federal Horticultural Board" by acts May 16, 1928, July 7, 1932, Mar. 26, 1934.

§ 6–905. Penalty.

Any person who shall violate any of the provisions of sections 151—154, 156—161 and 162—164a of title 7, U.S. Code, or who shall forge, counterfeit, alter, deface, or destroy any certificate provided for in said sections, or in the regulations of the Secretary of Agriculture, shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine not exceeding $500 or by imprisonment not exceeding one year, or both such fine and imprisonment, in the discretion of the court: *Provided,* That no common carrier shall be deemed to have violated the provisions of sections 152, 154, 156—161 and 162 of title 7, U.S. Code, on proof that such carrier did not knowingly receive for transportation or transport nursery stock or other plants or plant products as such from one State, Territory, or District of the United States into or through any other State, Territory, or District; and it shall be the duty of the United States attorneys diligently to prosecute any violations of sections 151—154, 156—161 and 162—164a of title 7, U.S. Code which are brought to their attention by the Secretary of Agriculture or which come to their notice by other means. (Aug. 20, 1912, 37 Stat. 318, ch. 308, § 10.)

CODIFICATION

Section is also classified to 7 U.S.C. §§ 163, 164.

Chapter 10.—BLACK-OUTS IN WAR TIME

Sec.
6–1001. Commissioners authorized to order black-outs—Regulations.
6–1002. Cooperation with Maryland and Virginia.
6–1003. Secretary of the Army to assist and cooperate.
6–1004. Municipality not liable for damages sustained as result of black-out.
6–1005. Increase of statutory punishment for crimes committed during black-out.
6–1006. Appointment of special police during war.
6–1007. Volunteer services for government of District during war.
6–1008. Evacuation from District during war.
6–1009. Establishment of organizations for civilian defense—Use of District of Columbia employees—Right of eminent domain—Funds for supplies and personnel—Hospitalization—Use of private property.
6–1010. Penalties for violation of chapter.
6–1011. Liability—Damage to volunteer workers.
6–1012. Same; damage to other persons and property.
6–1013. Extent of power and duties of Commissioners.
6–1014. Limitation on expenditures.
6–1015. Services to veterans and war workers.

§ 6–1001. Commissioners authorized to order black-outs—Regulations.

The Commissioners of the District of Columbia are authorized and directed, whenever a state of war exists between the United States and any foreign country or nation, to order black-outs in the District of Columbia at such times and for such periods of time as they may deem desirable, subject to the approval of the Secretary of the Army, to regulate and prohibit the movement of vehicular traffic on the highways during such periods and to make such regulations as they may deem necessary to insure the success of the black-outs and to protect life and property during said periods. (Dec. 26, 1941, 55 Stat. 858, ch. 625, § 1.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343, title II. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of act Aug. 10, 1956, enacted Title 10 of the U.S. Code which continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

§ 6–1002. Cooperation with Maryland and Virginia.

The Commissioners are authorized to negotiate with the proper authorities of the States of Maryland and Virginia with a view to effecting a synchronization of black-outs in the District of Columbia and such parts of those States as may be necessary to carry out the intent and purpose of this chapter. (Dec. 26, 1941, 55 Stat. 858, ch. 625, § 2.)

§ 6–1003. Secretary of the Army to assist and cooperate.

The Secretary of the Army is authorized to assist and cooperate with the Commissioners of the District of Columbia in the execution of black-outs in the District of Columbia and the metropolitan area. (Dec. 26, 1941, 55 Stat. 858, ch. 625, § 3.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343, title II. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of act Aug. 10, 1956, enacted Title 10, of the U.S. Code which continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

§ 6–1004. Municipality not liable for damages sustained as result of black-out.

The municipality of the District of Columbia shall not be liable for any damages sustained to person or property during, or as the result of, an authorized black-out. (Dec. 26, 1941, 55 Stat. 858, ch. 625, § 4.)

§ 6–1005. Increase of statutory punishment for crimes committed during black-out.

The statutory penalty upon conviction of any crime, other than those punishable by life imprisonment or death, committed during any authorized black-out shall be doubled. (Dec. 26, 1941, 55 Stat. 859, ch. 625, § 5.)

§ 6–1006. Appointment of special police during war.

During the existence of a state of war between the United States and any foreign country or nation, the Commissioners may appoint, for specified times, as many special police, without pay, from among residents of the District of Columbia as they may deem advisable. During the terms of service of such special police they shall possess all the powers and perform all the duties of privates of the standing police force of the District of Columbia, and such special police shall wear an emblem to be provided by the Commissioners. (Dec. 26, 1941, 55 Stat. 859, ch. 625, § 6.)

§ 6–1007. Volunteer services for government of District during war.

During the existence of a state of war between the United States and any foreign country or nation, the Commissioners of the District of Columbia are authorized to accept volunteer service for the government of the District of Columbia. (Dec. 26, 1941, 55 Stat. 859, ch. 625, § 7.)

§ 6–1008. Evacuation from District during war.

During the existence of a state of war between the United States and any foreign country or nation, the Commissioners of the District of Columbia, subject to the approval of the Secretary of the Army, are authorized to prepare for the evacuation from the District of Columbia or from any part thereof of all such persons as they shall determine, and for this purpose shall negotiate with the proper authorities of any State of the United States or of any subdivision thereof to provide for the reception, housing, maintenance, and care of evacuees, shall prepare all necessary plans for the conduct of such evacuation, and may when in their judgment the public interest or the safety of such persons creates the necessity therefor order and compel, subject to the approval of the Secretary of the Army, the evacuation from the District of Columbia of any such persons to such place or places as they may designate. The Commissioners of the District of Columbia are authorized and empowered to obligate the District of Columbia for the payment of all necessary costs and to make such regulations as they may deem necessary to carry out the provisions of this section, and, for the purpose

of compelling evacuation, may authorize custody by the regular or special police of any person or persons, which custody shall be effective until the point of destination has been reached, and the powers of such police for such purpose are hereby declared to extend to any point within the United States that the Commissioners of the District of Columbia may designate. There are hereby authorized to be appropriated out of any money in the Treasury to the credit of the United States not otherwise appropriated, such sums as may be necessary to carry out the provisions of this section. (Dec. 26, 1941, 55 Stat. 859, ch. 625, § 8.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343, title II. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of act Aug. 10, 1956, enacted Title 10, of the U.S. Code which continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

§ 6–1009. Establishment of organizations for civilian defense—Use of District of Columbia employees—Right of eminent domain—Funds for supplies and personnel—Hospitalization—Use of private property.

During the existence of a state of war between the United States and any foreign country or nation, the Commissioners of the District of Columbia are authorized and empowered, without regard to the provisions of any other law, to take such measures as they may deem necessary for the adequate protection of persons and property in the District of Columbia and to make such orders, rules, and regulations as they may deem necessary to carry out the foregoing authority. The power hereby granted shall include but not be limited to the following:

(a) To establish, in the government of the District of Columbia, units and organizations for civilian defense, and to utilize any or all existing voluntary units or organizations together with their personnel or any part or parts thereof; to vest members thereof with authority to carry out such functions as may be necessary to effectuate the purposes of this chapter including such powers and duties of the standing police force of the District of Columbia as the Commissioners may designate; and to make such orders and regulations as they may deem necessary to govern the establishment, maintenance, and operation of such units and organizations and the discipline of the members thereof.

(b) To use, for the purposes of this chapter, such regular employees of the government of the District of Columbia as they deem necessary.

(c) To temporarily requisition, enter upon, take possession of, and use private property of every kind and nature and any rights therein as may in their opinion be necessary for the location, installation, maintenance, and operation of facilities and devices suitable for defense purposes, and to ascertain and pay just compensation for such use of private property, and if the amount of compensation so determined be not satisfactory to the person entitled to receive the same such property may nevertheless be used immediately and such person shall be paid 50 per centum of the amount so determined and shall be entitled to sue the District of Columbia to recover such further sum as, added to said 50 per centum, will make up such amount as will be just compensation for such use.

(d) To accept from the United States and from any officer or agency thereof all facilities, supplies, and funds that may from time to time be offered to the District of Columbia, and to agree to such terms, conditions, rules, and regulations as may be imposed in connection with such offer.

(e) To borrow money from the Treasury of the United States, not exceeding $2,000,000, and to expend the same for defense purposes. In addition thereto, in the event of an emergency, to obligate the District of Columbia for the payment of any and all supplies, equipment, materials, food, and whatever else may be necessary for the purpose of preventing and alleviating suffering to persons and preventing the spread of disease in said District.

(f) Within the limits of money borrowed as herein provided, and of money appropriated, to store, maintain, operate, use, purchase and rent equipment, materials, and supplies of all kinds and to employ such personnel as the Commissioners may deem necessary.

(g) From the money herein authorized to be borrowed, to expend in the discretion of the Commissioners for hospital and other medical expenses for the treatment of members of civilian defense units and organizations injured in line of duty not to exceed $100,000.

(h) To accept the use of private property, and during such periods of time that any privately owned motor vehicle is used by the District of Columbia under the authority of this section the operator thereof shall not be deemed or held to be the agent of the owner of such vehicle within the meaning of sections 40–401 to 40–416.

The Secretary of the Treasury is hereby authorized to loan to the Commissioners of the District of Columbia such sum or sums as are authorized by this section, and there is hereby appropriated for this purpose $1,000,000 out of any money in the Treasury of the United States to the credit of the United States not otherwise appropriated. (Dec. 26, 1941, 55 Stat. 859, ch. 625, § 9; Aug. 6, 1942, 56 Stat. 740, ch. 548, § 1.)

REFERENCES IN TEXT

Sections 40–401 to 40–416, referred to in the text, were repealed by act May 25, 1954, 68 Stat. 120, ch. 222, § 82, and are now covered by §§ 40–417 to 40–498.

AMENDMENT

1942—Act Aug. 6, 1942, amended section generally. Prior to the amendment, the section read as follows: "The Commissioners of the District of Columbia are authorized and empowered, without regard to the provisions of any other law, and for defense purposes, to borrow money from the Treasury of the United States, to expend the same, to obligate the District of Columbia for the payment of equipment, materials, and supplies of all kinds, and to employ personnel as the Commissioners in their dicretion may deem necessary, not exceeding $1,000,000, and the said Commissioners are further authorized and empowered to use such regular employees of the Government of the District of Columbia as they deem necessary.

"The Secretary of the Treasury is hereby authorized to loan to the Commissioners of the District of Columbia such sum or sums as are authorized by this section, and there is hereby appropriated for this purpose $1,000,000

out of any money in the Treasury of the United States to the credit of the United States not otherwise appropriated."

TRANSFER OF FUNCTIONS

Office of Civil Defense and the Citizens' Civil Defense Advisory Council, abolition and re-establishment of new Office and Council respectively, see note under section 6–1202.

ADDITIONAL APPROPRIATION

Section 3 of act Aug. 6, 1942, provided that: "The Secretary of the Treasury is hereby authorized to loan to the Commissioners of the District of Columbia such sum or sums as are authorized by the first paragraph of said section 9, as amended [this section], and in addition to amounts heretofore appropriated there is hereby appropriated for this purpose the further sum of $1,000,000, out of any money in the Treasury of the United States to the credit of the United States not otherwise appropriated."

REPAYMENT OF LOANS

Section 4 of act Aug. 6, 1942, provided that: "The Secretary of the Treasury shall be repaid moneys loaned under authority of section 9 of the Act of December 26, 1941, as amended by this Act [this section], in annual installments over a period of not to exceed ten years, with interest thereon beginning July 1, 1943, for the period of amortization: *Provided,* That such interest shall be at such rate as would, in the opinion of the Secretary of the Treasury, be the lowest interest rate available to the District of Columbia on the date of the approval of this Act [Aug. 6, 1942] were said District authorized by law to issue and sell obligations to the public, at the par value thereof, in a sum equal to the repayable amounts of such advances, maturing serially over a period of ten years in approximately equal annual installments, including both principal and interest, and secured by a first pledge of and lien upon all the general-fund revenues of said District: *Provided further,* That such sums as may be necessary for the reimbursement herein required of the District of Columbia, and for the payment of interest, shall be included in the annual estimates of the Commissioners, the first reimbursement to be made on July 1, 1944."

§ 6–1010. Penalties for violation of chapter.

The Commissioners shall have the power to prescribe reasonable penalties for violation of any regulation promulgated pursuant to this chapter, not exceeding a fine of $300 or ninety days' imprisonment, or both. Prosecution for such violations shall be on information in the District of Columbia Court of General Sessions by the corporation counsel or his assistants. (Dec. 26, 1941, 55 Stat. 860, ch. 625, § 10; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 6–1011. Liability—Damage to volunteer workers.

Neither the District of Columbia nor any officer, agent, or employee of said District shall be liable to any person who has heretofore or who may hereafter volunteer for service with said District or with any agency for civilian defense in the District of Columbia or elsewhere for any damage sustained by such person in the course of or arising out of any such volunteer service. (Dec. 26, 1941, ch. 625, § 11, as added Aug. 6, 1942, 56 Stat. 741, ch. 548, § 2.)

NOTES TO DECISIONS

Evidence, admissibility

In prosecution for violating municipal blackout regulations when it was not sought to charge principal with actions of agent admitting testimony of defendant's admission that he was person in charge of property where violation occurred was not error. *Dibble* v. *District of Columbia* (D. C. Mun. App. 1944, 35 A. 2d 825).

Evidence, sufficiency

Evidence that defendant was the manager and person in charge of premises where light was displayed in violation of municipal blackout regulations, was sufficient to sustain conviction for violating regulations although there was evidence that engineers were in charge of lighting arrangements. *Dibble* v. *District of Columbia* (D. C. Mun. App. 1944, 35 A. 2d 825).

In prosecution for violating blackout regulations, evidence established that plaintiff failed to extinguish the offending light as promptly as possible or within 15 minutes as required by ordinance, and failed to establish any excuse for such violation. *Id.*

Judicial notice

In prosecution for violating ordinance regulating blackouts, the ordinance was not required to be introduced in evidence, since the municipal court would take notice of the ordinance. *Dibble* v. *District of Columbia* (D. C. Mun. App. 1944, 35 A. 2d 825).

§ 6–1012. Same—Damage to other persons and property.

Neither the District of Columbia nor any officer, agent, employee, or regularly appointed volunteer worker in the service of said District, nor any individual, receiver, firm, partnership, corporation, association, or trustee, or any of the agents thereof, in good faith and without willful or gross negligence carrying out, complying with, enforcing or attempting to carry out, comply with, or enforce this chapter or any order, rule, or regulation issued or promulgated pursuant to this chapter, shall be liable for any damage sustained to any persons or property as the result of such activity. (Dec. 26, 1941, ch. 625, § 12, as added Aug. 6, 1942, 56 Stat. 741, ch. 548, § 2.)

§ 6–1013. Extent of power and duties of Commissioners.

The power and duties conferred upon the Commissioners of the District of Columbia by this chapter or any other Act shall not affect, impair, limit, or interfere with the powers of the military or naval authorities with respect to the control and disposition of military or naval personnel or of civilians, or with respect to any other military or naval activity or duty. (Dec. 26, 1941, ch. 625, § 13, as added Aug. 6, 1942, 56 Stat. 741, ch. 548, § 2.)

§ 6–1014. Limitation on expenditures.

During the existence of a state of war between the United States and any foreign country or nation, the Commissioners of the District of Columbia are authorized to expend, in their discretion, from the money authorized by section 6–1009 to be borrowed, for personal services, supplies, and other expenses in connection with the coordination of nonprotective volunteer civilian services, not exceeding $25,000 per year. (Dec. 26, 1941, ch. 625, § 14, as added July 13, 1943, 57 Stat. 560, ch. 234.)

§ 6–1015. Services to veterans and war workers.

Up to and including December 31, 1947, the Commissioners of the District of Columbia are authorized and empowered, in their discretion, to provide services to veterans and war workers and to expend any

moneys otherwise available for expenditure under this chapter for all necessary expenses, including personal services without regard to civil service or classification laws. (Dec. 26, 1941, ch. 625, § 15, as added May 9, 1946, 60 Stat. 169, ch. 249, § 1.)

APPROPRIATIONS AUTHORIZED

Sec. 2 of act May 9, 1946, provided that: "There is hereby authorized to be appropriated out of any moneys in the Treasury of the United States to the credit of the District of Columbia not otherwise appropriated such sums as may be necessary to carry out the provisions of this amendment."

Chapter 11.—FEDERAL GOVERNMENT RESTAURANTS

Sec.
6–1101. Health regulations applicable to federal government restaurants—Exceptions.

§ 6–1101. Health regulations applicable to federal government restaurants—Exceptions.

The regulations now or hereafter adopted or promulgated by the Commissioners of the District of Columbia for the protection of health, including the penalty provisions of such regulations, shall extend and apply to all restaurants, coffee shops, cafeterias, short-order cafes, luncheonettes, soda fountains, and all other eating and drinking establishments, operated within the District of Columbia on premises owned or held under lease by the Government of the United States or any Federal department or agency, irrespective of whether such establishments are operated by the United States or any Federal department or agency or by any other person, firm, association, or corporation, and also irrespective of whether such establishments are operated for profit or otherwise.

This section shall not apply to the United States Senate and House of Representatives restaurants. (Dec. 20, 1944, 58 Stat. 826, ch. 613.)

Chapter 12.—OFFICE OF CIVIL DEFENSE

Sec.
6–1201. Declaration of intent.
6–1202. Office of civil defense authorized—Director and other personnel—Compensation.
6–1202a. Appointment of member of Metropolitan Police Department or member of Fire Department to position in office performing functions of Office of Civil Defense.
6–1202b. Same; definition.
6–1203. Powers and duties.
6–1204. Limitation of liability.
6–1205. Appropriations authorized.
6–1206. Yearly report of activities and expenditures.
6–1207. Interstate civil defense compacts.

§ 6–1201. Declaration of intent.

Because of the existing possibility of the occurrence of disaster of unprecedented destructiveness resulting from enemy attack, sabotage, or other hostile action, it is the intent of Congress that plans and programs to provide necessary protection, relief, and assistance for persons and property in the District of Columbia in the event such disaster shall occur or become imminent so as to require such protection, relief, and assistance, should be developed. As used in this chapter, the term "civil defense" shall mean all activities necessary for the development and execution of such plans and programs, unless the context indicates a different meaning. (Aug. 11, 1950, 64 Stat. 438, ch. 686, § 1.)

§ 6–1202. Office of civil defense authorized—Director and other personnel—Compensation.

To carry out the purposes of this chapter, the Commissioners of the District of Columbia are authorized to establish in the municipal government of such District an Office of Civil Defense to consist of a Director and such other personnel as may be needed. Such Director shall be the executive head of such office.

Notwithstanding the limitation of any law, there may be employed in such Office of Civil Defense any person who has been retired from any of the uniformed services of the United States or any office or position in the Federal or District governments, and except as hereinafter provided, while so employed in such Office of Civil Defense any such retired person may receive the compensation authorized for such employment or the retirement compensation or annuity, whichever he may elect, and upon the termination of such employment, he shall be restored to the same status as a retired officer or employee with the same retirement compensation or annuity to which he was entitled before having been employed in such Office of Civil Defense. While any person who has been retired from any of the uniformed services of the United States is so employed in such Office of Civil Defense, he may receive the compensation authorized for such employment and his retired or retirement pay, subject to section 5532 of title 5, U.S. Code. (Aug. 11, 1950, 64 Stat. 438, ch. 686, § 2; Aug. 19, 1964, 87 Stat. 489, Pub. L. 88–448, title IV, § 401(b).)

CODIFICATION

The reference in this section to "section 5532 of title 5, U.S. Code" was substituted for "section 201 of the Dual Compensation Act" on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. Section 201(a—e) of the Dual Compensation Act (Aug. 19, 1964, 78 Stat. 484, 485, Pub. L. 88–448, title II) was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554 (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by 5 U.S.C. § 5532. Section 201 (f—h) of the Dual Compensation Act was not repealed by the 1966 act, but was excluded from the revision of title 5, U.S.C., as not permanent and general.

AMENDMENTS

1964—Section 401(b) of act Aug. 19, 1964, amended the second paragraph generally and added the last sentence in said paragraph.

EFFECTIVE DATE OF 1964 AMENDMENT

See note to section 31–631.

TRANSFER OF FUNCTIONS

Reorganization Order No. 45 of the Board of Commissioners dated June 26, 1953, and as amended Oct. 22, 1953, established under the Board of Commissioners, a Citizens' Civil Defense Advisory Council to advise and consult with the Board and the Director of Civil Defense on matters of basic civil defense policies. The order describes the purposes and functions of the new Council, and abolished the previous Civil Defense Advisory Council.

Reorganization Order No. 49, as amended Nov. 10, 1953, established under the supervision and control of a Commissioner, an Office of Civil Defense headed by a Director. The order set forth the purpose, organization, and functions of the new Office of Civil Defense. The previous Office of Civil Defense was abolished and its functions and positions together with all personnel, property, records, and unexpended funds relating to those functions and positions were transferred to the new Office of Civil

Defense. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to Title 1, Administration.

§ 6–1202a. Appointment of member of Metropolitan Police Department or member of Fire Department to position in office performing functions of Office of Civil Defense.

The Commissioners of the District of Columbia are authorized to appoint a member of the Metropolitan Police Department or a member of the Fire Department of the District of Columbia to any position in any office or agency of the government of the District of Columbia, to which office or agency there may be transferred the functions of the Office of Civil Defense (authorized to be abolished by Reorganization Plan Number 5 of 1952), with the salary provided by law for such position, chargeable to the appropriation for the newly established office or agency: *Provided*, That during the tenure of his appointment such member so appointed shall be deemed to be a member of such Metropolitan Police Department or such Fire Department, as the case may be, for all purposes of rank, seniority, allowances, privileges and benefits, including retirement and disability benefits under the provisions of section 12 of the Act approved September 1, 1916 (39 Stat. 718–721), as amended, to the same extent as though the appointment had not been made, and at the termination of such appointment he shall be entitled to resume his status within the Metropolitan Police Department or Fire Department, as the case may be, which shall include any promotion in rank to which he may have become entitled: *Provided further*, That retirement and disability benefits and salary deductions shall be based on the salary of the rank or position held in the Metropolitan Police Department or the Fire Department, as the case may be, prior to his appointment to such position in such office or agency succeeding to the functions of the Office of Civil Defense or the salary of the position or rank he would have attained in the Metropolitan Police Department or the Fire Department had his appointment to such position in such office or agency not been made, whichever is greater. (May 21, 1951, 65 Stat. 44, ch. 102; July 6, 1953, 67 Stat. 139, ch. 179, § 1.)

REFERENCES IN TEXT

Section 12 of the act approved Sept. 1, 1916 (39 Stat. 718–721), as amended, referred to in the text, is classified to sections 4–521 to 4–535.

Reorganization Plan No. 5 of 1952, referred to in the text, provides for the abolition of the Office of Civil Defense and the Office of the Director of Civil Defense by not later than June 30, 1953. The act of July 6, 1953, in amending the law of May 21, 1951, which allowed the Commissioners to appoint a member to the Police or Fire Departments as Director of Civil Defense, permits the Commissioners to continue the present Director of the Office of Civil Defense in a position in any new agency of the District government which may take over the functions of the abolished Office of Civil Defense.

AMENDMENT

1953—Act July 6, 1953, substituted "section 12 of the Act approved September 1, 1916 (39 Stat. 718–721)" for "section 2 of the Act approved September 1, 1916 (38 Stat. 718)", and permitted Commissioners to appoint a member of the Metropolitan Police Department or a member of the Fire Department of the District of Columbia to any position in any office or agency of the District of Columbia to which the functions of the abolished Office of Civil Defense could be transferred.

EFFECTIVE DATE OF 1953 AMENDMENT

Section 2 of act July 6, 1953, provided that:

"This Act [amending this section, and adding section 6–1202b] shall take effect at such time as the Commissioners of the District of Columbia shall transfer the functions of the Office of Civil Defense of the District of Columbia to a newly established Office of Civil Defense or any other office or agency, pursuant to Reorganization Plan Number 5 of 1952."

§ 6–1202b. Same; definition.

As used in section 6–1202a the terms "Metropolitan Police Department" and "Fire Department" shall include, respectively, offices or agencies succeeding to the functions of such departments pursuant to Reorganization Plan Number 5 of 1952. (July 6, 1953, 67 Stat. 140, ch. 179, § 1.)

REFERENCES IN TEXT

Reorganization Plan Number 5 of 1952, referred to in the text, is set out in the Appendix to title 1, Administration. See note under section 6–1202a.

EFFECTIVE DATE

Section effective at such time as the Commissioners of the District of Columbia shall transfer the functions of the Office of Civil Defense of the District of Columbia to a newly established Office of Civil Defense or any other office or agency, pursuant to Reorganization Plan Number 5 of 1952, see note under section 6–1202a.

§ 6–1203. Powers and duties.

The Office of Civil Defense is authorized and directed, subject to the direction and control of the Commissioners of the District—

(a) to prepare a comprehensive plan and program for civil defense, such plan and program to be integrated into and coordinated with the civil defense plans of the Federal Government, and of nearby States and appropriate political subdivisions thereof;

(b) to institute training programs and public information programs; to organize, equip, and train volunteers and other civil defense units, and to utilize volunteers and regularly employed personnel of the government of the District of Columbia for service in and within such civil defense units and to train such personnel for such service; to expand existing agencies of the District government concerned with civil defense; and to take all other preparatory steps including the partial or full mobilization of civil defense organizations in advance of actual disaster;

(c) to make such studies and surveys of the resources and capabilities of the District for civil defense, and to plan for the most efficient emergency use thereof;

(d) to develop and enter into mutual aid agreements with States or political subdivisions thereof for reciprocal civil defense aid and mutual assistance in case of disaster too great to be dealt with unassisted. Such agreements may include the exchange of food, clothing, medicines, and other supplies; emergency housing; engineering services; police services; medical and nursing services; firefighting, rescue, transportation, and construction services and equipment; personnel necessary to provide or conduct these services; and such other supplies, equipment, facilities, personnel, and services as may be needed. Such agreements shall be consistent with the national civil defense plan and

program. In time of emergency it shall be the duty of each agency and organization to render assistance in accordance with the provisions of such mutual aid agreements;

(e) in accordance with the civil service laws and regulations to employ such technical, clerical, stenographic, and other personnel and fix their compensation in accordance with section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters] and make such expenditures within appropriations therefor or from other funds made available for purposes of civil defense, as may be necessary to carry out the purposes of this chapter: *Provided,* That no person shall be employed pursuant to this paragraph until the Civil Service Commission shall have made an investigation and a report to the Director concerning the loyalty of such person, and the Director, in accordance with such regulations as he shall issue, shall make a finding on the basis of the report of the Civil Service Commission whether the employee is suitable for employment: *Provided,* That in the event an investigation made pursuant to this section as herein amended develops any data reflecting that the individual who is the subject of the investigation is of questionable loyalty, the Civil Service Commission shall refer the matter to the Federal Bureau of Investigation for the conduct of a full field investigation, the results of which shall be furnished to the Civil Service Commission for its information and appropriate action;

(f) to cooperate with governmental and nongovernmental agencies, organizations, associations, and other entities, and coordinate the activities of all organizations for civil defense within the District;

(g) to accept from the United States or from any officer or agency thereof all facilities, supplies, and funds that may from time to time be offered to the District of Columbia, and to agree to such terms, conditions, rules, and regulations as may be imposed in connection with such offer;

(h) to utilize the services, equipment, supplies, and facilities of existing departments, offices, and agencies of the District to the maximum extent practicable, and the officers and personnel of all such departments, offices, and agencies are directed to cooperate with and extend such services and supply such equipment, supplies, and facilities to the said Director upon request;

(i) to perform such other functions as may be assigned by the Commissioners of the District of Columbia. (Aug. 11, 1950, 64 Stat. 439, ch. 686, § 3; Apr. 5, 1952, 66 Stat. 44, ch. 159, § 1.)

CODIFICATION

In subsec. (e) the reference "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

AMENDMENT

1952—Act Apr. 5, 1952, amended subsection (e) by striking out "Federal Bureau of Investigation" in two places, and inserting in lieu thereof the words "Civil Service Commission" and by adding the second proviso to the said subsection.

TRANSFER OF INVESTIGATIVE FUNCTIONS

Act Apr. 5, 1952, section 2, provides:

"The transfer of investigative functions hereinbefore provided for shall be effectuated during the period commencing with April 5, 1952, and terminating one hundred and eighty days thereafter, it being the intent of the Congress that the said transfer be effectuated as expeditiously within that period of time as the Civil Service Commission shall consider the facilities of that Commission adequate to undertake all or any part of the functions herein transferred: *Provided, however,* That investigations pending with the Federal Bureau of Investigation at the expiration of the one hundred and eighty days shall be completed in due course by that Bureau and reports thereof furnished to the Civil Service Commission for its information and appropriate action."

§ 6–1204. Limitation of liability.

Neither the District of Columbia nor any volunteer agency in the service of said District nor, except in cases of willful misconduct or gross negligence, any officer, agent, or employee of the District of Columbia or volunteer agency, or any regularly appointed volunteer worker, engaged in civil defense activities, while complying with or attempting to comply with any provision of this chapter or of any rule, regulation, or order issued pursuant to this chapter, shall be liable to any person, whether or not such person is engaged in civil defense, for death, injury, or property damage resulting therefrom. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under any workmen's compensation law, or under any pension, retirement, or disibility law, nor the right of any such person to receive any benefits or compensation under any other Act of Congress. (Aug. 11, 1950, 64 Stat. 440, ch. 686, § 4.)

§ 6–1205. Appropriations authorized.

Appropriations for carrying out the purposes of this chapter are hereby authorized. (Aug. 11, 1950, 64 Stat. 440, ch. 686, § 5.)

§ 6–1206. Yearly report of activities and expenditures.

The Office of Civil Defense, through the Commissioners of the District of Columbia, shall submit to the Senate and House of Representatives on the first day of each regular session of the Congress a report of its activities and expenditures under this chapter. (Aug. 11, 1950, 64 Stat. 440, ch. 686, § 6.)

§ 6–1207. Interstate civil defense compacts.

(a) The Commissioners of the District of Columbia are authorized to enter into and execute on behalf of the District of Columbia interstate civil-defense compacts with the States, substantially in the form set forth in the note following this section. The form of compact set forth in the note following this section may include, in lieu of the second sentence of article 3 thereof, the following: "Each party State shall extend to the civil-defense forces of any other party State, while operating within its State limits under the terms and conditions of this compact, the

same powers (except that of arrest unless specifically authorized by the receiving State), duties, rights, privileges, and immunities as are extended to the civil-defense forces of such State."

(b) Notwithstanding the provisions of the Federal Civil Defense Act of 1950, the consent of Congress is hereby granted to each compact entered into by the District of Columbia with any State pursuant to the provisions of this section.

(c) Whenever any such compact becomes operative by ratification of the parties thereto, such compact shall have the force and effect of law.

(d) As used in this section the word "State" includes the Territories and possessions of the United States and the District of Columbia and with respect to the District of Columbia the word "Governor" means the Commissioners of the District of Columbia. (Apr. 22, 1954, 68 Stat. 62, ch. 172, §§ 1—4.)

REFERENCES IN TEXT

Federal Civil Defense Act of 1950, referred to in the text, is classified to 50 U.S.C. App., § 2251 et seq.

FORM OF INTERSTATE COMPACT

Act of April 22, 1954, contained the following preamble:

"INTERSTATE CIVIL DEFENSE AND DISASTER COMPACT

"The contracting States solemnly agree:

"Article 1. The purpose of this compact is to provide mutual aid among the States in meeting any emergency or disaster from enemy attack or other cause (natural or otherwise) including sabotage and subversive acts and direct attacks by bombs, shellfire, and atomic, radiological, chemical, bacteriological means, and other weapons. The prompt, full, and effective utilization of the resources of the respective States, including such resources as may be available from the United States Government or any other source, are essential to the safety, care, and welfare of the people thereof in the event of enemy action or other emergency, and any other resources, including personnel, equipment, or supplies, shall be incorporated into a plan or plans of mutual aid to be developed among the civil-defense agencies or similar bodies of the States that are parties hereto. The Directors of Civil Defense of all party States shall constitute a committee to formulate plans and take all necessary steps for the implementation of this compact.

"Article 2. It shall be the duty of each party State to formulate civil-defense plans and programs for application within such State. There shall be frequent consultation between the representatives of the States and with the United States Government and the free exchange of information and plans, including inventories of any material and equipment available for civil defense. In carrying out such civil-defense plans and programs the party States shall so far as possible provide and follow uniform standards, practices, and rules and regulations including—

"(a) Insignia, arm bands, and any other distinctive articles to designate and distinguish the different civil-defense services;

"(b) Blackouts and practice blackouts, air-raid drills, mobilization of civil-defense forces, and other tests and exercises;

"(c) Warnings and signals for drills or attacks and the mechanical devices to be used in connection therewith;

"(d) The effective screening or extinguishing of all lights and lighting devices and appliances;

"(e) Shutting off water mains, gas mains, electric power connections, and the suspension of all other utility services;

"(f) All materials or equipment used or to be used for civil-defense purposes in order to assure that such materials and equipment will be easily and freely interchangeable when used in or by any other party State;

"(g) The conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic, prior, during, and subsequent to drills or attacks;

"(h) The safety of public meetings or gatherings; and

"(i) Mobile support units.

"Article 3. Any party State requested to render mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof: provided, that it is understood that the State rendering aid may withhold resources to the extent necessary to provide reasonable protection for such State. Each party State shall extend to the civil-defense forces of any other party State, while operating within its State limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving State), duties, rights, privileges, and immunities as if they were performing their duties in the State in which normally employed or rendering services. Civil-defense forces will continue under the command and control of their regular leaders but the organizational units will come under the operational control of the civil-defense authorities of the State receiving assistance.

"Article 4. Whenever any person holds a license, certificate, or other permit issued by any State evidencing the meeting of qualifications for professional, mechanical, or other skills, such person may render aid involving such skill in any party State to meet an emergency or disaster and such State shall give due recognition to such license, certificate, or other permit as if issued in the State in which aid is rendered.

"Article 5. No party State or its officers or employees rendering aid in another State pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith.

"Article 6. Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more States may differ from that appropriate among other States party hereto, this instrument contains elements of a broad base common to all States, and nothing herein contained shall preclude any State from entering into supplementary agreements with another State or States. Such supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons, and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation, and communications personnel, equipment, and supplies.

"Article 7. Each party State shall provide for the payment of compensation and death benefits to injured members of the civil-defense forces of that State and the representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such State.

"Article 8. Any party State rendering aid in another State pursuant to this compact shall be reimbursed by the party State receiving such aid for any loss or damage to, or expense incurred in the operation of, any equipment answering a request for aid and for the cost incurred in connection with such requests; provided, that any aiding party State may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party State without charge or cost; and provided further, that any two or more party States may enter into supplementary agreements establishing a different allocation of costs as among those States. The United States Government may relieve the party State receiving aid from any liability and reimburse the party State supplying civil-defense forces for the compensation paid to and the transportation, subsistence, and maintenance expenses of such forces during the time of the rendition of such aid or assistance outside the State and may also pay fair and reasonable compensation for the use or utilization of the supplies, materials, equipment, or facilities so utilized or consumed.

"Article 9. Plans for the orderly evacuation and reception of the civilian population as the result of an emergency or disaster shall be worked out from time to time between representatives of the party States and the various local civil-defense areas thereof. Such plans shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees,

the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party State receiving evacuees shall be reimbursed generally for the out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines, and medical care and like items. Such expenditures shall be reimbursed by the party State of which the evacuees are residents, or by the United States Government, under plans approved by it. After the termination of the emergency or disaster the party State of which the evacuees are resident shall assume the responsibility for the ultimate support or repatriation of such evacuees.

"Article 10. This compact shall be available to any State, territory, or possession of the United States, and the District of Columbia. The term 'State' may also include any neighboring foreign country or province or state thereof.

"Article 11. The committee established pursuant to Article 1 of this compact may request the Civil Defense Agency of the United States Government to act as an informational and coordinating body under this compact, and representatives of such agency of the United States Government may attend meetings of such committee.

"Article 12. This compact shall become operative immediately upon its ratification by any State as between it and any other State or States so ratifying and shall be subject to approval by Congress unless prior Congressional approval has been given. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party States and with the Civil Defense Agency and other appropriate agencies of the United States Government.

"Article 13. This compact shall continue in force and remain binding on each party State until the legislature or the Governor of such party State takes action to withdraw therefrom. Such action shall not be effective until 30 days after notice thereof has been sent by the Governor of the party State desiring to withdraw to the Governors of all other party States.

"Article 14. This compact shall be construed to effectuate the purposes stated in Article 1 hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected thereby."

Chapter 13.—CANCER AND MALIGNANT NEOPLASTIC DISEASES

Sec.

6–1301. Commissioners authorized to promulgate regulations requiring reports.
6–1302. Reports to be confidential—Exceptions.
6–1303. Persons not compelled to submit to medical examination or treatment.
6–1304. Penalties for violations.

§ 6–1301. Commissioners authorized to promulgate regulations requiring reports.

The Commissioners of the District of Columbia are authorized to promulgate regulations requiring that cancer, sarcoma, lymphoma (including Hodgkin's disease), leukemia, and all other malignant growths be reported to the director of public health of the District of Columbia. (July 27, 1951, 65 Stat. 124, ch. 241, § 1.)

§ 6–1302. Reports to be confidential—Exceptions.

The reports of cases made pursuant to the provisions of regulations promulgated under this chapter shall be confidential and not open to public inspection. The information in such reports shall not be divulged or made public so as to disclose the identity of any person to whom they may relate, except upon order of court, and unless already published shall be divulged or made public only on the written authorization of the director of public health. (July 27, 1951, 65 Stat. 124, ch. 241, § 2.)

§ 6–1303. Persons not compelled to submit to medical examination or treatment.

Nothing in this chapter, or regulations promulgated thereunder, shall be construed to compel any person suffering from any of the diseases listed in section 6–1301 to submit to medical examination or treatment. (July 27, 1951, 65 Stat. 124, ch. 241, § 3.)

§ 6–1304. Penalties for violations.

The said Commissioners are authorized to prescribe a reasonable penalty or fine, not to exceed $100, for the violation of any regulation promulgated under the authority of this chapter, and all prosecutions for violations of such regulations shall be in the criminal branch of the District of Columbia Court of General Sessions in the name of the District of Columbia upon information filed by the corporation counsel of the District of Columbia or any of his assistants. (July 27, 1951, 65 Stat. 124, ch. 241, § 4; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

TITLE 7.—HIGHWAYS, STREETS, BRIDGES

Chap. Sec.

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2. Land for Streets 7–201
3. Alleys and Minor Streets 7–301
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11. Barbed-wire Fences 7–1101
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Chapter 1.—HIGHWAY PLANS

Sec.

7–101. Commissioners to have control of streets—Power to make regulations for repairs.
7–102. Commissioners to have jurisdiction over public roads and bridges—Exceptions.
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7–122. New highway plans authorized.
7–123. Commissioners of the District of Columbia to close certain streets, roads, or highways in the District of Columbia rendered useless or unnecessary by the highway plan—Consent of owners.
7–124. Plat to be filed—Assessment.
7–125. Subdivision to conform to plan of Washington—Approval of Commissioners.
7–126. District of Columbia authorized to use certain land owned by United States for street purposes.
7–127. Relocation of Michigan Avenue—Relocation authorized.
7–128. Use of part of Soldiers' Home.
7–129. Portion of Michigan Avenue abandoned.
7–130. Surveyor to prepare plats showing relocation of Michigan Avenue—Recordation of plats to transfer title.
7–131. Right-of-way to Washington Railway and Electric Company.
7–132. District of Columbia highway construction program.
7–133. Loans for the District of Columbia highway construction program—Availability—Repayment—Interest—Budget estimates.
7–134. Use of land in squares 354 and 355 for Southwest Freeway and for redevelopment of Southwest area of District.

§ 7–101. Commissioners to have control of streets—Power to make regulations for repairs.

The commissioners of the District of Columbia shall have entire control of and make all regulations which they shall deem necessary for keeping in repair the streets, avenues, alleys, and sewers of the city, and all other works which may be intrusted to their charge by the Congress. (R. S., D. C., § 77; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 2.)

CODIFICATION

Act June 20, 1874, provided that the Commissioners were to exercise all the power and authority formerly vested in the governor or Board of Public Works of the District.

Act June 11, 1878, made new provisions respecting the appointment, qualifications, and duties of the Commissioners.

TRANSFER OF FUNCTIONS

Reorganization Order No. 28 of the Board of Commissioners dated Apr. 3, 1953, redesignated Organization Order No. 147 dated Aug. 19, 1965, established a Department of Sanitary Engineering headed by a Director. The new department is to perform sanitary engineering services and operations for the District including water distribution, sanitary, storm and combined sewer systems, sewage treatment, and collection and disposal of waste material. The Office of the Water Registrar and the previously existing Department of Sanitary Engineering were abolished and their functions transferred to the new Department of Sanitary Engineering. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The redesignated order and plan are set out in the Appendix to title 1, Administration.

Reorganization Order No. 53 established under the direction and control of the Engineer Commissioner, a Department of Highways, headed by a Director. The Department of Highways was established to perform highway services and operations for the District including the planning, design, engineering, operation, maintenance and repair of highway and bridge facilities. The order sets out the purposes and organization of the new department. The order abolished the previously existing Department of Highways, the Street Division, the Bridge Division, the Electrical Division, the Trees and Parking

Division and the Central Garage and Shops; and transferred all of their functions and positions to the new Department of Highways. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to title 1, Administration.

CROSS REFERENCES

Cleaning streets and repair and cleaning of sewers declared to be municipal objects, see § 1–235.

General limitation on power of Commissioners, see § 1–801.

Repair of streets sought to be abandoned, see § 7–114.

Rules and regulations in general, see § 1–226.

§ 7–102. Commissioners to have jurisdiction over public roads and bridges—Exceptions.

The Commissioners of the District of Columbia shall have the care and charge of, and the exclusive jurisdiction over, all the public roads and bridges, except such as belong to and are under the care of the United States, and except such as may be otherwise specially provided for by Congress. (R. S., D. C., § 247; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 2.)

CODIFICATION

Act June 20, 1874, provided that the Commissioners were to exercise all the power and authority formerly vested in the governor or Board of Public Works of the District.

Act June 11, 1878, made new provisions respecting the appointment, qualifications, and duties of the Commissioners.

TRANSFER OF FUNCTIONS

Department of Highways, headed by a Director, was established under the direction and control of the Engineer Commissioner by Reorganization Plan Number 5 of 1952. See note under section 7–101.

CROSS REFERENCES

Changing names of streets or highways, see §§ 7–106, 7–107, 7–112.

Closing alleys or streets in municipal center, see § 9–201.

Conduits and overhead wires, see §§ 7–1232, 43–1101 to 43–1108, 43–1301 to 43–1304, 43–1401 to 43–1417.

Construction and repair of streets, sidewalks, and sewers, see §§ 7–601 to 7–613, 7–615 to 7–634.

Construction, type of rails, and removal of street railway tracks, see §§ 44–206, 44–209, 44–211.

Criminal penalties for obstructing public highways, see §§ 22–3120 to 22–3122.

Designation of streets and sidewalks for business use; parking, see § 7–1205.

Duty to obtain street right-of-way through burial grounds, see § 1–615.

General limitation on power of Commissioners, see § 1–801.

Highway plans, see §§ 7–108 to 7–131.

Jurisdiction and control of Commissioners over bridges, see § 7–501 et seq.

Jurisdiction and control of streets, avenues, and sidewalks in public parks and playgrounds, see § 8–108 et seq.

Jurisdiction over Conduit Road transferred to Commissioners from Secretary of the Army, see § 7–1201.

Laying water mains and sewers, see § 43–1501 et seq.

Miscellaneous provisions concerning jurisdiction and control of Commissioners over public roadways, see § 7–1201 et seq.

No street to be opened, widened, or extended which will permanently diminish flow of Rock Creek, see § 8–151.

Permanent appropriation abolished, see § 47–109.

Permits to maintain barbed-wire fence, removal of illegal barbed-wire fences, see §§ 7–1102 to 7–1105.

Permit to widen roads or establish sidewalks adjacent to public parks and playgrounds, see § 8–127.

Power of Administrator of Alley Dwelling Act over streets and alleys, see § 5–104.

Power of Commissioners to close public highways under Street Readjustment Act, see §§ 7–401 to 7–410.

Power of Federal Government over certain streets, see §§ 7–1204, 7–1207 to 7–1210, 7–1217 to 7–1220.

Power to condemn land for streets, see §§ 7–201 to 7–221.

Power to establish and condemn land for alleys and minor streets; closing or abandoning alleys or minor streets, see §§ 7–301 to 7–331.

Public intoxication in street, alley or park, see § 25–128.

Regulations concerning gas mains for street lighting, see § 7–706.

Removal of ice and snow from sidewalks and streets, see §§ 7–801 to 7–806.

Traffic regulation for vehicular traffic, see §§ 40–601 to 40–617.

Transfer of certain lands from public park system to Commissioners for streets and alleys, see § 8–118.

NOTES TO DECISIONS

Care of sidewalk

Where a sidewalk belonged to the United States, and it was not sufficiently shown to the court as a matter of law on motion for summary judgment in a personal injury action against the United States and the District of Columbia, that the walk was not also under the care of the United States, the United States was not entitled to summary judgment on theory that District of Columbia had sole responsibility for the sidewalk. *Leary* v. *District of Columbia* (D.C.D.C. 1958, 166 F. Supp. 542).

Nature of powers

District of Columbia is a municipal corporation and is responsible for the negligence of its officers having the care of streets, avenues, and sidewalks, as resulted in personal injuries to individuals. *District of Columbia* v. *Woodbury* (1890, 10 S. Ct. 990, 136 U.S. 450, 34 L. Ed. 472).

Under this section, the powers of the Board of Public Works have been vested in the Commissioners of the District of Columbia. *Bauman* v. *Ross* (1897, 17 S. Ct. 966, 167 U. S. 548, 42 L. Ed. 270).

The Commissioners have the right to make reasonable regulations for the use of driveways across sidewalks, but the right to regulate is one thing, and prohibition is another. The right of access is a property right, though subject to regulation, which can not be taken away without just compensation. *Brownlow* v. *O'Donoghue* (1922, 276 F. 636, 51 App. D.C. 114, 22 A.L.R. 939).

§ 7–103. Abutment of Highway Bridge under control of Commissioners.

The abutment into which the second pier from the south end of Highway Bridge was converted, and the roadway built to replace the two south spans of said bridge, shall be maintained and controlled by the commissioners of the District of Columbia. (Apr. 3, 1930, 46 Stat. 139, ch. 102.)

CROSS REFERENCES

Other provisions concerning jurisdiction and control of Highway Bridge, see § 7–507.

Provisions concerning control and repair of bridges generally, see §§ 7–501, 7–502.

§ 7–104. Certain recorded public roads declared public highways.

All public roads within said District, outside the limits of Washington and Georgetown, which were duly laid out or declared and recorded as such on June 22, 1874, are public highways. (R. S., D. C., § 246.)

CROSS REFERENCES

Establishment of new roads in the subdivision of land, see § 1–614.

Georgetown, as a separate and distinct city, abolished and made part of the city of Washington, see § 1–107.

§ 7–105. Boundaries of public highways to be permanently marked.

The boundaries of every public highway shall be permanently marked and fixed by the erection of stones or posts at the different angles thereof. (R. S., D. C., § 249.)

§ 7–106. Commissioners may change names of streets when two streets have same name.

The Commissioners of the District of Columbia shall have the power and authority to change the name of any street, road, avenue, or other highway, whenever any two of such highways have the same name. (June 30, 1898, 30 Stat. 532, ch. 540.)

CROSS REFERENCES

Certain streets named or renamed by acts of Congress, see § 7–107,

Naming new streets, see § 7–112.

§ 7–107. Commissioners to name streets outside of city limits.

The Commissioners of the District of Columbia are authorized and directed to name or rename streets, avenues, alleys, highways, and reservations in that part of the District of Columbia lying outside of the city of Washington, under such system of naming as they shall see fit to adopt, and such names when recorded in the office of the surveyor of the District of Columbia shall thereafter be the official names of such streets, avenues, alleys, highways, and reservations. (Feb. 16, 1904, 33 Stat. 14, ch. 159.)

CROSS REFERENCE

Naming new streets, see § 7–112.

CHANGES IN STREET NAMES BY CONGRESS

ABBEY PLACE

The name of the street not yet cut through, but now on record as Third Place Northeast, be, and the same is hereby, changed to Abbey Place, and the surveyor of the District of Columbia is hereby directed to enter such change on the records of his office. (Feb. 21, 1925, 43 Stat. 960, ch. 285.)

AVENUE OF THE PRESIDENTS

Hereafter Sixteenth Street Northwest shall be known and designated as "Avenue of the Presidents." (Mar. 4, 1913, 37 Stat. 938, ch. 150.)

CATHEDRAL AVENUE

The name of the street now known as Jewett Street west of Wisconsin Avenue be, and the same is hereby, changed to Cathedral Avenue, and the surveyor of the District of Columbia is hereby directed to enter such change on the records of his office. (May 27, 1924, 43 Stat. 177, ch. 201.)

CHEVY CHASE PARKWAY

The name of the street now known as Thirty-seventh Street between Chevy Chase Circle and Reno Road be, and the same is hereby, changed to Chevy Chase Parkway, and the surveyor of the District of Columbia is hereby directed to enter such change on the records of his office. (May 3, 1924, 43 Stat. 115, ch. 148.)

COMMODORE BARNEY CIRCLE

From and after the passage of this act the circle located at the eastern end of Pennsylvania Avenue Southeast, in the District of Columbia, now known as public reservations numbered fifty-five and fifty-six, shall be officially known and designated "Commodore Barney Circle." (Aug. 19, 1911, 37 Stat. 29, ch. 34.)

FAIRLAWN AVENUE

The name of the street now known as Railroad Avenue, between Nichols Avenue and Massachusetts Avenue, part of which is not yet cut through, but now on record as Railroad Avenue Southeast, be, and the same is hereby, changed to Fairlawn Avenue, and the surveyor of the District of Columbia is hereby directed to enter such change on the records of his office. (May 29, 1928, 45 Stat. 997, ch. 905.)

FIFTEENTH STREET

McPherson Place Northwest, between I and K Streets, on the west side of McPherson Square, is hereby designated Fifteenth Street, and the surveyor of the District of Columbia is hereby directed to enter such change on the records of his office. (June 5, 1920, 41 Stat. 846, ch. 234.)

FLOYD B. OLSON MEMORIAL TRIANGLE

The triangle bounded by Connecticut Avenue, Q Street, and Twentieth Street in the District of Columbia is hereby designated the Floyd B. Olson Memorial Triangle in memory of the late Floyd B. Olson, former Governor of the State of Minnesota, and the surveyor of the District of Columbia is directed to enter such designation on the records of his office. (June 4, 1952, 66 Stat. 99, ch. 364, § 1.)

GREENWICH PARKWAY

The name of the street not yet cut through, between Forty-fourth Street and Foxhall Road, but now on record as Dent Place Northwest; be, and the same is hereby, changed to Greenwich Parkway, and the surveyor of the District of Columbia is hereby directed to enter such change on the records of his office. (July 3, 1926, 44 Stat. 809, ch. 736.)

LOGAN CIRCLE

The name of the circle known on December 11, 1930, as "Iowa Circle," in the city of Washington, is hereby changed to "Logan Circle" in recognition of the services rendered the United States by General John A. Logan during the Civil War and in civil life, and the surveyor of the District of Columbia is hereby directed to enter such change on the records of his office. (Dec. 11, 1930, 46 Stat. 1026, ch. 8.)

MAINE AVENUE

In honor of the State of Maine that part of Water Street Southwest, in the District of Columbia, lying between Fourteenth Street Southwest and P Street Southwest, is hereby renamed "Maine Avenue" and shall hereafter bear the name of "Maine Avenue." (June 11, 1938, 52 Stat. 641, ch. 339.)

MILITARY ROAD

The name of the street known as Keokuk Street Northwest, extending from Military Road at Twenty-seventh Street to Wisconsin Avenue, be, and the same shall henceforth be known as Military Road. And the Commissioners of the District of Columbia are hereby directed to cause the name of Military Road from Military Road at Twenty-seventh Street to Wisconsin Avenue Northwest to be placed upon the plats and maps of the District of Columbia. (June 7, 1924, 43 Stat. 593, ch. 304.)

MONTGOMERY BLAIR PORTAL

The portion of Sixteenth Street and the adjacent park reservation lying within the District of Columbia at the intersection of Sixteenth Street, North Portal Drive, Eastern Avenue, and the District line, shall be known as Montgomery Blair Portal, in commemoration of the public service of the late Montgomery Blair, Postmaster General in the Cabinet of President Lincoln. (April 14, 1932, 47 Stat. 81, ch. 101.)

MOZART PLACE

The street now known and designated as Messmore Place and extending from Euclid Street to Columbia Road shall hereafter be designated Mozart Place, and the surveyor of the District of Columbia is hereby directed to enter such change on the records of his office. (Mar. 4, 1911, 36 Stat. 1347, ch. 250.)

OREGON AND CONCORD AVENUES

The name of Oregon Avenue be restored to the street lying between New Hampshire Avenue and Eighteenth Street Northwest, in the District of Columbia, and said avenue shall be extended so as to include Cedar Place, and shall hereafter be known and designated as Oregon Avenue: *Provided,* That the name of the highway leading from North Capitol Street to Rock Creek Park, now known as Oregon Avenue, shall hereafter be known and designated as Concord Avenue. (February 15, 1912, 37 Stat. 65, ch. 39.)

OREGON AVENUE

In honor of the State of Oregon, Daniel Road Northwest, in the District of Columbia, is hereby renamed "Oregon Avenue" and shall hereafter bear the name of "Oregon Avenue." (June 11, 1938, 52 Stat. 641, ch. 340, § 1.)

PLAZA OF THE AMERICAS

The portion of the District of Columbia located between Constitution Avenue and C Street, Northwest, and between Nineteenth and Seventeenth Streets, Northwest, is hereby designated as "Plaza of the Americas". (May 13, 1960, 74 Stat. 128, Pub. L. 86–460, § 1.)

SWANN STREET

The street in the District of Columbia running through squares 132 and 152, known as "Oregon Avenue" prior to the enactment of this section is hereby renamed "Swann Street" and shall be a part of the street heretofore designated as "Swann Street." (June 11, 1938, 52 Stat. 641, ch. 340, § 2.)

WALBRIDGE PLACE

The part of Twentieth Street Northwest, in the District of Columbia, beginning at Park Road and extending north along the west side of square 2617 to the north end of said square, shall hereafter be designated Park Road; and the part of said Twentieth Street beginning at Park Road and extending south along square 2604 to Adams Mill Road shall hereafter be designated Walbridge Place. (Act of March 4, 1913, 37 Stat. 938, ch. 150.)

WILLIAMSBURG LANE

The name of that portion of the street in the District of Columbia now known as Twenty-fourth Street Northwest, which begins at Porter Street and extends one block in a northerly direction to Rock Creek Park, is hereby changed to Williamsburg Lane. (Apr. 22, 1940, 54 Stat. 156, ch. 134.)

§ 7–108. Permanent highway plan—Preparation by Commissioners—Width of highways.

The commissioners of the District of Columbia are hereby authorized and directed to prepare a plan for the extension of a permanent system of highways over all that portion of said District not included within the limits of the cities of Washington and Georgetown. Said system shall be made as nearly in conformity with the street plan of the city of Washington as the commissioners may deem advisable and practicable. The highways provided in such plans shall not in any case be less than ninety feet nor more than one hundred and sixty feet wide, except in cases of existing highways, which may be established of any width not less than their existing width and not more than one hundred and sixty feet in width. (Mar. 2, 1893, 27 Stat. 532, ch. 197, § 1.)

TRANSFER OF FUNCTIONS

Department of Highways, headed by a Director, was established under the direction and control of the Engineer Commissioner by Reorganization Plan Number 5 of 1952. See note under section 7–101.

CROSS REFERENCES

Appropriations made under this chapter may be used in closing public highways, see § 7–406.

Duties of Surveyor, see § 1–601 et seq.

Georgetown, as a separate and distinct city, abolished and made a part of the city of Washington, see § 1–107.

Major thoroughfare and mass transportation plans to be prepared by the National Capital Planning Commission, see § 1–1006.

New plan, see § 7–122.

NOTES TO DECISIONS

Duties of Commissioners

Under this act the Commissioners were required to prepare a plan for a permanent system of highways throughout the District, exclusive of the cities of Washington and Georgetown, and to cause to be prepared a map of the same showing the boundaries, and the dimensions of the streets, avenues, and roads, established by them with authority to name all streets, avenues, alleys, and reservations laid out or adopted under the provisions of the act. *Rudolph* v. *Warwick* (1926, 10 F. 2d 993, 56 App. D. C. 128).

Existing plans

In an act authorizing Commissioners of District to prepare new highway plans, they were not limited to previous plans subject to above section. *Wilkinson* v. *Dougherty* (1928, 24 F. 2d 1007, 58 App. D. C. 81, certiorari denied 49 S. Ct. 10, 278 U. S. 603, 73 L. Ed. 531).

§ 7–109. Permanent highway—Plans to be prepared in sections—Conformity to subdivisions—Plans to be submitted to National Capital Planning Commission—Recordation—Landowners to submit plat of proposed highways.

The said plans shall be prepared from time to time in sections, each of which shall cover such an area as the commissioners may deem advisable to include therein, and it shall be the duty of the commissioners in preparing such plan by sections, as far as may be practicable, to select first such areas as are covered by existing suburban subdivisions not in conformity with the general plan of the city of Washington. The commissioners in making such plans shall adopt and conform to any then existing subdivisions which shall have been made in compliance with the provisions of the Act of Congress approved August 27, 1888, entitled "An act to regulate the subdivision of land within the District of Columbia" (25 Stat. 451), or which shall, in the opinion of the commissioners, conform to the general plan of the city of Washington: *Provided, however,* That no place or street extending no farther than from one principal street to another, which has been opened under the direction of the commissioners, or in conformity with any subdivision approved by them prior to August 27, 1888, and recorded, and which was on March 2, 1893, paved with asphalt or other sheet pavement, shall be altered, affected, or interfered with by any plan adopted or anything done under or by virtue of sections 7–108 to 7–112. Whenever the plan of any such section shall have been adopted by the commissioners they shall cause a map of the same to be made showing the boundaries and dimensions of and number of square feet in the streets, avenues, and roads established by them therein; the boundaries and dimensions of and number of square feet in each, if any, of the then existing highways in the area covered by such map, and the boundaries and dimensions of and number of square feet in each lot of any then existing subdivision owned by private persons; and containing such explanations as shall be necessary to a complete understanding of such map. In making such maps the commissioners are further authorized to lay out at the intersections of the principal avenues and streets thereof circles or other reservations corresponding in number and dimensions with those existing on March 2, 1893, at such intersections in the city of Washington. A copy of such map, duly certified by the commissioners, shall be delivered to the National Capital Planning Commission, who shall make such alterations, if any, therein, as it shall deem advisable, keeping in view the intention and provisions of sections 7–108 to 7–112, and the necessity of harmonizing as far as possible the public convenience with economy of expenditure; and if such commission shall see fit, they may cause to be made a new map in place of the one submitted to them. When such commission, or a majority thereof, shall have come to a final deter-

mination in the matter, they shall approve in writing the map which they shall adopt, and shall deliver it to said commissioners of the District of Columbia, and the same shall at once be filed and recorded in the office of the surveyor of the District of Columbia, and after any such map shall have been so recorded no further subdivisicn of any land included therein shall be admitted to record in the office of the surveyor of said District, or in the office of the recorder of deeds thereof, unless the same be first approved by the commissioners and be in conformity to such map. Nor shall it be lawful when any such map shall have been so recorded for the commissioners of the District of Columbia, or any other officer or person representing the United States or the District of Columbia, to thereafter improve, repair, or assume any responsibility in regard to any abandoned highway within the area covered by such map, or to accept, improve, repair, or assume any responsibility in regard to any highway that any owner of land in such area shall thereafter attempt to lay out or establish, unless such landowner shall first have submitted to the commissioners a plat of such proposed highway and the commissioners shall have found the same to be in conformity to such map, and shall have approved such plat and caused it to be recorded in the office of said surveyor. (Mar. 2, 1893, 27 Stat. 532, ch. 197, § 2.)

TRANSFER OF FUNCTIONS

"National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in view of act June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission. See section 1–1009.

The National Capital Park and Planning Commission was established to perform the functions formerly performed by a commission composed of the Secretary of War, the Secretary of the Interior, and the Chief of Engineers of the U.S. Army, by act Apr. 30, 1926, 44 Stat. 374, ch. 198.

CROSS REFERENCE

Recording maps and plats, see § 1–606.

NOTES TO DECISIONS

Further subdivision

It was clearly within the authority of Congress to provide that after the recording of the map under this section, no further subdivision not in accordance with the map should be admitted of record, and such provision did not constitute the taking of land. *Bauman* v. *Ross* (1897, 17 S. Ct. 966, 167 U. S. 548, 42 L. Ed. 270.)

Property owner's rights

Provision in this section forbidding commissioners to improve, repair, or assume any responsibility in regard to highways not in conformity with map filed under this section did not affect the rights of owners of the land. *Bauman* v. *Ross* (1897, 17 S. Ct. 966, 167 U. S. 548, 42 L. Ed. 270).

§ 7–110. Adoption of subdivision by reference in will or deed.

When any such map shall have been recorded as aforesaid in the office of the surveyor of the District it shall be lawful for the owner of any land included within such map to adopt the subdivision thereby made by a reference thereto and to this section in any deed or will which he shall thereafter make, and when any deed or will containing any such reference shall have been made and recorded in the proper office it shall have the same effect as though the grantor or grantors in such deed or the maker of such will had made such subdivision and recorded the same in compliance with law. (Mar. 2, 1893, 27 Stat. 533, ch. 197, § 3.)

CROSS REFERENCE

Major thoroughfare and mass transportation plans to be prepared by the National Capital Planning Commission, see § 1–1006.

NOTES TO DECISIONS

Reference in deed or will

Provision of this section giving to any deed or will duly recorded, which referred to subdivision made by map filed under § 7–109, the same effect as if subdivision had been made and recorded by the testator or grantor, benefited rather than injured the land. *Bauman* v. *Ross* (1897, 17 S. Ct. 966, 167 U. S. 548, 42 L. Ed. 270).

§ 7–111. Entry upon property authorized for purposes of survey.

For the purpose of making surveys for such plans and maps the commissioners and their agents and employees necessarily engaged in making such surveys are authorized to enter upon any lands through or on which any projected highway or reservation may run or lie. (Mar. 2, 1893, 27 Stat. 534, ch. 197, § 4.)

CROSS REFERENCE

Major thoroughfare and mass transportation plans to be prepared by the National Capital Planning Commission, see § 1–1006.

§ 7–112. Commissioners authorized to name streets.

The Commissioners of the District of Columbia are authorized to name all streets, avenues, alleys, and reservations laid out or adopted under the provisions of sections 7–108 to 7–112. (Mar. 2, 1893, 27 Stat. 534, ch. 197, § 5.)

CROSS REFERENCES

Altering or renaming streets, see §§ 7–106, 7–107.

Major thoroughfare and mass transportation plans to be prepared by the National Capital Planning Commission, see § 1–1006.

§ 7–113. Abandonment or readjustment of streets to provide ground for educational, religious, or similar institutions.

In order to provide grounds for educational, religious, or similar institutions, the Commissioners of the District of Columbia be and they are hereby, authorized to abandon or readjust streets or proposed streets affecting localities that may be or that have been purchased for such purposes: *Provided*, That under the authority hereby conferred no changes shall be made in existing subdivisions or in avenues or in important lines of travel.

The plat of such readjustment, after being duly certified by said commissioners, shall be forwarded to the National Capital Planning Commission, and when approved by said commission or a majority thereof the change shall be recorded in the office of the surveyor of the District of Columbia and become a part of the permanent system of highways, and take the place of any part inconsistent therewith. (June 28, 1898, 30 Stat. 520, ch. 519, § 3.)

TRANSFER OF FUNCTIONS

Transfer of functions to the National Capital Planning Commission, see notes under section 7–109.

CROSS REFERENCES

Closing or abandoning alleys or minor streets, see §§ 7–302 to 7–312.

Closing streets, alleys, or highways, see §§ 7–401 to 7–410.

Exchange of certain lands belonging to Columbia Institution for the Deaf, see § 31–1021.

Provisions of Street Readjustment Act for the closing of public highways did not repeal similar provisions of this chapter, see § 7–409.

§ 7–114. Use of property by owner until condemnation.

The owner or owners of land over or upon which any highway or reservation shall be projected upon any map filed under sections 7–108 to 7–112 shall have the free right to the use and enjoyment of the same for building or any other lawful purpose, and the free right to transfer the title thereof, until proceedings looking to the condemnation of such land shall have been authorized and actually begun. And as to any highway or part of highway which by any such map is to be abandoned neither the right of those occupying or owning land abutting thereon or adjacent thereto, nor the right of the public to use such highway or part of highway, shall be affected by the filing of such map until condemnation proceedings looking to the ascertainment of the damages resulting from such proposed abandonment shall have been authorized and actually begun; nor shall the obligation of the municipal authorities to keep the same in repair be affected until they are rendered useless by the opening and improvement of new highways, to be evidenced by public notice by the commissioners of the District of Columbia. (June 28, 1898, 30 Stat. 520, ch. 519, § 5.)

§ 7–115. Public notice to owners of plan—Opportunity to be heard.

Said commissioners shall not submit for approval to the National Capital Planning Commission any map or plan thereunder until the owners of the land within the territory embraced within such map shall have been given an opportunity to be heard in regard thereto by said commissioners, after public notice to that effect for not less than fourteen consecutive days, excluding Sundays. (June 28, 1898, 30 Stat. 520, ch. 519, § 6.)

TRANSFER OF FUNCTIONS

Transfer of functions to the National Capital Planning Commission, see notes under section 7–109.

§ 7–116. Powers may be exercised through Beatty and Hawkins's addition to Georgetown.

All the powers given to the commissioners and others under sections 7–108 to 7–112 shall apply to and be capable of being exercised upon and through Beatty and Hawkins's addition to Georgetown, where it may be necessary to connect streets in parts of the District lying outside of cities, or to connect any street in the city with streets in the District of Columbia. (Apr. 12, 1904, 33 Stat. 587, Joint Res. No. 21.)

§ 7–117. Acceptance of dedicated streets—Building restrictions—Right-of-way for sewers and water-mains.

In order to facilitate the extension of streets and encourage the donation of land in accordance with the plans for the permanent system of highways, the Commissioners of the District of Columbia are authorized, whenever in their judgment it may seem proper, to accept the dedication of streets shown on said plans, and record same, under the following conditions, namely: Streets which are shown as ninety feet in width on said plans may be accepted with a width of not less than sixty feet: *Provided,* That the parties dedicating same agree to establish building restriction lines to agree with the street lines as shown on said plans; and streets shown on said plans as one hundred and twenty feet or more in width may be accepted with a width of not less than ninety feet: *Provided,* That the parties dedicating same agree to establish building restriction lines to agree with the street lines as shown on said plans: *And provided further,* That the space between the street lines, as established under the terms hereof, and the building restriction lines shall be considered as private property set aside and to be used for parking purposes: *But provided further,* That the parties so dedicating shall agree that said parking shall be subject to the regulations of said commissioners in regard to height of parking and the projection of buildings beyond the building line, and that the District of Columbia shall have a right of way through said parking for sewers and water-mains free of cost, and to lay thereon sidewalks, if, in the judgment of said commissioners, the space between street lines is not sufficient to admit the construction of such sidewalks within said lines. (May 31, 1900, 31 Stat. 248, ch. 599, § 2.)

CROSS REFERENCES

Building lines, see §§ 5–201 to 5–206.

Dedication of streets, see § 1–614.

Refusal to dedicate streets in conformity with highway plan, power of Commissioners to condemn, see §§ 7–216, 7–217.

NOTES TO DECISIONS

Eminent domain

Commissioners have no authority to widen street 60 feet in width to 120 feet since 15 foot space of the street though dedicated to certain purposes, does not constitute a part of the street for all purposes. *Dougherty* v. *Galliher*, (1928, 26 F. 2d 538, 58 App. D.C. 166).

It is not error to allow credit in assessment for benefit of land previously dedicated for street purposes, as well as value of land condemned. *Nealy* v. *Hazen* (1934, 71 F. 2d 692, 63 App. D.C. 239, certiorari denied 55 S. Ct. 119, 293 U.S. 602, 79 L. Ed. 694).

Widening of streets

Where a street is 60 feet wide with a mere building restriction on an additional 15 feet, the widening of the street by 45 feet is not authorized, since such widening will not make a 120-foot street. *Dougherty* v. *Galliher* (1928, 26 F. 2d 538, 58 App. D. C. 166).

§ 7–118. Streets abandoned under highway plan to revert to abutting owners.

Upon the abandonment of any street, avenue, road, or highway, or part thereof, under the provisions of sections 7–108 to 7–112, the title to the land contained in such abandoned portion shall revert to the owners of the land abutting thereon. (Feb. 16, 1904, 33 Stat. 14, ch. 159, § 2.)

CROSS REFERENCES

Closing alleys or minor streets, see §§ 7–302 to 7–312.

Closing public highways under Street Readjustment Act, see §§ 7–401 to 7–410.

Consent of property owners, see § 7–123.

Ownership or reversion of lands on abandonment of public ways, see §§ 7–123, 7–302 to 7–309, 7–401.

Provisions of Street Readjustment Act for the closing of public highways do not repeal similar provisions of this chapter, see § 7–409.

§ 7–119. Resubdivision of property affected by highway plan pending condemnation.

Where any proposed street of the permanent system of highways affects any lot or block of a subdivision recorded in the office of the surveyor of the District of Columbia, the commissioners of the District of Columbia may, in their discretion, allow the resubdivision of such lot or block in a manner conforming to the original subdivision until such time as condemnation proceedings are begun for the opening of the proposed street affecting the land to be subdivided. (Feb. 26, 1904, 33 Stat. 51, ch. 164.)

§ 7–120. Street, avenue, or public thoroughfare within 1,000 feet of Naval Observatory.

No street, avenue, or public thoroughfare in the neighborhood of the buildings erected upon the United States Naval Observatory grounds, Georgetown Heights, District of Columbia, shall extend within the area of a circle described with a radius of one thousand feet from the center of the building known as the clock room of the said observatory. (Aug. 1, 1894, 28 Stat. 588, Joint Res. No. 40, § 1.)

§ 7–121. Extension of Massachusetts Avenue.

Massachusetts Avenue, as laid down in conformity with section 7–120 upon the maps of the engineer department of the District of Columbia, through the grounds of the United States Naval Observatory is declared to be a public street in all respects as the other public streets of the District of Columbia. (Aug. 1, 1894, 28 Stat. 588, Joint Res. No. 40, § 2.)

§ 7–122. New highway plans authorized.

The commissioners of the District of Columbia are hereby authorized, whenever in their judgment the public interests require it, to prepare a new highway plan for any portion of the District of Columbia, and submit the same for approval, after public hearing, to the National Capital Planning Commission; such highway plans shall be prepared under sections 7–108 to 7–115, and upon approval and recording of any such new highway plan it shall take the place of and stand for any previous plan for the portion of the District of Columbia affected. (Mar. 4, 1913, 37 Stat. 949, ch. 150.)

Transfer of Functions

Transfer of functions to the National Capital Planning Commission, see notes under section 7–109.

Highway Plans

Highway plans for lands within the District of Columbia were authorized by the following acts:

Feb. 1, 1905, 33 Stat. 628, ch. 290.
June 30, 1906, 34 Stat. 800, ch. 3924.
Mar. 2, 1907, 34 Stat. 1130, ch. 2510.
Feb. 25, 1909, 35 Stat. 650, ch. 196.
Feb. 25, 1909, 35 Stat. 652, ch. 201.
Feb. 19, 1910, 36 Stat. 197, ch. 41.
Feb. 21, 1910, 36 Stat. 201, ch. 54.
Mar. 23, 1910, 36 Stat. 241, ch. 108.
Feb. 20, 1911, 36 Stat. 924, ch. 134.
Mar. 2, 1911, 36 Stat. 978, ch. 192.
Mar. 3, 1917, 39 Stat. 1014, ch. 160.

NOTES TO DECISIONS

Effect of prior acts

The Commissioners in establishing highways are not limited to plans prepared under act of March 2, 1893, and act of June 28, 1898. *Wilkinson* v. *Dougherty* (1928, 24 F. 2d 1007, 58 App. D. C. 81, certiorari denied 49 S. Ct. 10, 278 U. S. 603, 73 L. Ed. 531).

Notice of hearing

Assessment of benefits against property owners without notice of hearing held to deny due process of law. *Wilkinson* v. *Dougherty* (1928, 24 F. 2d 1007, 58 App. D. C. 81, certiorari denied 49 S. Ct. 10, 278 U.S. 603, 73 L. Ed. 531).

§ 7–123. Commissioners of the District of Columbia to close certain streets, roads, or highways in the District of Columbia rendered useless or unnecessary by the highway plan—Consent of owners.

The Commissioners of the District of Columbia be, and they are hereby, authorized to close Broad Branch Road between Jocelyn and Thirty-first Streets, Piney Branch Road between Spring Road and Blair Road, Pierce Mill Road between Tilden Street and Wisconsin Avenue, Belt Road between Wisconsin Avenue and Chevy Chase Circle, Colfax Street through square 712, Queen's Chapel Road between Bladensburg Road and Irving Street, Grant Road between Wisconsin Avenue and Connecticut Avenue, and such other streets, roads, or highways or parts of streets, roads, or highways, as may, in the judgment of the commissioners of the District of Columbia, become useless or unnecessary by reason of the opening, extension, widening, or straightening, in accordance with the highway plan of a street, road, or highway in the District of Columbia by dedication, purchase, or condemnation; the title to the part or parts of the streets, roads, or highways so closed to revert to the abutting property-owners: *Provided,* That the written consent of the owners of all the property abutting on the street, road, or highway or a part of street, road, or highway proposed to be closed be obtained. (Jan. 30, 1925, 43 Stat. 799, ch. 116, § 1.)

Cross References

Closing alleys or minor streets, see §§ 7–302 to 7–312.

Closing or altering streets under Alley Dwelling Act, see § 5–103.

Closing public highways under Street Readjustment Act, see §§ 7–401 to 7–410.

Closing streets for McKinley Technical High School and Langley Junior High School buildings, see § 31–1108.

Ownership or reversion of land on abandonment of public ways, see §§ 7–118, 7–302 to 7–309, 7–401.

Provisions of the Street Readjustment Act for the closing of public highways did not repeal similar provisions of this chapter, see § 7–409.

§ 7–124. Plat to be filed—Assessment.

Whenever a street, road, or highway, or any part of a street, road, or highway is sought to be closed in accordance with the provisions of section 7–123, a plat showing the street, road, or highway or part of the street, road, or highway to be closed by the said commissioners, as provided herein, shall be prepared by the surveyor of the District of Columbia and approved by the Commissioners of the District of Columbia and ordered by the said commissioners to be recorded in the office of the surveyor of the District of Columbia, and the area to be apportioned to each property owner abutting on the street, road, or highway or part of street, road, or

highway closed by the said commissioners, as provided herein, shall be determined by the said commissioners and shall be shown by plats and computations prepared by the surveyor of the District of Columbia, and said apportioned areas shall be assessed on the books of the assessor of the District of Columbia the same in all respects as other private property in the District of Columbia. (Jan. 30, 1925, 43 Stat. 800, ch. 116, § 2.)

§ 7–125. Subdivision to conform to plan of Washington—Approval of Commissioners.

No subdivision of land in the District of Columbia without the limits of the city of Washington shall be recorded in the office of the surveyor or in the office of the recorder of deeds unless the same shall have been first approved by the Commissioners of the District of Columbia and be in conformity with the recorded plans for a permanent system of highways. (Mar. 3, 1901, 31 Stat. 1428, ch. 854, § 1604.)

CROSS REFERENCES

General provision for approval of subdivisions by Commissioners, see § 1–613.

Refusal to dedicate streets in conformity with highway plan, power of Commissioners to condemn, see §§ 7–216, 7–217.

§ 7–126. District of Columbia authorized to use certain land owned by United States for street purposes.

The Commissioners of the District of Columbia are authorized to use for street purposes one thousand six hundred and fifty-one square feet of a tract of land known as parcel 17/93, seven hundred and eight square feet of a tract of land known as parcel 18/52, and three hundred and eighty square feet of a tract of land known as parcel 18/23, all for the widening of Reservoir Road, and to use for street purposes twenty-three thousand seven hundred and seventy-nine and sixty-three one-hundredths square feet of a tract of land known as parcel 28/12 for the widening of Reservoir Road and Forty-fourth Street; and to use for street purposes a strip of land sixty feet wide containing two hundred and fifty-eight thousand seven hundred and fifty square feet, more or less, lying immediately northeasterly of the southwesterly boundary of a tract of land known as parcel 173/23 for the widening of South Dakota Avenue; and to use for street purposes nine thousand square feet, more or less, of a tract of land known as parcel 243/15 for the extension of Trenton Street and for the widening of Fourth Street Southeast; and to use for street purposes one thousand five hundred and twenty-one and twenty-eight one-hundredths square feet of lot 802, square 1932, and three thousand six hundred and sixty-nine and eighty-eight one-hundredths square feet of lot 837, square 1300, for the widening of Wisconsin Avenue, all as shown on maps designated as Street Extension Maps 1150 and 1154, and Surveyor's Office Maps 1314 and 1373, on file in the office of the surveyor of the District of Columbia, all the above-described property herein authorized to be used for street purposes being owned by the United States of America. (Feb. 27, 1929, 45 Stat. 1341, ch. 353.)

§ 7–127. Relocation of Michigan Avenue—Relocation authorized.

In order to relocate the line of Michigan Avenue from Franklin Street as laid down on the plan of the permanent system of highways for the District of Columbia to Lincoln Road, bordering the southeast corner of the grounds of the United States Soldiers' Home, and to straighten and shorten the route of said avenue, the Commissioners of the District of Columbia are authorized to close, vacate, and abandon the portion of Michigan Avenue known and designated as Parcel E on map filed in the office of the surveyor of the District of Columbia and numbered as map 1429, containing fifty-four thousand three hundred and eighty square feet, said part so closed, vacated, and abandoned to be transferred by said Commissioners of the District of Columbia to the United States as part of the grounds of the United States Military Asylum, known as the United States Soldiers' Home. (Mar. 4, 1929, 45 Stat. 1543, ch. 682, § 1.)

EXTENSION AND WIDENING OF MICHIGAN AVENUE

Act April 22, 1932, 47 Stat. 135, ch. 133, provided that:

SECTION 1. "In order to extend and widen Michigan Avenue between First Street and Park Place Northwest, and to improve traffic conditions, the Commissioners of the District of Columbia be, and they are hereby, authorized to use for street purposes all of the land lying within the McMillan Park and the United States Soldiers' Home grounds which is comprised within the parcels designated A and B as shown on map filed in the office of the surveyor of the District of Columbia and numbered as map 1650, together with any and all additional land that may be necessary for slopes in the proper construction of roadway and sidewalks.

"SEC. 2. The Chief of Engineers, United States Army, is hereby authorized and directed to transfer to the Commissioners of the District of Columbia for street purposes all of the land comprised within the parcels designated A, as shown on map filed in the office of the surveyor of the District of Columbia and numbered as map 1650; and the Board of Commissioners of the United States Soldiers' Home is hereby authorized and directed to transfer to said Commissioners of the District of Columbia for street purposes all of the land comprised within the parcels designated B, as shown on said map filed in the office of the surveyor of the District of Columbia and numbered as map 1650.

"SEC. 3. That the Board of Commissioners of the United States Soldiers' Home shall transfer to the Chief of Engineers, United States Army, all of the land comprised within the parcels designated C, as shown on map filed in the office of the surveyor of the District of Columbia and numbered as map 1650, to be used as part of the McMillan Park; and the Chief of Engineers, United States Army, shall transfer to the Board of Commissioners of the United States Soldiers' Home all of the land comprised within the parcels designated D, as shown on said map filed in the office of surveyor of the District of Columbia and numbered as map 1650, to be used as part of the United States Soldiers' Home grounds.

"SEC. 4. That the surveyor of the District of Columbia is hereby authorized to prepare the necessary plat or plats showing all parcels of land to be transferred in accordance with the provisions of this Act, with a certificate affixed thereon to be signed by the parties in interest making the necessary transfers; which plat and certificate, after being signed by the various interested officials and approved by the Commissioners of the District of Columbia, shall be recorded upon order of said Commissioners in the office of the surveyor of the District of Columbia; and said plat or plats, when duly recorded in said office of the surveyor of the District of Columbia, shall constitute a legal transfer for the purposes designated according to the provisions of this Act.

"SEC. 5. The District of Columbia shall perform the necessary work and shall pay any and all expenses for removing and replacing water mains, removing, reconstructing, and repainting the boundary fence of the United States Soldiers' Home and bringing the surface of the areas reconstructed to proper grade with loose earth suitable for growing vegetation and otherwise replacing the property of the United States Soldiers' home in the same condition as it was before construction was undertaken; any trees required to be cut along the proposed route and on the areas authorized to be transferred by the United States Soldiers' Home to remain the property of the United States Soldiers' Home and to be cut into such lengths as may be suitable for cord wood or lumber, and to be split and stacked by said District of Columbia as directed by the governor of said home."

§ 7–128. Use of part of Soldiers' Home.

The Commissioners of the District of Columbia are authorized to use for street purposes all that part of the United States Soldiers' Home grounds designated as Parcel A, containing fifty-seven thousand six hundred and thirteen square feet, and Parcel B containing eleven thousand eight hundred and seventy square feet, as shown on map filed in the office of the surveyor of the District of Columbia and numbered as map 1429; and the proper authorities having title, control, or jurisdiction are authorized to make the necessary transfer of said parcels of land to the District of Columbia for street purposes. (Mar. 4, 1929, 45 Stat. 1543, ch. 682, § 2.)

§ 7–129. Portion of Michigan Avenue abandoned.

The Commissioners of the District of Columbia are authorized to close, vacate, and abandon the portion of Michigan Avenue known and designated as Parcel D, containing sixty-nine thousand three hundred and thirty-six square feet, and Parcel H, containing seven thousand two hundred and seventy-nine square feet, as shown on map filed in the office of the surveyor of the District of Columbia and numbered as map 1429, title to said parcels so closed, vacated, and abandoned to revert in fee simple to the owner or owners of the parcel numbered on the assessment records of the District of Columbia as parcel 120/1, said closing of said street and the transfer of title thereto to be upon the condition and with the express stipulation that the owner or owners of said parcel 120/1 shall dedicate to the District of Columbia for street purposes all of the parcel known and designated as Parcel F, containing forty-three thousand one hundred and sixty-one square feet, as shown on map filed in the office of the surveyor of the District of Columbia and numbered as map 1429 and shall further, in consideration of the increase in area of the property of said owner or owners of said parcel 120/1 by reason of the transfers as provided herein, dedicate to the District of Columbia about thirty-six thousand square feet of land, the location of which shall be mutually agreed upon by the Commissioners of the District of Columbia and the owner or owners of parcel 120/1, and that said owner or owners of said parcel 120/1 shall transfer to the United States as part of the grounds of the United States Military Asylum, known as the United States Soldiers' Home, all of the parcel known and designated as Parcel G, containing one thousand five hundred and forty-three square feet, as shown on said map numbered 1429 in the office of the surveyor of the District of Columbia: *Provided, however,* That the Board of Commissioners of the United States Soldiers' Home, or the proper authorities having title, control, or jurisdiction, shall transfer to the owner or owners of the parcel designated on the assessment and taxation records of the District of Columbia as parcel 120/1 all the land comprised within the parcel known and designated as Parcel C containing four thousand five hundred and seventeen square feet, as shown on map filed in the office of the surveyor of the District of Columbia and numbered as map 1429. (Mar. 4, 1929, 45 Stat. 1543, ch. 682, § 3.)

§ 7–130. Surveyor to prepare plats showing relocation of Michigan Avenue—Recordation of plats to transfer title.

The surveyor of the District of Columbia is hereby authorized to prepare the necessary plat or plats showing all parcels of land to be transferred in accordance with the provisions of sections 7–127 to 7–131, with a certificate affixed thereon to be signed by the parties in interest making the necessary transfers; which plat and certificate, after being signed by the various interested parties and approved by the Commissioners of the District of Columbia, shall be recorded upon order of said commissioners in the office of the surveyor of the District of Columbia; and said plat or plats, when duly recorded in said office of the surveyor of the District of Columbia, shall constitute a legal transfer of title of the various parcels to the parties in interest according to the provisions contained in sections 7–127 to 7–131. (Mar. 4, 1929, 45 Stat. 1544, ch. 682, § 4.)

CROSS REFERENCES

Duties of surveyor, see § 1–616.
Recording maps and plats, see § 1–606.

§ 7–131. Right-of-way to Washington Railway and Electric Company.

The commissioners of the District of Columbia are hereby authorized, upon the straightening and shortening of Michigan Avenue as provided by sections 7–127 to 7–131, to do any and all acts which may be necessary to give the Washington Railway and Electric Company such easement or right of way over said Michigan Avenue as is necessary for the proper operation of the railway lines and cars of said company over said avenue as straightened and shortened by the provisions of said sections. (Mar. 4, 1929, 45 Stat. 1545, ch. 682, § 7.)

CONSOLIDATION OF TRANSIT COMPANIES

The Washington Railway and Electric Company and the Capital Traction Company were consolidated under the name of Capital Transit Company by act Jan. 14, 1933, 47 Stat. 752, ch. 10, § 1.

§ 7–132. District of Columbia highway construction program.

A program of construction projects to meet immediate capital needs for highways in the District is hereby authorized. (May 18, 1954, 68 Stat. 110, ch. 218, title IV, § 401.)

CROSS REFERENCE

Commissioners' authority to make regulations, see § 43–1618 and note thereunder.

§ 7–133. Loans for the District of Columbia highway construction program—Availability—Repayment—Interest—Budget estimates.

(a) To assist in financing such program of construction, the Commissioners are hereby authorized to accept loans for the District from the United States Treasury and the Secretary of the Treasury is hereby authorized to lend to the Commissioners such sums as may hereafter be appropriated: *Provided,* That the total principal amount of loans advanced pursuant to this section shall not exceed $85,250,000: *Provided, further,* That any loan for use in any fiscal year must first be specifically requested of the Congress in connection with the budget submitted for the District for such fiscal year, with a full statement of the work contemplated to be done and the need thereof, and such work must be approved by the Congress: *And provided further,* That such approval shall not be construed to alter or to eliminate the procedures for consultation, advice, and recommendation provided in sections 1–1001 to 1–1013. Such loans shall be in addition to any other loans heretofore or hereafter made to the Commissioners for any other purpose, and when advanced shall be deposited in full in the Treasury of the United States to the credit of the Highway Fund.

(b) The loans authorized under this section, or any parts thereof, shall be advanced to the Commissioners on their requisitions therefor, shall be available to the Commissioners for carrying out the said construction program, and shall be available until expended.

(c) Any loan advanced pursuant to this section shall be repaid to the Secretary of the Treasury in substantially equal annual payments, including principal and interest, within a period of thirty years beginning on July 1 of the second fiscal year following the date on which each such advance is credited to the Highway Fund: *Provided,* That the Commissioners may, in their discretion, make repayments in larger amounts at any time during the life of any such loan. Interest on such loans shall begin to accrue as of the dates the respective advancements are credited to the Highway Fund.

(d) Loans advanced pursuant to this section during any six-month period (beginning with the six-month period ending December 31, 1954) shall be at a rate of interest determined by the Secretary of the Treasury as of the beginning of such period, which, in his judgment, would reflect the cost of money to the Treasury for borrowings at a maturity approximately equal to one-half of the period of time the loan is outstanding.

(e) Moneys for the payments to the United States Treasury herein required shall be included in the budget estimates of the Commissioners and shall be payable from the Highway Fund. (May 18, 1954, 68 Stat. 110, ch. 218, title IV, § 402; Sept. 30, 1966, 80 Stat. 858, Pub. L. 89–610, title X, § 1001).

CROSS REFERENCE

Commissioners' authority to make regulations, see § 43–1618 and note thereunder.

AMENDMENT

1966—Subsec. (a) amended by act Sept. 30, 1966, which increased ceiling on District's authority under this section from $50,250,000 to $85,250,000.

CONSTRUCTION; SEVERABILITY OF PROVISIONS; RULES AND REGULATIONS

For construction of act Sept. 30, 1966, Pub. L. 89–610, amending this section, severability of provisions with respect thereto, and authority to make rules and regulations to carry out provisions thereof, see §§ 1003—1005 of such act, set out in a note under § 25–124.

§ 7–134. Use of land in squares 354 and 355 for Southwest Freeway and for redevelopment of Southwest area of District.

The Commissioners of the District of Columbia are hereby authorized to use the land in squares 354 and 355 in the District of Columbia, and the water frontage on the Washington Channel of the Potomac River lying south of Maine Avenue between Eleventh and Twelfth Streets, including the buildings and wharves thereon, for the proposed Southwest Freeway and Washington Channel approaches thereto, and for the redevelopment of the Southwest area of the District of Columbia pursuant to authority contained in sections 5–701 to 5–719. (Aug. 28, 1958, 72 Stat. 983, Pub. L. 85–821.)

Chapter 2.—LAND FOR STREETS

Sec.

7–201. Commissioners may open, extend, or widen streets, avenues, roads, or highways according to permanent system of highways—Damages and costs assessed as benefits—Damages and costs paid from revenues of District—Repaid from assessments.
7–202. Condemnation of land for streets.
7–203. Contents of condemnation petition.
7–204. Public notice—Service of process on owner and occupant—Appointment of guardian ad litem for person under disability.
7–205. Jury—Drawing—Oath.
7–206. Objection to jurors—Hearings—Verdict.
7–207. Condemnation of part of plot.
7–208. Assessment of benefits and damages—Excess damages and costs paid by District.
7–209. Objections—Exceptions—When filed—Court may vacate verdict and grant new trial—Vacated in part.
7–210. Confirmation of verdict—Payment of award.
7–211. Assessments made liens—How paid—Set-off of damages and benefits.
7–212. Power to amend proceedings.
7–213. Repealed.
7–213a. Compensation of jurors in eminent domain cases.
7–214. Right to appeal—Parties not appealing.
7–215. Deposit of award in registry—Transfer of title.
7–216. Condemnation for streets through unsubdivided part of plot.
7–217. Procedure—Appropriation to pay damages.
7–218. Cost of street extension assessed as benefits—Assessments for parkways.
7–219. If damages and costs exceed benefits, Commissioners may dismiss cause.
7–220. Appropriation for costs and damages authorized—Benefits covered into treasury.
7–221. Benefits assessed against land no part of which was taken—Notice of assessment, how given.

§ 7–201. Commissioners may open, extend, or widen streets, avenue, roads, or highways according to permanent system of highways—Damages and costs assessed as benefits—Damages and costs paid from revenues of District—Repaid from assessments.

The Commissioners of the District of Columbia are hereby authorized to open, extend, or widen any street, avenue, road, or highway to conform with the plan of the permanent system of highways in that portion of the District of Columbia outside of the cities of Washington and Georgetown, adopted under

sections 7–108 to 7–115, by condemnation under the provisions of sections 7–202 to 7–212, 7–214 and 7–215: *Provided,* That the entire amount found to be due and awarded by the jury under such proceedings as damages for and in respect of the land condemned, plus the cost and expenses of said proceedings, shall be assessed by the jury as benefits: *And provided further,* That the costs and expenses of the condemnation proceedings taken under the provisions hereof, and the amounts awarded as damages for and in respect of the land condemned, shall be paid entirely from the revenues of the District of Columbia, and shall be repaid to said District of Columbia from the assessments for benefits and covered into the treasury of the United States to the credit of the revenues of the District of Columbia. (Mar. 4, 1913, 37 Stat. 950, ch. 150.)

CROSS REFERENCES

Application of this chapter to proceedings to close public highways under Street Readjustment Act, see § 7–405.

Assessment of benefits against lands not condemned, see § 7–221.

Benefits may exceed damages in certain cases; payment of excess; dismissal of proceedings, see § 7–219.

Condemnation of materials for making or repairing public roads, see § 7–332.

Condemnation proceedings in general, see § 16–1301 et seq.

Georgetown, as a separate and distinct city, abolished and made part of the city of Washington, see § 1–107.

NOTES TO DECISIONS

Extension or widening of street

Commissioners were authorized to institute a proceeding for the extension of street at an angle. *Briggs* v. *Brownlow* (1920, 265 F. 985, 49 App. D. C. 345).

When widening of street benefits properties, the owners of same are not as matter of right entitled to challenge the regularity of the proceedings unless it clearly appears that such owners were in fact prejudiced or defrauded. *Nealy* v. *Hazen* (1934, 71 F. 2d 692, 63 App. D. C. 239, certiorari denied 55 S. Ct. 119, 293 U. S. 602, 79 L. Ed. 694).

Question for consideration is whether or not, by the widening of the street, the properties of the respective appellants were benefited to the amount assessed against them; hence they are not in position to challenge the regularity or irregularity of the condemnation proceedings, unless it clearly appears that it operated to their prejudice, or fraud was practiced in making the awards. *Id.*

§ 7–202. Condemnation of land for streets.

Whenever land is needed for the opening, extension, widening, or straightening of any street, avenue, road, or highway in the District of Columbia, authorized by Congress, the Commissioners of the District of Columbia may institute, in the United States District Court for the District of Columbia, by petition, a proceeding in rem for the condemnation of the land needed. (Mar. 3, 1901, ch. 854, § 491a, as added Apr. 30, 1906, 34 Stat. 151, ch. 2070, and amended June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

NOTES TO DECISIONS

Proceedings for extension or widening

Proceedings for extension and widening of street held not to comply with statutory requirements. *Newman* v. *Lynchburg Inv. Corp.* (1915, 35 S. Ct. 477, 236 U.S. 692, 59 L. Ed. 792).

Reassessment of benefits

Reassessment of benefits from extension of street affirmed. *Columbia Heights Realty Co.* v. *Rudolph* (1910, 30 S. Ct. 581, 217 U.S. 547, 54 L. Ed. 877, 19 Ann Cas 854).

Review

Supreme Court denied writ of error in case arising under this section. Statute of District of Columbia is not a law of the United States within the meaning of § 250 of the Judicial Code. *American Security & Trust Co.* v. *Commissioners of District of Columbia* (1915, 32 S. Ct. 553, 224 U.S. 491, 56 L. Ed. 856).

§ 7–203. Contents of condemnation petition.

Such petition shall contain a particular description of the land to be condemned and the names of the owners of the fee of said land and their residences, so far as the same may be ascertained, together with a plan of the land to be taken. (Mar. 3, 1901, ch. 854, § 491b, as added Apr. 30, 1906, 34 Stat. 151, ch. 2070.)

§ 7–204. Public notice—Service of process on owner and occupant—Appointment of guardian ad litem for person under disability.

The said court shall cause public notice of not less than twenty days to be given of the institution of such proceeding, by advertisement in three daily newspapers published in the District of Columbia, which notice shall warn and require all persons having any interest in the proceeding to appear in court at a day to be named in said notice and to continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits by the jury herein provided for; and in addition to such public notice said court shall cause a copy of said notice to be served by the United States marshal for the District of Columbia, or his deputies, upon such owners of the land to be condemned as can be found by said marshal, or his deputies, within the District of Columbia and upon the tenants and occupants of the same. The said court shall appoint a guardian ad litem for any person interested in the proceedings who may be under disability. (Mar. 3, 1901, ch. 854, § 491c, as added Apr. 30, 1906, 34 Stat. 151, h. 2070, and amended Feb. 28, 1916, 39 Stat. 21, ch. 37.)

AMENDMENT

1916—Act Feb. 28, 1916, reenacted section without change.

CROSS REFERENCE

Assessment of benefit against lands not condemned, see § 7–221.

NOTES TO DECISIONS

In general

"It is clear that the statute requires both general notice by publication and personal service of the notice by the marshal upon such owners of land to be condemned as can be found within the District of Columbia." *Edwards* v. *Brownlow* (1921, 271 F. 797, 50 App. D.C. 331). See, also, *National Savings & Trust Co.* v. *Reichelderfer* (1935, 57 F. 2d 404, 61 App. D.C. 38).

Appearance by counsel

In condemnation proceedings, the provision of the statute as to notice by publication does not apply to one who has actual notice and appeared, represented by counsel.

Cafritz v. *Hazen* (1936, 85 F. 2d 260, 66 App. D. C. 94). See, also, *Mitchell* v. *Reichelderfer* (1932, 57 F. 2d 416, 61 App. D. C. 50).

Computation of time

The statute means that notice shall be given not less than 20 days before the time set, and does not mean on 20 distinct days before that time. *Newman* v. *Lynchburg* (1915, 35 S. Ct. 477, 236 U. S. 692, 59 L. Ed. 792).

Construction

Statutes authorizing the taking of property for public use must be strictly construed. *Fay* v. *Macfarland* (1908, 32 App. D.C. 295). See, also, *Edwards* v. *Brownlow* (1921, 271 F. 797, 50 App. D.C. 331).

Due process

It must be affirmatively shown that all provisions of the statutes that apply to the condemnation of lands have been substantially complied with, otherwise the whole proceeding would be void and without effect. *Brown* v. *Macfarland* (1902, 19 App. D.C. 525).

Every step to be taken by public officials in condemning private property must be literally followed. *Lynchburg Inv. Corp.* v. *Rudolph* (1913, 40 App. D.C. 129).

The failure to give appellant notice in fact amounts to a taking of property without due process of law. *Wilkinson* v. *Dougherty* (1928, 24 F. 2d 1007, 58 App. D. C. 81, certiorari denied 49 S. Ct. 10, 278 U. S. 603, 73 L. Ed. 531).

Notice jurisdictional

Entry of the judgment as to appellant's property, being without notice of any kind or opportunity on his part to object, was a nullity, and the requirement of the statute as to notice being mandatory, a failure to comply is jurisdictional. *Smith* v. *Gotwals* (1933, 62 F. 2d 466, 61 App. D. C. 304).

Participation in proceeding

Where owners of land involved in condemnation proceeding received notice contemplated by law and had full opportunity to make such showing as was appropriate to their right, their contention that they had been denied a hearing, and opportunity to cross-examine witnesses and generally to participate in condemnation proceeding was not sustained. *Brown* v. *District of Columbia* (1944, 143 F. 2d 374, 79 U. S. App. D. C. 148).

§ 7–205. Jury—Drawing—Oath.

After the return of the marshal and the filing of proof of publication of the notice provided for in section 7–204 said court shall order the jury commission to draw from the special box the names of as many persons as the court may direct, and from among the persons so drawn the court shall appoint a jury of five capable and disinterested persons, to which jury the court shall administer an oath or affirmation that they are not interested in any manner in the land to be condemned, and are not related to the parties interested therein, and that they will, without favor or partiality, and to the best of their judgment, ascertain the damages each owner of land to be taken may sustain by reason of the opening, extension, widening, or straightening of said street, avenue, road, or highway, and the condemnation of the land needed for the purpose thereof, and to assess the benefits resulting therefrom as hereinafter provided. (Mar. 3, 1901, ch. 854, § 491d, as added Apr. 30, 1906, 34 Stat. 152, ch. 2070, and amended Apr. 19, 1920, 41 Stat. 566, ch. 153.)

AMENDMENT

1920—Act Apr. 19, 1920, substituted "capable and disinterested persons" for "experienced, judicious, disinterested men, who shall be freeholders within the District of Columbia, not related to any person interested in the proceeding and not in the service or employment of the District of Columbia or of the United States, to be summoned by said marshal."

CROSS REFERENCE

Assessment of benefits against lands not condemned, see § 7–221.

§ 7–206. Objection to jurors—Hearings—Verdict.

The court, before accepting the jury, shall hear any objections that may be made to any member thereof, and shall have full power and authority to pass upon any such objections, and to excuse any juror or cause any vacancy in the jury, when impaneled, to be filled; and after the jury shall have been organized and shall have viewed and examined the land and premises affected by the condemnation proceeding they shall proceed, in the presence of the court, to hear and receive such evidence as may be offered or submitted on behalf of the District of Columbia and by any person or persons having any interest in the proceeding. When the hearing is concluded, the jury, or a majority of them, shall return to the court, in writing, their verdict, setting forth the amount found to be due and awarded to the owners of the land to be condemned as damages by reason of said opening, extension, widening, or straightening of said street, avenue, road, or highway, under the provisions hereof, and the lots, pieces, or parcels of land benefited by said opening, extension, widening, or straightening, and the amounts of the assessments for the benefits against the same. (Mar. 3, 1901, ch. 854, § 491e, as added Apr. 30, 1906, 34 Stat. 152, ch. 2070.)

CROSS REFERENCE

Assessment of benefits against lands not condemned, see § 7–221.

NOTES TO DECISIONS

Number of views by jury

This section authorized the jury to view and examine the "land and premises affected by the condemnation proceedings." It was not error to permit jury to have second view after hearing the evidence. *Briggs* v. *Brownlow* (1920, 265 F. 985, 49 App. D.C. 345).

§ 7–207. Condemnation of part of plot.

If a part only of any lot, piece, or parcel of ground is to be condemned, the jury, in determining its value, shall not take into consideration any benefits that may accrue to the remainder thereof from said opening, extension, widening, or straightening of said street, avenue, road, or highway, but such benefits shall be considered by the jury in determining what assessment shall be made or levied against such part of such lot, piece, or parcel of land as may not be taken as hereinbefore provided. (Mar. 3, 1901, ch. 854, § 491f, as added Apr. 30, 1906, 34 Stat. 152, ch. 2070.)

CROSS REFERENCE

Assessment of benefits against lands not condemned, see § 7–221.

§ 7–208. Assessment of benefits and damages—Excess damages and costs paid by District.

Of the amount found to be due and awarded as damages for and in respect of the land to be condemned for said opening, extension, widening, or straightening, plus the costs and expenses of the proceeding, such amount shall be assessed by the jury as benefits, and to the extent of such benefits against the lots, pieces, or parcels of land on each side of the street, avenue, road, or highway to be opened, extended, widened, or straightened, and against any

and all other lots, pieces, or parcels of land which the jury may find will be benefited by the opening, extension, widening, or straightening, as the jury may find said lots, pieces, or parcels of land will be benefited; and in determining the amounts to be assessed against said lots, pieces, or parcels of land the jury shall take into consideration the respective situations and topographical conditions of said lots, pieces, or parcels of land and the benefits and advantages they may severally receive from the opening, extension, widening, or straightening of the street, avenue, road, or highway. If the total amount of the damages awarded by the jury and the costs and expenses of the proceeding be in excess of the total amount of the assessment of benefits, such excess shall be borne and paid by the District of Columbia. (Mar. 3, 1901, ch. 854, § 491g, as added Apr. 30, 1906, 34 Stat. 152, ch. 2070, and amended Feb. 25, 1907, 34 Stat. 930, ch. 1195; Apr. 11, 1935, 49 Stat. 153, ch. 57, § 6.)

AMENDMENTS

1935—Act Apr. 11, 1935, repealed provisions authorizing the jury to take into consideration, when assessing benefits, dedication and the value of the land so dedicated.

1907—Act Feb. 25, 1907, authorized the jury to consider dedication and the value of land so dedicated, when assessing benefits.

CROSS REFERENCE

Assessment of benefits against lands not condemned, see § 7–221.

NOTES TO DECISIONS

Issues for jury

Where notice is given by publication, parties to be assessed for the betterment could not be mentioned by name in the notice since by statute the jury decides what land is benefited as well as the sum with which it shall be charged. *Newman* v. *Lynchburg* (1915, 35 S. Ct. 477, 236 U. S. 692, 59 L. Ed. 792).

Part of land dedicated

The value of the land dedicated, as well as the value of the land condemned, should be considered as of the date of condemnation. *Briggs* v. *Brownlow* (1920, 265 F. 985, 49 App. D. C. 345).

Congress has delegated to the jury authority to determine not only whether and to what extent any particular piece of property is benefited, but the area within which benefits are to be assessed. *Wilkinson* v. *Dougherty* (1928, 24 F. 2d 1007, 58 App. D.C. 81, certiorari denied 49 S. Ct. 10, 278 U.S. 603, 73 L. Ed. 531).

§ 7–209. Objections—Exceptions—When filed—Court may vacate verdict and grant new trial—Vacated in part.

The said court shall hear and determine any objections or exceptions that may be filed to any verdict of the jury and shall have power to vacate and set any verdict aside, in whole or in part, when satisfied that it is unjust or unreasonable, in which event the court shall order the jury commission to draw from the special box the names of as many persons as the court may direct, and from among the persons so drawn the court shall thereupon appoint a new jury of five capable and disinterested persons, who shall proceed to ascertain the damages or assess the benefits, or both, as the case may be, in respect of the land as to which the verdict may be vacated, as in the case of the first jury: *Provided,* That if vacated in part, the residue of the verdict as to the land condemned or assessed shall not be affected thereby: *And provided further,* That the objections or exceptions to the verdict shall be filed within twenty days after the return of the verdict to the court. (Mar. 3, 1901, ch. 854, § 491h, as added Apr. 30, 1906, 34 Stat. 153, ch. 2070, and amended Apr. 19, 1920, 41 Stat. 566, ch. 153.)

AMENDMENT

1920—Act Apr. 19, 1920, substituted "capable and disinterested persons" for "experienced, judicious, disinterested men, who shall be freeholders in the District of Columbia, not related to any person interested in the proceeding and not in the service or employment of the District of Columbia or of the United States, to be summoned."

CROSS REFERENCE

Assessment of benefits against lands not condemned, see § 7–221.

NOTES TO DECISIONS

Issues for court

There was no abuse of discretion by the lower court either in not granting the motion for a new trial, under the rules governing trials of civil cases in general, when the issue presented was an alleged error of fact, or in refusing to grant a new trial, under the additional powers given by the special provisions of the condemnation statute, since there was no "grave error of fact indicating plain partiality or corruption." *Willis* v. *United States* (1938, 99 F. 2d 362, 69 App. D. C. 129).

In the absence of a showing that property owner was prejudiced or defrauded, the concern of the owner is whether he was benefited by the assessment. *Johnson & Wimsatt* v. *Hazen* (1938, 99 F. 2d 384, 69 App. D.C. 151).

In proceeding by District of Columbia to condemn land for street purposes, trial court had no jurisdiction to determine what lands, if any, were exempt from assessment for benefits. *Brown* v. *District of Columbia* (1944, 143 F. 2d 374, 79 U. S. App. D. C. 148).

Where landowners contended that while proceeding to condemn land for street purposes instituted by District of Columbia was pending, Federal Government filed declaration of taking against their property and took title thereto whereupon compensation was paid to them by the Federal Government and that thereafter land was no longer subject to assessment for benefits by District of Columbia, issue thus tendered was not appropriate for decision in the condemnation proceeding. *Id.*

Nature of objections

"Had actual notice been given appellant after the return of the verdict, he could have protected his interests through the filing of objections or exceptions." *Wilkinson* v. *Dougherty* (1928, 24 F. 2d 1007, 58 App. D.C. 81 certiorari denied 49 S. Ct. 10, 278 U. S. 603, 73 L. Ed. 531).

Objections and exceptions are in the nature of a motion for a new trial, and are not to be tried by the condemnation jury, but are to be heard by the court, and only in case they are sustained by the court shall another jury be impaneled to retry the issue. *Mitchell* v. *Reichelderfer* (1932, 57 F. 2d 416, 61 App. D. C. 50).

Mere filing of objections and exceptions to the verdict of a condemnation jury does not entitle a property owner to reopen and retry the case to the same or another jury. *Id.*

Time for objection

Objections to verdict in condemnation proceedings must be filed within time limited. *Shannon & Luchs Constr. Co.* v. *Reicheiderfer* (1932, 57 F. 2d 402, 61 App. D. C. 36).

It was intended by Congress to require a party in a condemnation proceeding to bring his objections and exceptions to the attention of the court within 20 days, the time limit prescribed, or else be taken to have waived them. *Walker* v. *Hazen* (1937, 90 F. 2d 502, 67 App. D. C. 188 certiorari denied 58 S. Ct. 44, 302 U. S. 723, 82 L. Ed. 559).

§ 7–210. Confirmation of verdict—Payment of award.

When the court shall have finally ratified and confirmed the verdict of a jury condemning the land needed for the opening, extension, widening, or straightening of the street, avenue, road, or highway, the amounts of money found to be due and awarded to the owners of the land condemned shall

be paid to such owners by the disbursing officer of the District of Columbia from moneys advanced to him by the Secretary of the Treasury, upon requisitions of the commissioners of said District, as provided by law. (Mar. 3, 1901, ch. 854, § 491i, as added Apr. 30, 1906, 34 Stat. 153, ch. 2070.)

CROSS REFERENCE

Assessment of benefits against lands not condemned, see § 7–221.

NOTES TO DECISIONS

Time of payment

In the exercise by the United States of the power of eminent domain, compensation need not be paid, or even finally determined, in advance of the taking, provided reasonable, certain, and adequate provision is made at the time of the taking to ascertain and secure the compensation to be made to the owner. *Miller* v. *United States* (1932, 57 F. 2d 424, 61 App. D. C. 58).

§ 7–211. Assessments made liens—How paid—Set-off of damages and benefits.

When finally ratified and confirmed by the court, the several assessments authorized to be made or levied by the jury shall severally be a lien upon the land assessed, and shall be collected as special-improvement taxes in the District of Columbia, and shall be payable in five equal annual installments, with interest at the rate of four per centum per annum from and after sixty days after the confirmation of the verdict of the jury. In all cases of payments the accounting officers shall take into account the assessments for benefits and the award of damages, and shall pay only such part of the award in respect of any lot, piece, or parcel of land condemned as may be in excess of the assessment for benefits against the part of such lot, piece, or parcel of land not taken, and there shall be credited on said assessment the amount of said award not in excess of said assessment. (Mar. 3, 1901, ch. 854, § 491j, as added Apr. 30, 1906, 34 Stat. 153, ch. 2070.)

CROSS REFERENCES

Assessment for benefits upon closing streets under Street Readjustment Act, see § 7–406.

Assessment of benefits against lands not condemned, see § 7–221.

General provision concerning special assessments, see § 47–1101.

NOTES TO DECISIONS

Abandonment of project

Assessments paid for benefits to property from proposed street extension must be returned where the proposed extension is abandoned. *District of Columbia* v. *Thompson* (1930, 50 S. Ct. 172, 281 U. S. 25, 74 L. Ed. 677).

In landowner's action to recover benefit assessment payments made as result of a condemnation proceeding on ground of failure of consideration because project had been abandoned, where court found that improvements were promptly undertaken, that work on project continued after institution of action and that at time of trial all work had been completed, record justified denial of recovery on ground that there had been no "abandonment" or intention to abandon. *Boss* v. *District of Columbia* (1943, 134 F. 2d 14, 77 U.S. App. D.C. 142, 145 A.L.R. 1126).

On abandonment of a street improvement project for which assessments had been levied and paid, there is a failure of "consideration" and the moneys received as assessments must be returned to those entitled thereto. *Id.*

§ 7–212. Power to amend proceedings.

Said court shall have full power and authority, at any time, to allow amendments in form or substance in any petition, process, verdict, record, or other proceeding, or in the description of property proposed to be condemned or of property assessed for benefits whenever such amendment will not interfere with the substantial rights of the parties interested. (Mar. 3, 1901, ch. 854, § 1491k, as added Apr. 30, 1906, 34 Stat. 153, ch. 2070.)

§ 7–213. Repealed. July 30, 1951, 65 Stat. 126, ch. 248, § 1.

Section, act Mar. 3, 1901, ch. 854, § 491*l*, as added Apr. 30, 1906, 34 Stat. 153, ch. 2070, related to compensation of jurors in eminent domain cases, and is now covered by section 7–213a.

§ 7–213a. Compensation of jurors in eminent domain cases.

In all eminent domain cases instituted by or on behalf of the District of Columbia, each juror shall receive as compensation for his services the sum of $10 per day for every day necessarily employed in the performance of his duties. (July 30, 1951, 65 Stat. 126, ch. 248, § 2.)

§ 7–214. Right to appeal—Parties not appealing.

Any party aggrieved by any final order of the court may appeal therefrom to the United States Court of Appeals for the District of Columbia; but no appeal from any order of the court confirming any award of damages or assessment for benefits, nor any other proceeding that may be taken by any person, at law or in equity, against the confirmation of any award of damages or any assessment for benefits shall delay or prevent the payment of the damages awarded to other persons in respect of the property condemned, or delay or prevent the taking of the property sought to be condemned, or delay or prevent the opening, extension, widening, or straightening of the street, avenue, road, or highway. (Mar. 3, 1901, ch. 854, § 491m, as added Apr. 30, 1906, 34 Stat. 153, ch. 2070, and amended June 7, 1934, 48 Stat. 926, ch. 426.)

CHANGE OF NAME

Act June 7, 1934, substituted "United States Court of Appeals for the District of Columbia" for "Court of Appeals for the District of Columbia."

CROSS REFERENCE

Assessment of benefits against lands not condemned, see § 7–221.

NOTES TO DECISIONS

Vested title

Once title vests, it stays vested until it passes by grant, by descent, by adverse possession, or by some operation of law such as escheat or forfeiture; but title does not pass by inaction on the part of the owner. *Faulks* v. *Schrider* (1938, 99 F. 2d 370, 69 App. D. C. 137).

§ 7–215. Deposit of award in registry—Transfer of title.

In case any of the owners of land condemned are under disability or can not be found, or neglect or refuse to receive the money awarded to them; or in case the title to the property is in dispute or uncertain, the money due the owners of the property for damages for land taken may be deposited in the registry of the United States District Court for the District of Columbia, for the use of the rightful owners without cost or expense to said District; and thereupon the title to the land condemned shall be-

come vested in the District of Columbia. (Mar. 3, 1901, ch. 854, § 491n, as added Apr. 30, 1906, 34 Stat. 154, ch. 2070, and amended Dec. 18, 1908, 35 Stat. 582, ch. 4; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENT

1908—Act Dec. 18, 1908, amended section generally. Prior to the amendment the section read as follows: "In case any of the owners of the land condemned are under disability or can not be found or neglect to receive the money awarded to them, or in case the title to the property condemned is in controversy, the money awarded to any of such persons, or for any such property the title to which is in controversy, shall be deposited in the registry of the Supreme Court of the District of Columbia, without cost or expense to said District, to the credit of the person or persons who may be entitled thereto."

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

CROSS REFERENCE

This section applies to condemnation proceedings generally, see § 16–1319.

§ 7–216. Condemnation for streets through unsubdivided part of plot.

Whenever in the subdivision of a tract of land in the District of Columbia the owner or owners of such tract shall reserve from subdivision any portion thereof, and shall fail to or refuse to dedicate the streets or highways within the reserved portion as shown on the plan of permanent system of highways, the commissioners of the District of Columbia are authorized, in their discretion, to institute condemnation proceedings to acquire for street purposes in accordance with the highway plans any or all land comprised in the said streets within the limits of any portion reserved from subdivision, which the said commissioners may deem desirable for the purpose of extending existing or proposed streets or of connecting streets already of record according to the said highway plan. (Mar. 30, 1910, 36 Stat. 268, ch. 136, § 1.)

CROSS REFERENCES

Acceptance of streets previously dedicated, conditions, width, see § 7–117.

Dedication of streets, see § 1–614.

Streets to conform to plan of city of Washington, see § 7–125.

§ 7–217. Procedure—Appropriation to pay damages.

That the said condemnation proceedings shall be instituted under and in accordance with the provisions of sections 7–202 to 7–212, 7–214 and 7–215: *Provided,* That the entire amount found to be due and awarded by the jury in said proceedings as damages for and in respect of the land condemned for such streets or highways, plus the cost and expenses of said proceedings, shall be assessed by the jury as benefits, under the provisions of said sections. And there is hereby appropriated, out of the revenues of the District of Columbia, such amount or amounts as may be necessary to pay the cost and expenses of the condemnation proceeding taken pursuant hereto and for the payment of amounts awarded as damages, to be repaid to the District of Columbia from the assessments for benefits and covered into the treasury to the credit of the revenues of the District of Columbia. (Mar. 30, 1910, 36 Stat. 268, ch. 136, § 2.)

CROSS REFERENCE

Assessment of benefits against lands not condemned, see § 7–221.

§ 7–218. Cost of street extension assessed as benefits—Assessments for parkways.

The United States shall not bear any part of the cost of the acquisition of land for street extensions, but when the condemnation of any land for such purposes is authorized by law the total cost of the land and the expenses of the condemnation proceedings shall be assessed as benefits; in any case where land is condemned for a parkway, including a street or streets, where such parkway is of considerable length with relation to its width, not less than one-half of the cost of the land including the same fraction of the expenses of the condemnation proceedings shall be assessed as benefits; and in any case where land is condemned for a public park, not less than one-third of the cost of the land including the same fraction of the expenses of the condemnation proceedings shall be assessed as benefits. (June 26, 1912, 37 Stat. 178, ch. 182.)

§ 7–219. If damages and costs exceed benefits, Commissioners may dismiss cause.

In all condemnation proceedings instituted by the Commissioners of the District of Columbia in accordance with the provisions of sections 7–202 to 7–212, 7–214 and 7–215, for the acquisition of land for the opening, extension, widening, or straightening of Piney Branch Road between Thirteenth and Butternut Streets; Thirteenth Street, extended, except through the Walter Reed Hospital Reservation; Concord Avenue; Nicholson Street, or any street, avenue, road, or highway, or a part of any street, avenue, road, or highway in accordance with the plan of the permanent system of highways for the District of Columbia, all or any part of the entire amount found to be due and awarded by the jury in said proceedings as damages for, and in respect of, the land condemned for such streets, avenues, roads, or highways, or parts of streets, roads, avenues, or highways, plus all or any part of the costs and expenses of said proceedings, may be assessed by the jury as benefits: *Provided, however,* That if the total amount of damages awarded by the jury in any such proceedings, plus the costs and expenses of said proceeding, be in excess of the total amount of benefits, it shall be optional with the commissioners of the District of Columbia to abide by the verdict of the jury or, at any time before the final ratification and confirmation of the verdict, to enter a voluntary dismissal of the cause. (May 28, 1926, 44 Stat. 675, ch. 418, § 1.)

CROSS REFERENCE

Assessment of benefits against lands not condemned, see § 7–221.

NOTES TO DECISIONS

Abandonment of proceedings

Court cannot assume that Commissioners have abandoned condemnation proceedings but on the contrary

must assume that they are acting for the best interest of the public. *Johnson & Wimsatt* v. *Reichelderfer* (1933, 66 F. 2d 217, 62 App. D. C. 237).

§ 7–220. Appropriation for costs and damages authorized—Benefits covered into treasury.

There is hereby authorized to be appropriated out of the revenues of the District of Columbia such sums as may be necessary from time to time to pay the costs and expenses of the condemnation proceedings instituted under the authority of this act and for the payment of the amounts awarded as damages, the amounts collected as benefits to be covered into the treasury of the United States to the credit of the revenues of the District of Columbia: *Provided, however,* That if the total amount of damages awarded by the jury in any such proceeding, plus the costs and expenses of said proceedings, be in excess of the total amount of assessments for benefits, such excess shall be paid out of the appropriation herein authorized. (May 28, 1926, 44 Stat. 676, ch. 418, § 2.)

§ 7–221. Benefits assessed against land no part of which was taken—Notice of assessment, how given.

Where in any condemnation proceedings instituted by the Commissioners of the District of Columbia in accordance with the provisions of sections 7–202 to 7–212, 7–214 and 7–215 or in accordance with the provisions of sections 7–301 to 7–321, 7–323 to 7–327, the jury of condemnation shall assess benefits against any land or parcel of land no part of which was taken by the condemnation proceedings, and the owner of the land or parcel of land so assessed for benefits was not served with notice of the condemnation proceedings, notice of such assessment for benefits shall be given by the Commissioners of the District of Columbia by registered mail or by certified mail, mailed to the last known address of the person listed on the records of the assessor of the District of Columbia as the owner of the land or parcel of land so assessed, and, in addition thereto, the court shall give public notice of the land or parcels of land assessed for benefits, no part of which was taken by the condemnation proceedings, by advertisement once in each of three daily newspapers published in the District of Columbia showing the amount assessed against each such piece or parcel of land and stating the time within which interested parties may file with the court any objections or exceptions they may have to the verdict. The mailing by registered mail or by certified mail and the notice by publication herein provided for shall be sufficient notice to the owner of any land or parcel of land assessed for benefits as aforesaid. Nothing herein contained shall be considered to abrogate or nullify the option conferred upon the commissioners of the District of Columbia by sections 7–219 and 7–220. (May 29, 1928, 45 Stat. 953, ch. 863; June 11, 1960, 74 Stat. 203, Pub. L. 86–507, § 1(45).)

AMENDMENT

1960—Act June 11, 1960, substituted "registered mail or by certified mail" for "registered letter" in two instances.

CROSS REFERENCE

For use of certified mail receipts as prima facie evidence of delivery, see § 14–506.

NOTES TO DECISIONS

Injunction

Suit to enjoin collection of street improvement assessment brought within a year after receiving tax bill is not laches. *Smith* v. *Gotwals* (1933, 62 F. 2d 466, 61 App. D. C. 304).

Issues for jury

In condemnation proceeding, the amount of benefits to be assessed against land which was not taken, was for the jury, and there is nothing in the record to show that the jury acted unreasonably or unjustly. *Johnson & Wimsatt* v. *Hazen* (1938, 99 F. 2d 384, 69 App. D. C. 151).

Notice

This provision of the statute for notice by publication and registered letter does not apply to appellant, although benefits were assessed against his property, no part of which was condemned, since he had actual notice of the proceedings and was represented by counsel who appeared therein. *Cafritz* v. *Hazen* (1936, 85 F. 2d 260, 66 App. D. C. 94).

After the publication of the general notice of the condemnation proceedings, the assessments of benefits against lands not taken may be made by the condemnation jury. *Johnson & Wimsatt* v. *Hazen* (1938, 99 F. 2d 384, 69 App. D.C. 151).

Notice by publication together with a registered letter containing such notice is sufficient under this statute *Id.*

Time for objections

It is the duty of the Commissioners to give notice to person listed on the assessors' books at his last-known address. *Smith* v. *Gotwals* (1933, 62 F. 2d 466, 61 App. D.C. 304.)

Without strict compliance with the statute in regard to giving notice by registered mail, an order of assessment is a mere nullity. *Id.*

The requirement of the statute as to notice being mandatory, a failure to comply is juridictional. *Id.*

In condemnation proceedings owners receiving notice must file objections within 20 days after verdict. *Shannon & Luchs Constr. Co.* v. *Reichelderfer* (1932, 57 F. 2d 402, 61 App. D. C. 36).

Chapter 3.—ALLEYS AND MINOR STREETS

Sec.

7–301. Alleys and minor streets opened, extended, widened, or straightened by Commissioners—Conditions—Petition of landowners—Minor street defined.
7–302. Useless alleys—Sale of original alleys—Reversion of title to owner.
7–303. Alleys may be closed on dedication of new ones—Application of property owners—Future ownership of closed alleys—Plats recorded.
7–304. Closing narrow alleys—Application of property owners—Disposal of land.
7–305. Alleys closed for single improvement on two-thirds of square.
7–306. Changing of alleyways—Petition of property owners—New dedication—Plat—Future ownership.
7–307. Copy of order and plat recorded—Ownership of closed alley.
7–308. Obliterating subdivisions and alleys—Filing copy of order.
7–309. Closing alleys—Authorized upon acquisition of abutting property by District of Columbia—Property owner's right of access preserved.
7–310. Land owned by District may be set aside for alley purposes.
7–311. Public notice—Hearings.
7–312. Maps—Preparation—Recordation.
7–313. Condemnation to open, widen, or straighten alleys or minor streets—Plats.
7–314. Public notice of condemnation—Personal service on owner.
7–315. Procedure—Jury—Qualifications—Oath—Objections—Hearing—Verdict—Damages—Benefits.
7–316. Manner of assessing benefits where part only of parcel condemned.
7–317. Objections to verdict—When filed—Vacation or modification by court—New jury—Costs.

Sec.
7–318. Benefits assessed must equal damages and costs.
7–319. Jury not restricted as to assessment area—Building lines and alleys—Benefits must equal damages and costs.
7–320. Awards paid by Treasurer of United States—Benefits deducted from damages.
7–321. Assessments to be liens—Payable in four annual installments—Amendments allowed.
7–322. Repealed.
7–323. Appeal from assessment of benefits or damages not to stay proceedings—Determination on appeal controls.
7–324. Benefit assessments from condemnation for alleys or minor streets.
7–325. Proceeds of sale of lands paid into Treasury.
7–326. Plats to be made by surveyor—Costs.
7–327. Correcting defects in certain prior proceedings.
7–328. Certain alleys previously opened made valid.
7–329. Alleys closed by subdivision prior to March 3, 1901, unaffected.
7–330. Surplus from sale of land in which United States is interested to be paid into Treasury.
7–331. Costs paid from alley appropriations when proceedings fail.
7–332. Condemnation of materials for making or repairing public roads.
7–333. Commissioners to employ assistant corporation counsel for condemnation proceedings.

§ 7–301. Alleys and minor streets opened, extended, widened, or straightened by Commissioners—Conditions—Petition of landowners—Minor street defined.

The Commissioners of the District of Columbia are authorized to open, extend, widen, or straighten alleys and minor streets in the District of Columbia under the following conditions, namely: First, upon the petition of the owners of more than one-half of the real estate in the square or blocks in which such alley or minor street is sought to be opened, extended, widened, or straightened, accompanied by a plat showing the opening, extension, widening, or straightening proposed; second, when the commissioners deem that the public interests require such opening, extension, widening, or straightening; third, when the director of public health of said District certifies to the necessity for the same on the grounds of public health: *Provided,* That a minor street shall be of a width of not less than forty feet nor more than sixty feet and shall run through a square or block from one street to another. (Mar. 3, 1901, 31 Stat. 1429, ch. 854, § 1608; Feb. 23, 1905, 33 Stat. 733, ch. 734, § 1608; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

AMENDMENT

1905—Act Feb. 23, 1905, eliminated the following provisos: "*Provided,* That in the opening, extension, widening, or straightening of an alley or minor street it shall be lawful to close any original alley, which may thereby become useless or unnecessary; and that it shall also, in like manner, be lawful to close any other other alleys or parts of alleys, the title thereto to revert to the person or persons who dedicated the same for alley purposes, or to their assigns: *And provided further,* That the Commissioners of the District of Columbia are authorized, whenever in their judgment the same may be necessary or expedient, to close any alley or part of an alley the width of which is less than ten feet: *Provided,* That the assent thereto, in writing, is obtained from the owners of a majority of the real estate abutting thereon; that if the fee title to the land contained in the alley or part of an alley so to be closed is in the United States the said Commissioners are authorized to dispose of said land by sale to the owners of the lots or parts of lots contiguous thereto, at a price to be agreed upon between the said Commissioners and said owners, which price shall not be less than the current market price of the ground in the contiguous lots; that if the fee title to the land in the alley or part of alley so to be closed is not in the United States the title to said land shall revert to the person or persons who dedicated the same for alley purposes, or to his or their heirs or assigns."

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

CROSS REFERENCES

Appropriations made under this chapter may be used to establish building lines on streets, see § 5–206.

Condemnation and payment of damages for land in excess of public needs, see § 16–1336.

Condemnation proceedings generally, see § 16–1301 et seq.

Jurisdiction and control of commissioners over streets and highways, see § 7–102 and notes.

Obtaining land for streets and highways outside of the cities of Washington and Georgetown, see §§ 7–201 et seq.

Opening, closing, extending, widening, or straightening alleys under, see §§ 5–103 et seq.

Permanent highway system outside the cities of Washington and Georgetown, see §§ 7–101 et seq.

NOTES TO DECISIONS

Conditions, existence of

Under this section authorizing Commissioners of District of Columbia to open, widen, and straighten alley on petition of owners, when Commissioners deem that public interests require such opening, etc., or when public health officer of District certifies to necessity for same on grounds of public health, each of the three conditions specified need not exist to justify action of Commissioners. *Bailey* v. *Young* (1945, 149 F. 2d 15, 80 U. S. App. D. C. 65).

Extension from street to street

Commissioners could not open street running through corners of two squares and across proposed street. *Rudolph* v. *Warwick* (1926, 10 F. 2d 993, 56 App. D. C. 128).

Necessity of petition

The commissioners have no authority, except on petition of all abutting property owners, to close an alley. *Compton* v. *Rudolph* (1926, 12 F. 2d 152, 56 App. D. C. 211).

Public interest

In action to condemn piece of land for purpose of widening alley and providing space for turning of vehicular traffic at corner of alley, evidence supported determination that public interests required widening, etc., of alley. *Bailey* v. *Young* (1945, 149 F. 2d 15, 80 U. S. App. D. C. 65).

Voluntary dedication

Statute authorizing Commissioners of the District of Columbia to open, extend, widen, or straighten alleys and minor streets subject to certain conditions has no application to a voluntary dedication of realty accepted by the commissioners under authority of law for the widening of an alley. *Barnard* v. *Commissioners of the District of Columbia* (1957, 246 F. 2d 685, 100 U. S. App. D. C. 404).

§ 7–302. Useless alleys—Sale of original alleys—Reversion of title to owner.

If in the opening, extension, widening, or straightening of an alley or minor street, or in the extension or widening of public streets or highways, an alley or part of an alley may have been, or may hereafter be, in the judgment of the said commissioners rendered useless or unnecessary, said commissioners are authorized to close the same. If the alley to be closed is an original alley, they may sell the land contained therein for cash at a price not less than the assessed value of contiguous lots. If the alley is not an original alley, the title thereto shall revert to the owners of the land abutting thereon, but all such land shall

be subject to the assessment for benefits hereinafter referred to. (Mar. 3, 1901, ch. 854, § 1608a, as added Feb. 23, 1905, 33 Stat. 733, ch. 734.)

CROSS REFERENCES

Abandonment of streets and alleys in adoption of highway plans, see §§ 7–113 to 7–116, 7–118, 7–123, 7–124.

Closing alleys, streets, or highways, see §§ 7–401 to 7–410.

Disposition of proceeds of sale of lands belonging to the United States, see §§ 7–325, 7–330.

Ownership or reversion of lands on abandonment of public ways, see §§ 7–118, 7–123, 7–303 to 7–309, 7–401.

Provisions of street readjustment for the closing of public highways did not repeal similar provisions of this chapter, see § 7–409.

NOTES TO DECISIONS

Petition, necessity

Commissioners can not close alley not petitioned for. *Compton* v. *Rudolph* (1926, 12 F. 2d 152, 56 App. D. C. 211).

§ 7–303. Alleys may be closed on dedication of new ones—Application of property owners—Future ownership of closed alleys—Plats recorded.

The said commissioners are authorized to accept the dedication of an alley or alleys and in connection therewith to close any existing alley or alleys in the square or block in which such dedication is made upon the application of the owners of all the property abutting on such existing alley or alleys. If the alley proposed to be closed is an original alley, the party or parties making the dedication and the parties applying for the closing of the alley or alleys shall present with such application a mutual agreement in writing and under seal, in duplicate, as to the future ownership of the land contained in the alley or alleys to be closed, together with two plats showing the alley or alleys divided into parcels, with the name of the future owner marked on each parcel, in accordance with such agreement. Copies of the order of the commissioners accepting the dedication and closing the original or subdivisional alley, together with the said agreements and plats in the case of an original alley, shall be forwarded by said commissioners to the surveyor and recorder of deeds of the District of Columbia for record, and thereafter the title to the land in such subdivisional alley shall revert to the owners of the land abutting thereon, and the title to the land in the original alley shall vest in the parties whose names appear on said plat in accordance with said agreement. (Mar. 3, 1901, ch. 854, § 1608b, as added Feb. 23, 1905, 33 Stat. 733, ch. 734.)

CROSS REFERENCES

Opening, extending, widening, or straightening alleys, see §§ 5–103 et seq.

Ownership or reversion of lands on abandonment of public way, see §§ 7–118, 7–123, 7–302, 7–304 to 7–309, 7–401.

NOTES TO DECISIONS

All owners must join

A condition precedent to the closing of an existing alley is that the application must be concurred in by all the owners of property abutting thereon. *Compton* v. *Rudolph* (1926, 12 F. 2d 152, 56 App. D. C. 211).

Authority to accept land for widening of alley

The quoted words providing that "The said commissioners are authorized to accept the dedication of an alley or alleys" and in connection therewith to close any existing alley or alleys in the square or block in which such dedication is made "upon the application of the owners of all the property abutting on such existing alley or alleys," are not to be read as subject to the phrase "upon the application of the owners of all the property abutting on such existing alley or alleys." *Barnard* v. *Commissioners of the District of Columbia* (1957, 246 F. 2d 685, 100 U. S. App. D. C. 404).

Commissioners of the District of Columbia were authorized to accept from owner certain realty for the widening of an alley though owners of property abutting on the other side of the alley in question objected to the widening of the alley. *Id.*

Building permits

Where building permits granted by Commissioners of the District of Columbia were for lots abutting a portion of alley which, after acceptance of dedication of realty for widening of the alley, was 30 feet wide and with such width, extended to and opened on a street, the granting of the permits was not contrary to Zoning Commission's regulations providing that no dwelling or other building to be used for habitation shall be erected on an alley lot unless portion of alley abutting such lot is 30 or more feet in width and, with such width, extends to and opens on a street. *Barnard* v. *Commissioners of the District of Columbia* (1957, 246 F. 2d 685, 100 U. S. App. D. C. 404).

Powers of Commissioners

The Commissioners are without discretion in the premises. *Compton* v. *Rudolph* (1926, 12 F. 2d 152, 56 App. D. C. 211).

§ 7–304. Closing narrow alleys—Application of property owners—Disposal of land.

The commissioners are authorized to close any alley or part of alley the width of which is less than ten feet upon the application in writing of the owners of all the abutting property. If the title to such closed alley is in the United States, the land shall be sold, as provided in section 7–302; and if the title is not in the United States, the land shall revert as provided in said section. (Mar. 3, 1901, ch. 854, § 1608c, as added Feb. 23, 1905, 33 Stat. 734, ch. 734.)

CROSS REFERENCE

Ownership or reversion of lands on abandonment of public way, see §§ 7–118, 7–123, 7–302, 7–303, 7–306 to 7–309, 7–401.

§ 7–305. Alleys closed for single improvement on two-thirds of square.

Whenever the title in fee simple to an entire square is vested in one person or tenants in common or partners, and such owner or owners desire to improve said square by the erection thereon of a building covering not less than two-thirds of the area thereof, or to use said square for the purpose of some business enterprise, the commissioners are authorized, in their discretion, to order any alley or alleys in such square to be closed, and a copy of said order shall be filed with the surveyor and recorder of deeds of said District for record. (Mar. 3, 1901, ch. 854, § 1608d, as added Feb. 23, 1905, 33 Stat. 734, ch. 734.)

§ 7–306. Changing of alleyways—Petition of property owners—New dedication—Plat—Future ownership.

Whenever all the owners of an entire square, or all the owners of a part of a square bounded on all sides by public streets, in the District of Columbia, shall present to the commissioners of the District of Columbia a petition asking that any alley or alleys within said square or part of square may be closed wholly or partially, and shall in said petition offer to dedicate for public use, and shall so dedicate if in the opinion of the commissioners of said District

such dedication is necessary, as alleyways ground owned by the petitioners in amount equal at least in area to that of the alleyway sought to be closed, and shall also present to said commissioners with said petition a correct plat of said square or part of square signed by all of the owners thereof, upon which shall be accurately delineated the positions and dimensions of the existing alleyway or ways and a subdivision of the entire area of the alley or alleys sought to be closed into parcels, according to an agreement of all said owners for the future ownership of the same, the name of the agreed future owner of each parcel being marked thereon, and showing also the position and dimensions of the new alleyway or ways proposed to be substituted therefor it shall be the duty of said commissioners, upon being satisfied of the truth of the facts stated in the petition as to ownership and of correctness of the plat and also that the proposed change will not be detrimental to the public convenience, to make an order declaring the existing alleyway or ways closed, as prayed for, and opening the new alleyway or ways proposed to be substituted therefor. (Mar. 3, 1901, 31 Stat. 1428, ch. 854, § 1605.)

CROSS REFERENCE

Ownership or reversion of lands on abandonment of public way, see §§ 7–118, 7–123, 7–302 to 7–304, 7–307, 7–309, 7–401.

§ 7–307. Copy of order and plat recorded—Ownership of closed alley.

The commissioners shall cause a certified copy of the order to be attached to the plat and filed for record with the recorder of deeds of the District and also in the office of the surveyor of the District, each of whom shall record the same, and thereafter the right of the public to use the alleyway or ways declared closed and the proprietary interest of the United States therein shall forever cease and determine, and the title to the same shall be vested according to the agreement of the owners as shown in the aforesaid plat, each person being thenceforward the owner in fee simple of the parcel or parcels upon which his name shall be marked as provided in section 7–306. The new alleyway or ways described in said order and delineated on said plat shall thereafter be and remain dedicated to public use as alley ways, and, like other alleys of said city, shall be under the care and control of the city authorities (Mar. 3, 1901, 31 Stat. 1428, ch. 854, § 1606; June 30, 1902, 32 Stat. 545, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, substituted "filed" for "delivered to the petitioners, who shall file the same."

CROSS REFERENCES

Other provisions concerning jurisdiction and control over public highways, see § 7–102 and notes.

Ownership or reversion of lands on abandonment of public way, see §§ 7–118, 7–123, 7–302 to 7–304, 7–306, 7–309, 7–401.

NOTES TO DECISIONS

Rededication of alleys

'To make such a dedication requires not alone that the street or alley be given, but that it be accepted. The reason for this is self-evident The acceptance of a public street or alley imposes burdens on the District. 'The law is well settled that, to constitute a public street or highway by dedication, there must not only be an absolute dedication—by a setting apart and a surrender to the public use of the land by the proprietors—but there must be an acceptance and a formal opening thereof by the proper authorities, or a user which is equivalent to such acceptance and opening'." *Watson* v. *Carver* (1906, 27 App. D.C. 555).

"There was no valid statutory dedication, for an essential provision of the statute was not complied with, and without this there could be no valid statutory dedication." *Id.*

§ 7–308. Obliterating subdivisions and alleys—Filing copy of order.

Whenever the title in fee simple to an entire square is vested in one person or in tenants in common, or partners, and such owner or owners desire to improve said square by the erection of a building thereon, covering not less than two-thirds of the area thereof, or for the purpose of some business enterprise, the Commissioners of the District may, on the petition of such owner or owners, setting forth such ownership, the purpose for which it is desired to use such square, and the manner and the time in which it is proposed to improve the same, on being satisfied of the truth of the facts stated in the petition, and also that the proposed change and use will not be detrimental to the public interests, make an order canceling any previous subdivision of said square and obliterating all alleys therein. They shall cause a certified copy of such order to be filed for record with the recorder of deeds, and also the surveyor of the District, each of whom shall record the same. The expense of the recording provided for by this section and section 7–307 shall be advanced by the petitioner to the commissioners under such regulations as they may prescribe. (Mar. 3, 1901, 31 Stat. 1429, ch. 854, § 1607; June 30, 1902, 32 Stat. 545, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, substituted "filed" for "attached to a plat of said square and delivered to the petitioners, who shall file the same", and added the provisions concerning the advancement of the expense of recording to the commissioners.

NOTES TO DECISIONS

Assessments

The front-foot rule can not be applied to the assessment of a lot for paving an alley, which had a boundary of 233.17 feet facing two alleys, which could not be used commercially, and when the lot is assessed 222 per cent. higher than average assessment of other lots bordering the alleys, the assessment must be revised. *Willner* v. *Hazen* (1940, 111 F. 2d 511, 71 App. D. C. 373).

One seeking to cancel an alley paving assessment on a lot, facing two alleys, which, under zoning regulations was limited to one-family detached house, and which was assessed 222 per cent. higher than other lots, was entitled to trial on the merits, and dismissal of complaint was improperly granted. *Id.*

§ 7–309. Closing alleys—Authorized upon acquisition of abutting property by District of Columbia—Property owner's right of access preserved.

The Commissioners of the District of Columbia are authorized to close any alleys or parts of alleys in the District of Columbia when, in their judgment, such alleys, or parts of alleys, are rendered useless and unnecessary by reason of the acquisition of abutting land for municipal purposes: *Provided,* That the District of Columbia, prior to the closing of any such alley or part of alley, has acquired title to all the land abutting on the alley or part of alley proposed to be closed: *Provided further,* That the

title to the land comprised in the alleys or parts of alleys so closed shall revert to the District of Columbia: *And provided further,* That no property owner within the block where such alleys or parts of alleys are closed shall be deprived of the right of access to his property by alleys or parts of alleys, unless adequate access to such property be substituted therefor. (June 14, 1932, 47 Stat. 303, ch. 248, § 1.)

CROSS REFERENCES

Closing alleys or streets in municipal center, see § 9–201.
Ownership or reversion of lands on abandonment of public way, see §§ 7–118, 7–123, 7–302 to 7–307, 7–401.

§ 7–310. Land owned by District may be set aside for alley purposes.

The Commissioners of the District of Columbia are authorized to set aside for alley purposes any land owned by the District of Columbia whenever it becomes necessary to provide additional area for alleys by reason of the closing of any alley or part of any alley: *Provided,* That in each case the area set aside for alley purposes shall not exceed the area of the alley or part of alley closed. (June 14, 1932, 47 Stat. 303, ch. 248, § 2.)

§ 7–311. Public notice—Hearings.

The Commissioners of the District of Columbia shall cause public notice to be given, by advertisement in a newspaper of general circulation in the District of Columbia, of any order to be made by the said commissioners under the authority granted them by the provisions of sections 7–309 to 7–312: *Provided,* That such public notice shall be given not less than thirty days prior to the effective date of such order: *And provided further,* That if any interested property owner affected adversely by such order shall request a public hearing by the said commissioners, within thirty days prior to the effective date of the order, the said commissioners shall grant such hearing. (June 14, 1932, 47 Stat. 303, ch. 248, § 3.)

§ 7–312. Maps—Preparation—Recordation.

Any and all necessary maps showing the action taken by the commissioners of the District of Columbia under the provisions of sections 7–309 to 7–312 shall be prepared by the surveyor of the District of Columbia, approved by the commissioners of the District of Columbia, and ordered by said commissioners to be recorded in the office of the surveyor of the District of Columbia. (June 14, 1932, 47 Stat. 304, ch. 248, § 4.)

§ 7–313. Condemnation to open, widen, or straighten alleys or minor streets—Plats.

Whenever it becomes necessary to open, widen, extend, or straighten alleys or minor streets by condemnation the said commissioners shall institute condemnation proceedings in the United States District Court for the District of Columbia, by a petition in rem particularly describing the land to be taken, which petition shall be accompanied by duplicate plats to be prepared by the surveyor of said District, showing the courses and boundaries of the alley or minor street proposed to be opened, widened, extended, or straightened, the number of square feet to be taken from each lot or part of lot in the square or block, showing the existing alleys or minor street in said square or block, and such other information as may be necessary for the purposes of such condemnation. Upon the filing of such petition, one copy of the plat, indorsed with the docket number of the case, shall be returned by the clerk of said court to the said surveyor for record in his office. (Mar. 3, 1901, ch. 854, § 1608e, as added Feb. 23, 1905, 33 Stat. 734, ch. 734, and amended June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia, sitting as a District Court."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

CROSS REFERENCES

Application of this chapter to condemnation proceedings to establish building lines on streets, see § 5–203.
Application of this chapter to condemnation proceedings under the District of Columbia Alley Dwelling Act, see § 5–104.
Condemnation of material for making or repairing public roads, see § 7–332.
Condemnation proceedings for streets, alleys, or highways outside Washington and Georgetown, see § 7–201 et seq.
Condemnation proceedings generally, see § 16–1301 et seq.

§ 7–314. Public notice of condemnation—Personal service on owner.

The said court shall cause public notice of not less than ten days to be given of the filing of said proceedings, by advertisement in such manner as the court shall prescribe, which notice shall warn all persons having any interest in the proceedings to attend court at a day to be named in said notice and to continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and assessment of benefits of the jury; and, in addition to such public notice, said court, whenever in its judgment it is practicable to do so, shall cause a copy of said notice to be served by the United States marshal for the District of Columbia, or his deputies, upon such owners of the fee of the land to be condemned as may be found by said marshal or his deputies within the District of Columbia. (Mar. 3, 1901, ch. 854, § 1608f, as added Feb. 23, 1905, 33 Stat. 734, ch. 734.)

CHANGE OF NAME

Act June 25, 1936, 49 Stat. 1921, ch. 804, redesignated the Supreme Court of the District of Columbia as the District Court of the United States for the District of Columbia and act June 25, 1948, 62 Stat. 991, ch. 646, § 32(b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.

CROSS REFERENCE

Notice of assessments against land no part of which was condemned, see § 7–221.

NOTES TO DECISIONS

Powers of Court

It will be observed that this statute does not require personal service. This is a matter left to the discretion of the court. *National Sav. & T. Co.* v. *Reichelderfer* (1932, 57 F. 2d 404, 61 App. D.C. 38).

Where court directed newspaper publication, and personal service on owners found in the District, failure to obtain personal service does not require quashing verdict for damages. *Id.*

§ 7–315. Procedure—Jury—Qualifications—O a t h—Objections—Hearing—Verdict—Damages—Benefits.

After the return of the marshal and the filing of proof of publication of the notice provided for in section 7–314, said court shall cause a jury of five judicious, disinterested persons, not related to any person interested in the proceedings and not in the service or employment of the District of Columbia or of the United States, to be summoned by the said marshal, to which jurors said court shall administer an oath or affirmation that they are not interested in any manner in the land to be condemned nor in any way related to the parties interested therein, and that they will, without favor or partiality, to the best of their judgment, assess the damages each owner of land taken may sustain by reason of the opening, extension, widening, or straightening of said alley or minor street and the condemnation of lands for the purposes thereof, and assess the benefits resulting therefrom as hereinafter provided. The court, before accepting the jury, shall hear any objections that may be made to any member thereof, and shall have full power to decide upon all such objections, and to excuse any juror or cause any vacancy in the jury, when impaneled, to be filled; and after said jury shall have been organized and shall have viewed the premises, said jury shall proceed to hear and receive such evidence as may be offered or submitted on behalf of the District of Columbia and by any person or persons having any interest in the proceedings for the opening, extension, widening, or straightening of said alley or minor street; but all such hearings shall be in the presence of the court and under its supervision and direction. When the hearing is concluded the jury, or a majority of them, shall return to said court, in writing, its verdict of the amount found to be due and payable as damages sustained by reason of the said opening, extension, widening, or straightening under the provisions of sections 7–301 to 7–308, 7–313 to 7–318, 7–320, 7–321, 7–323, 7–325 to 7–330, and of the pieces or parcels of land benefited by such opening, extension, widening, or straightening, and the amount of the assessment for such benefits against the same. (Mar. 3, 1901, ch. 854, § 1608g, as added Feb. 23, 1905, 33 Stat. 735, ch. 734.)

CROSS REFERENCE

Assessment of benefits against land no part of which was condemned, see § 7–221.

NOTE TO DECISIONS

Answer to condemnation proceedings

An answer is not necessary in condemnation proceedings to protect property-owner's interests, having right to appear, produce witnesses and examine witnesses. *Concord Imp. Co.* v. *Reichelderfer* (1933, 65 F. 2d 189, 62 App. D. C. 101).

§ 7–316. Manner of assessing benefits where part only of parcel condemned.

If a part only of any piece or parcel of ground shall be condemned, the jury, in determining its value, shall not take into consideration any benefits that may accrue to the remainder thereof from such opening, extension, widening, or straightening, but such benefits shall be considered in determining what assessment shall be made on or against such part of such piece or parcel of land as may not be taken as herein provided. (Mar. 3, 1901, ch. 854, § 1608h, as added Feb. 23, 1905, 33 Stat. 735, ch. 734.)

CROSS REFERENCE

Assessment of benefits against lands, no part of which was condemned, see §§ 7–221, 7–319.

§ 7–317. Objections to verdict—When filed—Vacation or modification by court—New jury—Costs.

The court shall have power to hear and determine any objections which may be filed to said verdict or award, and to set aside and vacate the same, in whole or in part, when satisfied that it is unjust or unreasonable, and in such event a new jury in the case, having the qualifications hereinbefore mentioned, shall be summoned, who shall proceed to assess the damages or benefits, as the case may be, in respect of the land as to which the verdict may be vacated, as in the case of the first jury: *Provided,* That the exceptions or objections to the verdict and award shall be filed within thirty days after the return of such verdict and award: *And provided further,* That if the court is satisfied that part of the verdict or award should be set aside or vacated, then and in that event, at the election of the said commissioners, the court shall set aside and vacate the entire verdict or award and a new jury shall be summoned in the case as aforesaid. The verdict of a new jury summoned in accordance with the provisions of this section shall be final, and if the amount of damages assessed by any new jury summoned as aforesaid shall not be greater, or if the assessment of benefits shall not be less, than the amount assessed by the jury first summoned, according as the objection to the verdict may have been to the assessment of damages or benefits, the costs of the new jury shall be assessed against the property of the party or parties objecting, but if the party or parties should prevail by the verdict of the new jury, either in increasing his or their damages, or in diminishing the assessment for benefits, then, and in that event, the costs of the new jury shall be paid by the District of Columbia, and if the Commissioners of the District of Columbia do not elect that the entire verdict shall be set aside, and the same be set aside or vacated in part, the residue of the verdict and award shall not be affected thereby. (Mar. 3, 1901, ch. 854, § 1608i, as added Feb. 23, 1905, 33 Stat. 735, ch. 734.)

CROSS REFERENCE

Procedure where benefits were assessed against lands, no part of which were condemned, see § 7–221.

NOTE TO DECISIONS

Assessment exceeding benefits

Assessment for widening alley quashed where it greatly exceeded benefit to lots. *Brandenberg* v. *District of Columbia* (1907, 27 S. Ct. 449, 205 U. S. 135, 51 L. Ed. 743).

§ 7–318. Benefits assessed must equal damages and costs.

Said jury shall assess as benefits accruing by reason of said opening, extension, widening, or straightening an amount equal to the amount of damages as ascertained by them as hereinbefore provided, including five dollars per day for the marshal and five

dollars per day for each juror for the services of each when actually employed, and all other expenses of such proceedings. (Mar. 3, 1901, ch. 854, § 1608j, as added Feb. 23, 1905, 33 Stat. 736, ch. 734.)

CODIFICATION

The words: "upon each lot or part of lot or parcel of land in the square or block in which such alley or minor street is to be opened, extended, widened, or straightened, and upon each lot, part of lot, or parcel of ground in the squares or blocks confronting the square in which such alley or minor street is to be opened, extended, widened, or straightened, which will be benefited by such opening, extension, widening, or straightening, in the proportion that said jury may find said lots, parts of lots, or parcels of land will be benefited," have been omitted in view of the provisions of Act Mar. 3, 1917, 39 Stat. 1017, ch. 160, which is classified to section 7–319.

§ 7–319. Jury not restricted as to assessment area—Building lines and alleys—Benefits must equal damages and costs.

In all proceedings for the opening, extension, widening, or straightening of alleys and minor streets and for the establishment of building lines in the District of Columbia the jury of condemnation shall not be restricted as to the assessment area, but shall assess the entire amount awarded as damages plus the costs and expenses of the proceedings as benefits upon any and all lots, parts of lots, pieces or parcels of land which they may find will be benefited by the opening, extension, widening, or straightening of the alley or minor street, or by the establishment of the building line as they may find said lots, parts of lots, pieces or parcels of land will be benefited. (Mar. 3, 1917, 39 Stat. 1017, ch. 160.)

CROSS REFERENCE

Assessment of benefits against lands, no part of which were condemned, see § 7–221.

§ 7–320. Awards paid by Treasurer of United States—Benefits deducted from damages.

When the verdict of said jury shall have been finally ratified and confirmed by the court, as herein provided, the amounts of money awarded and adjudged to be payable for lands taken under the provisions of sections 7–301 to 7–308, 7–313 to 7–318, 7–320, 7–321, 7–323, 7–325 to 7–330 shall be paid to the owners of said land by the treasurer of the United States, ex officio commissioner of the sinking fund of the District of Columbia, upon the warrants of the commissioners of said District, out of any funds available therefor: *Provided,* That in all cases of payments the accounting officers shall take into account the assessment for benefits and the award for damages, and shall pay only such part of said award in respect of any lot as may be in excess of the assessment for benefits against the part of such lot not taken, and there shall be credited on said assessment the amount of said award not in excess of said assessment. (Mar. 3, 1901, ch. 854, § 1608k, as added Feb. 23, 1905, 33 Stat. 736, ch. 734.)

§ 7–321. Assessments to be liens—Payable in four annual installments—Amendments allowed.

When confirmed by the court the several assessments herein provided to be made shall severally be a lien upon the land assessed and shall be collected as special-improvement taxes in the District of Columbia, and shall be payable in four equal annual instalments, with interest at the rate of four per centum per annum from and after sixty days after the date of confirmation until paid. That said court may allow amendments in form or substance in any description of property proposed to be taken, or of property assessed for benefits, whenever such amendments will not interfere with the substantial rights of the parties interested, and any such amendment may be made after as well as before the order or judgment confirming the verdict or award aforesaid. (Mar. 3, 1901, ch. 854, § 1608*l*, as added Feb. 23, 1905, 33 Stat. 736, ch. 734.)

CROSS REFERENCE

General provisions concerning special assessments, see § 47–1101.

NOTES TO DECISIONS

Marketability of title

Where contract for sale of real estate provided that property was to be sold free of encumbrance and title was to be good of record and in fact, and subsequent to execution of contract condemnation proceedings were instituted with respect to adjacent property and benefits were assessed against property in question by jury, but at time of settlement of contract jury assessment had not been confirmed by the court, it was not a lien on property at time of settlement. *Murray* v. *Himelfarb et al.* (D.C. Mun. App. 1959, 154 A. 2d 358).

§ 7–322. Repealed. July 30, 1951, 65 Stat. 126, ch. 248, § 1.

Section, acts Mar. 3, 1901, 31 Stat. 1430, ch. 854, § 1609; June 30, 1902, 32 Stat. 545, ch. 1329; Feb. 23, 1905, 33 Stat. 736, ch. 734, related to compensation of jurors in eminent domain cases, and is now covered by § 7–213a.

§ 7–323. Appeal from assessment of benefits or damages not to stay proceedings—Determination on appeal controls.

No appeal by any interested party from the decision of the United States District Court for the District of Columbia confirming the assessment or assessments of benefits or damages herein provided for, nor any other proceeding at law or in equity by such party against the confirmation of such assessment or assessments, shall delay or prevent the payment of award to others in respect to the property condemned, nor delay or prevent the taking of any of said property sought to be condemned, nor the opening, extension, widening, or straightening of such alley or minor street: *Provided, however,* That upon the final determination of said appeal or other proceeding at law or in equity, the amount found to be due and payable as damages sustained by reason of the opening, extension, widening, or straightening of said alley or minor street under the provisions hereof shall be paid as hereinbefore provided. (Mar. 3, 1901, 31 Stat. 1430, ch. 854, § 1610; Feb. 23, 1905, 33 Stat. 736, ch. 734; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENT

1905—Act Feb. 23, 1905, amended section generally.

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia'" for "District Court of the United States for the District of Columbia."

CROSS REFERENCE

Assessment of benefits against lands, no part of which was condemned, see § 7–221.

§ 7–324. Benefit assessments from condemnation for alleys or minor streets.

In all condemnation proceedings instituted by the Commissioners of the District of Columbia in accordance with the provisions of sections 7–301 to 7–305, 7–313 to 7–318, 7–320, 7–321 and 7–323 for the acquisition of land for the opening, extension, widening, or straightening of alleys or minor streets, all, or any part of the entire amount found to be due and awarded by the jury in said proceedings as damages for, and in respect of, the land condemned, plus all or any part of the costs and expenses of said proceedings, may be assessed by the jury as benefits: *Provided, however,* That if the total amount of damages awarded by the jury in any such proceedings, plus the costs and expenses of said proceedings, be in excess of the total amount of benefits, it shall be optional with the commissioners of the District of Columbia to abide by the verdict of the jury, or, at any time before the final ratification and confirmation of the verdict, to enter a voluntary dismissal of the cause: *Provided further,* That if the total amount of damages awarded by the jury in any such proceedings, plus the costs and expenses of said proceedings, be in excess of the total amount of the assessment for benefits, any such excess in any verdict for the acquisition of land for minor streets or alleys, shall be paid out of the appropriation available for the payment of damages awarded and costs incurred under said verdict. (June 20, 1939, 53 Stat. 844, ch. 225.)

NOTES TO DECISIONS

Encumbrance

Where contract for sale of real estate provided that property was to be sold free of encumbrance and title was to be good of record and in fact, and subsequent to execution of contract jury in condemnation proceedings respecting adjoining property made a special benefit assessment against property in question, the special benefit assessment was not an "encumbrance" within meaning of contract. *Murray* v. *Himelfarb et al.* (D.C. Mun. App. 1959, 154 A. 2d 358).

§ 7–325. Proceeds of sale of lands paid into Treasury.

All money derived from the sale of land in which the United States is interested, under the provisions of sections 7–301, to 7–308, 7–313 to 7–318, 7–320, 7–321, 7–323, 7–325 to 7–330 shall be paid into the treasury of the United States by the commissioners of the District of Columbia to the credit of the United States. (Mar. 3, 1901, 31 Stat. 1430, ch. 854, § 1611; Feb. 23, 1905, 33 Stat. 737, ch. 734.)

AMENDMENT

1905—Act Feb. 23, 1905, amended section generally.

§ 7–326. Plats to be made by surveyor—Costs.

In all cases where plats are required to be made under the provisions of sections 7–301 to 7–308, 7–313 to 7–318, 7–320, 7–321, 7–323, 7–325 to 7–330, or where the said commissioners shall deem it necessary that they shall be made in order to more effectually carry out any provision hereof, such plats shall be made by the surveyor of the District of Columbia, who shall require the person or persons desiring the same to deposit in advance a sum to defray the cost of preparing the same; any amount of such deposit remaining after the cost of such plats has been paid shall be refunded to the party so depositing: *Provided,* That plats ordered by the said commissioners shall be prepared by said surveyor free of cost. (Mar. 3, 1901, 31 Stat. 1431, ch. 854, § 1612; Feb. 23, 1905, 33 Stat. 737, ch. 734.)

AMENDMENT

1905—Act Feb. 23, 1905, amended section generally.

CROSS REFERENCE

Duties of surveyor, fees, see § 1–616.

§ 7–327. Correcting defects in certain prior proceedings.

The validity of any condemnation proceeding under the Act of Congress entitled "An Act to provide for the opening of alleys in the District of Columbia," approved July 22, 1892, or under the Act of Congress entitled "An Act to open, widen, and extend alleys in the District of Columbia," approved August 24, 1894, or under the sections of the code of law of the District of Columbia hereby repealed, shall not be affected by the want of proper notice to any proprietor of land in the square, except as to such proprietor; and if it shall appear to the satisfaction of the commissioners of the District of Columbia that any such proprietor was not notified as required by said acts the said commissioners may proceed under sections 7–301 to 7–308, 7–313 to 7–318, 7–320, 7–321, 7–323, 7–325 to 7–330 to condemn the land affected by the want of such notice. (Mar. 3, 1901, 31 Stat. 1431, ch. 854, § 1613; Feb. 23, 1905, 33 Stat. 737, ch. 734.)

REFERENCES IN TEXT

The "sections of the code of law of the District of Columbia hereby repealed" referred to in the text, were sections 1608 to 1613 of act Mar. 3, 1901, which were repealed by act Feb. 23, 1905.

AMENDMENT

1905—Act Feb. 23, 1905, amended section generally.

§ 7–328. Certain alleys previously opened made valid.

All alleys opened or extended in the city of Washington since June 30, 1871, under an ordinance of the late corporation of Washington approved November 4, 1842, are hereby made valid. (Mar. 3, 1901, 31 Stat. 1431, ch. 854, § 1614.)

§ 7–329. Alleys closed by subdivision prior to March 3, 1901, unaffected.

All alleys or parts of alleys prior to March 3, 1901, closed by subdivision, with the approval of the commissioners, shall remain unaffected by sections 7–301 to 7–308, 7–313 to 7–318, 7–320, 7–321, 7–323, 7–325 to 7–330. (Mar. 3, 1901, 31 Stat. 1431, ch. 854, § 1615.)

§ 7–330. Surplus from sale of land in which United States is interested to be paid into Treasury.

If any money from the sale of land in which the United States is interested shall remain after carrying out the provisions of sections 7–301 to 7–308, 7–313 to 7–318, 7–320, 7–321, 7–323, 7–325 to 7–330, such moneys shall be paid into the treasury of the United States by the commissioners of the District of Columbia. (Mar. 3, 1901, 31 Stat. 1431, ch. 854, § 1616.)

§ 7–331. Costs paid from alley appropriations when proceedings fail.

In cases of condemnation proceedings for opening, widening, and extending alleys and minor streets in the District of Columbia, taken pursuant to law, which fail of confirmation and ratification by the court, the Commissioners of the District of Columbia are authorized to pay all costs and expenses that may be incurred in connection with such proceedings from the appropriation for "Alleys, District of Columbia." (May 30, 1908, 35 Stat. 494, ch. 227.)

CROSS REFERENCE

Appropriations made under this chapter may be used to establish building lines on streets, see § 5–206.

§ 7–332. Condemnation of materials for making or repairing public roads.

In any case where materials of any kind shall be deemed necessary for making or repairing a public road, if the proper authorities can not agree with the owner as to their purchase, such materials may be condemned in the same manner as provided for in this chapter in cases of condemnation of land for the purposes of a public road. (R. S., D. C., § 267.)

§ 7–333. Commissioners to employ assistant corporation counsel for condemnation proceedings.

The commissioners of said District are hereby authorized to employ, for such time as may be necessary, an assistant to the corporation counsel, whose duty it shall be to institute proceedings for the condemnations necessary to be taken in opening, widening, extending, and straightening alleys and minor streets. (June 27, 1906, 34 Stat. 491, ch. 3553; Mar. 2, 1907, 34 Stat. 1128, ch. 2510.)

Chapter 4.—CLOSING STREETS, ALLEYS, OR HIGHWAYS

Sec.

7–401. Street Readjustment—Closing of unnecessary public ways authorized—Disposition of property—Reference to Planning Commission.
7–402. Notice of intention to close public way—Hearing.
7–403. Plats to be prepared showing public way intended to be closed—Approval conditional upon dedication of other property.
7–404. Order for closing public ways—Notice—Effective if no objection within 30 days—Recordation of plats.
7–405. Objections to closing public ways—Proceedings.
7–406. Payment of damages—Collection of benefit assessments.
7–407. Abandonment of proceedings.
7–408. Petition by property owners for closing.
7–409. Prior laws to remain in force.
7–410. Short title.

§ 7–401. Street Readjustment—Closing of unnecessary public ways authorized—Disposition of property—Reference to Planning Commission.

The Commissioners of the District of Columbia are authorized to close any street, road, highway, or alley, or any part of any street, road, highway, or alley, in the District of Columbia when, in the judgment of said commissioners, such street, road, highway, or alley, or such part of a street, road, highway, or alley, has been rendered useless or unnecessary, the title to the land embraced within the public space so closed to revert to the owners of the abutting property subject to such compensation therefor in money, land, or structures as the commissioners of the District of Columbia, in their judgment, may find just and equitable, in view of all the circumstances of the case affecting near-by property of abutters and/or nonabutters: *Provided*, That if the title to such land be in the United States the property shall not revert to the owners of the abutting property but may be disposed of by the said commissioners to the best advantage of the locality and the properties therein and thereby affected, which properties thenceforth shall become assessable on the books of the tax assessor of the District of Columbia in all respects as other private property in the District; or also said property be sold as provided in section 7–302 this title, unless the use of such land is requested by some other department, bureau, or commission of the government of the United States for purposes not otherwise inconsistent with the proper development of the District of Columbia: *Provided further*, That the said closing by said commissioners is made expedient or advisable by reason of change in the highway plan or by reason of provision for access or better access to the abutting or nearby property and the convenience of the public by other street, road, highway, or alley facilities, or by reason of the acquisition by the District of Columbia or by the United States of America for school, park, playground, or other public purposes, of all the property abutting on the street, road, highway, or alley, or part of a street, road, highway, or alley, proposed to be closed or for other public reasons: *And provided further*, That the proposed closing of any street, road, highway, or alley, or any parts thereof, as provided for in this chapter shall be referred to the National Capital Planning Commission for its recommendation. (Dec. 15, 1932, 47 Stat. 747, ch. 4, § 1.)

TRANSFER OF FUNCTIONS

"National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in view of act June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission. See section 1–1009.

CROSS REFERENCES

Closing minor streets or alleys, see §§ 7–302 to 7–312.

Closing public highways outside Washington and Georgetown, see §§ 7–113 to 7–116, 7–118, 7–123, 7–124.

Jurisdiction and control of commissioners over highways, see § 7–102.

Ownership or reversion of lands on abandonment of public ways, see §§ 7–118, 7–123, 7–302 to 7–309.

NOTES TO DECISIONS

In general

Street Readjustment Act, this chapter, is a condemnation act in reverse, designed, as is the condemnation act, to dispose of all claims in a single suit. *Woodbury* v. *District of Columbia* (1937, 92 F. 2d 202, 67 App. D. C. 278).

§ 7–402. Notice of intention to close public way—Hearing.

Whenever a street, road, highway, or alley, or a part of a street, road, highway, or alley, is proposed to be closed under the provisions of this chapter the commissioners of the District of Columbia shall cause public notice of intention to be given by advertisement for not less than fourteen consecutive days, exclusive of Sundays and holidays, in a daily newspaper of general circulation printed and published

in the District of Columbia, to the effect that a public hearing will be held at a time and place stated in the notice for the hearing of objections, if any, to such closing. The said commissioners shall, not later than fourteen days in advance of such hearing, serve notice of such hearing, in writing, by registered mail, on each owner of property abutting the street, road, highway, or alley, or part thereof, proposed to be closed, or if the owner can not be located the advertisement provided for above shall be deemed sufficient legal notice. At such hearing a map showing the proposed closing shall be exhibited, and the property owners or their representatives, and any other persons interested, shall be given an opportunity to be heard (Dec. 15, 1932, 47 Stat. 748, ch. 4, § 2.)

§ 7–403. Plats to be prepared showing public way intended to be closed—Approval conditional upon dedication of other property.

After such public hearing the said commissioners, if they are satisfied that the proposed closing will be in the public interest, and that such closing will not be detrimental to the rights of the owners of the property abutting on the street, road, highway, or alley, or part of a street, road, highway, or alley, proposed to be closed, nor cause unreasonable inconvenience to or adverse effect upon the owner or owners of any property abutting on streets connected therewith, nor unreasonably infringe the rights of the public to use such street, road, highway, or alley shall cause to be prepared a plat or plats showing the street, road, highway, or alley, or part thereof, proposed to be closed and the area to be apportioned to each owner of property abutting thereon: *Provided*, That if the approval of the proposed closing by the said commissioners shall be conditioned upon the dedication of any other areas for street, highway, or alley purposes, and/or the retention by the District of Columbia of specified rights of way for any public purpose, and/or any other reservations deemed expedient or advisable by said commissioners, such plat or plats shall also show the parcels of land so dedicated, and/or the reserved rights of way, and/or such additional area affected by said closing, with alternative openings occasioned thereby, and/or by certificate thereon any such reservations deemed expedient or advisable by the said commissioners of the District of Columbia. (Dec. 15, 1932, 47 Stat 748, ch. 4, § 3.)

§ 7–404. Order for closing public ways—Notice—Effective if no objection within 30 days—Recordation of plats.

If, after such hearing, the commissioners are of the opinion that any street, road, highway, or alley, or part thereof, should be closed, they shall prepare an order closing the same and shall cause public notice of such order to be given by advertisement for fourteen consecutive days, exclusive of Sundays and legal holidays, in at least two daily newspapers of general circulation printed and published in the District of Columbia, and shall serve a copy of such order on each property-owner abutting the street, road, highway, or alley, or part thereof, proposed to be closed by such order, and copy of such order shall be served on the owners in person or by registered mail delivered at the last known residence of such owners, or if the owner can not be located the advertisement provided for above shall be deemed sufficient legal notice; or if he be a nonresident of the District of Columbia, by sending a copy thereof by registered mail to his last known place of address: *Provided*, That if no objection in writing be made to the commissioners by any party interested within thirty days after the service of such order, then the said order shall immediately become effective; and the said order and plat or plats as provided for herein shall be ordered by the commissioners of the District of Columbia recorded in the office of the surveyor of the District of Columbia. (Dec. 15, 1932, 47 Stat. 749, ch. 4, § 4.)

§ 7–405. Objections to closing public ways—Proceedings.

When any such objection shall be filed with the commissioners as provided in section 7–404, then the commissioners of the District of Columbia shall institute a proceeding in rem in the United States District Court for the District of Columbia for the closing of such street, road, highway, or alley, or part thereof, and its abandonment for street, highway, or alley purposes, and for the ascertainment of damages and the assessment of benefits resulting from such closing and abandonment. Such proceeding shall be conducted in like manner as proceedings for the condemnation of land for streets, under the provisions of sections 7–202 to 7–212, 7–214 and 7–215, and such closing and abandonment shall be effective when the damages and benefits shall have been so ascertained and the verdict confirmed. (Dec. 15, 1932, 47 Stat. 749, ch. 4, § 5; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

CROSS REFERENCE

Condemnation generally, see § 16–1301 et seq.

§ 7–406. Payment of damages—Collection of benefit assessments.

Any damages awarded in any proceedings under section 7–405, together with the costs of the proceedings, shall be payable from the indefinite annual appropriation for opening, extending, straightening, or widening of any street, avenue, road, or highway, in accordance with the plan of the permanent system of highways of the District of Columbia. Any benefits assessed against private property in any such proceedings shall be a lien upon such property and shall be collected in like manner as provided in section 7–211 (Dec. 15, 1932, 47 Stat. 749, ch. 4, § 6.)

CROSS REFERENCES

Permanent system of highways, see §§ 7–108 to 7–131.
Special assessments in general, see § 47–1101 et seq.

NOTES TO DECISIONS

In general

Action in personam to recover assessment from an extension of streets alleging partial failure of consideration for closing one of streets was not barred on grounds, that

jury awarded him no damages upon such proceedings, when there was no evidence that the matter was actually litigated and determined. *Woodbury* v. *District of Columbia* (1937, 92 F. 2d 202, 67 App. D. C. 278).

§ 7–407. Abandonment of proceedings.

In any proceedings under section 7–405 or section 7–406 it shall be optional with the commissioners either to abide by the verdict and proceed with the proposed closing, or within a reasonable time to be fixed by the court in its order confirming the verdict, to abandon the proposed closing without being liable for damages therefor. (Dec. 15, 1932, 47 Stat. 749, ch. 4, § 7.)

§ 7–408. Petition by property owners for closing.

Nothing in this chapter contained shall be construed to prevent the filing of petitions by abutting property-owners, or other persons or groups of persons affected by said closing, praying the closing or discontinuance in the public interest of any street, road, highway, or alley, or parts or portions thereof within the District of Columbia; and all such petitions shall be definitely considered by the commissioners of the District of Columbia, and all action taken by the said commissioners thereon shall be in conformity and compliance with the provisions of this chapter. (Dec. 15, 1932, 47 Stat. 749, ch. 4, § 8.)

§ 7–409. Prior laws to remain in force.

Nothing in this chapter shall be construed to repeal the provisions of any existing law authorizing the commissioners of the District of Columbia to close streets, roads, highways, or alleys, not inconsistent with the provisions of this chapter, but all such laws shall remain in full force and effect; and in any case to which more than one of these laws is applicable, the commissioners of the District of Columbia may elect the one under which they will proceed. (Dec. 15, 1932, 47 Stat. 750, ch. 4, § 9.)

CROSS REFERENCES

Closing minor streets or alleys, see §§ 7–302 to 7–312.
Closing public highways outside Washington and Georgetown, see §§ 7–113 to 7–116, 7–118, 7–123, 7–124.

§ 7–410. Short title.

In all cases where necessary to refer to this chapter, the same may be cited as "The Street Readjustment Act of the District of Columbia." (Dec. 15, 1932, 47 Stat. 750, ch. 4, § 10.)

Chapter 5.—BRIDGES, VIADUCTS, AND SUBWAYS

Sec.

7–501. Control of bridges vested in Commissioners of the District of Columbia—Except Aqueduct Bridge.
7–502 Construction and repair of bridges over railway and canal rights-of-way—Collection of cost.
7–503 Cost of maintenance and repairs to Rock Creek bridges—Collection.
7–504. Pennsylvania Avenue Bridge.
7–505. Anacostia Bridge—Cost of paving—Repairs.
7–506 John Philip Sousa Bridge over Anacostia River.
7–507 Highway Bridge—Maintenance cost—Street railways.
7–508 Long Bridge—Maintenance cost—Railroads.
7–509. Tugboat construction—Approval by Secretary of the Army—Passage under bridges without using draw.
7–510 Monroe Street Bridge—Cost—Street railways.
7–511. Francis Scott Key Bridge—Railways—Approval by Secretary of the Army.
7–512 South Dakota Avenue Bridge—Payment of proportion of cost—Street railways.
7–513. Connecticut Avenue Bridge over Klingle Valley—Street railways.
7–514. Benning Bridge—Cost—Railways.
7–515. Fern and Varnum Streets and Eastern Avenue Viaducts—Cost—Railways.
7–516. Certain grade crossings to be closed after completion of Fern Street Viaduct.
7–517. Van Buren Street Subway—Cost—Railways.
7–518. Grade crossing closed.
7–519. Cedar Street Subway—Use by street railway company—Payment of share of cost.
7–520. Michigan Avenue Viaduct—Construction authorized—Cost.
7–521. Use of viaduct by street railway companies.
7–522 Grade crossing to be closed
7–523. Subway under Baltimore and Ohio tracks in vicinity of Chestnut Street, Fern Place, and Piney Branch Road, extended—Cost.
7–524 Calvert Street Bridge—Street railways
7–525. Francis Case Memorial Bridge.
7–526. Washington Channel bridge and facilities—Construction, maintenance, etc.—Acquisition of land—Cooperation with agencies—Leases—Advisory Committee—Appropriations.

§ 7–501. Control of bridges vested in Commissioners of the District of Columbia—Except Aqueduct Bridge.

The control of bridges, except the Aqueduct Bridge across Rock Creek, in the District of Columbia, is hereby conferred on the commissioners of the District of Columbia, and they are hereby required to make such proper regulations as they may deem necessary for the safety of the public using said bridges, and for the lighting and the police control of the same. (Mar. 3, 1893, 27 Stat. 544, ch. 199.)

CROSS REFERENCES

General provisions for contracts for construction or repair, see § 1–801 et seq.
Powers and duties of Commissioners, see § 7–102.
Provisions for lighting public places, see §§ 7–701 to 7–710.
Railroads other than street railways to pay cost of lighting bridges and subways, see § 7–709.
Rules and regulations in general, see § 1–226.

§ 7–502. Construction and repair of bridges over railway and canal rights-of-way—Collection of cost.

Appropriations made after June 7, 1924, for the construction and repair of bridges shall be available for repairing, when necessary, any bridge carrying a public street over the right of way or property of any railway company, or for constructing, reconstructing, or repairing in such manner as shall in the judgment of the commissioners be necessary reasonably to accommodate public traffic, any bridge required to carry or carrying such traffic in a public street over the right of way or property of any canal company operating as such in the District of Columbia, on the neglect or refusal of such railway or canal company to do such work when notified and required by the commissioners, and the amounts thus expended shall be a valid and subsisting lien against the property of such railway company or of such canal company, and shall be collected from such railway company or from such canal company in the manner provided in section 7–604, and shall be deposited in the Treasury to the credit of the United States and the District of Columbia in the manner provided by law. (June 7, 1924, 43 Stat. 550, ch. 302.)

OPENING OF STREETS AND CONSTRUCTION OF VIADUCT BRIDGES

Act Aug. 9, 1935, 49 Stat. 568, ch. 502, provided that:

SECTION 1. "No streets or avenues shall be opened across the railroads constructed under the authority of this Act between Florida Avenue and an extension of the west line of Twenty-second Street Northeast from Bryant Street to New York Avenue, except New York Avenue and except as hereinafter provided; the Baltimore and Ohio Railroad Company and the Philadelphia, Baltimore and Washington Railroad Company shall construct, within two years after being directed so to do by the Commissioners of the District of Columbia, a suitable viaduct bridge above the said railroads connecting Brentwood Road and T Street Northeast, with New York Avenue at such point as may be determined by the said Commissioners between Fourth Street Northeast and the extension of Mount Olivet Road Northeast, as the same may be shown on the plan of the permanent system of highways at the time the said Commissioners direct the construction of said viaduct bridge, said viaduct bridge either to connect directly with New York Avenue at grade or to pass over said avenue with connections thereto as the said Commissioners may direct; the Baltimore and Ohio Railroad Company and the Philadelphia, Baltimore and Washington Railroad Company shall pay in equal shares the entire cost and expense of the bridge structure, including the necessary retaining walls and approaches in connection therewith, between the southerly line of New York Avenue as now publicly owned, and the southerly line of Brentwood Road as now publicly owned; the Baltimore and Ohio Railroad Company and the Philadelphia, Baltimore and Washington Railroad Company shall dedicate or cause to be dedicated to the District of Columbia such land lying between the southerly line of Brentwood Road and the northerly line of New York Avenue Northeast, as now publicly owned, as may be necessary for the location of such bridge structure and the approaches thereto in accordance with the plan of the permanent system of highways as said plan may be established at the time the Commissioners direct the construction of said viaduct bridge; the cost of maintenance of said viaduct bridge, retaining walls, and approaches is to be borne entirely by the District of Columbia; and said viaduct bridge, retaining walls, and approaches shall be constructed in accordance with plans and specifications and at a location approved by the Commissioners of said District; and the Baltimore and Ohio Railroad Company and the Philadelphia, Baltimore and Washington Railroad Company shall construct, within two years after being directed so to do by the Commissioners of the District of Columbia, a suitable subway or underpass beneath the tracks of said companies within the lines of the street connecting the intersection of New York Avenue and West Virginia Avenue Northeast, as the same may be shown on said plan of the permanent system of highways at the time said Commissioners direct the construction of said subway or underpass; the said railroad companies shall pay in equal shares the entire cost and expense of the subway or underpass structure, including the necessary retaining walls in connection therewith, and in addition thereto, so much of the approaches to said subway or underpass as lie within the limits of the said railroad companies' properties; each of said railroad companies shall dedicate or cause to be dedicated to the District of Columbia such land lying within the limits of said railroad companies' properties as may be necessary for said street in accordance with the plan of the permanent system of highways as said plan may be established at the time the Commissioners direct the construction of said subway or underpass; the cost of maintenance of said approaches is to be borne entirely by the District of Columbia; the cost of maintenance of said subway or underpass structure and the retaining walls is to be borne entirely by said railroad companies; and the said subway or underpass and the retaining walls and approaches shall be constructed in accordance with the plans and specifications and at a location approved by the Commissioners of said District.

"SEC. 2. Congress reserves the right to alter, amend, or repeal this Act.

"SEC. 3. If this amendatory Act or any part thereof shall be declared invalid, so much of this Act as forbids the opening of Ninth, Twelfth, and Fifteenth Streets shall be void, and the duty of the terminal company referred to in said Act of Congress approved February 28, 1903, to construct suitable viaduct bridges and the approaches thereto to carry said streets over the railroads as required by said section 5 of said Act of February 28, 1903, as originally enacted, shall remain in full force and effect and unimpaired by this amendatory Act."

GROSS REFERENCE

Other provisions concerning construction, cost, and repair of viaducts and subways, see §§ 7–1210 to 7–1212, 7–1214, 7–1215, 7–1220 to 7–1227, 7–1228.

§ 7–503. Cost of maintenance and repairs to Rock Creek bridges—Collection.

The entire cost of paving, repairs, or replacements incident to track repairs, replacements, or changes made at a time when the bridge is not being paved, and one-half the cost of other paving, repaving, or maintenance of paving between its track and for two feet outside the outer rails, and the excess cost of construction and maintenance of any bridge across Rock Creek due to the existence or installation by a street railway or railways of its or their tracks on such bridge shall be borne by the said railway company or companies, and shall be collected in the same manner as the cost of laying pavements between the rails and tracks of street railways as provided for in section 7–604. The amounts thus collected shall be deposited to the credit of the appropriation for the fiscal year in which they are collected. (Aug. 7, 1894, 28 Stat. 252, ch. 232; Jan. 14, 1933, 47 Stat. 759, ch. 10, § 3.)

CODIFICATION

Provisions concerning the entire cost of paving, repairs, replacements incident to track repairs, replacements, or changes made at a time when the bridge is not being paved, and one-half the cost of other paving, repaving, or maintenance of paving between its track and for two feet outside the outer rails, and the excess cost of construction and maintenance of any bridge across Rock Creek due to the existence or installation by a street railway or railways of its or their tracks on such bridge were substituted for provisions stating that one-half the cost of the maintenance and repair of any bridge across Rock Creek occupied by the tracks of a street railway or railways was to be borne by such company or companies, to conform to act Jan. 14, 1933.

§ 7–504. Pennsylvania Avenue Bridge.

The East Washington Heights Traction Railroad Company shall bear the cost of maintenance, construction, and repair of the Pennsylvania Avenue Bridge over the Anacostia River in like manner and under the same conditions as are provided by section 7–503. (July 1, 1902, 32 Stat. 636, ch. 1360; Jan. 14, 1933, 47 Stat. 759, ch. 10, § 3.)

CODIFICATION

Provisions relating to the East Washington Heights Traction Railroad Company bearing the cost of maintenance, construction, and repair of the Pennsylvania Avenue Bridge, were substituted for provisions which extended the construction time of the East Washington Heights Traction Railroad Company, and permitted the company to extend a single line across the Pennsylvania Avenue Bridge to connect with the Capital Traction Company, with the Commissioners of the District approving plans and supervising construction, and the company bearing one-half the cost of maintenance and repair of said bridge, to conform to act Jan. 14, 1933.

§ 7–505. Anacostia Bridge—Cost of paving—Repairs.

The Anacostia and Potomac River Railroad Company shall pay the entire cost of the pavement between the exterior rails of its tracks on said bridge

(the Anacostia Bridge) and for a distance of two feet from the said exterior rails of said tracks on each side thereof and the cost of the entire floor system supporting said pavement, to be collected in the same manner as the cost of laying pavements between the rails and tracks of street railways as provided for in section 7–604 and paid for each fiscal year into the treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the treasury of the United States and the revenues of the District of Columbia: *Provided further*, That any other railroad company on or after April 27, 1904, authorized by Congress to use said bridge shall have the right to use the tracks of the Anacostia and Potomac River Railroad Company thereon upon such reciprocal trackage and such compensation as may be mutually agreed upon, and in case of failure to reach such an agreement that the District Court of the United States for the District of Columbia shall, upon petition filed by either party, fix and determine the same. And after April 27, 1904, one-half of the cost of the maintenance and repairs of this bridge shall be borne by the said railway company or companies, and shall be collected in the same manner as the cost of laying pavements between the rails and tracks of street railways, and paid into the treasury, as provided for above. The entire cost of maintenance of such underfloor construction as may be necessary in order that the cars of said company may be propelled over said bridge by underfloor electrical conductors or cables shall, after March 3, 1905, be borne by said railroad company, and no cars shall be propelled across said bridge unless all electrical conductors or cables furnishing power for the propulsion of the same shall be placed under floor of said bridge. (Apr. 27, 1904, 33 Stat. 372, ch. 1628; Mar. 3, 1905, 33 Stat. 893, ch. 1406; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

CODIFICATION

This section is a composite of the credits cited in the history line.

CROSS REFERENCES

Joint use of facilities, see § 43–302.

The Federal Government now makes a lump sum appropriation for the District, see § 47–134.

NOTE TO DECISIONS

Apportionment of maintenance cost

Street railway required to pay one-half cost of maintenance and repairs under the act of 1904 and said act was not repealed by the act of 1905. *Hazen* v. *Washington R. & E. Co.* (1935, 74 F. 2d 461, 64 App. D. C. 57, certiorari denied 55 S. Ct. 512, 294 U.S. 714, 79 L. Ed. 1247).

§ 7–506. John Philip Sousa Bridge over Anacostia River.

The bridge authorized to be erected over the Anacostia River, in the District of Columbia, in the line of Pennsylvania Avenue shall be on and after March 7, 1939, known as the John Philip Sousa Bridge. (Mar. 7, 1939, 53 Stat. 512, ch. 8.)

§ 7–507. Highway Bridge—Maintenance cost—Street railways.

The jurisdiction and control of the Highway Bridge across the Potomac River, including appropriations and employees, shall be under the commissioners of the District of Columbia. The Highway Bridge shall be for highway traffic. The entire cost of paving, repairs, or replacements incident to track repairs, replacements, or changes made at a time when the bridge is not being paved, and one-half the cost of other paving, repaving, or maintenance of paving between its track and for two feet outside the outer rails, and the excess cost of construction and maintenance of the bridge due to the existence or installation of its tracks thereon shall be paid by the street railway company or companies using the same under such regulations as the commissioners of the District of Columbia shall prescribe: *Provided*, That all street railroads chartered or that may hereafter be chartered by Congress shall have the right to cross said bridge upon terms mutually agreed upon with the Washington, Alexandria, and Mount Vernon Railway Company or in case of disagreement, upon terms determined by the United States District Court for the District of Columbia which is authorized and directed to give hearing to the interested parties and to fix the terms of joint trackage. (Feb. 12, 1901, 31 Stat. 773, ch. 353, § 12; July 1, 1902, 32 Stat. 598, ch. 1352; Feb. 22, 1921, 41 Stat. 1117, ch. 70, § 1; Jan. 14, 1933, 47 Stat. 759, ch. 10, § 3; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CODIFICATION

This section is a composite of the credits cited in the history line.

This section is also classified to 40 U.S.C. § 61.

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

REPLACEMENT OF HIGHWAY BRIDGE

Act Oct. 4, 1966, 80 Stat. 875, Pub. L. 89–627, provided: "That notwithstanding any other provision of law, the Commissioners of the District of Columbia are authorized to remove the existing Fourteenth Street Bridge structure, also known as the Highway Bridge, across the Potomac River, and to construct on the general alinement of such structure a highway bridge of at least six lanes.

"Sec. 2. The Commissioners of the District of Columbia are hereby authorized to construct bridge approaches and roads connecting such bridge and approaches with streets and park roads in the District of Columbia and with roads and park roads on the Virginia side of the Potomac River: *Provided*, That the authorization contained in this section shall not apply to any bridge approaches and connecting roads extending beyond the boundary line between the District of Columbia and the Commonwealth of Virginia, as defined in section 101 of Public Law 208, Seventy-ninth Congress, approved October 31, 1945.

"Sec. 3. There are hereby authorized to be appropriated such District of Columbia funds as may be necessary to carry out the provisions of this Act."

[Section 101 of Pub. L. 208 (ch. 443), Seventy-ninth Congress, approved Oct. 31, 1945, referred to in the above-quoted provisions, is set out in note under § 1–101 of this Code.]

CROSS REFERENCES

Joint use of facilities, see § 43–302.

Other provisions concerning jurisdiction and control of Highway Bridge, see § 7–103.

§ 7–508. Long Bridge—Maintenance cost—Railroads.

The bridge built in lieu of the Long Bridge shall be for railroad purposes only and for two or more railway tracks. The Baltimore and Potomac Railroad Company shall maintain, and keep in repair said bridge at its own cost and expense, and shall maintain an efficient draw in said bridge, operating the same so as not to unnecessarily impede the free navigation of the Potomac River at any hour of the day or night, and shall give other railroad companies the right to pass over said bridge upon such reasonable terms as may be agreed upon between the companies or prescribed by Congress. (Feb. 12, 1901, 31 Stat. 772, ch. 353, § 11.)

GROSS REFERENCE

Joint use of facilities, see § 43–302.

§ 7–509. Tugboat construction—Approval by Secretary of the Army—Passage under bridges without using draw.

All tugboats using the Potomac River at the place or places where the same is spanned by the two certain bridges in said act provided for, namely the railway bridge and the highway bridge are required to equip and fit, not later than July 1, 1909, all smokestacks thereof or other vertical projections with hinges or other mechanical device so as to permit the same to be lowered to the level of the top of the pilot house of such boats: *Provided,* That all such tugboats the pilot house of which will not pass under such bridges may be exempted from the operations of the provisions hereof, upon application made to the Secretary of the Army and his approval thereof: *Provided further,* That all tugboats after March 4, 1909, built or purchased, or not on said date actually engaged in business on the Potomac River at the places aforesaid, must have their dimensions approved by the Secretary of the Army before being permitted to use and operate the same on the Potomac River at the places above mentioned: *And provided further,* That the provisions hereof shall not apply to such tugboats as may, by reason of their structure, be able to pass under said two bridges, respectively, without the necessity of operating the draws thereof.

The provisions of this section are applicable to "power boats," meaning any boat, vessel, or craft propelled by machinery, whether the machinery be only principal or auxiliary power of propulsion. (Mar. 4, 1909, 35 Stat. 1066, ch. 315; Mar. 4, 1915, 38 Stat. 1053, ch. 142, § 6.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343, title II. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of act Aug. 10, 1956, enacted Title 10 of the U.S. Code which continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

AMENDMENT

1915—Act Mar. 4, 1915, included the provisions relating to power boats.

§ 7–510. Monroe Street Bridge—Cost—Street railways.

No street railway company shall use the viaduct or bridge or any approaches thereto authorized by the Act of July 3, 1930, to carry Monroe Street Northeast over the tracks of the Baltimore and Ohio Railroad Company, for its tracks until such company shall have paid to the collector of taxes of the District of Columbia a sum equal to one-fourth of the cost of such viaduct or bridge and approaches, which sum shall be paid to the collector of taxes for the District of Columbia for deposit to the credit of the District of Columbia. (Mar. 2, 1907, 34 Stat. 1130, ch. 2510; July 3, 1930, 46 Stat. 963, ch. 848.)

AMENDMENT

1930—Act July 3, 1930, required the payment of one-fourth the cost of the bridge and approaches instead of one-sixth, to be paid to the collector of taxes for the District, instead of the Treasurer of the United States for the use of the District without apportionment to the United States.

§ 7–511. Francis Scott Key Bridge—Railways—Approval by Secretary of the Army.

The jurisdiction or control of the Georgetown bridge, to be known as the Francis Scott Key bridge, across the Potomac River and approaches shall be under the commissioners of the District of Columbia. The said bridge shall be used as a highway for traffic, and for gas and water-mains, power, telegraph and telephone wires or cables, and interurban railroads upon such conditions and for such compensation as may from time to time be prescribed by the Secretary of the Army: *Provided,* That the Washington and Old Dominion Railway, using the Aqueduct Bridge on May 18, 1916, shall be permitted, with the approval of the Secretary of the Army, to change its location so as to cross with a double track the new bridge and approaches herein provided for, and to connect its railway, located in Alexandria County, Virginia, and in the District of Columbia, with the tracks of said new bridge; and that all plans for such change are to be approved by the Secretary of the Army: *And provided further,* That a standard system of electric propulsion shall be installed by said railway on said new bridge, and no dynamo furnishing power to this portion of the road of said railway shall be in any manner connected with the ground, and that the cost of paving and maintaining in good condition between the tracks and two feet outside thereof shall be paid by said railway: *And provided further,* That any electric railway shall have the right to use said new bridge and the double track above described upon terms determined by the Secretary of the Army, who is hereby authorized and directed to hear the interested parties and to fix the terms of joint trackage. (May 18, 1916, 39 Stat. 163, ch. 127, § 5; Feb. 28, 1923, 42 Stat. 1338, ch. 148, § 1; June 7, 1926, 44 Stat. 697, ch. 480, § 1.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343, title II. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of act Aug. 10, 1956, enacted Title 10, of the U.S. Code which continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

Provisions relating to the control of the Francis Scott Key bridge by the commissioners of the District of Columbia were added to conform to act Feb. 28, 1923.

AMENDMENT

1926—Act June 7, 1926, deleted provisions which related to the payment of one-half of one cent for each passenger transported one way over the new bridge by electric railway companies, and for reasonable rates on all freight transported thereon, and for the crediting of one-half of these funds to the District of Columbia when paid into the Treasury.

GROSS REFERENCE

Joint use of facilities by utility companies, see § 43–302.

§ 7–512. South Dakota Avenue Bridge—Payment of proportion of cost—Street railways.

No street railway company shall use the bridge authorized by the Act of March 3, 1917 (39 Stat. 1018), for its tracks until such company shall have paid to the treasurer of the United States a sum equal to one-sixth of the total cost of said bridge, to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the treasury of the United States and the revenues of the District of Columbia. (Mar. 3, 1917, 39 Stat. 1018, ch. 160; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

CODIFICATION

Act Feb. 22, 1921, deleted provisions stating that one-half of the payment to the Treasurer of the United States should be credited to the United States and the other half to the credit of the District of Columbia.

GROSS REFERENCE

The Federal Government now makes a lump-sum appropriation for the District, see §§ 7–604, 47–134.

§ 7–513. Connecticut Avenue Bridge over Klingle Valley—Street railways.

Any street railway company using the new Connecticut Avenue Bridge over Klingle Valley shall install thereon at its own expense an approved standard underground system and an overhead trolley system of street car propulsion, including trolley poles of approved design, and at its own expense shall thereafter maintain such underground and overhead construction and bear the cost of surfacing, resurfacing, and maintaining in good condition the space between the railway tracks and two feet exterior thereto, and shall defray the cost of excess construction occasioned by such use. (July 3, 1930, 46 Stat. 962, ch. 848.)

§ 7–514. Benning Bridge—Cost—Railways.

One-fifth of the cost of constructing the said bridge (in line of Benning Road over the Anacostia River) and approaches shall be borne and paid by the Washington Railway and Electric Company, its successors and assigns, to the collector of taxes of the District of Columbia, to the credit of the District of Columbia, and the same shall be a valid and subsisting lien against the franchises and property of the said railway company and shall constitute a legal indebtedness of said company in favor of the District of Columbia, and the said lien may be enforced in the name of the District of Columbia by a bill in equity brought by the said commissioners in the United States District Court for the District of Columbia, or by any other lawful proceeding against the said railway company: *Provided further,* That after the completion of said bridge and approaches authorized by the Act of June 29, 1932 (47 Stat. 355) no street railway company shall use said bridge or approaches until the said company shall have paid to the collector of taxes of the District of Columbia a sum equal to one-fifth of the cost of said bridge and approaches, which sum shall be paid to the collector of taxes of the District of Columbia for deposit to the credit of the District of Columbia. (June 29, 1932, 47 Stat. 355, ch. 308; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

GROSS REFERENCE

Joint use of facilities by utility companies, see § 43–302.

§ 7–515. Fern and Varnum Streets and Eastern Avenue Viaducts—Cost—Railways.

The viaducts and approaches thereto, to carry Fern and Varnum Streets over the tracks and right of way of the Baltimore and Ohio Railroad Company or the viaduct and approaches thereto to carry Eastern Avenue over the tracks and rights of way of the Philadelphia, Baltimore and Washington Railroad Company and the Baltimore and Ohio Railroad Company shall not be used by any street railroad company until said companies shall have paid to the collector of taxes of the District of Columbia, a sum equal to one-fourth of the total cost of constructing said viaducts and approaches, to be applied to the credit of the District of Columbia. No limitation shall run against claims made by the District of Columbia under the provisions of this section. (Mar. 3, 1927, 44 Stat. 1352, ch. 306, § 1.)

GROSS REFERENCE

Cost of repairs and maintenance, see § 7–502.

§ 7–516. Certain grade crossings to be closed after completion of Fern Street Viaduct.

From and after the completion of the viaduct and approaches to carry Fern Street over the tracks and right of way of the Metropolitan branch of the Baltimore and Ohio Railroad Company, the highway grade crossing over the tracks and right of way of the said Baltimore and Ohio Railroad Company at Chestnut Street shall be forever closed against further traffic of any kind; and from and after the completion of the viaduct and approaches to carry Varnum Street over the tracks and right of way of the Metropolitan branch of the Baltimore and Ohio Railroad Company, the highway grade crossing over the tracks and right of way of the said railroad company at Bates Road shall be forever closed against further traffic of any kind, and from and after the completion of the viaduct and approaches to carry Eastern Avenue over the tracks and right of way of the Philadelphia, Baltimore and Washington Railroad Company and the Baltimore and Ohio Railroad Company, the highway grade crossing over

the tracks and rights of way of the said railroad companies at Quarles Street, shall be forever closed against further traffic of any kind. (Mar. 3, 1927, 44 Stat. 1354, ch. 306, § 4.)

§ 7–517. Van Buren Street Subway—Cost—Railways.

No street railway company shall use the subway and approaches to carry Van Buren Street under the tracks and right of way of the Metropolitan branch of the Baltimore and Ohio Railroad Company for its tracks until said company shall have paid to the collector of taxes of the District of Columbia a sum equal to one-fourth of the total cost of said subway and approaches, to be applied to the credit of the District of Columbia. (Mar. 2, 1925, 43 Stat. 1096, ch. 395, § 1.)

§ 7–518. Grade crossing closed.

The highway grade crossing formerly over the tracks and right of way of the Metropolitan branch of the Baltimore and Ohio Railroad Company at Lamond shall be forever closed against further traffic of any kind. (Mar. 2, 1925, 43 Stat. 1097, ch. 395, § 3.)

§ 7–519. Cedar Street Subway—Use by street railway company—Payment of share of cost.

No street railway company shall use the subway herein authorized (to carry Cedar Street under the tracks of the Baltimore and Ohio Railroad Company) for its tracks until such company shall have paid to the treasurer of the United States a sum equal to one-fourth of the total cost of said subway and bridge, to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the treasury of the United States and the revenues of the District of Columbia. (May 18, 1910, 36 Stat. 388, ch. 248; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

CODIFICATION

Act Feb. 22, 1921, substituted provisions relating to the proportions of appropriations as paid from the Treasury and from the revenues of the District, for provisions crediting half of the payments to the United States, and the other half to the District of Columbia.

GROSS REFERENCE

The Federal Government now makes a lump sum appropriation for the District, see §§ 7–604, 47–134.

§ 7–520. Michigan Avenue Viaduct—Construction authorized—Cost.

The Commissioners of the District of Columbia are authorized and directed to construct a viaduct and approaches to eliminate the crossing at grade of Michigan Avenue and the tracks and right of way of the Baltimore and Ohio Railroad Company, said viaduct to be constructed north of the present line of Michigan Avenue as may be determined by the commissioners of the District of Columbia in accordance with plans and profiles of said works to be approved by the said commissioners: *Provided*, That one-half of the total cost of constructing the said viaduct and approaches shall be borne and paid by the said railroad company, its successors and assigns, to the collector of taxes of the District of Columbia to the credit of the District of Columbia, and the same shall be a valid and subsisting lien against the franchises and property of the said railroad company and shall constitute a legal indebtedness of said company in favor of the District of Columbia, and the said lien may be enforced in the name of the District of Columbia by a bill in equity brought by the said commissioners in the United States District Court for the District of Columbia, or by any other lawful proceeding against the said railroad company: *Provided further*, That from and after the completion of the said viaduct and approaches the highway grade crossing over the tracks and right-of-way of the said Baltimore and Ohio Railroad Company in line of present Michigan Avenue shall be forever closed against further traffic of any kind. (Mar. 3, 1927, 44 Stat. 1351, ch. 305, § 1; Feb. 12, 1931, 46 Stat. 1087, ch. 119; June 14, 1935, 49 Stat. 349, ch. 241, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENTS

1935—Act June 14, 1935, included the proviso: "That from and after the completion of the said viaduct and approaches the highway grade crossing over the tracks and right-of-way of the said Baltimore and Ohio Railroad Company in line of present Michigan Avenue shall be forever closed against further traffic of any kind."

1931—Act Feb. 12, 1931, substituted "eliminate the crossing at grade of Michigan Avenue and the tracks and right-of-way of the Baltimore and Ohio Railroad Company, said viaduct to be constructed north of the present line of Michigan Avenue as may be determined by the commissioners of the District of Columbia", for "carry Michigan Avenue over the tracks and right-of-way of the Baltimore and Ohio Railroad Company."

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

GROSS REFERENCE

Cost of repairs and maintenance, see § 7–502.

NOTES TO DECISIONS

Commissioner's discretion in determining location

Project for erection of a viaduct was not unauthorized by law, because its location was not exactly as specified in the statute authorizing it where it was substantially so, and the statute left to the commissioners some discretion in placing the exact location. *Ralph* v. *Hazen* (1938, 93 F. 2d 68, 68 App. D. C. 55).

§ 7–521. Use of viaduct by street railway companies.

No street railway company shall use the viaduct or any approaches thereto authorized by section 7–520 for its tracks until the said company shall have paid to the collector of taxes of the District of Columbia a sum equal to one-fourth of the cost of said viaduct and approaches, which sum shall be deposited to the credit of the District of Columbia. (Mar. 3, 1927, 44 Stat. 1352, ch. 305, § 2.)

§ 7–522. Grade crossing to be closed.

From and after the completion of the said viaduct and approaches, the highway grade crossing over the tracks and the right of way of the said Baltimore and Ohio Railroad Company at Michigan Avenue in the District of Columbia shall be forever closed against further traffic of any kind. (Mar. 3, 1927, 44 Stat. 1352, ch. 305, § 4.)

§ 7–523. Subway under Baltimore and Ohio tracks in vicinity of Chestnut Street, Fern Place, and Piney Branch Road, extended—Cost.

One-half of the total cost of constructing a subway under the tracks and right of way of the Baltimore and Ohio Railroad Company in the vicinity of Chestnut Street or of the intersection of Fern Place and Piney Branch Road, extended, and thereafter the cost of maintaining the structure within the limits of its right of way shall be borne and paid by the said Baltimore and Ohio Railroad Company, its successors and assigns, to the collector of taxes of the District of Columbia for deposit to the credit of the District of Columbia, and the same shall be a valid and subsisting lien against the franchises and property of the said railroad company, and shall constitute a legal indebtedness against the said railroad company in favor of the District of Columbia, and said lien may be enforced in the name of the District of Columbia by a bill in equity brought by the commissioners in the United States District Court for the District of Columbia, or by any other legal proceeding against the said railroad company: *Provided further*, That from and after the completion of the said subway and approaches, the highway grade crossing over the tracks and right of way of the said Baltimore and Ohio Railroad Company at Chestnut Street shall be forever closed against further traffic of any kind. (July 3, 1930, 46 Stat. 963, ch. 848; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

§ 7–524. Calvert Street Bridge—Street railways.

Any street railway company using the bridge constructed to replace the Calvert Street Bridge over Rock Creek, as authorized by the act of June 16, 1933 (48 Stat. 229, ch. 93) shall install thereon, at its own expense, an approved underground system of streetcar propulsion and, at its own expense, shall thereafter maintain such underground construction, and bear the cost of surfacing and resurfacing and maintaining in good condition the space between the railway tracks and two feet exterior thereto as provided by law, and shall defray the cost of excess construction occasioned by such use including the relocation and construction of closed plow pits at the west approach to the bridge in accordance with plans to be approved by the commissioners of the District of Columbia. (June 16, 1933, 48 Stat. 229, ch. 93.)

§ 7–525. Francis Case Memorial Bridge.

The bridge crossing the Washington Channel of the Potomac River on Interstate Route 95, approximately one hundred yards downstream from the outlet gate of the Tidal Basin, near the intersection of the extension of Thirteenth and G Streets Southwest, shall be known and designated as the "Francis Case Memorial Bridge". Any law, regulation, map, document, record, or other paper of the United States or of the District of Columbia in which such bridge is referred to shall be held to refer to such bridge as the "Francis Case Memorial Bridge". (Sept. 25, 1965, 79 Stat. 838, Pub. L. 89–203, § 1.)

COMMISSIONERS TO PLACE PLAQUES ON BRIDGE

Section 2 of act Sept. 25, 1965, provided: "The Commissioners of the District of Columbia shall place on the 'Francis Case Memorial Bridge' plaques of suitable and appropriate design."

TRANSMISSION OF RESOLUTION TO FAMILY OF LATE SENATOR FRANCIS CASE

Section 3 of Act Sept. 25, 1965, provided: "The Secretary of the Senate shall transmit copies of this resolution to the wife of the late Senator Francis Case, Myrle Case; his daughter, Jane Case Williams; and his granddaughters, Catherine and Julia."

§ 7–526. Washington Channel bridge and facilities—Construction, maintenance, etc.—Acquisition of land—Cooperation with agencies—Leases—Advisory Committee—Appropriations.

(a) The Secretary of the Interior is hereby authorized to provide for the construction, maintenance, and operation of a bridge, with visitor facilities, over the Washington Channel, from the vicinity of Tenth Street Southwest to East Potomac Park in Washington, District of Columbia. The structure may be so designed and constructed as to provide facilities for the accommodation of visitors to the Nation's Capital area, and to provide convenient and adequate access to East Potomac Park.

(b) The Secretary may obtain and use such lands or interests therein owned, controlled, or administered by the District of Columbia, the District of Columbia Redevelopment Land Agency, the Corps of Engineers, or any other Government agency, with the prior consent of such agency or agencies, as he shall consider necessary for the construction and operation of said bridge, without cost or reimbursement. Before construction is commenced, the location and plans for the bridge shall be approved by the Chief of Engineers and the Secretary of the Army subject to such conditions as they may prescribe, in accordance with section 525(b) of title 33, U.S. Code.

(c) The Secretary is authorized to enter into appropriate arrangements for the construction and operation of the bridge in accordance with the authority contained in section 3 of title 16, U.S. Code, as amended, except that any such arrangements need not be limited to a maximum term of thirty years. The bridge, at all times, shall be under the jurisdiction of the Secretary of the Interior, and shall be administered, operated, maintained, and policed as a part of the park system of the National Capital.

(d) The Secretary of the Interior shall cooperate with other Federal and local agencies with respect to the construction and operation of the bridge by him and the construction and operation of associated facilities by such other Federal and local agencies including the District of Columbia Redevelopment Land Agency which shall enter into appropriate arrangements by negotiation or public bid to (i) lease all or part of the land bounded by Maine Avenue, Ninth Street and the Southwest Freeway, Southwest, to provide for the construction, maintenance and operation of a structured auto-

mobile parking facility designed to accommodate visitors to East Potomac Park and (ii) provide for the construction of (a) a public park or overlook, which park is to be maintained and operated by the National Park Service; and (b) roads providing access to the Tenth Street Mall from the Southwest Freeway and to and from Ninth Street, Southwest, which roads shall be maintained and operated by the District of Columbia. Any lease of the aforementioned area, executed by the District of Columbia Redevelopment Land Agency, shall provide appropriate easements for the construction, maintenance and operation of the aforesaid public park and roadways. Local agencies may enter into arrangements with the person, persons, corporation or corporations, as the Secretary may select pursuant to subsection (c) hereof for the construction and operation of necessary associated facilities otherwise authorized.

(e)(1) There is hereby established an advisory committee, which shall be composed of the Chairman, National Capital Planning Commission; the Chairman, Commission of Fine Arts; the President, Board of Commissioners of the District of Columbia; the Chief of Engineers, United States Army; the Chairman, District of Columbia Redevelopment Land Agency; and three members to be appointed by the Secretary of the Interior from among the residents of the Metropolitan Washington area. The ex-officio members of the Committee may be represented by their designees.

(2) Members of the Committee shall serve without compensation, but the Secretary is authorized to pay any expenses reasonably incurred by the Committee in carrying out its responsibilities under this section.

(3) The Secretary shall designate one member of the Committee to be Chairman. The Committee shall act and advise by the affirmative vote of a majority of its members.

(4) The Secretary or his designee shall, from time to time, consult with and obtain the advice of the Committee with respect to matters relating to the design, construction, and operation of the bridge and any associated facilities.

(f) The construction and operation of the bridge shall be at no expense to the Federal Government, and there are hereby authorized to be appropriated such sums as may be necessary for maintenance of the bridge and to carry out the other purposes of this section. (Nov. 7, 1966, 80 Stat. 1417, Pub. L. 89–789, title I, § 111.)

SHORT TITLE

Section 113 of act Nov. 7, 1966, 80 Stat. 1418, Pub. L. 89–789, title I, provided that such title of the act (of which this section is a part) may be cited as the "River and Harbor Act of 1966".

Chapter 6.—REPAIR AND CONSTRUCTION

Sec.
7–601. Repairs to streets, avenues, alleys, or sewers—Public notice—Lowest responsible bidder to be accepted—Rejection of bids—Subdivision of contracts.
7–602 Contracts—Unanimous consent of Commissioners required—Contracts to be copied into book.
7–603. Pavement to be of best known materials—Bond of contractors—Liability for repairs.
7–604 Payments—Railway companies to pay portion of cost—Penalty for refusal.
7–604a. Removal of street railway tracks—Provision for paving.
7–605 Water and gas mains, service pipes, and sewer connections to be laid before permanent improvements are made.
7–606. Assessment of cost of sidewalks and curbing against abutting property.
7–607. Commissioners to submit schedules of streets to be improved in order of importance.
7–608. Improvement and repair of alleys and sidewalks, and construction of sewers and sidewalks under permit system—Hearing—Notice—Cost—Assessment, collection, liability for sale, deposit.
7–609 Permit system—Repayments.
7–610 Service connections for water and sewer when street is about to be paved—Cost—Assessment.
7–611. Paving or repairing roadway of streets, avenues, and roads—Maintenance and improvements—Cost—Assessment.
7–612. Assessments for costs of paving streets.
7–612a. Special assessments for curbs and gutters—Definition of gutter.
7–612b. Same—Computation of assessment.
7–612c. Same—Property abutting two or more streets, avenues, or roads.
7–612d. Same—Roadway improvements and curbs and gutters completed after May 25, 1943.
7–613. Width of pavement of streets.
7–614. Repealed.
7–615. Cutting trenches in highways—Reservation or public space without permit prohibited—Inapplicable to public buildings.
7–616. Penalty—Prosecution.
7–617. Use of bituminous macadam authorized
7–618. Use of portable asphalt plant.
7–619. Unexpended allotments for street paving made available for succeeding year.
7–620. Limitation on contracts of District Commissioners.
7–621. Contracts for repairs may be made for not more than 5 years.
7–622 Assessment when roadway of street, avenue, or road is paved—One-half of cost assessed—Improvement of one-half only of roadway.
7–623. "Roadway" to include gutters and curbs—Assessment for curbs and gutters.
7–624. Cost of certain roadway improvements not to be assessed.
7–625. Maximum front foot assessment—Total assessment limited—Computation against unsubdivided property.
7–626. Property exempt from replacement costs.
7–627. Assessments when prior roadway improvements were made at owner's cost.
7–628 No assessment for cost of resurfacing by heater method—Assessment of replacement cost.
7–629. Assessment against property abutting two or more streets.
7–630. Collection of assessments—Interest—Advertising of intention to improve and hearing not required.
7–631. Protest of aggrieved property owner—Adjustment of assessment by Commissioners.
7–632. Cancellation of prior assessments directed—Reassessment—Refund.
7–633. Separability of provisions.
7–634. Not applicable to assessments levied prior to 1885.

§ 7–601. Repairs to streets, avenues, alleys, or sewers—Public notice—Lowest responsible bidder to be accepted—Rejection of bids—Subdivision of contracts.

When any repairs of streets, avenues, alleys, or sewers within the District of Columbia are to be made, or when new pavements are to be substituted in place of those worn out, new ones laid, or new streets opened, sewers built, or any works the total cost of which shall exceed the sum of $1,000, notice shall be given in one newspaper in Washington, and if

the total cost shall exceed $5,000, then in one newspaper in each of the cities of New York, Philadelphia, and Baltimore also for one week, for proposals, with full specifications as to material for the whole or any portion of the works proposed to be done; and the lowest responsible proposal for the kind and character of pavement or other work which the commissioners shall determine upon shall in all cases be accepted: *Provided, however,* That the commissioners shall have the right, in their discretion, to reject all of such proposals: *Provided,* That work capable of being executed under a single contract shall not be subdivided so as to reduce the sum of money to be paid therefor to less than one thousand dollars. (June 11, 1878, 20 Stat. 105, ch. 180, § 5.)

CODIFICATION

This section is part of section 5 of act June 11, 1878. Remainder of such section is classified to sections 1–212, 7–602 to 7–604, and 7–605.

CROSS REFERENCES

Annual estimate of salaries and expenses to operate and maintain bridges, see § 47–207.

Annual estimate of salaries, cost of repairs and maintenance of sewers, see § 47–206.

Condemnation of material for making or repairing public roads, see § 7–332.

Construction, type of rails, and removal of street railway tracks, see §§ 44–206, 44–209, and 44–211.

Contracting power of Commissioners in general, see §§ 1–801 to 1–819.

General powers and duties of Commissioners regarding streets and sewers, see § 7–102.

General provisions for laying water-mains and sewers, assessments, see § 43–1501 et seq.

Inspector of asphalt and cement, see § 1–307.

Organic Act of 1878, see preliminary material preceding Title 1, Administration.

Philadelphia, Baltimore, and Washington Railroad Company required to construct and maintain certain walkways, see § 44–106.

Repair of permanent highways abandoned or not approved by commissioners forbidden, see § 7–109.

Repair of sewers declared to be a municipal object, see § 1–235.

Testing building materials, see §§ 1–813, 1–814.

NOTE TO DECISIONS

Breach of contract

The District is liable for breach of a contract entered into for the doing of certain work on its streets, including repair work, when the contract was entered into under authority of an act of Congress, even though the work may have been dependent on annual appropriations, especially where the appropriation was ample to cover the work. *District of Columbia* v. *Cranford Paving Co.* (1921, 271 F. 374, 50 App. D. C. 300).

§ 7–602. Contracts—Unanimous consent of Commissioners required—Contracts to be copied into book.

All contracts for the construction, improvement, alteration, or repairs of the streets, avenues, highways, alleys, gutters, sewers, and all work of like nature shall be made and entered into only by and with the official unanimous consent of the commissioners of the District, and all contracts shall be copied into a book kept for that purpose and be signed by the said commissioners, and no contract involving an expenditure of more than one hundred dollars shall be valid until recorded and signed as aforesaid. (June 11, 1878, 20 Stat. 106, ch. 180, § 5.)

CODIFICATION

This section is part of section 5 of act June 11, 1878. Remainder of such section is classified to sections 1–212, 7–601, 7–603 to 7–604, and 7–605.

CROSS REFERENCES

Contractors' bond not required for contracts not exceeding $1,000, see § 1–805.

General limitation on powers of Commissioners, see § 1–801.

NOTE TO DECISIONS

Authority of commissioners

When the Board of Commissioners was constituted by statute to carry the powers of the municipal corporation called the District of Columbia into effect, the Commissioners could adopt for the corporation any seal they chose, whether intended to be permanently used or adopted for the time being. When, acting officially, as in this instance, they signed and sealed the instrument as for the corporation, their signatures and seals bound the corporation as by a specialty. *District of Columbia* v. *Camden Iron Works* (1901, 21 S. Ct. 680, 181 U. S. 453, 45 L. Ed. 948).

§ 7–603. Pavement to be of best known materials—Bond of contractors—Liability for repairs.

No pavement shall be accepted nor any pavement laid except that of the best material of its kind known for that purpose, laid in the most substantial manner; and good and sufficient bonds to the District of Columbia shall be required (except when otherwise provided by section 1–805) from the contractors in a penal sum of not less than twenty-five per centum of the amount of the contract with sureties or a surety company to be approved by the Commissioners of the District of Columbia guaranteeing that the terms of the contract shall be strictly and faithfully performed to the satisfaction of said commissioners; that the contractors shall promptly make payments to all persons supplying them labor and materials in the prosecution of the work provided for in such contracts; and that such work shall be kept in repair for a period of one year from the date of completion of said work; and where repairs are necessary during the four years following the said one year period due to inferior work or defective materials, such repairs shall be made at the expense of the contractor, and the bond furnished by the contractor shall be liable for such expense. (June 11, 1878, 20 Stat. 106, ch. 180, § 5; Sept. 1, 1916, 39 Stat. 688, ch. 433; Aug. 3, 1951, 65 Stat. 166, ch. 292, § 1.)

CODIFICATION

This section is part of section 5 of act June 11, 1878. Remainder of such section is classified to sections 1–212, 7–601, 7–602, 7–604, and 7–605.

This section is a composite of the credits cited in the history line. The parenthetical exception was inserted by the compilers in view of the provisions of § 1–805. The act of 1878 originally required contractors to keep new pavements or other new works in repair for 5 years, 10 per centum of the cost to be retained as additional security, such sum to be invested in United States or District of Columbia bonds, and the interest paid to the contractors.

AMENDMENTS

1951—Act Aug. 3, 1951, deleted "but no cash retent to guarantee such repair shall be held or required on such contracts" following "contractor shall be liable for such expense."

1916—Act Sept. 1, 1916, amended section generally.

REPAIRS

The provision respecting repairs due to inferior work and defective materials was in the following Appropriation Acts:

1959—Aug. 6, 1958, Pub. L. 85–594, § 1, 72 Stat. 509.

1958—June 27, 1957, Pub. L. 85–61, § 1, 71 Stat. 204.

1957—June 29, 1956, ch. 479, § 1, 70 Stat. 451.

1956—July 5, 1955, ch. 272, § 1, 69 Stat. 259.
1955—July 1, 1954, ch. 449, § 1, 68 Stat. 392.
1954—July 31, 1953, ch. 299, § 1, 67 Stat. 290.
1953—July 5, 1952, ch. 576, § 1, 66 Stat. 385.
1951—July 18, 1950, ch. 467, § 1, 64 Stat. 347.
1950—June 29, 1949, ch. 279, § 1, 63 Stat. 303.
1949—June 19, 1948, ch. 555, § 1, 62 Stat. 553.
1948—July 25, 1947, ch. 324, § 1, 61 Stat. 442.
1947—July 9, 1946, ch. 544, § 1, 60 Stat. 518.
1946—June 30, 1945, ch. 209, § 1, 59 Stat. 289.
1945—June 28, 1944, ch. 300, § 1, 58 Stat. 526.
1944—July 1, 1943, ch. 184, § 1, 57 Stat. 341.
1943—June 27, 1942, ch. 452, § 1, 56 Stat. 455.
1942—July 1, 1941, ch. 271, § 1, 55 Stat. 534.
1941—June 12, 1940, ch. 333, 54 Stat. 307.
1940—July 15, 1939, ch. 281, 53 Stat. 1037.
1934—June 16, 1933, ch. 93, 48 Stat. 230.
1929—May 21, 1928, ch. 659, 45 Stat. 657.
1928—Mar. 2, 1927, ch. 271, 44 Stat. 1308.
1927—May 10, 1926, ch. 276, 44 Stat. 427.

CROSS REFERENCES

Contractors' bond, see §§ 1–804 to 1–806.
General limitation on power of Commissioners, see § 1–801.
Retention of percentage of cost to guarantee faithful performance, see § 1–807.

§ 7–604. Payments—Railway companies to pay portion of cost—Penalty for refusal.

The cost of laying down said pavement, sewers, and other works, or of repairing the same, shall be paid for in the following proportions and manner, to wit: The United States shall pay one-half of the cost of all work done under the provisions of this section, except as hereinafter provided, which payment shall be credited as part of the fifty per centum which the United States contributes toward the expenses of the District of Columbia for that year; and all payments shall be made by the Secretary of the Treasury on the warrant or order of the Commissioners of the District of Columbia or a majority thereof, in such amounts and at such times they may deem safe and proper in view of the progress of the work: *Provided,* That the Capital Transit Company herein provided for shall bear the entire cost of paving, repairs, or replacements incident to track repairs, replacements, or changes made at a time when the street or bridge is not being paved, and shall bear one-half the cost of other paving, repaving, or maintenance of paving between its track and for two feet outside the outer rails, and shall bear the excess cost of construction and maintenance of public bridges due to the existence or installation of its tracks on such bridges: *Provided further,* That nothing herein contained shall relieve said Capital Transit Company from liability for street paving as owner of real estate apart from right of way occupied by its tracks as provided by section 7–612; and if such company shall fail or refuse to pay the sum due from them in respect of the work done by or under the orders of the proper officials of said District, the Commissioners of the District of Columbia shall issue certificates of indebtedness against the property, real or personal, of such railway company, which certificates shall bear interest at the rate of ten per centum per annum until paid, and which, until they are paid, shall remain and be a lien upon the property on or against which they are issued together with the franchise of said company; and if the said certificates are not paid within one year, the said Commissioners of the District of Columbia may proceed to sell the property against which they are issued, or so much thereof as may be necessary to pay the amount due, such sale to be first duly advertised daily for one week in some newspaper published in the city of Washington, and to be at public auction to the highest bidder. When street railways cross any street or avenue, the pavement between the tracks of such railway shall conform to the pavement used upon such street or avenue, and the companies owning these intersecting railroads shall pay for such pavements in the same manner and proportion as required of other railway companies under the provisions of this section. (June 11, 1878, 20 Stat. 106, ch. 180, § 5; Jan. 14, 1933, 47 Stat. 759, ch. 10, § 3.)

CODIFICATION

This section was part of section 5 of act June 11, 1878. Remainder of such section is classified to sections 1–212, 7–601 to 7–603, and 7–605.

This section was recompiled following the decision of the Court, in *Fisher* v. *Capital Transit Corp.* (1957, 246 F. 2d 666, 100 U. S. App. D. C. 385). The original text of the sections of the law from which the above section was recompiled reads as follows:

"The cost of laying down said pavement, sewers, and other works, or of repairing the same, shall be paid for in the following proportions and manner, to wit: When any street or avenue through which a street-railway runs shall be paved, such railway company shall bear all of the expense for that portion of the work lying between the exterior rails of the tracks of such roads, and for a distance of two feet from and exterior to such track or tracks on each side thereof, and of keeping the same in repair; but the said railway companies, having conformed to the grades established by the Commissioners, may use such cobblestone or Belgian blocks for paving their tracks, or the space between their tracks, as the Commissioners may direct; the United States shall pay one-half of the cost of all work done under the provisions of this section, except that done by the railway companies, which payment shall be credited as part of the fifty per centum which the United States contributes toward the expenses of the District of Columbia for that year; and all payments shall be made by the Secretary of the Treasury on the warrant or order of the Commissioners of the District of Columbia or a majority thereof, in such amounts and at such times they may deem safe and proper in view of the progress of the work: That if any street railway company shall neglect or refuse to perform the work required by this act, said pavement shall be laid between the tracks and exterior thereto of such railway by the District of Columbia; and if such company shall fail or refuse to pay the sum due from them in respect of the work done by or under the orders of the proper officials of said District in such case of the neglect or refusal of such railway company to perform the work required as aforesaid, the Commissioners of the District of Columbia shall issue certificates of indebtedness against the property, real or personal, of such railway company, which certificates shall bear interest at the rate of ten per centum per annum until paid, and which, until they are paid, shall remain and be a lien upon the property on or against which they are issued together with the franchise of said company; and if the said certificates are not paid within one year, the said Commissioners of the District of Columbia may proceed to sell the property against which they are issued or so much thereof as may be necessary to pay the amount due, such sale to be first duly advertised daily for one week in some newspaper published in the city of Washington, and to be at public auction to the highest bidder. When street railways cross any street or avenue, the pavement between the tracks of such railway shall conform to the pavement used upon such street or avenue, and the companies owning these intersecting railroads shall pay for such pavements in the same manner and proportion as required of other railway companies under

the provisions of this section." (Portion of section 5, act June 11, 1878, 20 Stat. 106, ch. 180.)

"That all provisions of law making it incumbent upon any street railway company to bear the expense of policemen at street railway crossings and intersections, the laying of new pavement, the making of permanent improvements, renewals, or repairs to the pavement of streets and public bridges, and the permanent improvements, renewals, or repairs to public bridges over which the streetcar lines operate, are hereby repealed, such repeal to be effective on the date the unification herein authorized becomes operative: *Provided,* That the Capital Transit Company herein provided for shall bear the entire cost of paving, repairs, or replacements incident to track repairs, replacements, or changes made at a time when the street or bridge is not being paved, and shall bear one-half the cost of other paving, repaving or maintenance of paving between its track and for two feet outside the outer rails, and shall bear the excess cost of construction and maintenance of public bridges due to the existence or installation of its tracks on such bridges: *Provided further,* That nothing herein contained shall relieve said Capital Transit Company from liability for street paving as owner of real estate apart from right of way occupied by its tracks as provided by section 8 of the Act of Congress entitled 'An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1917, and for other purposes,' approved September 1, 1916, as amended to date." (Jan. 14, 1933, 47 Stat. 759, ch. 10, § 3.)

The act of Jan. 14, 1933, 47 Stat. 752, ch. 10, § 3, read "the Capital Transit Company herein provided for shall bear" instead of "such railway company shall bear." This for the reason that the then existing street railway companies were being consolidated under the name of the Capital Transit Company, but it was thought that the true intention of Congress would be expressed if the section was given a general wording.

The 50–50 ratio of the provision: "the United States shall pay one-half of the cost of all work done under the provisions of this section, except the work done by the railway companies, which payment shall be credited as part of the fifty per centum which the United States contributes", was changed to 60 for the District and 40 for the United States, by a general provision found in the appropriation act of June 29, 1922, 42 Stat. 668, ch 249, § 1, which also repealed all prior inconsistent acts. This provision was in turn repealed by the act of May 16, 1938, 52 Stat. 375, ch. 223, § 8, adding Title X to the act of Aug. 17, 1937. This last-mentioned repealing act provided no substitute for the 60–40 ratio.

CHANGE OF NAME

Capital Transit Company, referred to in the text has now been succeeded by the D. C. Transit Company.

CROSS REFERENCES

Assessment of cost of paving streets against abutting property, see §§ 7–622 to 7–634.

Cost of repair and maintenance of bridges, see §§ 7–502 to 7–508.

General limitations on power of Commissioners, see § 1–801.

Lump-sum appropriation for the District, see § 47–134.

Maximum front foot assessment, see § 7–625.

NOTES TO DECISIONS

Duty of transit company to repair tracks

Transit Company in the District of Columbia owed no duty to pedestrians to inspect, maintain, and repair its tracks and, therefore, was not liable for personal injuries sustained by pedestrian who, while crossing street, fell when he caught his foot in hole located in or near streetcar tracks or for resulting loss of consortium to pedestrian's wife. *Fisher* v. *Capital Transit Co.* (1957, 246 F. 2d 666, 100 U.S. App. D.C. 385).

Congress, in authorizing formulation of the Capital Transit Company in the District of Columbia, intended to impose only ultimate financial cost, as distinguished from legal duty of street maintenance, upon the company. *Id.*

§ 7–604a. Removal of street railway tracks—Provision for paving.

On and after July 1, 1941, when any Capital Transit Company street railway operation shall have been ordered abandoned by the Public Service Commission of the District of Columbia and the Commissioners of the District of Columbia shall have ordered the removal of abandoned tracks, the Capital Transit Company shall pay the entire cost of removing such abandoned tracks and regrading the track area, and, if the street or bridge in which the said tracks have been ordered abandoned is not being paved, the Capital Transit Company shall pay the entire cost of paving the abandoned track areas, which cost, however, shall not exceed the cost of repaving such abandoned track areas with the type, character, and thickness of the paving of the adjacent roadway left in place, and, if the roadway of the street or bridge is being paved at the time of removal of said abandoned tracks, the Capital Transit Company shall pay one-half of the actual cost of paving the abandoned track areas, irrespective of whether the paving is of the type, character, and thickness as that existing at the time of said removal. The Commissioners of the District are authorized to settle in conformity with the principles herein set forth, any claims it now has, or in the future may have, for the paving of abandoned track areas, upon such terms and conditions as to time of payment or payments as the Commissioners may determine. (July 1, 1941, 55 Stat. 533, ch. 271; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88–503, § 21.)

CHANGE OF NAME

Act Aug. 30, 1964, § 21, substituted "Public Service Commission of the District of Columbia" for "Public Utilities Commission of the District of Columbia". See § 2–2418.

§ 7–605. Water and gas mains, service pipes, and sewer connections to be laid before permanent improvements are made.

It shall be the duty of the commissioners of the District of Columbia to see that all water and gas-mains, service pipes, and sewer connections are laid upon any street or avenue proposed to be paved or otherwise improved before any such pavement or other permanent works are put down; and the Washington Gas Light Company, under the direction of said commissioners, shall at its own expense take up, lay, and replace all gas-mains on any street or avenue to be paved, at such time and place as said commissioners shall direct. (June 11, 1878, 20 Stat. 107, ch. 180, § 5.)

CODIFICATION

This section is part of section 5 of act June 11, 1878. Remainder of such section is classified to sections 1–212, and 7–601 to 7–604.

CROSS REFERENCES

General limitation on power of Commissioners, see § 1–801.

General provisions for laying water mains and sewers, see § 43–1501 et seq.

Permit to excavate public streets or alleys to make water, gas, or sewer connections, fees, see § 1–726.

§ 7–606. Assessment of cost of sidewalks and curbing against abutting property.

When new sidewalks or curbing are required to be laid on streets being improved, one-half the total cost shall be assessed against abutting property, in

like manner and under the law governing in the case of assessment and permit work: *Provided,* That abutting property shall not be liable to such assessment when sidewalk and curbing have been laid by the District authorities in front of the same under the assessment and permit system within two years prior to such assessment. (Aug. 7, 1894, 28 Stat. 250, ch. 232.)

GROSS REFERENCE

General provisions concerning special assessments, see § 47–1101 et seq.

§ 7–607. Commissioners to submit schedules of streets to be improved in order of importance.

The commissioners, in submitting the schedules of streets and avenues to be improved, shall each year arrange said streets and avenues in the order of their importance, as determined by them after personal examination of said streets and avenues. (Mar. 3, 1903, 32 Stat. 962, ch. 992.)

§ 7–608. Improvement and repair of alleys and sidewalks, and construction of sewers and sidewalks under permit system—Hearing—Notice—Cost—Assessment, collection, liability for sale, deposit.

The Commissioners of the District of Columbia are authorized and empowered, whenever in their judgment the public health, safety, or comfort require it, or whenever application shall be made therefor, accompanied by a deposit equal to one-half the estimated cost of the work, to improve and repair alleys and sidewalks, and to construct sewers and sidewalks in the District of Columbia of such form and materials as they may determine, and to pay the total cost of such work from appropriations for assessment and permit work.

Said commissioners shall give notice by advertisement, twice a week for two weeks in some newspaper published in the city of Washington, of any assessment work proposed to be done by them under this section, designating the location and the kind of work to be done, specifying the kind of materials to be used, the estimated cost of the improvement, and fixing a time and place when and where property-owners to be assessed can appear and present objections thereto, and for hearing thereof. One-half of the total cost of the assessment work herein provided for, including the expenses of the assessment, shall be charged against and become a lien upon abutting property, and an assessment therefor shall be levied pro rata according to the linear frontage of said property: *Provided,* That no such assessment shall be levied against abutting property for the cost of repairing alleys or sidewalks when the damage requiring such repair is caused by the growth of roots of trees on public space or the cause of such damage is otherwise beyond the control of the owner of such property. One-half of the cost of the assessment work done under the provisions of this section shall be paid to the Collector of Taxes of the District of Columbia, as follows: One-third of the amount within sixty days after service of notice of such assessment, without interest; one-third within one year, and the remainder within two years from the date of such service of notice, and interest shall be charged at the rate of six per centum per annum from the date of service of such notice on all amounts which shall remain unpaid at the expiration of sixty days after service of notice of such assessment, which in all cases shall be served upon each lot owner, if he or she be a resident of the District, and his or her residence known, and if he or she be a nonresident of the District, or his or her residence unknown, such notice shall be served on his or her tenant or agent, as the case may be, and if there be no tenant or agent known to the commissioners, then they shall give notice of such assessment by advertisement twice a week for two weeks in some newspaper published in said District. The service of such notice, where the owner or his tenant or agent resides in the District of Columbia, shall be either personal or by leaving the same with some person of suitable age at the residence or place of business of such owner, agent, or tenant; and return of such service, stating the manner thereof, shall be made in writing and filed in the office of said commissioners: *Provided,* That the cost of publication of the notice herein provided for, and the service of such notices shall be paid out of the appropriations for assessment and permit work. Any property upon which such assessment and accrued interest thereon, or any part thereof, shall remain unpaid at the expiration of two years from the date of service of notice of such assessment shall be subject to sale therefor under the same conditions and penalties which are imposed by existing laws for the nonpayment of general taxes; and if any property assessed as herein provided for shall become liable to sale for any other assessment or tax whatever, then the assessments levied under this section shall become immediately due and payable, and the property against which they are levied may be sold therefor, together with the accrued interest thereon, and the cost of advertising, to the date of such sale. Property-owners who request improvements under the permit system shall deposit in advance with the Collector of Taxes of the District of Columbia an amount equal to one-half the estimated cost of such improvements, and in such cases it shall not be necessary to give the notice hereinbefore provided for. All moneys received by the Collector of Taxes of the District of Columbia for work done upon the request of property-owners, as herein provided for, shall be deposited by him in the United States Treasury to the credit of the permit fund. Upon the completion of work done as aforesaid at the request of property-owners, the commissioners shall repay to the then current appropriation for assessment and permit work, out of the permit fund, a sum equivalent to one-half of the cost of the work, and shall return to the depositors, from the same fund, as application may be made therefor, any surplus that may remain over and above one-half of the cost of the work. All sums received by the collector under the provisions of this section on account of assessment work, and in payment of assessments heretofore made prior to August 7, 1894, for compulsory permit work, shall be credited to the appropriation for assessment and permit work for the fiscal years in which they are collected: *Provided further,* That the costs of service connections with water-mains and sewers shall be assessed against the lots for which said connections are made, and shall be collected in the same manner and upon the

same conditions as to notice as herein provided for assessment work. (Aug. 7, 1894, 28 Stat. 247, ch. 232; Feb. 20, 1931, 46 Stat. 1198, ch. 246, § 9; Sept. 25, 1962, 76 Stat. 598, Pub. L. 87–700, § 1.)

AMENDMENTS

Section 1 of act Sept. 25, 1962, amended the second sentence in the second paragraph of the section to relieve abutting property owners from assessment for repairs to alleys and sidewalks where the cause of the damage is beyond their control or where it is caused by roots of trees on public space. The language of the amendment is set out above beginning with the words "said property" preceding the proviso clause and ending with "such property" at the end of the proviso clause.

1931—Act Feb. 20, 1931, reduced the rate of interest from 8 percent per annum to 6 percent.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 3 of act Sept. 25, 1962, provides: "This Act shall take effect ten days after its approval."

APPLICABILITY OF 1962 AMENDMENT

Section 2 of act Sept. 25, 1962, provides: "That the amendment made by the first section of this Act [set out in this section] shall apply to repairs to alleys or to sidewalks the completion of which repairs shall occur on or after the effective date of this Act."

CROSS REFERENCES

Assessments against abutting property, see §§ 7–622 to 7–634.

Exemption from assessment for repairs where original construction was done under permit system, see § 7–627.

General provision concerning special assessments, see § 47–1101 et seq.

General provisions for laying water mains and sewers, assessments, see § 43–1501 et seq.

§ 7–609. Permit system—Repayments.

Repayments from the permit fund to the appropriation for assessment and permit work shall be credited to the appropriation for the fiscal year in which the repayment is made. (Mar. 2, 1907, 34 Stat. 1127, ch. 2510.)

§ 7–610. Service connections for water and sewer when street is about to be paved—Cost—Assessment.

The Commissioners of the District of Columbia are hereby authorized whenever the roadway of a street is about to be paved or macadamized to make service connections in such street for all abutting lots and premises with the water mains and sewer provided for the service of said lots and premises. The entire cost of the said connections shall be paid from the current appropriations respectively for the extension of the sewer and water-supply systems and shall be assessed against the abutting property and collected in like manner as assessments which are levied under the compulsory permit system; the sums so collected shall be credited to the respective appropriations for the extension of the sewer and water-supply systems for the fiscal year during which said collections are made. (Mar. 14, 1894, 28 Stat. 44, ch. 40.)

CROSS REFERENCES

General provisions concerning special assessments, see § 47–1101 et seq.

General provisions for laying water mains and sewer, assessments, see § 43–1501 et seq.

§ 7–611. Paving or repairing roadway of streets, avenues, and roads—Maintenance and improvements—Cost—Assessment.

Whenever under appropriations made by Congress, the roadway of any street, avenue, or road in the District of Columbia is improved by laying a new pavement thereon or completely resurfacing the same not less than one square in extent, from curb to curb, or from gutter to gutter where no curb exists, where the material used is sheet asphalt, asphalt block, asphaltic or bituminous macadam, concrete, or other fixed roadway pavement, such proportion of the total cost of the work, including all expenses of the assessment, to be made as prescribed by section 7–612, shall be charged against and become a lien upon the abutting property, and assessments therefor shall be levied pro rata according to the linear frontage of said property on the street, avenue, or road, or portion thereof upon the roadway of which said new pavement or resurfacing is laid: *Provided,* That there shall be excepted from such assessment the cost of paving the roadway space included within the intersection of streets, avenues, and roads, as said intersections are included within the building lines projected, and also the cost of paving the space within such roadways for which street railway companies are responsible under their charters or under law on streets, avenues, or roads where such railways have been or shall be constructed.

All of the expenses of maintenance and repairs shall be paid from the revenues of the District of Columbia and in addition, such sums as may be appropriated out of any money in the Treasury of the United States not otherwise appropriated. Nothing contained in this section shall be construed as relieving street-railway companies from bearing one-half the expense of paving streets or avenues between the exterior rails of the tracks of their roads in the District of Columbia and for a distance of two feet from and exterior to such tracks on each side thereof and of keeping the same in repair, as required by section 7–604. (July 21, 1914, 38 Stat. 524, ch. 191; July 29, 1914, 38 Stat. 565, ch. 215; Jan. 14, 1933, 47 Stat. 759, ch. 10, § 3.)

CODIFICATION

The first paragraph of this section and the first sentence of the second paragraph are from act of July 21, 1914, and the last sentence is from act of July 29, 1914, both cited in the history line.

AMENDMENTS

1933—Act Jan. 14, 1933, provided that street railway companies should bear only half of the expense of paving between tracks and two feet beyond each rail, rather than all the expense.

CROSS REFERENCES

Assessment of cost of paving against abutting property, see §§ 7–622 to 7–634.

General provisions concerning special assessments, see § 47–1101 et seq.

Lump sum appropriations now made for District, see § 47–134.

NOTES TO DECISIONS

Application to city street

This act applies to a city or village street, not to a country road, for it is unusual to speak of squares or curbs when referring to a road of that character. *Rudolph* v. *Knox* (1922, 280 F. 1007, 52 App. D. C. 33).

If the paving of an avenue be treated as an original improvement, converting a highway into a paved city street, its constitutional infirmities are emphasized by reason of the existence of physical conditions forbidding any equal, fair, or equitable application of the frontage rule of taxing benefits. If considered as a repair of the

avenue, in the form of repaving, its validity must be condemned as a general city improvement. *Johnson* v. *Rudolph* (1927, 16 F. 2d 525, 57 App. D. C. 29).

Front-foot rule

Size, shape, improvements, or favorable location of the instant property is not the test to be applied in determining the validity of an assessment under the front-foot rule. The test is the relation of the property to other properties facing on the avenue, and in the immediate vicinity. *Taliaferro* v. *Railway Terminal Warehouse Co.* (1930, 43 F. 2d 271, 59 App. D. C. 376).

Paving assessment on triangular shaped lot on frontage basis is invalid under the Borland Amendment. *Dougherty* v. *American Security & Trust Co.* (1930, 40 F. 2d 813, 59 App. D. C. 301, certiorari denied 51 S. Ct. 31, 282 U. S. 854, 75 L. Ed. 757). See, also, *Crosby* v. *Dodge* (1931, 46 F. 2d 727, 60 App. D. C. 36); *Crosby* v. *Moebs* (1932, 57 F. 2d 408, 61 App. D. C. 42); *Reichelderfer* v. *Hechinger* (1932, 57 F. 2d 943, 61 App. D. C. 104); *Gotwals* v. *Miller* (1932, 59 F. 2d 1051, 61 App. D. C. 402).

§ 7–612. Assessments for costs of paving streets.

The half cost of the paving or repaving of a roadway between the side thereof and the center thereof with sheet asphalt, asphalt block, granite block, vitrified block, cement concrete, bituminous concrete, macadam, or other form of pavement shall be assessed against the property abutting the side of the street so improved, such assessments to be levied and collected as provided on September 1, 1916, as to alleys and sidewalks: *Provided,* That the advertisement by publication of the commissioners' intention to do such work and the formal hearing in respect thereto required by law as to alley and sidewalk improvements shall not be required as to roadway improvements.

There shall be included in the area the cost of which is assessable hereunder only the roadway area abutting the property between lines normally projected from the building line of the street being improved at the points of intersection with the building lines of intersecting streets.

There shall be excluded from the cost of the roadway work to be assessed hereunder:

First. The cost of all such work beyond a line twenty feet from the side thereof.

Second. The cost of all such work within the space within which street railway companies are required to pave by law, and nothing herein contained shall be construed as relieving street-railway companies from bearing one-half the cost of paving and repairing streets and avenues between lines two feet exterior to the outer rails of their tracks, as required by section 7–604.

Third. That no frontage of abutting property, on which a legal assessment for paving or repaving has been levied and paid hereunder, shall be liable to any further assessment hereunder on account of the replacement of such pavement. (Sept. 1, 1916, 39 Stat. 716, ch. 433, § 8; Feb. 9, 1927, 44 Stat. 1064, ch. 87; Jan. 14, 1933, 47 Stat. 759, ch. 10, § 3.)

CODIFICATION

Paragraph "Second" originally provided that street railway companies should bear all the expense of paving between tracks and two feet beyond each exterior rail, but the act of Jan. 14, 1933, provides that street railway companies shall bear only half of this expense.

AMENDMENT

1927—Act Feb. 9, 1927, added paragraph "Third."

GROSS REFERENCE

Special assessments generally, see §§ 47–1101 et seq.

NOTES TO DECISIONS

Front-foot rule

Special repaving assessment on basis of frontage, under this act, invalid. *Reichelderfer* v. *Hechinger* (1932, 57 F. 2d 943, 61 App. D. C. 104).

§ 7–612a. Special assessments for curbs and gutters—Definition of gutter.

When any curb or gutter is laid, or any curb and gutter are laid, on any street, avenue, or road in the District of Columbia which said curb shall be constructed of concrete, stone, or other permanent type of construction, or which said gutter shall be constructed of concrete, brick, granite block, asphalt on a concrete base, or other permanent type of construction, one-half of the total cost thereof shall be charged against and become a lien upon the property abutting the side of the street, avenue, or road, or portion thereof, so improved, and assessments therefor shall be levied pro rata according to the linear frontage of said property on the side of the street, avenue, or road, or portion thereof, so improved: *Provided, however,* That no assessments shall be levied hereunder on account of the replacement of any curb or gutter or curb and gutter of a permanent type of construction. When any gutter shall be constructed, in whole or in part, as an integral portion of a permanent type of roadway of any street, avenue, or road, so much of said roadway as lies within two feet of the curb line shall be considered as a gutter for the purposes of sections 7–612a to 7–612d. (May 25, 1943, 57 Stat. 83, ch. 98, § 1.)

§ 7–612b. Same—Computation of assessment.

The total assessment levied hereunder against any abutting property shall not exceed the number of square feet of area of said property multiplied by 1 per centum of the linear front-foot assessment and shall not exceed 10 per centum of the value of the said abutting property, exclusive of improvements thereon, as assessed for the purpose of taxation at the time of the laying of the curb or gutter or curb and gutter for which said assessment is levied. In computing assessments hereunder against unsubdivided land according to the assessed valuation, there shall be excluded from the computation land lying back more than one hundred feet from the street, avenue, or road being improved where the depth is even, and where the depth is uneven the average depth shall be taken in computation but not to exceed more than one hundred feet. (May 25, 1943, 57 Stat. 83, ch. 98, § 2.)

§ 7–612c. Same—Property abutting two or more streets, avenues, or roads.

When any property abuts two or more streets, avenues, or roads, the assessments against said property levied hereunder shall not exceed in the aggregate, together with any legal assessments heretofore levied and paid for paving, curbing, and guttering of or on said streets, avenues, or roads, under the authority of sections 7–611, 7–612, relating to assessments for the paving of streets, avenues, and roads, or under section 7–606, relating to assessments for laying curbs, or under sections 7–622 to 7–625, 3½ cents per square foot of area of said property, or 20 per centum of the value of said

property, exclusive of improvements thereon, as assessed for the purpose of taxation at the time of the laying of the curb or gutter or curb and gutter for which said assessment is levied. (May 25, 1943, 57 Stat. 83, ch. 98, § 3.)

§ 7–612d. Same—Roadway improvements and curbs and gutters completed after May 25, 1943.

No assessments shall be levied under sections 7–622 to 7–625, for any roadway improvement completed subsequent to May 25, 1943, but for curbs or gutters, or curbs and gutters, completed subsequent to May 25, 1943, assessments shall be levied against the abutting property in accordance with the provisions of sections 7–612a to 7–612d. (May 25, 1943, 57 Stat. 83, ch. 98, § 4.)

§ 7–613. Width of pavement of streets.

No street or avenue in the District of Columbia shall be paved less in width than the width provided by law except by express authority of Congress upon estimates to be submitted to Congress by the commissioners of the District of Columbia. (Mar. 2, 1907, 34 Stat. 1127, ch. 2510.)

§ 7–614. Repealed. July 24, 1956, 70 Stat. 602, ch. 669, § 10(b), eff. Aug. 15, 1956.

Section, act June 26, 1912, 37 Stat. 152, ch. 182, related to the duty of street railway companies to keep tracks free of snow and ice.

§ 7–615. Cutting trenches in highways—Reservation or public space without permit prohibited—Inapplicable to public buildings.

It shall be unlawful for any person to make any cut or trench in any highway, reservation, or public space in the District of Columbia, or to disturb or remove any public work or material therein, without a permit so to do from the commissioners of the District of Columbia: *Provided,* That nothing in this section shall be construed to apply to public buildings of the United States, or to diminish the authority of the officer in charge of public buildings and grounds, or the Architect of the Capitol. (June 18, 1898, 30 Stat. 477, ch. 467, § 7.)

§ 7–616. Penalty—Prosecution.

Any person violating any of the provisions of sections 7–615 and 7–616 shall, on conviction thereof in the District of Columbia Court of General Sessions be punished by a fine of not less than five dollars nor more than one hundred dollars; and in default of payment of such fine such person shall be confined in the workhouse of the District of Columbia for a period not exceeding six months; and all prosecutions shall be in the District of Columbia Court of General Sessions, in the name of the District of Columbia. (June 18, 1898, 30 Stat. 477, ch. 467, § 8; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 7–617. Use of bituminous macadam authorized.

The use of bituminous macadam is authorized on streets, avenues, and roads to be improved or paved. (June 26, 1912, 37 Stat. 150, ch. 182.)

§ 7–618. Use of portable asphalt plant.

The portable asphalt plant purchased under the appropriation for repairs of streets, avenues, and alleys for the fiscal year one thousand nine hundred and thirteen, may be operated under the immediate direction of the Commissioners of the District of Columbia in doing such work of resurfacing and repairs to asphalt pavements, in the repair of macadam streets by constructing on such macadam streets and asphalt macadam wearing surface and in the construction of asphaltic macadam surfaces on concrete base, as in their judgment may be economically performed by the use of said plant: *Provided,* That at no time shall more work of resurfacing and repairs be done with the portable asphalt plant than can be accomplished with the single portable plant owned on March 4, 1913, by the District of Columbia. (Mar. 4, 1913, 37 Stat. 948, ch. 150.)

§ 7–619. Unexpended allotments for street paving made available for succeeding year.

When as many streets and entire blocks of streets in any section have been paved as the amount allotted to that section will permit, and there still remains a balance insufficient to pave an entire block of the street provided for pavement upon the schedule, such balance shall remain available and be added to the allotment for that section for the next succeeding year. (June 6, 1900, 31 Stat. 559, ch. 789.)

§ 7–620. Limitation on contracts of District Commissioners.

The Commissioners of the District of Columbia are prohibited from incurring or contracting liabilities on behalf of the United States in the improvement of streets, avenues, and reservations beyond the amount of appropriations previously made by Congress, and from entering into any contract touching such improvements on behalf of the United States, except in pursuance of appropriations made by Congress. (R. S. § 1813; June 20, 1874, 18 Stat. 116, ch. 337.)

§ 7–621. Contracts for repairs may be made for not more than 5 years.

Contracts for repairs to pavements may be made for periods not exceeding five years, and subject to annual appropriation therefor by Congress. (July 18, 1888, 25 Stat. 319, ch. 676.)

§ 7–622. Assessment when roadway of street, avenue, or road is paved—One-half of cost assessed—Improvement of one-half only of roadway.

Whenever under the appropriations made by Congress, the roadway of any street, avenue, or road in the District of Columbia is paved or repaved with sheet asphalt, asphalt block, asphaltic or bituminous concrete (except penetration macadam), cement concrete, granite block, vitrified brick, or other form of permanent pavement, one-half of the total cost thereof shall be charged against and become a lien upon the abutting property, and assessments there-

for shall be levied pro rata according to the linear frontage of said property on the street, avenue, or road, or portion thereof, upon the roadway of which said new pavement or repaving is laid: *Provided, however*, That when such new pavement or repaving is laid solely on one side of the center line of such roadway, the one-half cost thereof shall be assessed, as herein provided, against the property abutting the side of the street, avenue, or road, or portion thereof, so improved. (Feb. 20, 1931, 46 Stat. 1197, ch. 246, § 1.)

CROSS REFERENCES

Cost of pavement or repair of streets used by railroad, see § 7–1222.

Improvements completed after May 25, 1943, see § 7–612d.

Special assessments generally, see § 47–1101 et seq.

§ 7–623. "Roadway" to include gutters and curbs—Assessment for curbs and gutters.

For the purposes of computing the assessments under sections 7–622 to 7–633, the term "roadway" shall be construed to include the gutters and curbings: *Provided, however,* That where any permanent and new construction of curb, or curb and gutter, is laid, and the roadway of the street is not paved or repaved, or is not paved or repaved with a pavement of the character specified in section 7–622, the half cost of such curb, or curb and gutter, shall be assessed against the abutting property in the manner provided in sections 7–622 to 7–633. (Feb. 20, 1931, 46 Stat. 1197, ch. 246, § 2.)

GROSS REFERENCE

Improvements completed after May 25, 1943, see § 7–612d.

§ 7–624. Cost of certain roadway improvements not to be assessed.

There shall be excepted from such assessments the cost of paving the roadway in excess of forty feet in width where the new pavement or repaving is laid on both sides of the center line of such roadway; the cost of paving the roadway in excess of twenty feet in width where the new pavement or repaving is laid solely on one side of the center line of such roadway; the cost of paving the roadway space included within the intersection of streets. avenues, and roads, as said intersections are limited by lines normally projected from the building lines of the street, avenue, or road being improved at its point of intersection with the building lines of the intersecting streets, avenues, or roads and also the cost of paving or repaving the space within such roadways for which street-railway companies are responsible under their charters or under law, on streets, avenues, or roads where such railways have been or shall be constructed. (Feb. 20, 1931, 46 Stat. 1197, ch. 246, § 3.)

GROSS REFERENCE

Improvements completed after May 25, 1943, see § 7–612d.

§ 7–625. Maximum front foot assessment—Total assessment limited—Computation against unsubdivided property.

The maximum linear front foot assessment levied hereunder shall not exceed $3.50 per linear front foot. The total assessment levied hereunder against any abutting property shall not exceed the number of square feet of area of said property multiplied by 1 per centum of the linear front foot assessment, and shall not exceed 20 per centum of the value of the said abutting property, exclusive of improvements thereon, as assessed for the purpose of taxation at the time of the paving or repairing of the street, avenue, or road for which said assessment is levied. In computing assessments hereunder against unsubdivided land by the square foot or according to the assessed valuation, there shall be excluded from the computation land lying back more than one hundred feet from the street, avenue, or road being improved where the depth is even; where the depth is uneven, the average depth shall be taken in computation, but not to exceed one hundred feet. (Feb. 20, 1931, 46 Stat. 1197, ch. 246, § 4.)

GROSS REFERENCE

Improvements completed after May 25, 1943, see § 7–612d.

§ 7–626. Property exempt from replacement costs.

No property on which a legal assessment has been levied and paid for paving or repaving, curbing or curbing and guttering, on the roadway of any street, avenue, or road, shall be liable for any further assessment under sections 7–622 to 7–633 on account of the replacement of such pavement, curbing, or curbing and guttering. (Feb. 20, 1931, 46 Stat. 1198, ch. 246, § 5.)

§ 7–627. Assessments when prior roadway improvements were made at owner's cost.

No assessments shall be levied for repaving where the original pavement was laid at the whole cost of the owner or owners of the abutting property if the said original pavement was constructed under a permit issued by the District of Columbia and under the supervision and direction of an authorized engineer and inspector of the Highway Department of said District, in strict accordance with the then current specifications and design for pavements of the type for which permit was issued: *Provided,* That where curb, or curb and gutter, or a part of the roadway has or have been paved under proper permit, subject to engineering and inspection as above stated, the assessment for paving other parts of the roadway, placing curb, or curb and gutter, when the same is done at public expense, shall be made against property abutting on the highway as provided in sections 7–622 to 7–633, credit being given in such assessment for the half cost of the pavement laid by the owner under permit as above, estimated on the basis of the contract rates for such work at the date of the performance of the assessable work, so that the total cost to the owner for such improvements shall not exceed the amount of assessments which would have been made under sections 7–622 to 7–633, had the improvements been all made at public expense. (Feb. 20, 1931, 46 Stat. 1198, ch. 246, § 6.)

§ 7–628. No assessment for cost of resurfacing by heater method—Assessment of replacement cost.

No assessment shall be levied for the cost of resurfacing asphalt pavements by the heater method—stripping the surface from a rigid type base, and replacing surface thereon—or covering an existing

hard surface or macadam pavement or base with bituminous material: *Provided,* That where an entire pavement is removed and replaced with a pavement of the character specified in section 7–622, the cost of the latter pavement shall be assessed as provided in sections 7–622 to 7–633, if no previous legal assessment has been levied and paid therefor. (Feb. 20 1931, 46 Stat. 1198, ch. 246, § 7.)

§ 7–629. Assessment against property abutting two or more streets.

When any property abuts two or more streets, avenues, or roads, the assessments against said property levied under sections 7–622 to 7–633 shall not exceed in the aggregate, together with any legal assessments levied and paid prior to February 20, 1931, for the paving, curbing, or curbing and guttering of or on said streets, avenues, or roads 3½ cents per square foot of area of said property, or 20 per centum of the value of said property, exclusive of improvements thereon, as assessed for purposes of taxation at the time of the paving or repaving, curbing, or curbing and guttering for which the assessment is levied (Feb. 20, 1931, 46 Stat. 1198, ch. 246, § 8.)

§ 7–630. Collection of assessments—Interest—Advertising of intention to improve and hearing not required.

The assessments provided for in sections 7–622 to 7–633 shall be made and collected as provided in section 7–608, relating to alleys and sidewalks. The rate of interest to be charged upon any assessment, levied under section 7–608 relating to alleys and sidewalks, or any instalment thereof, is reduced hereby from eight per centum per annum to six per centum per annum: *Provided, however,* That any instalment of any such assessment not paid within the time provided in section 7–608 shall thereafter bear interest at the rate of twelve per centum per annum: *And provided further,* That the advertisement by publication of the intention of the Commissioners of the District of Columbia to perform the work and the formal hearing in respect thereto required by law as to alley and sidewalk improvements shall not be required as to roadway, curbing, and gutter improvements. (Feb. 20, 1931, 46 Stat. 1198, ch. 246, § 9.)

§ 7–631. Protest of aggrieved property owner—Adjustment of assessment by Commissioners.

Any property-owner, aggrieved by any assessment levied under sections 7–622 to 7–633, may, within sixty days after service of notice of such assessment, file with the Commissioners of the District of Columbia a protest in writing against such assessment, accompanied by affidavits if he so desires, and if said commissioners find that the property of such owner so protesting is not benefited by the improvement for which said assessment is levied, or is benefited less than the amount of such assessment, or is unequally or inequitably assessed with relation to other property abutting such improvement, said commissioners shall abate, reduce, or adjust such assessment in accordance with such finding. In computing the sixty days provided in section 7–608, within which such assessment may be paid without interest, there shall be excluded therefrom the time between the date of the filing of any such protest and the date of action thereon by the commissioners. (Feb. 20, 1931, 46 Stat. 1199, ch. 246, § 10.)

§ 7–632. Cancellation of prior assessments directed—Reassessment—Refund.

The Commissioners of the District of Columbia are directed to cancel all assessments for improvements completed within three years prior to February 20, 1931, levied under the authority of sections 7–611, 7–612, relating to assessments for the paving of streets, avenues, and roads, or under section 7–606, relating to assessments for laying curbs; and the commissioners are further directed to reassess the cost of such improvements against the abutting property in accordance with the provisions of sections 7–622 to 7–633, which assessments shall become a lien upon the abutting property and be collected in the manner provided under sections 7–622 to 7–633. Where assessments for such improvements have been paid in whole or in part the commissioners shall refund, within the limits of appropriations by Congress therefor, to the persons paying the same, the excess, if any, of such payments over the amounts of the reassessments levied under sections 7–622 to 7–633. (Feb. 20, 1931, 46 Stat. 1199, ch. 246, § 11.)

GROSS REFERENCE

For other provisions concerning refund of taxes and assessments, see § 47–1016.

NOTES TO DECISIONS

Prior assessments, validity

Where Congress, in authorizing improvement of a particular street made finding of benefit to abutting property, the conclusiveness of the finding that benefits would be conferred on abutting landowners was not affected by fact that "existing law" in 1929 regarding assessments was replaced by this section. *Philadelphia, B. & W. R. R.* v. *Hazen* (1941, 116 F. 2d 543, 73 App. D. C. 37).

Prior law

Act of Feb. 25, 1929, 45 Stat. 1272, authorizing improvement of a particular street in District of Columbia and providing for assessments against abutting property owners in accordance with the existing law, for protest to Commissioners of District by abutting property owners, does not negative finding that the act fixed with particularity location of the improvement, and of property to be benefited, and set up a method of assessment which required only mathematical computation for its application, but rather the provision was merely a recognition that in unusual situations application of general method of assessment may be inequitable. *Philadelphia, B. & W. R. R.* v. *Hazen* (1941, 116 F. 2d 543, 73 App. D. C. 37).

§ 7–633. Separability of provisions.

Should any provision of sections 7–622 to 7–633 be decided by the courts to be unconstitutional or invalid, the validity of sections 7–622 to 7–633 as a whole or of any part thereof other than the part decided to be unconstitutional shall not be affected. (Feb. 20, 1931, 46 Stat. 1199, ch. 246, § 12.)

REPEAL

Section 13 of act of Feb. 20, 1931, provided that: "All laws and parts of laws inconsistent with the provisions of this Act [§§ 7–622 to 7–633] are hereby repealed."

§ 7–634. Not applicable to assessments levied prior to 1885.

(a) The provisions of sections 7–626, 7–627, and 7–628 shall not preclude the levying of assessments hereunder if the improvement for which such prior

assessment was levied, or, if the original paving, curbing, or curbing and guttering, laid at the whole cost of the owner, were completed prior to January 1, 1885.

(b) The provision of section 7–629, relating to legal assessments heretofore levied, shall not be applicable where said prior assessments were levied for any improvement completed prior to January 1, 1885. (Feb. 20, 1931, ch. 246, § 14, as added June 28, 1935, 49 Stat. 430, ch. 331, § 1.)

EXISTING LEVIES NOT AFFECTED

Section 2 of act June 28, 1935, provided that: "The provisions herein contained [adding this section] shall not apply to assessments levied prior to the date of approval of this Act [June 28, 1935]."

Chapter 7.—STREET LIGHTING

Sec.

7–701. Street lighting—Rates for street lighting—Cost and maintenance of lighting facilities—Powers of Commissioners.
7–702. Overhead wires prohibited.
7–703 Deductions for failure to provide required illumination—Testing facilities.
7–704. Contracts for gas and electric lighting not required.
7–705. Penalty for failure to furnish, erect, maintain, move, or discontinue street lamps.
7–706. Extension of gas-mains for maintenance of street lamps—Cost.
7–707. Regulating hours of lighting of street lamps.
7–708 Washington Terminal Company to pay for certain street lighting.
7–709 Railroads to pay for certain street lighting.
7–710 Increase in number of street lamps authorized

§ 7–701. Street lighting—Rates for street lighting—Cost and maintenance of lighting facilities—Powers of Commissioners.

No more than the following rates shall be paid for lighting avenues, streets, roads, alleys, and public spaces.

For mantle gas lamps of sixty candlepower, eighteen dollars and forty cents per lamp per annum.

For mantle gas lamps of not less than one hundred and twenty candlepower, twenty-seven dollars per lamp per annum.

For street designation lamps, using flat-flame burners, consuming not more than two and one-half cubic feet of gas per hour, or eight candlepower incandescent electric lamps, with posts and lanterns furnished by the District of Columbia, ten dollars per lamp per annum.

For forty candlepower, fifty watt, incandescent electric lamps on overhead wires, fifteen dollars per lamp per annum.

For forty candlepower, fifty watt, incandescent electric lamps on underground wires, nineteen dollars and fifty cents per lamp per annum.

For sixty candlepower, seventy-five watt, incandescent electric lamps on overhead wires, seventeen dollars and fifty cents per lamp per annum.

For sixty candlepower, seventy-five watt, incandescent electric lamps on underground wires, twenty-three dollars per lamp per annum.

For eighty candlepower, one hundred watt, incandescent electric lamps on underground wires, twenty-six dollars per lamp per annum.

For one hundred candlepower, one hundred and twenty-five watt, incandescent electric lamps on underground wires, twenty-seven dollars and fifty cents per lamp per annum.

For one hundred and fifty candlepower, one hundred and eighty-seven watt, incandescent electric lamps on underground wires, thirty-six dollars and fifty cents per lamp per annum.

For two hundred candlepower, two hundred and fifty watt, incandescent electric lamps on underground wires, forty-six dollars and fifty cents per lamp per annum.

For four glower Nernst lamps on underground wires, fifty-two dollars and fifty cents per lamp per annum.

For six and six-tenths ampere, five hundred and twenty-eight watt, direct-current, series-inclosed arc lamps, eighty dollars per lamp per annum.

For five amperes, five hundred and fifty watt, direct-current, multiple-inclosed arc lamps, eighty dollars per lamp per annum.

For four ampere, three hundred and twenty watt, magnetite, or other arc lamps of equal illuminating value acceptable to the commissioners of the District of Columbia, on overhead wires, fifty-nine dollars per lamp per annum.

For four ampere, three hundred and twenty watt magnetite, or other arc lamps of equal illuminating value acceptable to the Commissioners of the District of Columbia, on underground wires, seventy-two dollars and fifty cents per lamp per annum.

For six and six-tenths ampere, five hundred watt magnetite, or other arc lamps of equal illuminating value acceptable to the Commissioners of the District of Columbia, on overhead wires, eighty-four dollars per lamp per annum.

For six and six-tenths ampere, five hundred watt magnetite, or other arc lamps of equal illuminating value acceptable to the Commissioners of the District of Columbia, on underground wires, ninety-seven dollars and fifty cents per lamp per annum.

For flame arc lamps, five hundred watt, General Electric type, or other arc lamps of equal illuminating value acceptable to the Commissioners of the District of Columbia, one hundred and fifty dollars per lamp per annum.

For the rates named above it shall be the duty of each gaslight company and each electric-light company doing business in the District of Columbia to erect and maintain such street lamps as the Commissioners of said District may direct; and each such company shall furnish, install, and maintain all posts, lamps, lanterns, burners, wires, cable, conduits, gas pipes, street designations, and fixtures necessary for the respective lamps maintained by each of them, including lighting and extinguishing lamps, and repairing, painting, and cleaning.

The cost of each lamp-post for incandescent electric lighting furnished by any lighting company under the above rates shall not exceed fifteen dollars, except as hereinafter provided, which cost shall include only the lamp-post, the globe, the ornamental top, and the street-designation frame and signs. All other fixtures, parts, fittings, lamps, sockets, wires, cables, and appurtenances necessary for the lamps maintained by said lighting company

on said posts, including the cost of erection, shall not be included in said cost.

The cost of each lamp-post for gaslighting furnished by any lighting company under the above rates shall not exceed fifteen dollars, except as hereinafter provided, which cost shall include only the lamp-post and the street-designation frame and signs. All other fixtures, parts, fittings, burners, lamps, pipes, and appurtenances necessary for the lamps maintained by said lighting company on said posts, including the cost of erection, shall not be included in said cost.

The cost of each lamp-post for arc lighting furnished by any lighting company under the above rates shall not exceed fifty dollars, except as hereinafter provided, which cost shall include only the lamp-post, the street-designation frame and signs, and the arm or top from which the lamp is hung. All other fixtures, parts, fittings, lamps, cables, wires, and appurtenances necessary for the lamps maintained by said lighting company on said posts, including the cost of erection, shall not be included in said cost.

Each lamp-post and its equipment shall be of a design and quality acceptable to the Commissioners of the District of Columbia.

For each such lamp-post furnished by a lighting company by direction of the District Commissioners which shall cost in excess of fifteen dollars for gas or electric incandescent lamps, or which shall cost in excess of fifty dollars for electric arc lamps, the company furnishing the same shall receive, in addition to the above rates, eleven per centum per annum on such additional or excess cost.

The Commissioners of the District of Columbia are authorized, in their discretion, to purchase or construct from street-lighting appropriations made in the Act of June 26, 1912 (37 Stat. 181), posts, lanterns, street designations, and all necessary fixtures or appurtenances for any of the systems of lighting above named: *Provided,* That whenever the said commissioners shall furnish a lamp-post including only the globe, the ornamental top, and the street-designation frame and signs for the electric incandescent lamps, or including only the street-designation frame and signs for gas lamps, or including only the street-designation frame and signs and the arm or top for arc lamps, one dollar and sixty-five cents per lamp per annum for gas or electric incandescent lamps and four dollars and forty cents per lamp per annum for electric arc lamps shall be deducted from the rates above fixed.

The Commissioners of the District of Columbia are further authorized, in their discretion, to adopt other forms of electric street lighting than those named, in which event payments under appropriations made in the Act of June 26, 1912 (37 Stat. 181), shall be made for the lighting service rendered at not to exceed three cents per kilowatt-hour for current consumed, and, in addition thereto, eleven per centum per annum of the cost to the lighting company of furnishing and installing lamps, posts, street designations, fixtures, and the cable from lamps to the nearest point of current supply, and a fair sum for the cost of maintenance.

When ordered to do so by the said commissioners, lighting companies shall move and readjust any lamps maintained by them at the following rates:

For each electric arc lamp, ten dollars.

For each electric incandescent lamp, five dollars.

For each gas lamp moved not more than six feet, two dollars and fifty cents.

For each gas lamp moved more than six feet, four dollars.

For each gas lamp raised or lowered to new grade, one dollar and fifty cents.

When ordered by the commissioners to do so, lighting companies in the District of Columbia shall discontinue any public lamps maintained by them without further payment therefor, and shall remove from the streets, at their own expense, all posts, lanterns, and fixtures connected therewith. (Mar. 2, 1911, 36 Stat. 1008, ch. 192, § 7; June 26, 1912, 37 Stat. 181, ch. 182, § 7.)

CODIFICATION

The first part of the 27th and the last part of the 28th paragraphs of this section are probably temporary and obsolete.

The foregoing section fixes the rate therein specified for the fiscal year 1913 only. Successive appropriation acts have specified that the appropriations should be expended in accordance with the provisions of this section and of § 7 of the act of March 2, 1911 (36 Stat. 1008). The rates in both acts are identical. The act of May 10, 1926 (44 Stat. 430), provided that for the fiscal year 1927 "this appropriation shall not be available for the payment of rates for electric street lighting in excess of 87½ per centum of rates heretofore established by law, and rates established by the commissioners in accordance with law, and payment for electric current for new forms of street lighting shall not exceed 2 cents per kilowatt-hour for current consumed." The reduced rates were promulgated by the Public Utilities Commission [now Public Service Commission of the District of Columbia] effective July 1, 1926. (Orders Nos. 633 and 634 of June 30 and July 1, 1926.) Public Utilities Order No. 656 of December 21, 1926, established new rates for electric service, including street lighting, effective January 1, 1927, but the basic rates remain as above set out.

The act of June 12, 1940, 54 Stat. 307, ch. 333, provided that the sum appropriated therein for street lighting should be expended in accordance with the provisions of the appropriation acts for the fiscal years 1912 and 1913 (36 Stat. 1008–1011, §§ 7, 8, and 37 Stat. 181–184, § 7) and other laws applicable thereto.

CROSS REFERENCES

Change of name of Public Utilities Commission, see § 2–2418.

Duty to maintain lights on bridges, see § 7–501.

Erection of lights, etc., beyond city limits, see § 1–234.

General powers and duties as to streets, see § 7–102 and notes.

§ 7–702. Overhead wires prohibited.

No public electric lamp shall be maintained by means of overhead wires within either the city limits of Washington or the existing fire limits of the District of Columbia as existing March 2, 1911. (Mar. 2, 1911, 36 Stat. 1011, ch. 192, § 8.)

CODIFICATION

This section is part of section 8 of act Mar 2, 1911. Other provisions of section 8 are classified to §§ 7–703 to 7–705.

§ 7–703. Deductions for failure to provide required illumination—Testing facilities.

Proportionate deductions shall be made from the amounts due lighting companies for failure to furnish the illumination required by law for public

lighting in the District of Columbia, and each company shall furnish, at its own expense, when and as required by the Commissioners of the District of Columbia, all proper and necessary facilities, testing places, and apparatus at its plant, and such help at points on its mains or circuits as to enable the said commissioners to determine whether the required illumination is being furnished. For each and every lamp which shall be extinguished or not lighted during any portion of the schedule time of lighting, a pro rata deduction, based upon the period of non-illumination and the price per lamp, shall be made from said amounts. (Mar. 2, 1911, 36 Stat. 1011, ch. 192, § 8.)

CODIFICATION

This section is part of section 8 of act Mar. 2, 1911. Other provisions of section 8 are classified to §§ 7–702, 7–704, and 7–705.

§ 7–704. Contracts for gas and electric lighting not required.

The Commissioners of the District of Columbia shall not be required to execute contracts for gas and electric lighting. (Mar. 2, 1911, 36 Stat. 1011, ch. 192, § 8.)

CODIFICATION

This section is part of section 8 of act Mar. 2, 1911. Other provisions of section 8 are classified to §§ 7–702, 7–703, and 7–705.

§ 7–705. Penalty for failure to furnish, erect, maintain, move, or discontinue street lamps.

Any gaslight company or any electric-light company doing business in the District of Columbia, which shall fail or refuse to furnish, erect, maintain, move, or discontinue any street lamp in compliance with the foregoing provisions as the commissioners of the District of Columbia may direct, shall be subject to a penalty of twenty-five dollars for each and every day's failure or refusal so to do, to be recovered at law in the name of the District of Columbia in any court of competent jurisdiction. (Mar. 2, 1911, 36 Stat. 1011, ch. 192, § 8.)

CODIFICATION

This section is part of section 8 of act Mar. 2, 1911. Other provisions of section 8 are classified to §§ 7–702 to 7–704.

§ 7–706. Extension of gas-mains for maintenance of street lamps—Cost.

Each gas company in the District of Columbia shall, at its sole and entire expense, make reasonable extensions of its gas-mains whenever the said extensions shall be necessary for maintaining street lamps for the public safety and comfort, and the said commissioners shall regulate the location and depth of the said gas-mains in the streets, avenues, roads, alleys, and spaces of the District of Columbia. (Mar. 3, 1893, 27 Stat. 544, ch. 199; May 29, 1928, 45 Stat. 996, ch. 901, § 1.)

AMENDMENT

1928—Act May 29, 1928, deleted the provision: "any failure to comply with this provision shall be reported to Congress by the Commissioners."

§ 7–707. Regulating hours of lighting of street lamps.

The Commissioners of the District of Columbia, subject to appropriations therefor, are hereby authorized and empowered to require that all public and other lamps under their control be lighted during such hours as in their judgment will most effectively promote the safety and convenience of the public. (Mar. 6, 1939, 53 Stat. 511, ch. 7.)

§ 7–708. Washington Terminal Company to pay for certain street lighting.

The Washington Terminal Company, its successors, or transferees shall pay to the District for the lighting of the streets, avenues, alleys, and grounds over and under which its right of way may cross, as well as for the lighting of those streets, avenues, alleys, and grounds bordering on its right of way, under the direction and control of the commissioners; and in case of default of payment of such bills, actions at law may be maintained by the District of Columbia against said terminal company or its successors, or transferees therefor: *Provided,* That not more than eighty-five dollars per annum shall be paid for any electric arc light burning from fifteen minutes after sunset to forty-five minutes before sunrise, and operated wholly by means of underground wire; and each arc light shall be of not less than one thousand actual candlepower: *Provided further,* That no more than eighteen dollars per annum shall be paid for each gas-lamp equipped with a self-regulating flat-flame burner so adjusted as to secure under all ordinary variations of pressure and density a consumption of five cubic feet of gas per hour, nor more than twenty dollars and eighty-five cents per annum for each gas and twenty-two dollars and eighty cents per annum for each oil lamp equipped with an incandescent mantle burner of not less than sixty candlepower. (May 26, 1908, 35 Stat. 287, 288, ch. 198.)

§ 7–709. Railroads to pay for certain street lighting.

All railroads other than street railroads shall pay to the District of Columbia for the lighting, under the direction and control of the commissioners of the District of Columbia, of the public roads, streets, avenues, and alleys, for their full width, through which their tracks may be laid, for the length of the street occupied by the said tracks, whether the said tracks be laid above, below, or at grade; as well as for the lighting of the subways and bridges over or under which the tracks of said railroads pass; and in default of payment of such bills, actions at law may be maintained by the District of Columbia against said railroads or their successors, transferees, or lessees therefor: *Provided,* That nothing herein shall be held to repeal section 7–708. (Mar. 4, 1913, 37 Stat. 953, ch. 150.)

GROSS REFERENCE

Duty to maintain lights on bridges, see § 7–501.

§ 7–710. Increase in number of street lamps authorized.

The proper authorities are directed to increase from time to time, as the public good may require, the number of street-lamps on any of the streets, lanes, alleys, public ways, and grounds, in the city of Washington, and to do any and all things pertaining to the well lighting of the city. (R. S., D. C., § 233.)

Chapter 8.—REMOVAL OF SNOW AND ICE

Sec.
7–801. Snow and ice to be removed from sidewalks within fire limits by owner or occupant of abutting property.
7–802. Removal by Commissioners from walks adjacent to public buildings—Making safe with sand or ashes.
7–803. Removal from sidewalks adjacent to Federal buildings—Making safe with sand or ashes.
7–804. Temporary use of sand and ashes.
7–805. Removal by Commissioners upon default by owner or occupant—Expense.
7–806. Suit for recovery of cost.

§ 7–801. Snow and ice to be removed from sidewalks within fire limits by owner or occupant of abutting property.

It shall be the duty of every person, partnership, corporation, joint-stock company, or syndicate in charge or control of any building or lot of land within the fire limits of the District of Columbia, fronting or abutting on a paved sidewalk, whether as owner, tenant, occupant, lessee, or otherwise, within the first eight hours of daylight after the ceasing to fall of any snow or sleet, to remove and clear away, or cause to be removed and cleared away, such snow or sleet from so much of said sidewalk as is in front of or abuts on said building or lot of land. (Sept. 16, 1922, 42 Stat. 845, ch. 318, § 1.)

NOTES TO DECISIONS

Discretion of trial judge

In suit for injuries sustained by pedestrian in fall on snow and ice accumulated on sidewalk running before building in control of defendant, competent evidence of conditions wrought by weather in city generally should be received, but trial judge has discretion in fixing limits for such testimony and it may not be said, as a matter of law, that he may not confine such testimony as to particular streets to those within vicinity of scene of accident. *Campbell* v. *District of Columbia* (1957, 243 F. 2d 226, 100 U.S. App. D.C. 120).

District's liability for dangerous sidewalk on Federal property

Even though the Snow Removal Act makes it duty of Director of National Park Service to remove snow and ice from sidewalks in front of or around reservation owned by United States and even though the sidewalk on which plaintiff fell was part of public sidewalk surrounding a federally owned reservation on which was situated the Municipal Court buildings, the District of Columbia was nevertheless liable for pedestrian's injuries in fall due to dangerous and unusual sidewalk formations of snow and ice of which District had actual or constructive notice for a reasonable period of time. *Campbell* v. *District of Columbia* (D.C.D.C. 1957, 153 F. Supp. 730, affirmed 254 F. 2d 357, 103 U.S. App. D.C. 20).

Duty to pedestrians

This section and section 805 of this title do not purport affirmatively to make property owner liable to respond in damages to a pedestrian who is injured by falling on snow or ice which owner has not removed from abutting sidewalk. *Radinsky* v. *Ellis* (1948, 167 F. 2d 745, 83 U.S. App. D.C. 172).

Essential elements for recovery

Essential elements, for recovery against District of Columbia for injuries sustained in fall on icy sidewalk running before buildings under control of District, are that formations which caused or contributed to injuries were of such size or location as to be dangerous and unusual in some way other than original slipperiness caused by weather conditions and that District had actual or constructive notice of particular condition and reasonable period of time in which to remove formations so as to make sidewalk reasonably safe for travel. *Campbell* v. *District of Columbia* (1957, 243 F. 2d 226, 100 U.S. App. D.C. 120).

To recover for injuries sustained in sidewalk fall, for alleged negligence in failing to remove ice and snow, against person in control of abutting building, plaintiff is not required to show that formations of ice and snow complained of are entirely unique and that similar ones exist nowhere in city. *Id.*

Extent of clearance

Under the statute making it the duty of person controlling building fronting on sidewalk to remove snow from so much of walk as in front of building, clearing snow from about half width of sidewalk after heavy snowfall was sufficient. *Smith* v. *District of Columbia* (1951, 189 F. 2d 671, 89 U.S. App. D.C. 7).

Liability

District of Columbia snow removal statute did not change or add to basic liability of District Government with respect to safe conditions on public streets. *Smith* v. *District of Columbia* (1951, 189 F. 2d 671, 89 U.S. App. D.C. 7).

Where plaintiff left restaurant and waited under a canopy at top of steps which led down to restaurant while her escort was getting his automobile, and then she took several steps toward curb and suddenly lost her footing and fell on public sidewalk on which snow and sleet and rain had very recently accumulated, District of Columbia and restaurant keeper were not liable for the fall on sidewalk which was not shown to be appropriated to exclusive use and benefit of restaurant keeper. *Morris* v. *Prati etc., et al.* (D.C. Mun. App. 1960, 163 A. 2d 552).

Sufficiency of evidence

In action against District of Columbia for injuries sustained by plaintiff in fall on icy sidewalk running in front of building owned or controlled by District, there was sufficient evidence for jury to find that four-inch snow which had fallen on two previous days had been trampled into ice knobs by passing pedestrians at least 24 hours or longer before plaintiff fell and that District which maintained seven-man force in building charged with removing such condition had notice thereof. *Campbell* v. *District of Columbia* (1957, 243 F. 2d 226, 100 U.S. App. D.C. 120).

§ 7–802. Removal by Commissioners from walks adjacent to public buildings—Making safe with sand or ashes.

It shall be the duty of the Commissioners of the District of Columbia within the first eight hours of daylight after the ceasing to fall of any snow or sleet, or after the accumulation of ice on the paved sidewalks within the fire limits of the District of Columbia, in front of or adjacent to all public buildings, public squares, reservations, and open spaces in the said District owned or held by lease by said District, to cause such snow, sleet, and ice to be removed; and also to cause the same to be removed from all crosswalks of improved streets and places of intersection of alleys with paved sidewalks, and also from all paved sidewalks or crosswalks used as public thoroughfares through all public squares, reservations, or open spaces within the fire limits of said District owned or held by lease by the District of Columbia; but in the event of inability to remove such accumulation of snow, sleet, and ice without injury to the sidewalk, by reason of the hardening thereof, it shall be their duty, within the first eight hours of daylight after the hardening thereof, to make reasonably safe for travel, or cause to be made reasonably safe for travel, by the sprinkling of sand or ashes thereon, such paved sidewalks, crosswalks, and places of intersection of alleys with paved sidewalks, and shall, as soon thereafter as the weather shall permit, thoroughly clean, or cause to be thoroughly cleaned, said sidewalks, crosswalks,

and places of intersection of alleys with paved sidewalks. (Sept. 16, 1922, 42 Stat. 845, ch. 318, § 2.)

TRANSFER OF FUNCTIONS

Reorganization Order No. 28 of the Board of Commissioners dated Apr. 3, 1953, redesignated Organization Order No. 147 dated Aug. 19, 1965, established a Department of Sanitary Engineering headed by a Director. The new department is to perform sanitary engineering services and operations for the District including the collection of waste material and including snow removal. The office of Water Registrar and the previously existing Department of Sanitary Engineering were abolished and their functions transferred to the new department. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The redesignated order and plan are set out in the Appendix to title 1, Administration.

NOTES TO DECISIONS

Discretion of trial judge

In suit for injuries sustained by pedestrian in fall on snow and ice accumulated on sidewalk running before building in control of defendant, competent evidence of conditions wrought by weather in city generally should be received, but trial judge has discretion in fixing limits for such testimony and it may not be said, as a matter of law, that he may not confine such testimony as to particular streets to those within vicinity of scene of accident. *Campbell* v. *District of Columbia* (1957, 243 F. 2d 226, 100 U.S. App. D.C. 120).

Effect of Appellate Courts decision on retrial

Where Court of Appeals found, in action against District of Columbia for injuries sustained by plaintiff in fall on icy sidewalk in front of one of the Municipal Court buildings, that there was sufficient evidence for jury to find that District had notice of condition of sidewalk, apart from statute which makes it duty of District to remove ice from sidewalks adjacent to its buildings, question of notice would not be considered on motion for judgment notwithstanding verdict in second trial, wherein evidence was substantially the same, even if Court of Appeals had erred factually in finding that sidewalk was adjacent to building owned or controlled by District rather than adjacent to federal reservation owned by United States. *Campbell* v. *District of Columbia* (D.C.D.C. 1957, 153 F. Supp. 730, affirmed 254 F. 2d 357, 103 U.S. App. D.C. 20).

Essential elements for recovery

Essential elements, for recovery against District of Columbia for injuries sustained in fall on icy sidewalk running before buildings under control of District, are that formations which caused or contributed to injuries were of such size or location as to be dangerous and unusual in some way other than original slipperiness caused by weather conditions and that District had reasonable period of time in which to remove formations actual or constructive notice of particular condition and so as to make sidewalk reasonably safe for travel. *Campbell* v. *District of Columbia* (1957, 243 F. 2d 226, 100 U.S. App. D.C. 120).

To recover for injuries sustained in sidewalk fall, for alleged negligence in failing to remove ice and snow, against person in control of abutting building, plaintiff is not required to show that formations of ice and snow complained of are entirely unique and that similar ones exist nowhere in city. *Id.*

Evidence

In pedestrian's suit against District of Columbia for injuries sustained when she slipped on ice and snow on sidewalk running in front of building under control of District, in view of fact that pedestrian failed to offer evidence of conditions naturally prevailing on sidewalks anywhere in city at time, she could not successfully complain on appeal of trial court's ruling that such evidence had to relate to radius of one block from locale of accident. *Campbell* v. *District of Columbia* (1957, 243 F. 2d 226, 100 U.S. App. D.C. 120).

Instructions

In action against District of Columbia for injuries sustained by pedestrian in fall on icy sidewalk running in front of building controlled by District, court committed prejudicial error in failing to charge substance of pedestrian's requested instruction that, if jury found that icy condition had existed such time that District had actual or constructive notice thereof, liability for negligence could be imposed for failing to treat the previously dangerous condition, though new snow and sleet had aggravated it, though tendered instruction was required to be modified slightly. *Campbell* v. *District of Columbia* (1957, 243 F. 2d 226, 100 U.S. App. D.C. 120).

Where District of Columbia opposed instruction on statute, which makes it duty of District to remove ice from sidewalk, District withdrew instruction prepared on assumption that it would call witnesses to show that efforts had been made to cope with snow storm, and after withdrawal of pedestrian's requested instruction, District did not ask to reopen case for purposes of calling witnesses, and there was no basis for belief that such request would have been denied, District was not entitled to new trial on ground that it was unaware that statute would not be element in case until it was too late for it to call its witnesses. *Campbell* v. *District of Columbia* (D.C.D.C. 1957, 153 F. Supp. 730, affirmed 254 F. 2d 357, 103 U.S. App. D.C. 20).

Liability

Primary duty of clearing snow and ice from sidewalk along South Building of Department of Agriculture in District of Columbia was on United States, and therefore District of Columbia was not liable for injuries sustained by employee of Department of Agriculture in fall on icy sidewalk. *D. J. Daniels-Lumley* v. *United States et al.* (1962, 306 F. 2d 769, 113 U.S. App. D.C. 162).

District of Columbia snow removal statute did not change or add to basic liability of District Government with respect to safe conditions on public streets. *Smith* v. *District of Columbia* (1951, 189 F. 2d 671, 89 U.S. App. D.C. 7).

Where plaintiff left restaurant and waited under a canopy at top of steps which led down to restaurant while her escort was getting his automobile, and then she took several steps toward curb and suddenly lost her footing and fell on public sidewalk on which snow and sleet and rain had very recently accumulated, District of Columbia and restaurant keeper were not liable for the fall on sidewalk which was not shown to be appropriated to exclusive use and benefit of restaurant keeper. *Morris* v. *Prati etc., et al.* (D.C. Mun. App. 1960, 163 A. 2d 552).

Notice

If District of Columbia has notice of dangerous icy condition on sidewalk adjacent to building which it maintains, it may be liable for negligence to one injured because of such condition, though new snow and sleet had aggravated the condition. *Campbell* v. *District of Columbia* (1957, 243 F. 2d 226, 100 U.S. App. D.C. 120).

Reasonably safe

Under this section, requiring Commissioners of the District of Columbia within first eight hours after daylight after ceasing of any fall of snow or sleet to clear sidewalks so as to make them reasonably safe, District does not have to render condition absolutely harmless. *Campbell* v. *District of Columbia* (1957, 243 F. 2d 226, 100 U.S. App. D.C. 120).

Sufficiency of evidence

In action against District of Columbia for injuries sustained by plaintiff in fall on icy sidewalk running in front of building owned or controlled by District, there was sufficient evidence for jury to find that four-inch snow which had fallen on two previous days had been trampled into ice knobs by passing pedestrians at least 24 hours or longer before plaintiff fell and that District which maintained seven-man force in building charged with removing such condition had notice thereof. *Campbell* v. *District of Columbia* (1957, 243 F. 2d 226, 100 U.S. App. D.C. 120).

§ 7–803. Removal from sidewalks adjacent to Federal buildings—Making safe with sand or ashes.

It shall be the duty of the Director of National Park Service within the first eight hours of daylight after the ceasing to fall of any snow or sleet, or after the accumulation of ice upon

the paved sidewalks within the fire limits of the District of Columbia, to remove or cause to be removed from such sidewalks as are in front of or adjacent to all buildings owned or leased by the United States, except the Capitol buildings and grounds and the Congressional Library building, and from all paved sidewalks or crosswalks used as public thoroughfares in front of, around, or through all public squares, reservations, or open spaces within the fire limits of the District of Columbia, owned or leased by the United States, such snow, sleet, and ice; but in the event of inability to remove such accumulation of snow, sleet, and ice, by reason of the hardening thereof, without injury to the sidewalk, it shall be his duty, within the first eight hours of daylight after the hardening of such snow, sleet, and ice, to make reasonably safe for travel, or cause to be made reasonably safe for travel, by the sprinkling of sand or ashes thereon, such paved sidewalks and crosswalks, and shall, as soon thereafter as the weather shall permit, thoroughly clean said sidewalks and crosswalks. (Sept. 16, 1922, 42 Stat. 845, ch. 318, § 3.)

TRANSFER OF FUNCTIONS

This section originally placed the duty of removing ice and snow from sidewalks of public buildings on the Chief Engineer of the United States Army. Act of Feb. 26, 1925, 43 Stat. 983, ch. 339, § 3, transferred the duties imposed upon the Chief of Engineers to the Director of Public Buildings and Public Parks of the National Capital. Ex. Or. No. 6166, June 10, 1933, transferred the functions of the Public Buildings and Public Parks of the National Capital to the Office of National Parks, Buildings, and Reservations. Act of Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1, changed the name of the Office of National Parks, Buildings, and Reservations to the National Park Service.

NOTES TO DECISIONS

District's liability for dangerous sidewalk on Federal property

Even though the Snow Removal Act makes it duty of Director of National Park Service to remove snow and ice from sidewalks in front of or around reservation owned by United States and even though the sidewalk on which plaintiff fell was part of public sidewalk surrounding a federally owned reservation on which was situated the Municipal Court buildings, the District of Columbia was nevertheless liable for pedestrian's injuries in fall due to dangerous and unusual sidewalk formations of snow and ice of which District had actual or constructive notice for a reasonable period of time. *Campbell* v. *District of Columbia* (D.C.D.C. 1957, 153 F. Supp. 730, affirmed 254 F. 2d 357, 103 U.S. App. D.C. 20).

Responsibility for removal

Primary duty of clearing snow and ice from sidewalk along South Building of Department of Agriculture in District of Columbia was on United States, and therefore District of Columbia was not liable for injuries sustained by employee of Department of Agriculture in fall on icy sidewalk. *D. J. Daniels-Lumley* v. *United States et al.* (1962, 306 F. 2d 769, 113 U.S. App. D.C. 162).

Snow Removal Act does not shift responsibility for removal of snow from streets and sidewalks adjacent to federal property from District of Columbia to Director of National Park Service in such sense as to bar a suit against District for personal injuries sustained by pedestrian in fall on slippery sidewalk. *District of Columbia* v. *Campbell* (1958, 254 F. 2d 357, 103 U.S. App. D.C. 20).

§ 7–804. Temporary use of sand and ashes.

In case the snow, sleet, and ice can not be removed from so much of the paved sidewalks within the fire limits of the District of Columbia as front upon or abut such buildings or lots of land as are not owned or held by lease by the District of Columbia or the United States without injury to said sidewalks, because of the hardening thereof, the person, partnership, corporation, joint-stock company, or syndicate in charge or control of such buildings or lots of land, whether as owner, tenant, occupant, lessee, or otherwise, shall, within the first eight hours of daylight after the same has formed, make reasonably safe for travel, or cause to be made reasonably safe for travel, by the sprinkling of sand or ashes thereon, said sidewalks, and shall, as soon thereafter as the weather shall permit, thoroughly clean said sidewalks. (Sept. 16, 1922, 42 Stat. 845, ch. 318, § 4.)

NOTES TO DECISIONS

Discretion of trial judge

In suit for injuries sustained by pedestrian in fall on snow and ice accumulated on sidewalk running before building in control of defendant, competent evidence of conditions wrought by weather in city generally should be received, but trial judge has discretion in fixing limits for such testimony and it may not be said, as a matter of law, that he may not confine such testimony as to particular streets to those within vicinity of scene of accident *Campbell* v. *District of Columbia* (1957, 243 F. 2d 226, 100 U.S. App. D.C. 120).

Essential elements for recovery

Essential elements, for recovery against District of Columbia for injuries sustained in fall on icy sidewalk running before buildings under control of District, are that formations which caused or contributed to injuries were of such size or location as to be dangerous and unusual in some way other than original slipperiness caused by weather conditions and that District had actual or constructive notice of particular condition and reasonable period of time in which to remove formations so as to make sidewalk reasonably safe for travel. *Campbell* v. *District of Columbia* (1957, 243 F. 2d 226, 100 U.S. App. D.C. 120).

To recover for injuries sustained in sidewalk fall, for alleged negligence in failing to remove ice and snow, against person in control of abutting building, plaintiff is not required to show that formations of ice and snow complained of are entirely unique and that similar ones exist nowhere in city. *Id.*

Liability

District of Columbia snow removal statute did not change or add to basic liability of District Government with respect to safe conditions on public streets. *Smith* v. *District of Columbia* (1951, 189 F. 2d 671, 89 U.S. App. D.C. 7).

Sufficiency of evidence

In action against District of Columbia for injuries sustained by plaintiff in fall on icy sidewalk running in front of building owned or controlled by District, there was sufficient evidence for jury to find that four-inch snow which had fallen on two previous days had been trampled into ice knobs by passing pedestrians at least 24 hours or longer before plaintiff fell and that District which maintained seven-man force in building charged with removing such condition had notice thereof. *Campbell* v. *District of Columbia* (1957, 243 F. 2d 226, 100 U.S. App. D.C. 120).

§ 7–805. Removal by Commissioners upon default by owner or occupant—Expense.

In the event of the failure of any person, partnership, corporation, joint-stock company, or syndicate to remove or cause to be removed such snow or ice from the said sidewalks, or to make the same reasonably safe for travel, or cause the same to be made reasonably safe for travel, as hereinbefore provided, it shall be the duty of the Commissioners of the Dis-

trict of Columbia, as soon as practicable after the expiration of the time herein provided for the removal thereof, or for the making of the said sidewalks reasonably safe for travel, to cause the snow and ice in front of such building or lot of land to be removed or to cause the same to be made reasonably safe, as hereinbefore directed to be done by such person, partnership, corporation, joint-stock company, or syndicate in charge or control of such building or lot of land, and the amount of the expense of such removal or such work of making the said sidewalks reasonably safe for travel, shall in each instance be ascertained and certified by the said commissioners to the corporation counsel of the District of Columbia. (Sept. 16, 1922, 42 Stat. 846, ch. 318, § 5.)

NOTES TO DECISIONS

Liability

District of Columbia snow removal statute did not change or add to basic liability of District Government with respect to safe conditions on public streets. *Smith* v. *District of Columbia* (1951, 189 F. 2d 671, 89 U.S. App. D.C. 7).

§ 7–806. Suit for recovery of cost.

The corporation counsel is hereby directed and authorized to sue for and recover from such person, partnership, corporation, joint-stock company, or syndicate, the amount of such expense in the name of the District of Columbia, together with a penalty not exceeding $25 for each offense, with costs, and when so recovered the amount shall be deposited to the credit of the District of Columbia. (Sept. 16, 1922, 42 Stat. 846, ch. 318, § 6.)

Chapter 9.—RENTAL OF SPACE UNDER SIDEWALKS

Sec.
7–901. Authority conferred on Commissioners.

§ 7–901. Authority conferred on Commissioners.

The Commissioners of the District of Columbia are authorized and directed to assess and collect rent from all users of space occupied under the sidewalks and streets in the District of Columbia, which said space is occupied or used in connection with the business of said users, and such rent shall be deposited to the credit of the Highway Fund. (Sept. 1, 1916, 39 Stat. 716, ch. 433, § 7; May 18, 1954, 68 Stat. 110, ch. 218, § 501.)

AMENDMENT

1954—Act May 18, 1954, added "and such rent shall be deposited to the credit of the Highway Fund."

GROSS REFERENCE

General powers and duties concerning streets and sidewalks, see § 7–102.

NOTES TO DECISIONS

Constructions permitted before act

This section authorizing assessment and collection of rent from users of space under sidewalks and streets in the District comprehended constructions permitted before as well as after this act was passed. *District of Columbia* v. *Andrews Paper Co.* (1921, 41 S. Ct. 545, 256 U. S. 582, 65 L. Ed. 1103).

A permit to an abutting owner to erect a building with adjacent vaults under the sidewalk although used continuously does not grant a permanent right. *Id.*

Chapter 10.—REAL ESTATE SALE OR RENT SIGNS

Sec.
7–1001. Signs on sidewalk or parking prohibited—Number of signs—Removal—Penalties.

§ 7–1001. Signs on sidewalk or parking prohibited—Number of signs—Removal—Penalties.

No sign or advertisement relating to the sale, rent, or lease of land or premises shall be located on the sidewalk or parking of any street, avenue, or road in the District of Columbia. One painted or printed sign or advertisement for the sale, rent, or lease of land or premises may, with the written consent of the owner or legal representative of the owner, be placed, by any one of not exceeding three real estate agents, on any lot, piece, or parcel of land abutting on a street, avenue, or road in said District, or attached to the exterior of any building fronting thereon. The commissioners of the District of Columbia are authorized to use the police authority vested in them, to require the removal of any sign or advertisement in violation of this provision, and to institute prosecutions, in the District of Columbia Court of General Sessions, against persons violating the provisions hereof, and every such person, upon conviction of such violation, shall be fined in the sum of not less than $5 nor more than $25. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 7; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

GROSS REFERENCE

Power of Commissioners to regulate and license out-of-door advertising signs, see §§ 1–231 to 1–233.

Chapter 11.—BARBED-WIRE FENCES

Sec.
7–1101. Construction or maintenance within fire limits.
7–1102. Construction or maintenance outside fire limits.
7–1103. Notice to remove—Service.
7–1104. Penalties.
7–1105. Notice by publication—Removal by inspector of buildings—Cost, assessment.

§ 7–1101. Construction or maintenance within fire limits.

No fence, barrier, or obstruction consisting or made, in whole or in part, of what is commonly called barbed wire shall be erected, constructed, or maintained along the line of or in or upon any street, avenue, alley, road, or other public walk, driveway, or public or private parking within the fire limits of the District of Columbia. (July 8, 1898, 30 Stat. 724, ch. 640, § 1.)

§ 7–1102. Construction or maintenance outside fire limits.

No fence, barrier, or obstruction made, in whole or in part of what is commonly called barbed wire shall be erected, constructed, or maintained within the said District of Columbia, outside of the fire

limits, along the line of or in or upon any street, avenue, alley, road, or other public walk, driveway, or public or private parking without a permit therefor from the commissioners of said District. (July 8, 1898, 30 Stat. 724, ch. 640, § 2.)

GROSS REFERENCE

Powers and duties of Commissioners concerning public highways, see § 7–102 and notes.

§ 7–1103. Notice to remove—Service.

Whenever, under the provisions of sections 7–1101 and 7–1102, any barbed wire in use in whole or in part on July 8, 1898, for a fence, barrier, or obstruction, along the line of or in or upon any street, avenue, alley, road, or other public walk, driveway, or public or private parking within the District of Columbia is required to be removed, said wire shall be removed by the owner of the building or other property upon which such fence, barrier, or obstruction exists, or his or her agent, within thirty days from the service by the inspector of buildings of said District of a notice, served in like manner as notices in regard to assessment and permit work are required by law to be served, directing the owner, agent, or other person or persons owning or controlling the land, structure, or other property upon which such fence or barrier exists to remove the same. (July 8, 1898, 30 Stat. 724, ch. 640, § 3.)

§ 7–1104. Penalties.

Any person violating any of the provisions of this chapter shall, upon conviction thereof in the District of Columbia Court of General Sessions be fined not more than ten dollars for each day such violation shall continue. (July 8, 1898, 30 Stat. 725, ch. 640, § 4; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court of said District to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 7–1105. Notice by publication—Removal by inspector of buildings—Cost, assessment.

In case the owner, agent, or other person or persons in control of the property along which such fence, barrier, or obstruction unlawfully exists can not be found within five days after the issue of such notice, the commissioners shall publish such notice twice a week for two successive weeks in one daily newspaper of general circulation published in the District of Columbia. If within five days after the last publication of said notice the fence, barrier, or obstruction therein described be not removed, the inspector of buildings of said District shall immediately cause such fence, barrier, or obstruction to be removed, and the expense of such removal shall be paid out of the assessment and permit fund; and the cost of such removal, together with the cost of said advertising, shall be assessed against said property and collected as general taxes in said District are assessed and collected; and the funds from which said payments are made shall be reimbursed from such collections. (July 8, 1898, 30 Stat. 725, ch. 640, § 5.)

Chapter 12.—MISCELLANEOUS

Sec.
7–1201. Jurisdiction over Conduit Road transferred to Commissioners—Abutting property owners—Assessment—Application of municipal laws.
7–1202. Railroads prohibited on certain streets.
7–1203. Further laying of street railroads prohibited.
7–1204. Removal of paving stones—Permit from Director of National Park Service—Obstruction on streets.
7–1205. Denomination of streets as "business streets."
7–1206. Portion of streets may be set aside as parks.
7–1207. Removal of obstructions from streets—Duty of Director of National Park Service.
7–1208. Penalty for failure to replace paving stones.
7–1209. Improper appropriation or occupation of streets.
7–1210. Sidings may be laid by Baltimore and Potomac Railroad Company—Authority of Commissioners.
7–1211. Certain railroad sidings authorized.
7–1212. Baltimore and Ohio Railroad Company authorized to extend tracks and maintain additional stations.
7–1213. Railroads may use Union Station and terminals—Fixing of rates.
7–1214. Streets to be under or over railroad tracks—Cost of opening streets—Maintenance.
7–1215. Subways and viaducts to eliminate grade crossings authorized in discretion of Commissioners—Cost.
7–1216. Philadelphia, Baltimore and Washington Railroad Company—Extensions for development of Buzzards Point authorized.
7–1217. Connections with navy-yard tracks.
7–1218. Branch tracks, spurs, or sidings authorized—Plats or charts kept on file.
7–1219. Extensions through public grounds authorized—Exceptions—Approval of Fine Arts Commission.
7–1220. Authority of Commissioners under section 7–1215 not affected.
7–1221. Condemnation proceedings by railroad company.
7–1222. Company to pay portion of cost of paving or repairing streets.
7–1223. Extensions—Use by other carriers.
7-1224. Right of repeal reserved.
7–1225. Pennsylvania Railroad Company—Construction of switch connections authorized.
7–1226. Plans to be approved by Commissioners.
7–1227. Grade crossings subject to approval of Commissioners—Overhead bridge.
7–1228. Authority of Commissioners not abridged.
7–1229. Right of repeal reserved.
7–1230. Electrification of existing steam-railroad lines—Structures, equipment.
7–1231. Submarine cables at drawbridge openings.
7–1232. Construction of conduit systems—Government use of three ducts.
7–1233. Jurisdiction not abridged.
7–1234. Liability for injuries.
7–1235. Employment of temporary special and technical employees—Report by Commissioners—Tenure of employment.
7–1236. Employment of temporary laborers and mechanics—Per diem rate of pay.
7–1237. Employment of horses, horse-drawn vehicles, and motortrucks—Report by Commissioners—Temporary use under special conditions.
7–1238. Employment of personnel and equipment to execute work payable from miscellaneous trust fund deposits—Delegation of hiring authority by Commissioners.

§ 7–1201. Jurisdiction over Conduit Road transferred to Commissioners—Abutting property owners—Assessment—Application of municipal laws.

Jurisdiction and control over the Conduit Road for its full width in the District of Columbia between

Foxhall Road and the District line, excepting a strip nineteen feet wide within the lines of said road, the center of which is coincident with the center of the water-supply conduit, is hereby transferred from the Secretary of War to the commissioners of the District of Columbia, and property abutting thereon shall be subject to any and all lawful assessments which may be levied by the said commissioners for public improvements, the same as other private property in the District of Columbia: *Provided,* That all municipal laws and regulations shall apply to the entire width of the said road in the District of Columbia in the same degree that they apply to other streets and highways in the said District. (May 22, 1926, 44 Stat. 627, ch. 372.)

GROSS REFERENCE

Jurisdiction and control of Commissioners over public roadways, see § 7–102.

MONTROSE PARK—TRANSFER OF PART FOR HIGHWAY PURPOSES

The Chief of Engineers, United States Army, is hereby directed to transfer to the jurisdiction of the Commissioners of the District of Columbia for highway purposes so much of Montrose Park as they may deem necessary for the connecting highway herein authorized. (Act June 26, 1912, 37 Stat. 139, ch. 182.)

§ 7–1202. Railroads prohibited on certain streets.

All railroads are prohibited on the I-Street and K-Street fronts of Farragut, Scott, and Franklin Squares. (R. S., D. C., § 223.)

§ 7–1203. Further laying of street railroads prohibited.

No further street railroads shall be laid down in the city of Washington without the consent of Congress. (R. S., D. C., § 224.)

§ 7–1204. Removal of paving stones—Permit from Director of the National Park Service—Obstruction on streets.

Whenever any person desires to remove the paving-stones, or to displace any other work done by the authority of the United States, for the purpose of laying gas-pipes, or for any other purpose, it shall be the duty of such person to obtain a written permit from the Director of the National Park Service, and such person shall oblige themselves to replace the said work to the satisfaction of said officer, and within such time as he may prescribe. If any person shall place any obstruction on the streets, avenues, or sidewalks, so improved by the United States, such person shall pay the costs of removing the same, and shall be subject to a penalty of ten dollars, to be recovered as other debts are recovered in said District, for each and every day the obstruction may remain after the Director of the National Park Service shall have given notice for its removal. (R. S., D. C., §§ 228, 229; Feb. 26, 1925, 43 Stat. 983, ch. 339, § 3.)

GROSS REFERENCE

For transfer of functions from the Office of Public Buildings and Grounds to the Office of Public Buildings and Public Parks of the National Capital, then to the Office of National Parks, Buildings, and Reservations, and finally to the National Park Service, see Compiler's Note under § 7–803.

CROSS REFERENCES

General provisions for laying water mains and sewers, see § 43–1501 et seq.

Other provisions concerning powers of Federal Government over public highways, see §§ 7–1207 to 7–1210, 7–1217 to 7–1220.

§ 7–1205. Denomination of streets as "business streets."

The Commissioners of the District of Columbia are authorized and directed to denominate portions of streets in the District of Columbia as business streets and to authorize the use, on such portions of streets, for business purposes by abutting propertyowners, under such general regulations as said commissioners may prescribe, of so much of the sidewalk and parking as may not be needed, in the judgment of said commissioners, by the general public, under the following conditions, namely: First, wherein a portion of a street not already denominated a business street a majority of a frontage not less than three blocks in length is occupied and used for business purposes; and, second, where a portion of a street has already been denominated a business street, and there exists adjoining such portion a block or more whose frontage is occupied and used for business purposes. (Feb. 2, 1904, 33 Stat. 10, ch. 89.)

CODIFICATION

This section is the same as the last proviso of section 8–108.

CROSS REFERENCES

Commissioners general authority to regulate parking, see § 40–603.

Jurisdiction and control of Commissioners over public roads, see § 7–102.

Rules and regulations generally, see §§ 1–224, 1–226.

NOTES TO DECISIONS

Temporary use

Provision of act of April 16, 1870, ch. 47, 16 Stat. 82, that nothing therein should authorize the occupancy of any portion of public streets or avenues for private purposes did not apply to temporary use in transacting business but only to permanent obstructions. *Crane* v. *District of Columbia* (1923, 289 F. 557, 53 App. D. C. 159).

Street vendors

Commissioners are not vested with power to prohibit street sales hereunder. *Crane* v. *District of Columbia* (1923, 289 F. 557, 53 App. D. C. 159).

§ 7–1206. Portion of streets may be set aside as parks.

The proper authorities of the District are authorized to set apart from time to time, as parks, to be adorned with shade-trees, walks, and inclosed with curb-stones, not exceeding one-half the width of any and all avenues and streets in the said city of Washington, except Pennsylvania Avenue, leaving a roadway of not less than thirty-five feet in width in the center of said avenues and streets or two such roadways on each side of the park in the center of the same; but such inclosures shall not be used for private purposes. (R. S., D. C., § 225; Mar. 3, 1881, 21 Stat. 462, ch. 134.)

AMENDMENT

1881—Act Mar. 3, 1881, deleted so much of act of April 6, 1870, as prohibited the Commissioners from narrowing the carriage-ways of Louisiana and Indiania Avenues and a portion of Four-and-a-Half Street.

GROSS REFERENCE

Parkways not affected by establishment of building lines on street, see § 5–205.

§ 7–1207. Removal of obstructions from streets—Duty of Director of National Park Service.

It shall be the duty of the Director of the National Park Service to cause obstructions of every kind to be removed from such streets, avenues, and sidewalks in the city of Washington as have been, or may be, improved in whole or in part by the United States, and to keep the same, at all times, free from obstructions. For the purpose of carrying out the provisions of this section the Director of the National Park Service shall have power to institute suits in any court having competent jurisdiction, and it shall be the duty of the United States attorney for the District to prosecute the same. (R. S., D. C., §§ 226, 227; Feb. 26, 1925, 43 Stat. 983, ch. 339, § 3.)

TRANSFER OF FUNCTIONS

For transfer of functions of Director of Public Buildings and Public Parks of the National Capital, to the office of National Parks, Buildings, and Reservations, and then to the National Park Service, see Codification note under § 7–803.

GROSS REFERENCE

Jurisdiction and control of public ways, see § 7–102.

§ 7–1208. Penalty for failure to replace paving stones.

If any person removing the paving-stones or other work done by the authority of the United States shall fail to replace the same to the satisfaction of the Director of the National Park Service, within the time prescribed by him, he shall be subject to a penalty of twenty-five dollars for each and every failure, and shall pay the costs of replacing the same, the whole to be recovered before any court in said District having competent jurisdiction. (R. S., D. C., § 230.)

TRANSFER OF FUNCTIONS

For transfer of functions of Director of Public Buildings and Public Parks of the National Capital, to the Office of National Parks, Buildings, and Reservations, and then to the National Park Service, see Codification note under § 7–803.

§ 7–1209. Improper appropriation or occupation of streets.

The Secretary of the Interior is directed to prevent the improper appropriation or occupation of any of the public streets, avenues, squares, or reservations in the city of Washington, belonging to the United States, and to reclaim the same if unlawfully appropriated; and particularly to prevent the erection of any permanent building upon any property reserved to or for the use of the United States, unless plainly authorized by Act of Congress, and to report to Congress at the commencement of each session his proceedings in the premises, together with a full statement of all such property, and how, and by what authority, the same is occupied or claimed. Nothing herein contained shall be construed to interfere with the temporary and proper occupation of any portion of such property, by lawful authority, for the legitimate purposes of the United States. (R. S., § 1818.)

CODIFICATION

Section is also classified to 40 U.S.C. § 66.

§ 7–1210. Sidings may be laid by Baltimore and Potomac Railroad Company—Authority of Commissioners.

It shall be the duty of the commissioners of the District of Columbia, and they are hereby authorized and empowered, whenever they consider it a public benefit, to grant the Baltimore and Potomac Railroad Company permission to lay, maintain, and use sidetracks and sidings from the main line or lines of said railroad into any real estate in the said city abutting on the streets or avenues on which such line of such company is or may be situated, east of Four-and-a-half Street and south of Virginia and Maryland Avenues, which may be used or occupied for manufacturing, commercial, or other business purposes by parties desiring the use of such facilities. Such sidetracks or sidings shall be laid and maintained under the direction of said commissioners, and in such manner as shall least obstruct the use of the public streets for ordinary purposes: *Provided,* That the right to revoke the use of said sidetracks or sidings is reserved to Congress. (Jan. 19, 1891, 26 Stat. 719, ch. 76, § 2.)

NOTES TO DECISIONS

Departure from established route

The title to the streets of Washington being in the United States, the authorization for a use of the streets by a railroad for its depots must be by act of Congress, and act of June 21, 1870 (16 Stat. 161, ch. 142), providing for a railroad extension from the terminus at Ninth Street by way of Maryland Avenue to the Long Bridge, does not, by construction, authorize the company to depart from Maryland Avenue on its way to the bridge. *District of Columbia Commissioners* v. *Baltimore & P. R. Co.* (1885 5 S. Ct. 1098, 114 U. S. 453, 29 L. Ed. 216).

§ 7–1211. Certain railroad sidings authorized.

It shall be lawful for the Baltimore and Potomac Railroad Company to extend and construct, from time to time, branch tracks or sidings from the lines of railroad authorized hereunder, into any lot or lots adjacent to any street or avenue along which said lines of railroad are located, upon the application of the owner or owners of such lot or lots, to enable such owners to use their property for the purpose of coal, wood, or lumber yards, manufactories, warehouses, and other business enterprises: *Provided, however,* That no grade crossing of any street or avenue within the city of Washington shall be thereby created, but such connecting tracks shall be carried across such street or avenue in such manner as not to obstruct the free use thereof, and the plans of such connecting tracks shall in every case be first filed with and approved by the commissioners of the District of Columbia. (Feb. 12, 1901, 31 Stat. 772, ch. 353, § 10.)

§ 7–1212. Baltimore and Ohio Railroad Company authorized to extend tracks and maintain additional stations.

In addition to the main or terminal station or depot, the Baltimore and Ohio Railroad Company, or the Washington Terminal Company may from time to time construct, establish, and maintain such additional stations or depots, for passengers or freight, as the company may deem necessary or useful in the conduct of its business, or for the accommodation of the freight and passenger traffic passing over the lines of railroad authorized by this Act, at such point or points within said District as the commissioners of the District of Columbia shall approve: *Provided,* That no such station or depot within the city limits shall be located east of Second Street east, and west of North Capitol Street, and it shall

be lawful for either of said companies to acquire, by gift, purchase, or condemnation, any land adjacent to any street or avenue along or upon which the lines of railroad and works hereby authorized shall be located, and hold and improve the same in such manner as it may deem necessary or beneficial to accommodate or promote the traffic on said railroad, and to extend and construct tracks of railroad into and upon any lands so acquired and connect the same with the tracks on such adjacent street or avenue: *Provided, however,* That no grade crossing of any street or avenue within the city of Washington shall be thereby created, but such connecting tracks shall be elevated and carried over the portion of such street or avenue crossed in such manner as not to obstruct the free use thereof, and the plans of such connecting tracks and elevated structure shall in every case be first filed with and approved by the commissioners of the District of Columbia. And it shall be lawful for said companies, or either of them, subject to the same conditions and restrictions, to extend and construct, from time to time, branch tracks or sidings from the lines of railroad authorized hereunder into any lot or lots adjacent to any street or avenue along which said lines of railroad are located, upon the application of the owner or owners of such lot or lots, to enable such owners to use their property for the purposes of coal, wood, or lumber yards, manufactories, warehouses, and other business enterprises. (Feb. 12, 1901, 31 Stat. 777, ch. 354, § 5.)

REFERENCES IN TEXT

This Act, referred to in the text, means act Feb. 12, 1901, which is classified to this section, and section 47–719.

GROSS REFERENCE

Taxation, see §§ 47–718, 47–719.

NOTES TO DECISIONS

Departure from established route

When the railroad company wished to depart in any direction from line of its track as prescribed by acts of Congress it was necessary that it obtain permission to do so from Congress. *District of Columbia Commissioners* v. *Baltimore & P. R. Co.* (1885, 5 S. Ct. 1098, 114 U. S. 453, 29 L. Ed. 216).

Estoppel

By accepting award in condemnation proceeding, landowner estopped to insist petition was not maintainable. *Winslow* v. *Baltimore & O. R. Co.* (1908, 28 S. Ct. 190, 208 U. S. 59, 52 L. Ed. 388).

Nuisance

Although tunnel constructed under authority of act of Congress can not be deemed a public nuisance, it may be a private nuisance which would entitle property owner to damages. *Richards* v. *Washington Terminal Co.* (1914, 34 S. Ct. 654, 233 U. S. 546, 58 L. Ed 1088, L. R. A. 1915A, 887).

§ 7–1213. Railroads may use Union Station and terminals—Fixing of rates.

Any railroad company lawfully existing and authorized to extend a line of railroad into the District of Columbia, or having secured the right to operate over the lines of any other then existing railroad, to a point of connection with the tracks of the Washington Terminal Company, shall have the right to the joint use of said station and terminals authorized in the Act approved February 28, 1903 (32 Stat. 909), upon the payment of a reasonable compensation for the use of the same; and if the parties be unable to agree upon such terms, then the same shall be prescribed by the United States District Court for the District of Columbia, upon petition of either party in interest, under such rules of procedure as the said court shall prescribe. (Feb. 28, 1903, 32 Stat. 918, ch. 856, § 11; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 109, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

GROSS REFERENCE

Joint use of utility facilities, see § 43–302.

NOTES TO DECISIONS

Assent of city

Granting the Baltimore and Potomac Railroad Company the right to establish a depot on lot 233 of the city of Washington required the assent of the city to the act, and an act was passed on May 21, 1872, ratifying the action of the city authorities, and setting out in detail the direction of the lateral track to the passenger depot. *District of Columbia Commissioners* v. *Baltimore & P. R. Co.* (1885, 5 S. Ct. 1098, 114 U. S. 453, 29 L. Ed. 216).

Compensation of property owner

Property owner held entitled to compensation for damages specially affecting his property as result of tunnel construction. *Richards* v. *Washington Terminal Co.* (1914, 34 S. Ct. 654, 233 U.S. 546, 58 L. Ed. 1088, L.R.A. 1915A, 887).

Constitutionality

Not unconstitutional because a revenue bill not originating in House of Representatives, or because appropriating money for exclusive use of railroad companies. *Millard* v. *Roberts* (1906, 26 S. Ct. 674, 202 U. S. 429, 50 L. Ed. 1090).

§ 7–1214. Streets to be under or over railroad tracks—Cost of opening streets—Maintenance.

Any and all streets or highways within the District of Columbia now or hereafter planned or projected to cross any line of railroad, other than a street railway, in the District of Columbia, which may be hereafter opened to public use, shall be located, constructed, and maintained either beneath such railroad by a suitable subway, or above the same by a suitable viaduct bridge at such altitude as will not interfere with the free and safe operation thereof: *Provided, however,* That nothing herein contained shall require the location, construction, or maintenance of any such street or highway under or above any spur, industrial, switching or side track, or branch line of any railroad unless the Commissioners of the District of Columbia shall find the same is necessary in the public safety.

The cost and expense of any project for opening any such street or highway within the limits of such railroad company's right-of-way, including the cost of constructing the portion of any viaduct bridge, within said limits, shall be borne and paid as follows:

(1) The District of Columbia shall apply to the payment of such cost and expense all Federal aid highway-railway grade separation funds available for use by the District of Columbia at the time any such project is programed and all such funds

which become available for use on such projects by the District of Columbia during the construction of such project:

(2) If such Federal aid highway-railway grade separation funds are insufficient to pay the cost and expense of any such project, the portion not so covered shall be paid one-half by the railroad company, its successors and assigns, whose tracks are crossed and one-half by the District of Columbia: *Provided,* That in no case shall the obligation of the railroad company affected exceed 10 per centum of the total cost and expense of such project;

(3) After construction, the cost of maintenance shall be wholly borne and paid in the case of highway overpasses by the District of Columbia, and in the case of highway underpasses by the railroad company, its successors and assigns, whose tracks are crossed; and

(4) The portions of such streets planned or projected as above which lie within a right-of-way belonging to such railroad company shall be dedicated by such company as a public thoroughfare when the portions of such street adjoining such right-of-way have been similarly dedicated or otherwise acquired.

(Feb. 28, 1903, 32 Stat. 918, ch. 856, § 10; May 9, 1941, 55 Stat. 182, ch. 93, § 1; July 25, 1956, 70 Stat. 638, ch. 720, § 1.)

AMENDMENTS

1956—Act July 25, 1956, provided that the District of Columbia pay the costs of opening streets or highways within railroad rights-of-way from Federal aid highway-railway grade separation funds, and that if such funds are insufficient, then payment is to be half by the affected railroad, and half by the District, with the railroad's payment not to exceed ten per centum of the total cost of the project, and deleted "steam-" before "railroad tracks" in the catchline.

1941—Act May 9, 1941, added the proviso relating to the Commissioner's finding of necessity in the public safety.

SEPARABILITY OF PROVISIONS

Sections 2 and 3 of Act May 9, 1941, provided:

"SEC. 2. Congress reserves the right to alter, amend, or repeal this Act [amending this section].

"SEC. 3. If this amendatory act, or any part thereof, shall be declared invalid, the act of February 28, 1903, as originally enacted shall remain in full force and effect and unimpaired by this amendatory act."

§ 7–1215. Subways and viaducts to eliminate grade crossings authorized in discretion of Commissioners—Cost.

(a) The Commissioners of the District of Columbia be, and they are hereby, authorized and directed to construct viaducts and approaches thereto, to carry Fern and Varnum Streets over the tracks and right of way of the Baltimore and Ohio Railroad Company and to construct a viaduct and approaches thereto to carry Eastern Avenue over the tracks and rights of way of the Philadelphia, Baltimore and Washington Railroad Company and the Baltimore and Ohio Railroad Company, in accordance with plans and profiles of said works to be approved by the said commissioners: *Provided,* That one-half of the total cost of constructing the viaduct and approaches thereto at Varnum Street and one-half of the total cost of constructing the viaduct and approaches thereto at Fern Street shall be borne and paid by the said Baltimore and Ohio Railroad Company, its successors and assigns, and that one-half of the total cost of constructing the viaduct and approaches thereto at Eastern Avenue shall be borne and paid by the said Philadelphia, Baltimore and Washington Railroad Company and the said Baltimore and Ohio Railroad Company, their successors and assigns, in proportion to the widths of their respective land holdings, to the collector of taxes of the District of Columbia for deposit to the credit of the District of Columbia, and the said half cost shall be valid and subsisting liens against the franchises and property of the railroad companies concerned and shall constitute a legal indebtedness against the said railroad companies in favor of the District of Columbia, and said liens may be enforced in the name of the District of Columbia by a bill in equity brought by the said commissioners in the United States District Court for the District of Columbia, or by any other legal proceeding against the said railroad companies: *Provided,* That no street railway company shall use the said viaduct or any approaches thereto herein authorized for its tracks until said companies shall have paid to the collector of taxes of the District of Columbia, a sum equal to one-fourth of the total cost of constructing said viaducts and approaches, to be applied to the credit of the District of Columbia. No limitation shall run against claims made by the District of Columbia under the provisions of this section.

(b) For the purpose of carrying into effect the provisions of this section, the sum of $405,000 is hereby authorized to be appropriated, payable in like manner as other appropriations, for the expenses of the government of the District of Columbia, and the said commissioners are authorized to expend such sum or sums as may be necessary for personal services, engineering, and incidental expenses. The said commissioners are further authorized to acquire, out of the appropriation herein authorized, the necessary land, or any portion of the same, by purchase at such price or prices as in their judgment they may deem reasonable and fair, or, in their discretion, by condemnation in accordance with the provisions of sections 7–202 to 7–212, 7–214, 7–215, under a proceeding or proceedings in rem instituted in the United States District Court for the District of Columbia: *Provided,* That of the entire amount found to be due and awarded by the jury as damages for, and in respect of, the land to be condemned to carry the provisions of this section into effect, plus the costs and expenses of the proceeding or proceedings taken pursuant hereto, not less than one-half thereof shall be assessed by the jury as benefits, the amounts collected as benefits to be covered into the Treasury of the United States to the credit of the District of Columbia.

(c) Hereafter the Commissioners of the District of Columbia are authorized, whenever in their judgment it may be necessary for the public safety, and subject to appropriations to be made therefor by Congress, to construct subways or viaducts and approaches thereto, in accordance with plans and profiles of said works to be approved by them, to carry any street or highway crossing at grade any line of railroad track or tracks in the District of Columbia, or any street or highway within the Dis-

trict of Columbia now or hereafter planned or projected to cross any such line of railroad, under or over said track or tracks: *Provided,* That the total cost of constructing any project for such viaduct or subway and approaches thereto shall be borne and paid as follows:

(1) The District of Columbia shall apply to the payment of the cost of such project all Federal aid highway-railway grade separation funds available for use by the District of Columbia at the time any such project is programed and all such funds which become available for use on such project by the District of Columbia during the construction of such projects; and

(2) If such Federal-aid highway-railway grade separation funds are insufficient to pay the cost of any such project, the portion not so covered shall be paid one-half by the railroad company, its successors and assigns, whose tracks are crossed and one-half by the District of Columbia: *Provided further,* That in no case shall the obligation of the railroad company affected exceed 10 per centum of the total cost of such project: *Provided further,* That in the event the rights-of-way of two or more railroad companies are so crossed said half cost as herein provided shall be paid by the said railroad companies, their successors and assigns, in proportion to the widths of their respective landholdings, but the obligations of such companies shall not, in the aggregate, exceed 10 per centum of the cost of such project: *Provided further,* That after construction the cost of maintenance shall be wholly borne and paid in the case of highway overpasses by the District of Columbia, and in the case of highway underpasses by the railroad company, its successors and assigns, whose tracks are crossed: *Provided further,* That in the event the rights-of-way of two or more railroad companies are so crossed, the cost of maintenance shall be borne and paid in the case of highway underpasses by the said railroad companies, their successors and assigns, in proportion to the widths of their respective landholdings. All provisions in respect to the method of payment and credit of said half cost, creation of a lien in respect thereto and enforcement thereof, conditions of use thereof by street railway companies, and every other kind of condition provided in section (a) hereof, and the authorization and every condition in respect thereto for the acquisition of any necessary land provided in subsection (b) hereof, in relation to the viaducts and their approaches therein authorized, are hereby made applicable to the subways, viaducts, and approaches authorized in this section the same as if enacted at length herein. (Mar. 3, 1927, 44 Stat. 1353, ch. 306, §§ 1–3; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 25, 1956, 70 Stat. 639, ch. 720, § 2.)

AMENDMENT

1956—Act July 25, 1956, amended section generally, and among other changes, provided that costs are to be met from Federal-aid highway-railway separation funds, and if such funds are insufficient, the deficiency is to be met one-half by the railroad affected, or if rights of way cross, by the several railroads affected in proportion to the widths of their respective holdings, and one-half by the District, with the proviso that in no case is the railroad's obligation to exceed ten per centum of the project's total cost, that maintenance expenses would be borne by the District for highway overpasses, and by the railroads for highway underpasses, and deleted "steam" preceding "railroad" in subsec (c).

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

GROSS REFERENCE

Condemnation proceedings, see § 16–1301 et seq.

§ 7–1216. Philadelphia, Baltimore and Washington Railroad Company—Extensions for development of Buzzards Point authorized.

The Philadelphia, Baltimore and Washington Railroad Company is hereby authorized to establish a switch connection with an existing track in its New Jersey Avenue yard, at a point north of the north curb line of I Street Southeast; thence southward on First Street Southeast to and connecting with the existing track on First Street Southeast at or about N Street, with a switch connection at or about Quander Street and spur track running over, across, and through square 743 to and into the United States navy yard; thence southward on First Street Southeast to and thence along Potomac Avenue to the west line of Second Street Southwest, with all necessary switches, extensions, turnouts, and sidings and such other track extensions through and along One-half Street Southwest, and Second Street Southwest, south of Potomac Avenue and north of Potomac Avenue to P Street, and One-half Street Southeast, south of Potomac Avenue and north of Potomac Avenue to O Street, as may be or become necessary for the establishment of adequate railroad facilities in connection with the development of Buzzards Point as an industrial area in the District of Columbia. (June 18, 1932, 47 Stat. 322; ch. 269, § 1; June 20, 1939, 53 Stat. 849, ch. 229; June 5, 1942, 56 Stat. 326, ch. 353.)

AMENDMENTS

1942—Act June 5, 1942, amended section by inserting all words between words "connection with" and the semicolon in lieu of the following words "the existing track siding leading from Second and Eye Streets Southeast to and into the United States Navy Yard, at a point in said siding south of M Street Southeast, thence running over and across the northwest corner of United States reservation 17 E, on June 18, 1932, controlled and occupied by the United States Navy Department for navy yard and ordnance storage purposes, thence over, across, and through square 743 to First Street Southeast,".

1939—Act June 20, 1939, struck out the words "One-half Street Southwest, One-half Street Southeast, and Second Street Southwest, south of Potomac Avenue and north of Potomac Avenue to P Street," and inserted in lieu thereof "One-half Street Southwest, and Second Street Southwest, south of Potomac Avenue and north of Potomac Avenue to P Street, and One-half Street Southeast, south of Potomac Avenue and north of Potomac Avenue to O Street."

CROSS REFERENCES

Joint use of utility facilities, see §§ 7–1223, 43–302.
Taxation, see §§ 47–718, 47–719.

§ 7–1217. Connections with navy-yard tracks.

The Secretary of the Navy is authorized to sell and transfer or to lease to The Philadelphia, Baltimore and Washington Railroad Company, its successors and/or assigns, upon such terms and for such amount as he may deem to be both just and reasonable, the existing railroad track connection with the United States Navy Yard as constructed and established under authority conferred by an Act of Congress approved August 29, 1916, entitled "An Act making appropriations for the naval service for the fiscal year ending June 30, 1917, and for other purposes": *Provided,* That the title to any right of way or property provided by the United States for the purposes of such construction and occupied by said track connection on June 18, 1932, shall remain in the United States: *And provided further,* That said track connection, insofar as the requirements of the United States Navy Yard may be affected, at all times shall be maintained and operated by said railroad company, its successors or assigns, to the satisfaction of the Secretary of the Navy. (June 18, 1932, 47 Stat. 322, ch. 269, § 2.)

REFERENCES IN TEXT

Act Aug. 29, 1916, referred to in the text, means Act Aug. 29, 1916, 39 Stat. 556, ch. 417.

§ 7–1218. Branch tracks, spurs, or sidings authorized—Plats or charts kept on file.

Said railroad company is hereby authorized to construct, maintain, and operate branch tracks, spurs, or sidings into any lot or square zoned or thereafter zoned for industrial or second commercial use abutting upon any street or avenue over and along which said railroad company is hereby specifically authorized to lay and operate tracks, and also to construct tracks to serve any wharf which may be established on the Anacostia River: *Provided,* That the construction of all such railroad tracks and appurtenant turnouts, branch tracks, and sidings, in all respects and things, shall be subject to the prior approval of the commissioners of the District of Columbia after report by the National Capital Planning Commission, such approval to be noted upon identical copies of a suitably prepared plat or chart, one copy to be kept on file in the office of the engineer commissioner of the District of Columbia and the other thereof to be kept on file in the office of the National Capital Planning Commission. (June 18, 1932, 47 Stat. 322, ch. 269, § 3.)

BRANCH SIDINGS OVER FIRST STREET SOUTHWEST

That the Philadelphia, Baltimore, and Washington Railroad Company is hereby authorized to construct, maintain, and operate at grade two branch sidings from its present tracks in square 607 over First Street to square 663 between S and T Streets Southwest, Washington, D.C. Such sidings shall be constructed in accordance with plans approved by the Commissioners of the District of Columbia.

SEC. 2. Congress reserves the right to alter, amend, or repeal this Act. (Sept. 26, 1961, 75 Stat. 686, Pub. L. 87–325, §§ 1, 2.)

TRANSFER OF FUNCTIONS

"National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in view of act June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission. See section 1–1009.

§ 7–1219. Extensions through public grounds authorized—Exceptions—Approval of Fine Arts Commission.

Subject always to the approval of the Commissioners of the District of Columbia, all such railroad tracks, turnouts, branch tracks, spurs, and sidings may be located and constructed in, upon, along, and through public grounds, space, and streets of the United States and/or of the District of Columbia as same, are now or may hereafter be located and established: *Provided,* That except as in sections 7–1216 to 7–1224 expressly authorized no tracks, turnouts, branches, spurs, or sidings shall be constructed along or through South Capitol Street or First Street Southwest in the north and south direction, at grade or otherwise, but each of said streets, with prior approval of said commissioners of the District of Columbia, may be crossed to such extent as may be necessary for the establishment of adequate railroad facilities: *Provided further,* That no permit for the construction of tracks, turnouts, branches, spurs, or sidings shall be issued with respect to squares 600, 602, 604, 606, 608, 610, and 612, or any of said squares, until the particular square or squares for which a permit is sought shall have been zoned industrial: *And provided further,* That the plans for any building fronting on Canal Street from the Anacostia River to P Street Southwest shall have the approval of the Fine Arts Commission as to height and design. (June 18, 1932, 47 Stat. 323, ch. 269, § 4.)

GROSS REFERENCE

Fine Arts Commission, generally, see 40 U.S.C. §§ 104–106.

§ 7–1220. Authority of Commissioners under § 7–1215 not affected.

Nothing contained in sections 7–1216 to 7–1224 shall be construed as limiting or abridging the authority of the commissioners of the District of Columbia under section 7–1215. (June 18, 1932, 47 Stat. 323, ch. 269, § 5.)

§ 7–1221. Condemnation proceedings by railroad company.

The Philadelphia, Baltimore, and Washington Railroad Company, its successors or assigns, is authorized to acquire any land or property other than public grounds, space, or streets of the United States or the District of Columbia necessary or expedient for right of way for said track extensions, turnouts, branch tracks, spurs, sidings, and connections by purchase or condemnation. In event that said company, its successors or assigns, shall be unable to acquire any piece or parcel of land necessary or expedient for any of the purposes indicated in sections 7–1216 to 7–1224, at a price deemed by it to be reasonable, then, and in such event The Philadelphia, Baltimore, and Washington Railroad Company, its successors and assigns, is authorized to acquire the same by condemnation proceedings to be instituted in its own name by petition filed in the United States District Court for the District of Columbia for the ascertainment of its value, in accordance with the provisions of sections 16–601 to

16–611. (June 18, 1932, 47 Stat. 323, ch. 269, § 6; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

REFERENCES IN TEXT

Section 16–601 to 16–611, referred to in this section, were repealed by act Dec. 23, 1963, 77 Stat. 620, Pub. L. 88–241, § 21(a), are now covered by §§ 16–1301 and 16–1311 et seq.

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

GROSS REFERENCE

Condemnation proceedings, see § 16–1301 et seq.

§ 7–1222. Company to pay portion of cost of paving or repairing streets.

If and when the Commissioners of the District of Columbia shall decide to pave or repave any of the streets over or along which tracks are authorized to be constructed, the railroad company shall be required to bear the expense of the paving and/or repairs to pavements between the rails and on either side of the tracks for a distance of two feet. (June 18, 1932, 47 Stat. 323, ch. 269, § 7.)

§ 7–1223. Extensions—Use by other carriers.

The authority to establish, construct, acquire, maintain, and operate the tracks, switch connections, extensions, turnouts, sidings, branches, spurs, and other facilities provided for in sections 7–1216 to 7–1224 is given upon the following conditions, to wit: The said facilities shall be open to any and all freight traffic by rail whether originating within or without the District of Columbia either on the said The Philadelphia, Baltimore, and Washington Railroad Company or any other common carrier railroad, upon such just, reasonable, and nondiscriminatory rates, terms, and conditions as may be embraced in public tariffs, subject to the jurisdiction of the Interstate Commerce Commission as provided for other rates under the provisions of the Interstate Commerce Act: *Provided,* That no greater charge shall be made for deliveries to be made upon said facilities than is or are or may be made for delivery of like traffic consigned for delivery at any other delivery point on The Philadelphia, Baltimore, and Washington Railroad Company in the District of Columbia; special, free, or reduced rates or charges for deliveries of property consigned to the United States or any of its departments, bureaus, or subordinate branches or to or for use of the municipality of the District of Columbia not included: *And provided further,* That any common carrier by railroad now or hereafter authorized to operate in the District of Columbia shall, upon application to and approval by the Interstate Commerce Commission, be permitted to use jointly all such facilities as provided in sections 7–1216 to 7–1224 on such terms and for such compensation as may be prescribed by the said Interstate Commerce Commission in accordance with the provisions of the Interstate Commerce Act, as amended. (June 18, 1932, 47 Stat. 324, ch. 269, § 8.)

REFERENCES IN TEXT

Interstate Commerce Act, as amended, referred to in the text, is classified to 49 U.S.C. chs. 1, 8, 12, 13, and 19.

§ 7–1224. Right of repeal reserved.

The right to alter, amend, or repeal sections 7–1216 to 7–1224 is reserved without regard to any payments required or agreements established under their terms. (June 18, 1932, 47 Stat. 324, ch. 269, § 9.)

§ 7–1225. Pennsylvania Railroad Company—Construction of switch connections authorized.

The Pennsylvania Railroad Company, operating lessee of all of the railroads and appurtenant properties of the Philadelphia, Baltimore, and Washington Railroad Company in the District of Columbia, be, and it is hereby, authorized to establish switch and siding connections with its existing siding tracks in square numbered 4263 (also shown as parcel 154/44) to cross West Virginia Avenue into and through square numbered 4105 along and adjacent to the existing main-line tracks, thence into and through square numbered 4104 and 4099, crossing New York Avenue by means of a suitable overhead bridge, thence to and through square numbered 4099 and the parcels of land known and identified on the plat books of the Surveyor's Office of the District of Columbia as parcels 153/44, 143/25, 142/25, and 142/28, to and through the square known as and numbered 4038 (portions of which are included in parcel 142/28), 4093, south of 4093, and 4098, with all switches, crossings, turnouts, extensions, spurs, and sidings, as may be or become necessary for the development of the squares and parcels of land above indicated for such uses as may be permitted in the use district or districts in which said squares and parcels of land are now or may hereafter be included as defined in the zoning regulations of the District of Columbia and shown in the official atlases of the Zoning Commission. (Aug. 6, 1935, 49 Stat. 537, ch. 449, § 1.)

§ 7–1226. Plans to be approved by Commissioners.

Before any of the work authorized in section 7–1225 shall be begun on the ground, a plan or plans thereof shall be prepared and submitted to the Commissioners of the District of Columbia for their approval and only to the extent that such plans shall be so approved shall said work or any portion thereof be permitted or undertaken. (Aug. 6, 1935, 49 Stat. 537, ch. 449, § 2.)

§ 7–1227. Grade crossings subject to approval of Commissioners—Overhead bridge.

Subject only to the approval of the Commissioners of the District of Columbia the crossing of any public street or alley other than New York Avenue, within the limits of the total area noted in section 7–1225 may be at or on grade. The said railroad shall, when and as directed by the Commissioners of the District of Columbia, construct at its entire cost and expense, an additional overhead bridge for the track hereby authorized to be established over such other street located between Montello Avenue and New York Avenue as such street may now or may hereafter be shown on the Plan of the Permanent System of Highways. (Aug. 6, 1935, 49 Stat. 537, ch. 449, § 3.)

CROSS REFERENCES

Joint use of utility facilities, see § 43–302.
See note to § 7–1210.

§ 7–1228. Authority of Commissioners not abridged.

Nothing contained in sections 7–1225 to 7–1229 shall be construed as limiting or abridging the authority of the Commissioners of the District of Columbia under sections 7–515, 7–516 and 7–1215. (Aug. 6, 1935, 49 Stat. 537, ch. 449, § 4.)

§ 7–1229. Right of repeal reserved.

Congress reserves the right to amend, alter, or repeal sections 7–1225 to 7–1229. (Aug. 6, 1935, 49 Stat. 537, ch. 449, § 5.)

§ 7–1230. Electrification of existing steam-railroad lines—Structures, equipment.

Steam-railroad companies now operating within the District of Columbia are hereby authorized, after approval of their detailed plans and issuance of a permit by the Commissioners of the District of Columbia, to electrify their lines within the District of Columbia and across the Anacostia and Potomac Rivers with an alternating current overhead catenary or other type of electrification system, with all necessary transmission, signal, and communication conductors and equipment, poles, conduits, underground and overhead construction, substations, and any other structures necessary in such electrification, the provisions of any law or laws to the contrary notwithstanding. (Mar. 27, 1934, 48 Stat. 506, ch. 97, § 1.)

§ 7–1231. Submarine cables at drawbridge openings.

Submarine cables may be used at drawbridge openings, provided previous approval shall have been obtained from the Department of the Army. (Mar. 27, 1934, 48 Stat. 506, ch. 97, § 2.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343, title II. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of act Aug. 10, 1956, enacted title 10 of the U.S. Code which continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

§ 7–1232. Construction of conduit systems—Government use of three ducts.

Where necessary for such electrification, the Commissioners of the District of Columbia may issue permits to construct conduit systems through or under the surfaces of public streets or other District of Columbia or United States property: *Provided, however,* That three ducts therein shall be reserved for the use of the United States and the District of Columbia. (Mar. 27, 1934, 48 Stat. 507, ch. 97, § 3.)

GROSS REFERENCE

General provisions concerning conduits and overhead wires, see §§ 43–1101 to 43–1108 and notes.

§ 7–1233. Jurisdiction not abridged.

Nothing contained in sections 7–1230 to 7–1234 shall be construed as limiting or abridging the authority of the Department of the Army, the Commissioners of the District of Columbia, or of the Interstate Commerce Commission. (Mar. 27, 1934. 48 Stat. 507, ch. 97, § 4.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343 title II. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of act Aug. 10, 1956, enacted title 10 of the U.S. Code which continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

§ 7–1234. Liability for injuries.

The said railroad companies shall be liable for any accident to, or injuries sustained by, any person by reason of any act or omission of the railroad companies or by their agents or servants during the construction, installation, maintenance, or operation of the electrical equipment and apparatus of the railroad trains. (Mar. 27, 1934, 48 Stat. 507, ch. 97, § 5.)

§ 7–1235. Employment of temporary special and technical employees—Report by Commissioners—Tenure of employment.

The services of draftsmen, assistant engineers, levelers, transitmen, rodmen, chainmen, computers, copyists, overseers, and inspectors temporarily required in connection with sewer, water, street, street-cleaning, or road work, or construction and repair of buildings and bridges, or any general or special engineering or construction work authorized by appropriations may be employed exclusively to carry into effect District of Columbia appropriations when ordered by the Commissioners in writing, and all such necessary expenditures for the proper execution of said work shall be paid from and equitably charged against the sums appropriated for said work; and the Commissioners in their Budget estimates shall report the number of such employees performing such services, and their work, and the sums paid to each, and out of what appropriation: *Provided,* That the expenditures hereunder shall not exceed $42,000 during any one fiscal year: *Provided further,* That, excluding inspectors in the sewer department, one inspector in the electrical department, and one inspector in the repair shop, no person shall be employed in pursuance of the authority contained in this paragraph for a longer period than nine months in the aggregate during any one fiscal year. (June 28, 1944, 58 Stat. 530, ch. 300, § 2.)

CODIFICATION

Section comprised first paragraph of section 2 of act June 28, 1944.

SIMILAR PROVISIONS

1944—July 1, 1943, ch. 184, § 2, 57 Stat. 344.
1943—June 27, 1942, ch. 452, § 2, 56 Stat. 458.
1942—July 1, 1941, ch. 271, § 2, 55 Stat. 537.
1941—June 12, 1940, ch. 333, § 2, 54 Stat. 341.

CROSS REFERENCES

Provisions establishing standards for hours of work and overtime pay of laborers and mechanics employed on work done under contract for, or with the financial aid of, the United States, for any territory, or for the District of Columbia, see 40 U.S.C. §§ 327 to 332, and 5 U.S.C. §§ 5544, 6102.

§ 7–1236. Employment of temporary laborers and mechanics—Per diem rate of pay.

The Commissioners, or their duly designated representatives, are authorized to employ temporarily such laborers, skilled laborers, drivers, hostlers, and mechanics as may be required exclusively in connection with sewer, water, street, and road work, and street cleaning, or the construction and repair of buildings and bridges, furniture and equipment, and any general or special engineering or construction or repair work, at per diem rates of pay to be fixed and adjusted from time to time by a wage board and approved by the Commissioners, and to incur all necessary engineering and other expenses, exclusive of personal services, incidental to carrying on such work and necessary for the proper execution thereof, said laborers, skilled laborers, drivers, hostlers, and mechanics to be employed to perform such work as may not be required by law to be done under contract, and to pay for such services and expenses from the appropriations under which such services are rendered and expenses incurred. (June 28, 1944, 58 Stat. 531, ch. 300, § 2.)

CODIFICATION

Section comprised third paragraph of section 2 of act June 28, 1944.

SIMILAR PROVISIONS

1944—July 1, 1943, ch. 184, § 2, 57 Stat. 344.
1943—June 27, 1942, ch. 452, § 2, 56 Stat. 458.
1942—July 1, 1941, ch. 271, § 2, 55 Stat. 538.
1941—June 12, 1940, ch. 333, § 2, 54 Stat. 341.

GROSS REFERENCE

Provisions establishing standards for hours of work and overtime pay of laborers and mechanics employed on work done under contract for, or with the financial aid of, the United States, for any territory, or for the District of Columbia, see 40 U.S.C. §§ 327 to 332, and 5 U.S.C. §§ 5544, 6102.

§ 7–1237. Employment of horses, horse-drawn vehicles, and motortrucks—Report by Commissioners—Temporary use under special conditions.

All horses, harness, horse-drawn vehicles necessary for use in connection with construction and supervision of sewer, street, street lighting, road work, and street-cleaning work, including maintenance of said horses and harness, and maintenance and repair of said vehicles, and purchase of all necessary articles and supplies in connection therewith, or on construction and repair of buildings and bridges, or any general or special engineering or construction work authorized by District of Columbia appropriations, may be purchased, hired, and maintained, and motortrucks may be hired exclusively to carry into effect said appropriations, when ordered by the Commissioners in writing; and all such expenditures necessary for the proper execution of said work, exclusive of personal services, shall be paid from and equitably charged against the sums appropriated for said work; and the Commissioners in the Budget estimates shall report the number of horses, vehicles, and harness purchased, and horses and vehicles hired, and the sums paid for same, and out of what appropriation; and all horses owned or maintained by the District shall, so far as may be practicable, be provided for in stables owned or operated by said District: *Provided,* That such horses, horse-drawn vehicles, and carts as may be temporarily needed for hauling and excavating material in connection with works authorized by appropriations may be temporarily employed for such purposes under the conditions named in section 7–1236 in relation to the employment of laborers, skilled laborers, and mechanics. (June 28, 1944, 58 Stat. 531, ch. 300, § 3.)

SIMILAR PROVISIONS

1944—July 1, 1943, ch. 184, § 3, 57 Stat. 345.
1943—June 27, 1942, ch. 452, § 3, 56 Stat. 459.
1942—July 1, 1941, ch. 271, § 3, 55 Stat. 538.
1941—June 12, 1940, ch. 333, § 3, 54 Stat. 341.

GROSS REFERENCE

Provisions establishing standards for hours of work and overtime pay of laborers and mechanics employed on work done under contract for, or with the financial aid of, the United States, for any territory, or for the District of Columbia, see 40 U.S.C. §§ 327 to 332, and 5 U.S.C. §§ 5544, 6102.

§ 7–1238. Employment of personnel and equipment to execute work payable from miscellaneous trust fund deposits—Delegation of hiring authority by Commissioners.

The Commissioners are authorized to employ in the execution of work, the cost of which is payable from the appropriation account created in the District of Columbia Appropriation Act, approved April 27, 1904, and known as the miscellaneous trust-fund deposits, District of Columbia, necessary personal services, horses, carts, and wagons, and to hire therefor motortrucks when specifically and in writing authorized by the Commissioners, to establish and fix fees to be charged for such work, maintain operating balances, and to incur all necessary expenses incidental to carrying on such work, and necessary for the proper execution thereof, including the purchase, exchange, maintenance, and operation of motor vehicles for inspection and transportation purposes; such services and expenses to be paid from said appropriation account or operating balances: *Provided,* That the Commissioners may delegate to their duly authorized representatives the employment under this section of laborers, mechanics, and artisans. (June 28, 1944, 58 Stat. 531, ch. 300, § 4.)

REFERENCES IN TEXT

"District of Columbia Appropriation Act, approved April 27, 1904" referred to in the text, means act April 27, 1904, ch. 1628, 33 Stat. 363.

SIMILAR PROVISIONS

1944—July 1, 1943, ch. 184, § 4, 57 Stat. 345.
1943—June 27, 1942, ch. 452, § 4, 56 Stat. 459.
1942—July 1, 1941, ch. 271, § 4, 55 Stat. 539.
1941—June 12, 1940, ch. 333, § 4, 54 Stat. 342.

GROSS REFERENCE

Provisions establishing standards for hours of work and overtime pay of laborers and mechanics employed on work done under contract for, or with the financial aid of, the United States, for any territory, or for the District of Columbia, see 40 U.S.C. §§ 327 to 332, and 5 U.S.C. §§ 5544, 6102.

Chapter 13.—WASHINGTON NATIONAL AIRPORT

Sec.
7–1301. Administration of airport—Definitions.
7–1302. Powers and duties of Administrator—Rules and regulations
7–1303. Lease of space or property.
7–1304. Authority to make arrests—Carrying of firearms—Park Police patrol.
7–1305. Penalty for violations.
7–1306. Deposit of collateral by person charged with violation.
7–1307. Agreements for municipal services—Charges—Appropriations authorized.

§ 7–1301. Administration of airport—Definitions.

That for the purposes of this chapter—

(a) "Administrator" means the Administrator of the Civil Aeronautics Authority.

(b) "Airport" means the Washington National Airport, which shall consist of, and include, the tract of land, together with all structures, improvements, and other facilities located thereon, lying partly in the District of Columbia, and partly in the state of Virginia, particularly described as follows:

Commencing at a point of beginning, said point being the intersection of the property line of property owned by the Richmond, Fredericksburg and Potomac Railroad Company, and dredging base line at station 0+18.99 referenced south 6,808.21, west 9,078.02, running in a southeasterly direction on a bearing of south 22°51′18″ east a distance of 6,270.91 feet, more or less, to station 62+89.90 of said dredging base line. Thence 13°30′ right on a bearing of south 9°21′18″ east a distance of 1,332.29 feet, more or less, to station 76+22.19 of said base line. Thence 11°04′19″ right on a bearing of south 1°43′01″ west a distance of 1,231.20 feet, more or less, to station 88+53.39 of said base line. Thence 12°40′41″ right on a bearing of south 14°23′42″ west a distance of 2,409.32 feet, more or less, to station 112+62.71 on said base line. Thence 1°15′44.3″ right on a bearing of south 15°39′26.3″ west a distance of 4,938.38 feet, more or less, to United States Coast and Geodetic Survey Station WATER, referenced south 22,220.86, west 8,395.54. Thence 17°09′25.6″ left on a bearing of south 1°29′59.3″ east a distance of 85.58 feet, more or less, to a corner of the property line between the United States of America and Smoot Sand and Gravel Corporation. Thence 85°59′59.3″ right on a bearing of south 84°30′00″ west a distance of 1,516.41 feet, more or less, to a monument located at a corner on the property line of the Richmond, Fredericksburg and Potomac Railroad Company, said monument being referenced south 22,451.75, west 9,902.73. Thence 85°50′06.7″ right on a bearing of north 8°09′54″ west a distance of 442.68 feet, more or less. Thence 5°00′12″ left on a bearing of north 13°10′06″ west a distance of 578.64 feet, more or less. Thence 4°57′25″ left on a bearing of north 18°07′31″ west a distance of 462.94 feet, more or less. Thence 1°34′50″ left on a bearing of north 19°42′21″ west a distance of 943.56 feet, more or less, to the point of a curve having an angle of 27°52′45″ right radius 1,241.15 feet, long chord 597.98 feet, on a bearing of north 5°45′58″ west. Thence along the arc of said curve a distance of 603.92 feet, more or less, to the point of tangency of said curve. Thence along a tangent to said curve on a bearing of north 8°10′24″ east a distance of 232.33 feet, more or less, to the point of a curve having an angle of 36°59′09″ left, radius 1,046 feet, long chord 663.56 feet on a bearing of north 10°19′10.5″ west. Thence along the arc of said curve a distance of 675.22 feet, more or less, to the point of tangency of said curve. Thence along a tangent to said curve on a bearing of north 28°48′45″ west a distance of 256.75 feet, more or less. Thence 30°33′10″ left on a bearing of north 59°21′55″ west a distance of 287.84 feet, more or less. Thence 40°45′20″ right on a bearing of north 18°36′35″ west a distance of 1,142.08 feet, more or less. Thence 5°43′29″ right on a bearing of north 12°53′06″ west a distance of 118.02 feet, more or less, to the point of a curve having an angle of 26°20′50″ right, radius 3,665.71 feet, long chord 1,670.85 feet on a bearing of north 0°17′19″ east. Thence along the arc of said curve a distance of 1,685.66 feet, more or less, to the point of tangency of said curve. Thence along a tangent to said curve on a bearing of north 13°27′44″ east a distance of 2,002.11 feet, more or less, to the point of a curve having an angle of 10°36′25″ left, radius 2,864.79 feet, long chord of 529.59 feet on a bearing of north 8°09′31.5″ east. Thence along the arc of said curve a distance of 530.25 feet, more or less, to the point of tangency of said curve. Thence along a tangent to said curve on a bearing of north 2°51′19″ east a distance of 124.53 feet, more or less. Thence 6°57′52″ left on a bearing of north 4°06′33″ west a distance of 571.33 feet, more or less. Thence 7°22′39″ left on a bearing of north 11°29′12″ west a distance of 811.63 feet, more or less. Thence 8°16′52″ right on a bearing of north 3°12′20″ east a distance of 70.41 feet, more or less, to the point of a curve having an angle of 7°43′12″ right, radius 5,479.58 feet, long chord 737.75 feet on a bearing of north 7°03′56″ east. Thence along the arc of said curve a distance of 738.31 feet, more or less, to the point of tangency of said curve, said point being on the old property line between Mary E. Cullinane and Milton Hopfenmaier property. Thence along said property line on a bearing of north 75°11′50″ east a distance of 204.72 feet, more or less, to a monument marked U. S. D. 1–N. P. S., reference south 18,419.16, west 10,829.26. Thence along the same bearing of north 75°11′50″ east a distance of 215 feet, more or less. Thence 34°36′06″ left on a bearing of north 40°35′44″ east a distance of 1,509 feet, more or less, to the point of a curve having an angle of 5°45′ left, radius 7,239.41 feet, long chord of 723.20 feet, on a bearing of north 37°53′14″ east. Thence along the arc of said curve a distance of 726.51 feet, more or less, to the point of a compound curve having an angle of 6°00′ left, radius 2,217.01 feet, long chord of 232.06 feet on a bearing of north 32°10′44″ east. Thence along the arc of said curve a distance of 232.15 feet, more or less, to the point of a compound curve having an angle of 57°01′20″ left, radius 1,303.74, long chord 1,244.62, on a bearing of north 0°40′04″ east. Thence along the arc of said curve a distance of 1,297.22 feet, more or less, to the point of a compound curve having an angle of 7°59′54.3″ left, radius 2,217.01 feet, long chord 309.23 feet on a bearing of north 31°49′33″ west. Thence along the arc of said curve a distance of 310 feet, more or less, to the intersection of said curve with the property line of the Richmond, Fredericksburg and Potomac Railroad Company and the United States of America. Thence in a northeasterly direction along a bearing of north 34°30′00″ east a distance of 340 feet, more or less, to the point of beginning;

excepting, however, such portion thereof as the President may, by executive order or orders, prescribe, which portion shall be added to, and administered as part of, the Mount Vernon Memo-

rial Highway. authorized by the Act approved May 23, 1928 (45 Stat. 721), as amended. (June 29, 1940, 54 Stat. 686, ch. 444, § 1.)

§ 7–1302. Powers and duties of Administrator—Rules and regulations.

The Administrator shall have control over, and responsibility for, the care, operation, maintenance, and protection of the airport, together with the power to make and amend such rules and regulations as he may deem necessary to the proper exercise thereof. (June 29, 1940, 54 Stat. 687, ch. 444, § 2.)

NOTES TO DECISIONS

Arbitrary and capricious conduct

Record on appeal from dismissal of complaint of operator of automobile rental service disclosed prima facie showing that action of Civil Aeronautics Administrator and Director of Washington National Airport in prohibiting such operator from delivering driverless automobiles to customers at airport in any case where paper was to be signed or money was to be paid, even if reservation had been made in advance, was arbitrary and capricious and unrelated to proper administration of airport. *Friend, d/b/a Hertz Driv-Ur-Self System* v. *Lee, Administrator* (1955, 221 F. 2d 96, 95 U.S. App. D.C. 224).

Authority of administrator

Under statute giving civil aeronautics administrator control over and responsibility for the care, operation, maintenance and protection of airport together with power to make and amend such rules and regulations as he might deem necessary to proper exercise thereof and under statute providing any person who willfully violates any rule or regulation shall be guilty of a misdemeanor, administrator was empowered to establish conduct of citizens on airport or make such conduct a crime against United States and defendant could be prosecuted for using profane language in violation of regulation. *Finn* v. *United States* (1958, 256 F. 2d 304).

Instructions to jury

In prosecution for using profane language in Washington National Airport contrary to airport regulation, defendant was not entitled to instruction that if profanity was used while resisting a false arrest it was justified. *Finn* v. *United States* (1958, 256 F. 2d 304).

Power of administrator

To what extent Civil Aeronautics Administrator and Director of Washington National Airport might be entitled to prevent use of public address system at airport by operator of automobile rental service was question which should be decided at trial of operator's action for, inter alia, injunction against interference with operator's delivery of driverless automobiles to customers at airport. *Friend, d/b/a Hertz Driv-Ur-Self System* v. *Lee, Administrator* (1955, 221 F. 2d 96, 95 U.S. App. D.C. 224).

Civil Aeronautics Administrator and Director of Washington National Airport possessed broad powers in relation to automobile and personal traffic at airport, and to use of space. *Id.*

Regulations

Regulation forbidding conduct of business on Washington National Airport without approval of Administrator of Civil Aeronautics or Airport Director was not violated by rent-a-car-system employee, who drove automobile to airport for use of incoming plane passenger, who had placed order for automobile, even though agreement for lease of automobile was signed at airport. *United States* v. *Jenkins* (1955, 130 F. Supp. 808).

Sufficiency of information

Information charging that defendant unlawfully and without just cause or excuse used profane language contrary to airport regulation prohibiting use of profane language on airfield was sufficient to state essential elements of crime although the words knowingly and willfully were not used. *Finn* v. *United States* (1958, 256 F. 2d 304).

§ 7–1303. Lease of space or property.

The Administrator is empowered to lease, upon such terms as he may deem proper, space or property within or upon the airport for purposes essential or appropriate to the operation of the airport. (June 29, 1940, 54 Stat. 687, ch. 444, § 3.)

GROSS REFERENCE

Other provisions for lease of public buildings and property, see § 9–202 and notes.

NOTES TO DECISIONS

Supervision and control

Purpose of regulation forbidding conduct of business on Washington National Airport without approval of Administrator of Civil Aeronautics or Airport Director was intended to give Administrator or Director supervision and control of such mercantile engagements as would require occupancy or space of facilities of airport in a manner more burdensome than, or otherwise different from, that accorded to a passenger. *United States* v. *Jenkins* (1955, 130 F. Supp. 808).

§ 7–1304. Authority to make arrests—Carrying of firearms—Park Police patrol.

(a) The Administrator, and any Civil Aeronautics Administration employee appointed to protect life and property on the airport, when designated by the Administrator, is hereby authorized and empowered (1) to arrest under a warrant within the limits of the airport any person accused of having committed within the boundaries of the airport any offense against the laws of the United States, or against any rule or regulation prescribed pursuant to this chapter; (2) to arrest without warrant any person committing any such offense within the limits of the airport, in his presence; or (3) to arrest without warrant within the limits of the airport any person whom he has reasonable grounds to believe has committed a felony within the limits of the airport.

(b) Any individual having the power of arrest as provided in subsection (a) of this section may carry firearms or other weapons as the Administrator may direct or by regulation may prescribe.

(c) The United States Park Police may, at the request of the Administrator, be assigned by the Director of the National Park Service, in his discretion, subject to the supervision and direction of the Secretary of the Interior, to patrol any area of the airport, and any members of the United States Park Police so assigned are hereby authorized and empowered to make arrests within the limits of the airport for the same offenses, and in the same manner and circumstances, as is provided in this section with respect to employees designated by the Administrator. (June 29, 1940, ch. 444, § 4, as added May 15, 1947, 61 Stat. 94, ch. 62.)

§ 7–1305. Penalty for violations.

Any person who knowingly and willfully violates any rule or regulation prescribed under this chapter shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $500 or imprisoned not more than six months, or both. (June 29, 1940, ch. 444, § 5, as added May 15, 1947, 61 Stat. 94, ch. 62.)

NOTES TO DECISIONS

Authority of administrator

Under statute giving civil aeronautics administrator control over and responsibility for the care, operation, maintenance and protection of airport together with

power to make and amend such rules and regulations as he might deem necessary to proper exercise thereof and under statute providing any person who willfully violates any rule or regulation shall be guilty of a misdemeanor, administrator was empowered to establish conduct of citizens on airport or make such conduct a crime against United States and defendant could be prosecuted for using profane language in violation of regulation. *Finn* v. *United States* (1958, 256 F. 2d 304).

Instructions to jury

In prosecution for using profane language in Washington National Airport contrary to airport regulation, defendant was not entitled to instruction that if profanity was used while resisting a false arrest it was justified. *Finn* v. *United States* (1958, 256 F. 2d 304).

Sufficiency of information

Information charging that defendant unlawfully and without just cause or excuse used profane language contrary to airport regulation prohibiting use of profane language on airfield was sufficient to state essential elements of crime although the words knowingly and willfully were not used. *Finn* v. *United States* (1958, 256 F. 2d 304).

§ 7–1306. Deposit of collateral by person charged with violation.

The officer on duty in command of those employees designated by the Administrator as provided in section 7–1304, may accept deposit of collateral from any person charged with the violation of any rule or regulation prescribed under this chapter, for appearance in court or before the appropriate United States commissioner; and such collateral shall be deposited with the United States commissioner at Alexandria, Virginia. (June 29, 1940, ch. 444 § 6, as added May 15, 1947, 61 Stat. 94, ch. 62.)

§ 7–1307. Agreements for municipal services—Charges—Appropriations authorized.

The Administrator may enter into agreements with the State of Virginia, or with any political subdivision thereof, for such municipal services as the Administrator shall deem necessary to the proper and efficient government of the airport, and he may, from time to time, agree to modifications in any such agreement: *Provided, however,* That where the charge for any such service is established by the laws of the State of Virginia, the Administrator may not pay for such service an amount in excess of the charge so established. There is hereby authorized to be appropriated such sums as may be necessary for the making of payment for services under any such agreement. (June 29, 1940, ch. 444, § 7, as added May 15, 1947, 61 Stat. 95, ch. 62.)

Chapter 14.—PUBLIC AIRPORT

Sec.
7–1401. Construction and operation of airport authorized.
7–1402. Selection of site.
7–1403. Acquisition and construction of facilities.
7–1404. Maintenance and operation.
7–1405. Lease of space or property.
7–1406. Contracts for supplies and services.
7–1407. Transfers of property by federal agencies.
7–1408. Authority to make arrests—Park Police patrol.
7–1409. Agreements for municipal services.
7–1410. Penalty for violations.
7–1411. Definitions.
7–1412. Appropriations authorized.

§ 7–1401. Construction and operation of airport authorized.

Administrator of the Federal Aviation Agency (hereinafter referred to as the "Administrator") is hereby authorized and directed to construct, protect, operate, improve, and maintain within or in the vicinity of the District of Columbia, a public airport (including all buildings and other structures necessary or desirable therefor). (Sept. 7, 1950, 64 Stat. 770, ch. 905, § 1; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85–726, title XIV, § 1402(g).)

AMENDMENT

1958—Act Aug. 23, 1958, amended the section by striking the words "Secretary of Commerce" and inserting in lieu the words "Administrator of the Federal Aviation Agency" and by striking the word "Secretary" and inserting in lieu the word "Administrator".

§ 7–1402. Selection of site.

For the purpose of carrying out this chapter, the Administrator is authorized to acquire, by purchase, lease, condemnation, or otherwise (including transfer with or without compensation from Federal agencies or the District of Columbia, or any State or political subdivision thereof), such lands and interests in lands and appurtenances thereto, including avigation easements or air-space rights, as may be necessary or desirable for the construction, maintenance, improvement, operation and protection of the airport: *Provided,* That before making commitments for the acquisition of land, or the transfer of any lands, the Administrator shall consult and advise with the National Capital Park and Planning Commission as to the conformity of the proposed location with the Commission's comprehensive plan for the National Capital and its environs, and said Commission shall, upon request, submit a report and recommendations thereon within thirty days: *Provided further,* That the choice of site by the Administrator shall be made only after consultation with the governing body in the county in which the airport is to be located, with respect to the suitability of the site to be selected, and its possible impact on the vicinity. (Sept. 7, 1950, 64 Stat. 771, ch. 905, § 2; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85–726, title XIV, § 1402(g).)

AMENDMENT

1958—Act Aug. 23, 1958, amended section by striking the word "Secretary" wherever same appeared and inserting in lieu the word "Administrator".

TRANSFER OF FUNCTIONS

"National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in view of act June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers, and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission. See section 1–1009.

§ 7–1403. Acquisition and construction of facilities.

For the purposes of this chapter, the Administrator is empowered to acquire, by purchase, lease, condemnation, or otherwise (including transfer with or without compensation from Federal agencies or the District of Columbia, or any State or political subdivision thereof), rights-of-way or easements for roads, trails, pipe lines, power lines, railroad spurs, and other similar facilities necessary or desirable for the construction or proper operation of the airport.

The Administrator is authorized to construct any streets, highways, or roadways (including bridges) as may be necessary to provide access to the airport from existing streets, highways, or roadways. Upon

completion of construction of any street, highway, or roadway within the District of Columbia, such street, highway, or roadway shall be transferred to the District of Columbia without charge and thereafter shall be maintained by the District of Columbia. Upon construction of any street, highway, or roadway within a State or political subdivision thereof, such street, highway, or roadway may be transferred to such State or political subdivision thereof, without charge, on the condition that such street, highway, or roadway thereafter be maintained as a public street, highway, or roadway by such State or political subdivision thereof. (Sept. 7, 1950, 64 Stat. 771, ch. 905, § 3; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85–726, title XIV, § 1402(g).)

AMENDMENT

1958—Act Aug. 23, 1958, struck out the word "Secretary" wherever same appeared in the section and substituted the word "Administrator" in lieu thereof.

NOTES TO DECISIONS

Standing to sue

Where none of plaintiff's land was sought to be condemned, his suit to enjoin taking of property, more than one-half mile distant from his own land, for use as airport, did not present a "justiciable controversy", and his suit was premature. *Jasper* v. *Sawyer et al.* (1953, 92 U.S. App. D.C. 94, 205 F. 2d 700).

§ 7–1404. Maintenance and operation.

The Administrator shall have control over and responsibility for the care, operation, maintenance, improvements, and protection of the airport, together with the power to make and amend such rules and regulations as he may deem necessary to the proper exercise thereof: *Provided,* That the authority herein contained may be delegated by the Administrator to such official or officials of the Federal Aviation Agency as the Administrator may designate. (Sept. 7, 1950, 64 Stat. 771, ch. 905, § 4; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85–726, title XIV, § 1402(g).)

AMENDMENT

1958—Act Aug. 23, 1958, struck out the word "Secretary" wherever same appeared and substituted the word "Administrator," also struck out the words "Department of Commerce" and inserted in lieu the words "Federal Aviation Agency".

§ 7–1405. Lease of space or property.

The Administrator is empowered to lease under such conditions as he may deem proper and for such periods as may be desirable space or property within or upon the airport for purposes essential or appropriate to the operation of the airport: *Provided,* That no lease for the use of any hangar or space therein shall extend for a period exceeding three years. (Sept. 7, 1950, 64 Stat. 771, ch. 905, § 5; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85–726, title XIV, § 1402(g).)

AMENDMENT

1958—Act Aug. 23, 1958, substituted the word "Administrator" for "Secretary".

§ 7–1406. Contracts for supplies and services.

The Administrator is authorized to contract with any person for the furnishing of supplies or performance of services at or upon the airport necessary or desirable for the proper operation of the airport, including but not limited to, contracts for furnishing food and lodging, sale of aviation fuels, furnishing of aircraft repairs and other aeronautical services, and such other services and supplies as may be necessary or desirable for the traveling public. No such contract, not including contracts involving the construction of permanent buildings or facilities, shall extend for a period of longer than five years, except the restaurant. The provisions of 41 U.S.C. § 5, shall not apply to contracts authorized under this section, to leases authorized under section 7–1405 hereof, or to contracts for architectural or engineering services necessary for the design and planning of the airport. (Sept. 7, 1950, 64 Stat. 771, ch. 905, § 6; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85–726, title XIV, § 1402(g).)

AMENDMENT

1958—Act Aug. 23, 1958, substituted the word "Administrator" for "Secretary".

§ 7–1407. Transfers of property by federal agencies.

Any executive department, independent establishment, or agency of the Federal Government or the District of Columbia, for the purposes of carrying out this chapter, is authorized to transfer to the Administrator, without compensation, upon his request, any lands, interests in lands (including avigation easements or air-space rights), buildings, property, or equipment under its control and in excess of its own requirements, which the Administrator may consider necessary or desirable for the construction, care, operation, maintenance, improvement, or protection of the airport. (Sept. 7, 1950, 64 Stat. 772, ch. 905, § 7; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85–726, title XIV, § 1402(g).)

AMENDMENT

1958—Act Aug. 23, 1958, substituted the word "Administrator" for "Secretary" wherever same appeared in the section.

§ 7–1408. Authority to make arrests—Park Police patrol.

(a) The Administrator and any Federal Aviation Agency employee appointed to protect life and property on the airport, when designated by the Administrator, is hereby authorized and empowered (1) to arrest under a warrant within the limits of the airport any person accused of having committed within the boundaries of the airport any offense against the laws of the United States, or against any rule or regulation prescribed pursuant to this chapter; (2) to arrest without warrant any person committing any such offense within the limits of the airport, in his presence; or (3) to arrest without warrant within the limits of the airport any person whom he has reasonable grounds to believe has committed a felony within the limits of the airport.

(b) Any individual having the power of arrest as provided in subsection (a) of this section may carry firearms or other weapons as the Administrator may direct or by regulation may prescribe.

(c) The United States Park Police may, at the request of the Administrator, be assigned by the Secretary of the Interior, in his discretion, to patrol any area of the airport, and any members of the United States Park Police so assigned are hereby authorized and empowered to make arrests within the limits of the airport for the same offenses and in the same manner and circumstances as are provided in

this section with respect to employees designated by the Administrator.

(d) The officer on duty in command of those employees designated by the Administrator as provided in subsection (a) of this section may accept deposit of collateral from any person charged with the violation of any rule or regulation prescribed under this chapter, for appearance in court or before the appropriate United States Commissioner; and such collateral shall be deposited with such United States Commissioner. (Sept. 7, 1950, 64 Stat. 772, ch. 905, § 8; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85–726, title XIV, § 1402(g).)

AMENDMENT

1958—Act Aug. 23, 1958, substituted the word "Administrator" for "Secretary" wherever same appeared in subsection (a), (b), (c), and (d); substituted "Federal Aviation Agency" for "Department of Commerce" in subsection (a).

NOTES TO DECISIONS

Arrest without warrant

A motorist, who had received a summons from an officer to appear before a court commissioner to answer a charge of a parking violation, could not be validly arrested without a warrant for failure to post collateral. *P. Y. Craig* v. *J. T. Cox & A. C. Doak* (D.C. Mun. App. 1961, 171 A. 2d 259).

Bail follows arrest, and is not given to avoid an arrest. *Id.*

§ 7–1409. Agreements for municipal services.

The Administrator may enter into agreements with the State, or any political subdivision thereof, in which the airport or any portion thereof is situated, for such State or municipal services as the Administrator shall deem necessary to the proper and efficient operation and protection of the airport, and he may, from time to time, agree to modifications in any such agreement: *Provided, however,* That where the charge for any such service is established by the laws of the State, the Administrator may not pay for such service in excess of the charge so established. (Sept. 7, 1950, 64 Stat. 772, ch. 905, § 9; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85–726, title XIV, § 1402(g).)

AMENDMENT

1958—Act Aug. 23, 1958, substituted the word "Administrator" for "Secretary" wherever same appeared in the section.

§ 7–1410. Penalty for violations.

Any person who knowingly and willfully violates any rule, regulation, or order issued by the Administrator under this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $500 or to imprisonment not exceeding six months, or to both such fine and imprisonment. (Sept. 7, 1950, 64 Stat. 772, ch. 905, § 10; Aug. 23, 1958, 72 Stat. 807, Pub. L. 85–726, title XIV, § 1402(g).)

AMENDMENT

1958—Act Aug. 23, 1958, substituted the word "Administrator" for "Secretary".

§ 7–1411. Definitions.

Unless the context otherwise requires, the definitions of the words and phrases used in this chapter shall be the definitions assigned to such words and phrases by the Civil Aeronautics Act of 1938, as amended. (Sept. 7, 1950, 64 Stat. 772, ch. 905, § 11.)

REFERENCES IN TEXT

Civil Aeronautics Act of 1938, as amended, referred to in the text, which was classified to 49 U.S.C. § 401 et seq., was repealed and is now covered by 49 U.S.C. § 1301 et seq.

§ 7–1412. Appropriations authorized.

There is hereby authorized to be appropriated such sum as may be necessary for the construction of the airport authorized by this chapter, and such sum shall remain available until expended. There are hereby authorized to be appropriated such other sums as may be necessary to carry out the purposes of this chapter. (Sept. 7, 1950, 64 Stat. 773, ch. 905, § 12; July 11, 1958, 72 Stat. 354, Pub. L. 85–511, § 1.)

AMENDMENT

1958—Act July 11, 1958, removed the limitation on the amount authorized to be appropriated for construction.

TITLE 8.—PARKS AND PLAYGROUNDS

Chap. Sec.
1. Parks and Playgrounds 8–101
2. Recreation Board 8–201

Chapter 1.—PARKS AND PLAYGROUNDS

Sec.
8–101, 8–102. Transferred.
8–103. Acquisition of land subject to limited rights reserved to grantor—Acquisition of limited permanent rights in land adjoining park property.
8–104. Establishing and making clear the title of the United States to lands along Potomac River, Anacostia River, and Rock Creek.
8–105. Lease of lands acquired for park, parkway, or playground purposes.
8–106, 8–107. Transferred.
8–108. Park system — Control — Inclusions — Exclusions, improvements, parking spaces—"Business streets"—Conditions requisite.
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8–139. Public convenience stations—Establishment—Location—Control transferred to Commissioners.
8–140. Public convenience stations—Authority to make rules, regulations, and charges.
Sec.
8–141. Part of reservation 13 transferred to Commissioners for use as burial ground.
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8–143. Authority to make regulations for care of public grounds.
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8–145. Public spaces resulting from filling of canals under jurisdiction of director.
8–146. Rock Creek Park—Establishment.
8–147. Rock Creek Parkway—Area.
8–148. Rock Creek Park—Control and regulations.
8–149. Rock Creek Park—Lease of buildings and grounds authorized.
8–150. Rock Creek Park—Acceptance of dedicated property authorized.
8–151. Rock Creek Park—Injury or diminution of the flow of water in Rock Creek.
8–152. Piney Branch Parkway part of park system.
8–153. Potomac Park—Establishment.
8–154. Potomac Park—Control.
8–155. Potomac Park—Restriction on construction of lagoon or speedway.
8–156. Potomac Park—Temporary occupancy by Department of Agriculture.
8–157. Potomac Park—Licenses for boathouses on banks of tidal reservoir.
8–158. Parkway connecting Potomac Park with Zoological and Rock Creek Parks—Reimbursement of part of cost to United States.
8–159. Boundaries of parkway authorized by section 8–158 changed.
8–160. Connecting parkway to be part of park system.
8–161. Anacostia Park.
8–162. Glover Parkway and Children's Playground.
8–163. Glover Parkway and Children's Playground—Part of park system of District.
8–164. Theodore Roosevelt Island—Acceptance authorized—Maintenance and development.
8–165. Theodore Roosevelt Island—Means of access to be provided—Appropriation authorized.
8–166. Theodore Roosevelt Island—Structures authorized.
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8–168. Public bathing beach authorized.
8–169. Bathing pools and beaches—Construction authorized.
8–170. Bathing pools and beaches—Operation—Fees.
8–171. Bathing pools and beaches—Operation—Funds.

§§ 8–101, 8–102. Transferred.

CODIFICATION

Section 8–101, which related to the National Capital Park and Planning Commission and prescribed its duties, is transferred to chapter 10 of Title 1, Administration. Act July 19, 1952, 66 Stat. 782, ch. 949, § 1, amended act June 6, 1924, 43 Stat. 463, ch. 270, generally, and provisions formerly contained in section 8–101 are now covered by sections 1–1001 to 1–1010.

Section 8–102, which authorized the acquisition of land by the National Capital Park and Planning Commission, is transferred to section 1–1011.

§ 8–103. Acquisition of land subject to limited rights reserved to grantor—Acquisition of limited permanent rights in land adjoining park property.

The authority of the National Capital Planning Commission, established by the Act approved April 30, 1926, is hereby enlarged as follows:

Said commission is hereby authorized to acquire, for and in behalf of the United States of America,

by gift, devise, purchase, or condemnation, in accordance with the provisions of the Act of June 6, 1924, as amended by the Act of April 30, 1926, (1) fee title to land subject to limited rights, but not for business purposes, reserved to the grantor: *Provided,* That such reservation of rights shall not continue beyond the life or lives of the grantor or grantors of the fee: *Provided further,* That in the opinion of said commission the permanent public park purposes for which control over said land is needed are not essentially impaired by said reserved rights and that there is a substantial saving in cost by acquiring said land subject to said limited rights as compared with the cost of acquiring unencumbered title thereto; (2) permanent rights in land adjoining park property sufficient to prevent the use of said land in certain specified ways which would essentially impair the value of the park property for its purposes: *Provided,* That in the opinion of said commission the protection and maintenance of the essential public values of said park can thus be secured more economically than by acquiring said land in fee or by other available means: *Provided further,* That all contracts for acquisition of land subject to such limited rights reserved to the grantor and for acquisition of such limited permanent rights in land shall be subject to the approval of the President of the United States. (Dec. 22, 1928, 45 Stat. 1070, ch. 48, § 1.)

REFERENCES IN TEXT

The Act approved Apr. 30, 1926, referred to in the text, means act Apr. 30, 1926, 44 Stat. 374, ch. 198, which amended section 1 of act June 6, 1924, 43 Stat. 463, ch. 270.

The Act of June 6, 1924, referred to in the text, means act June 6, 1924, 43 Stat. 463, ch. 270, which was amended generally by act July 19, 1952, 66 Stat. 782, ch. 949, § 1, and is now classified to sections 1–1001 to 1–1013.

CODIFICATION

Section is also classified to 40 U.S.C. § 72a.

TRANSFER OF FUNCTIONS

The functions, powers and duties of the National Capital Park and Planning Commission were transferred to the National Capital Planning Commission by act June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1, which is classified to section 1–1009.

§ 8–104. Establishing and making clear the title of the United States to lands along Potomac River, Anacostia River, and Rock Creek.

For the purpose of establishing and making clear the title of the United States in and to any part or parcel of land or water in, under, and adjacent to the Potomac River, the Anacostia River, or Eastern Branch, and Rock Creek, including the shores and submerged or partly submerged land, as well as the banks of said waterways, and also the upland immediately adjacent thereto, including made land, flat lands and marsh lands, in which persons and corporations and others may have or pretend to have any right, title, claim, or interest adverse to the complete title of the United States as set forth in an Act entitled "An Act providing for the protection of the interest of the United States in lands and water comprising any part of the Potomac River, the Anacostia River, Eastern Branch, and Rock Creek, and adjacent lands thereto," approved April 27, 1912 (37 Stat. 93), and in order to facilitate the same, by making equitable adjustments of such claims and controversies between the United States of America and such adverse claimants, the Secretary of the Interior is authorized to make and accept, on behalf of the United States, by way of compromise when deemed to be in the public interest such conveyances, including deeds of quitclaim and restrictive and collateral covenants, of the lands in dispute as shall be also approved by the National Capital Planning Commission and the Attorney-General of the United States. (June 4, 1934, 48 Stat. 836, ch. 375.)

TRANSFER OF FUNCTIONS

The functions, powers and duties of the National Capital Park and Planning Commission were transferred to the National Capital Planning Commission by act June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1, which is classified to section 1–1009.

NOTES TO DECISIONS

Discretion as to use

The United States, under the cession from Maryland and by virtue of powers surrendered by the states under the Constitution, may exercise their discretion in use of portion of land below high water of Anacosta River in District of Columbia in the public right of fishing, or in the promotion of commerce and navigation. *United States* v. *Belt* (1944, 142 F. 2d 761, 79 U. S. App. D. C. 87).

Riparian rights

Where Maryland ceded District of Columbia territory to United States and act of ratification, Acts Md. 1791, ch. 45, provided that nothing therein contained should be construed to vest in United States any right of property or affect rights of individuals otherwise than as transferred by individuals to United States, and where commissioners of the United States appointed to lay out city of Washington made agreement with owners of lots along Anacostia River to reconvey to lot owners one-half of their original frontage and lot owners received back lots in one-half quantity surrendered bordering on river and acquired by purchase remaining lots which the commissioners offered for sale, the proprietors of lots binding the high-water line of the Anacostia River and their successors in interest were riparian proprietors with all rights and privileges pertaining to such riparian property. *United States* v. *Belt* (1944, 142 F. 2d 761, 79 U. S. App. D. C. 87).

On establishment of District of Columbia, the United States succeeded to Maryland's right of regulation of riparian rights or proprietors of lots along Anacostia River so that the common-law rights of riparian owners, within the limits of the District, are subject to change and modification by act of Congress to the same extent and with the same limitations that change or modification might have been made by Maryland while the land was within its boundaries. *Id.*

§ 8–105. Lease of lands acquired for park, parkway, or playground purposes.

The Director of the National Park Service is authorized, subject to the approval of the National Capital Planning Commission, to lease, for a term not exceeding five years, and to renew such lease, subject to such approval, for an additional term not exceeding five years, pending need for their immediate use in other ways by the public, and on such terms as the director shall determine, land or any existing building or structure on land acquired for park, parkway, or playground purposes. (Dec. 22, 1928, 45 Stat. 1070, ch. 48, § 2.)

CODIFICATION

Section is also classified to 40 U.S.C. § 72b.

TRANSFER OF FUNCTIONS

The functions, powers and duties of the National Capital Park and Planning Commission were transferred to the National Capital Planning Commission by act

June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1, which is classified to section 1–1009.

Transfer of functions of Director of Public Buildings and Public Parks of the National Capital to Director of National Park Service, see notes under section 8–108.

CROSS REFERENCE

Leases for playgrounds unaffected, see § 8–210.

§§ 8–106, 8–107. Transferred.

CODIFICATION

Sections 8–106 and 8–107 are transferred to sections 1–1012 and 1–1013, respectively.

§ 8–108. Park system—Control—Inclusions—Exclusions, improvements, parking spaces—"Business streets"—Conditions requisite.

The park system of the District of Columbia is placed under the exclusive charge and control of the Director of the National Park Service, under such regulations as may be prescribed by the President of the United States.

The said park system shall be held to comprise:

(a) All public spaces laid down as reservations on the map of 1894 accompanying the annual report for 1894 of the officer in charge of public buildings and grounds;

(b) All portions of the space in the streets and avenues of the said District, after the same shall have been set aside by the Commissioners of the District of Columbia for park purposes.

Provided, That no areas less than two hundred and fifty square feet between sidewalk lines shall be included within the said park system, and no improvements shall be made in unimproved public spaces in streets between building lines or building lines prolonged until the outlines of such portions as are to be improved as parks shall have been laid out by the commissioners of the District of Columbia: *And provided further,* That the said director is authorized temporarily to turn over the care of any of the parking spaces included in Classes (a) and (b) above, to private owners of adjoining lands under such regulations as he may prescribe and with the condition that the said private owners shall pay special assessments for improvements contiguous to such parking, under the same regulations as are or may be prescribed for private lands: *And provided further,* That the Commissioners of the District of Columbia are authorized and directed to denominate portions of streets in the District of Columbia as business streets and to authorize the use, on such portions of streets, for business purposes by abutting property owners, under such general regulations as said commissioners may prescribe, of so much of the sidewalk and parking as may not be needed, in the judgment of said commissioners, by the general public, under the following conditions, namely: First. wherein a portion of a street not already denominated a business street a majority of a frontage not less than three blocks in length is occupied and used for business purposes; and second, where a portion of a street has already been denominated a business street, and there exists adjoining such portion a block or more whose frontage is occupied and used for business purposes. (July 1, 1898, 30 Stat. 570, ch 543, § 2; Feb. 2, 1904, 33 Stat. 10, ch. 89; Apr. 14. 1906, 34 Stat. 112, ch. 1622.)

CODIFICATION

The last proviso of this section is also classified to section 7–1205.

AMENDMENTS

1906—Act Apr. 14, 1906, struck out the first proviso in the fifth paragraph the words "Class B" and substituting therefor "Classes (a) and (b)."

1904—Act Feb. 2, 1904, changed the last proviso to read as above.

TRANSFER OF FUNCTIONS

By act July 1, 1898, this section applied to transfers of land from the jurisdiction of the Chief of Engineers of the United States Army, as established by said act to that of the Commissioners of the District of Columbia, or vice versa. The Office of Public Buildings and Grounds under the Chief of Engineers was abolished and the functions of the Chief of Engineers and of the Secretary of War with respect thereto were transferred to the Director of Public Buildings and Public Parks of the National Capital by act Feb. 26, 1925, ch. 339, § 3, 43 Stat. 983. The Office of Public Buildings and Public Parks of the National Capital was abolished and the functions thereof were transferred to the Office of National Parks, Buildings, and Reservations of the Department of the Interior by Ex. Ord. No. 6166, § 3, June 10, 1933. The name of the latter office was changed to "National Park Service" by act Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1.

The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by section 303 (b) of Reorg. Plan No. I, July 1, 1939, 4 F. R. 2729, 53 Stat. 1427.

All functions with respect to acquiring space in buildings by lease, all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space acquired by lease and space in Government-owned buildings), were, with certain exceptions, transferred from the respective agencies in which theretofore vested to the Administrator of General Services by section 1 of 1950 Reorg. Plan No 18, 15 F.R. 3177, 64 Stat. 1270 set out in note under U.S. Code, title 40, § 490. For delegation of such transferred functions to other personnel of the General Services Administration, or to the heads and personnel of other agencies, and for transfer of personnel, property, records, and funds, see sections 3 and 4 of such Plan.

All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, and all functions of the Commissioner of Public Buildings and the Public Buildings Administration, were transferred to the Administrator of General Services by section 103(a) of act June 30, 1949, 63 Stat. 380, ch. 288, title I. The Federal Works Agency, the office of Federal Works Administrator, the office of Commissioner of Public Buildings, and the Public Buildings Administration, were abolished by section 103(b) of said Act. Said section 103 is classified to U.S. Code, title 40, § 753.

CROSS REFERENCES

Driving animals or vehicles over footways, penalty, see § 22–1118.

General provisions concerning jurisdiction and control of streets, see § 7–102 and notes.

Rules and regulations generally, see § 1–226 and notes.

NOTES TO DECISIONS

Power vested in commission

Whether the space or part of a sidewalk and parking is needed by the public is a question committed to the judgment of the Commissioners and not that of the courts. *United States ex rel. Crupper* v. *Newman* (1918, 47 App. D.C. 345).

§ 8–109. Control by director of vehicles and traffic regulations.

The Director of the National Park Service is authorized and empowered to make and enforce all regulations for the control of vehicles and traffic, and limiting the speed thereof on roads, highways, and bridges within the public grounds in the District

of Columbia, under his control, subject to the penalties prescribed in the Act entitled "An Act regulating the speed of automobiles in the District of Columbia, and for other purposes," approved June 29, 1906. (June 5, 1920, 41 Stat. 898, ch. 235, § 1.)

REFERENCES IN TEXT

The Act entitled "An Act regulating the speed of automobiles in the District of Columbia, and for other purposes," approved June 29, 1906, referred to in the text, was repealed by act Mar. 3, 1925, 43 Stat. 1125, ch. 446, § 16(a), and is now covered by the District of Columbia Traffic Act, 1925, which is classified to section 40–601 et seq.

REPEAL

Repeal and saving clauses in act March 3, 1925, ch. 443, § 16 (a), (b), 43 Stat. 1126, as affecting this section, see § 40–614.

TRANSFER OF FUNCTIONS

Transfer of functions to Director of National Park Service, see notes under section 8–108.

CROSS REFERENCE

Park grounds excepted from operation of the Traffic Act of 1925, see § 40–613.

§ 8–110. Street parking.

The jurisdiction and control of the street parking in the streets and avenues of the District of Columbia is transferred to and vested in the Commissioners of the District of Columbia. (July 1, 1898, 30 Stat. 570, ch. 543, § 1.)

CROSS REFERENCES

Parking restrictions on public or private property, see §§ 40–810 and 40–811.

Regulation of public off-street parking facilities, see Motor Vehicle Parking Facility Act of 1942, §§ 40–801 to 40–809.

NOTES TO DECISIONS

Authority of Commissioners

In determining whether vendor suing purchaser for breach of contract for sale of lots in Square 1067 on 15th Street SE., near the Anacostia River in Washington, D. C., had ability to obtain wharfage facilities and privilege of running pipe line from wharf to lots as required by contract, Commissioners of District of Columbia, National Capital Park and Planning Commission, and United States Engineers Office had legal authority to make decisions involving eventual granting of such facilities and privilege. *Decatur Corporation* v. *Friedman* (D.C.D.C. 1941, 39 F. Supp. 692, affirmed 135 F. 2d 812, 77 U.S. App. D.C. 326).

§ 8–111. Small parks at certain street intersections.

Public parks acquired by the condemnation of small park areas at the intersections of streets outside the limits of the original city of Washington, shown on the map on file showing areas surrounded by streets, in the office of the engineer commissioner, shall become a part of the park system of the District of Columbia and be under the control of the Director of the National Park Service. (Mar. 4, 1913, 37 Stat. 971, ch. 150, § 1; July 21, 1914, 38 Stat. 550, ch. 191; Aug. 1, 1914, 38 Stat. 625, ch. 223, § 1.)

CODIFICATION

Section consolidates acts Mar. 4, 1913, July 21, 1914, and Aug. 1, 1914.

TRANSFER OF FUNCTIONS

Transfer of functions to Director of National Park Service, see notes under section 8–108.

§ 8–112. Meridian Hill Park.

Meridian Hill Park is a part of the park system of the District of Columbia, under the control of the Director of the National Park Service. The sum annually appropriated and expended for the maintenance and improvement of said park shall be paid by the United States and the District of Columbia in the proportions fixed by law. (June 25, 1910, 36 Stat. 700, ch. 383, § 36.)

CODIFICATION

Act June 29, 1922, 42 Stat. 668, ch. 249, which formed the basis for various sections of the Code which provide for the 60 percent payment by the District of certain expenses, was repealed by act May 16, 1938, 52 Stat. 375, ch. 223, § 8. This repealing act does not provide any substitute provision, and consequently the aforesaid sections are left without foundation in the statutes. Act June 29, 1922, contains a provision repealing all prior inconsistent acts, and, therefore, the prior acts which were the bases for these various sections no longer apply. The division of expenses between the District and the United States, if any, is apparently a matter of practice, not controlled by the statutes as they now stand.

TRANSFER OF FUNCTIONS

Transfer of functions to Director of National Park Service, see notes under section 8–108.

CROSS REFERENCE

Lump-sum appropriation for the District, see § 47–134.

§ 8–113. Montrose Park.

Montrose Park is a part of the park system of the District of Columbia, under the control of the Director of the National Park Service. The sum that shall be annually appropriated and expended for the maintenance and improvement of said park shall be paid by the United States and the District of Columbia in the proportions fixed by law. (Mar. 2, 1911, 36 Stat. 1006, ch. 192.)

TRANSFER OF FUNCTIONS

Transfer of functions to Director of National Park Service, see notes under section 8–108.

CROSS REFERENCES

Apportionment, see Codification note under § 8–112.

Lump-sum appropriation for the District, see § 47–134.

Portion of park transferred for highway purposes, see note to § 7–1201.

§ 8–114. Portion of Water Street made part of park system—Consent of owners.

The Commissioners of the District of Columbia are authorized to close upper Water Street, between Twenty-second and Twenty-third Streets, northwest, lying north of Potomac Park and south of square 62: *Provided,* That the consent in writing of the owners of three-fourths of all private property on the south side of square 62 is first had and obtained; and upon the closing of said street between the limits named the Commissioners of the District of Columbia are authorized to transfer the land contained in the bed of said street to the Director of the National Park Service, as part of the park system of the District of Columbia: *Provided further,* That the said commissioners are authorized to enter upon said closed area at all times for the purpose of maintenance and repair of all existing sewers and sewer appurtenances. (May 13, 1932, 47 Stat. 154, ch. 180, § 1.)

TRANSFER OF FUNCTIONS

Transfer of functions to Director of National Park Service, see notes under section 8–108.

§ 8–115. Transfer of jurisdiction over property between United States and District of Columbia.

Federal and District authorities administering properties within the District of Columbia owned by

the United States or by the said District are authorized to transfer jurisdiction over parts or all of such properties among or between themselves for purposes of administration and maintenance under such conditions as may be mutually agreed upon: *Provided,* That prior to the consummation of any transfer hereunder such proposed transfer shall be recommended by the National Capital Planning Commission: *Provided further,* That all such transfers and agreements shall be reported to Congress by the District authorities concerned. (May 20, 1932, ch. 197, § 1, 47 Stat. 161, as amended June 6, 1924, ch. 270, § 9 as added July 19, 1952, ch. 949, § 1, 66 Stat. 790, and amended Aug. 30, 1954, ch. 1076, § 1(20), 68 Stat. 967.)

AMENDMENTS

1954—Act Aug. 30, 1954, amended section by repealing the requirement that the Federal authorities concerned should also report to Congress all transfers and agreements authorized by this section.

TRANSFER OF FUNCTIONS

Transfer of functions to National Park Service and to Administrator of General Services, see notes under section 8–108.

"National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission", on authority of act July 19, 1952, which transferred functions of the latter to the former.

Reorganization Order No. 18 issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952, created within the Department of General Administration an Administrative Services Office and established therein responsibility for the administration of real property owned or utilized by the Government of the District of Columbia.

CROSS REFERENCES

Jurisdiction of land, buildings, and facilities of Recreation Board, see § 8–215.

Power of Metropolitan Police over Federal buildings and grounds, see § 4–120.

§ 8–116. Transfer of jurisdiction—Existing laws unaffected.

Nothing in section 8–115 shall be construed to repeal the provisions of any existing law or laws authorizing the transfer of jurisdiction of certain lands between and among federal and District authorities, but all such laws shall remain in full force and effect. (May 20, 1932, 47 Stat. 162, ch. 197, § 2.)

TRANSFER OF FUNCTIONS

Reorganization Order No. 18 issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952, created within the Department of General Administration an Administrative Services Office and established therein responsibility for the administration of real property owned or utilized by the Government of the District of Columbia.

§ 8-117. Whitehaven Parkway—Boundaries of at Huidekoper Place to be adjusted.

In order to readjust the boundaries of Whitehaven Parkway at Huidekoper Place and preserve the trees and other natural park values, the commissioners of the District of Columbia are authorized to close, vacate, and abandon for highway and alley purposes the area contained in parcel designated "A," as shown on map filed in the office of the surveyor of the District of Columbia and numbered as map 1817, and to transfer said area so closed, vacated, and abandoned to the United States to be under the jurisdiction of the Director of the National Park Service for park purposes. (Apr. 13, 1934, 48 Stat. 575, ch. 114, § 1.)

TRANSFER OF FUNCTIONS

Transfer of functions to Director of National Park Service, see notes under section 8–108.

§ 8–118. Whitehaven Parkway—Federal property in exchange.

The commissioners of the District of Columbia are authorized to use for street and alley purposes the area comprised within the parcels designated "B," as shown on map filed in the office of the surveyor of the District of Columbia and numbered as map 1817; and the Director of the National Park Service is authorized to make the necessary transfer of said land to the District of Columbia, same to be under the jurisdiction of the said commissioners for street and alley purposes. (Apr. 13, 1934, 48 Stat. 575, ch. 114, § 2.)

TRANSFER OF FUNCTIONS

Transfer of functions to Director of National Park Service, see notes under section 8–108.

§ 8–119. Whitehaven Parkway—Exchange authorized with property owners.

Upon the dedication by the lawful owner or owners of the land contained in the parcel designated "C" and the transfer by plat as provided herein and/or the conveyance by deed of the land contained in the parcel designated "D," in accordance with map showing said parcels filed in the office of the surveyor of the District of Columbia, numbered as map 1817, the said parcel "C" to be dedicated to the District of Columbia for street purposes and the said parcel "D" transferred by plat and/or conveyed by deed to the United States, to be under the jurisdiction of the Director of the National Park Service, then the said director, with the approval of the Secretary of the Interior, acting for and in behalf of the United States of America, is authorized and directed to transfer by plat as provided herein and/or convey by deed all the land comprised in the parcel designated "E" as shown on said map filed in the office of the surveyor of the District of Columbia and numbered as map 1817, said transfer and/or conveyance to be made to the owner or owners making the transfer and/or conveyance of said parcel designated "D" to the United States, such transfers and/or deeds of conveyance to pass title in fee simple to the said land, and any and all of such transfers when duly executed and consummated shall constitute legal conveyances of the parcels herein described to the parties in interest: *Provided, however,* That good and sufficient title, satisfactory to the Commissioners of the District of Columbia and the Director of the National Park Service, shall be given with respect to the land contained in said parcels "C" and "D," respectively: *And provided further,* That upon the transfer by plat and/or the conveyance by deed of the said parcel designated "E," as provided herein, the land contained in said parcel shall be subject to assessment and taxation the same in all respects as other private property in the District of Columbia. (Apr. 13, 1934, 48 Stat. 575, ch. 114, § 3.)

TRANSFER OF FUNCTIONS

Transfer of functions to Director of National Park Service, see notes under section 8–108.

§ 8–120. Whitehaven Parkway—Plats to be prepared.

The surveyor of the District of Columbia is hereby authorized to prepare the necessary plat or plats showing the parcels of land to be transferred and dedicated in accordance with the provisions of sections 8–117 to 8–120, with certificates affixed thereon to be signed by the parties in interest making the necessary transfers and dedication, which plat or plats, after being signed by the various interested parties and officials, and approved by the commissioners of the District of Columbia, upon recommendation of the National Capital Planning Commission, shall be recorded upon order of said commissioners in the office of the surveyor of the District of Columbia, and said plat or plats and certificates when so recorded shall constitute a legal dedication and legal transfers of the property described for the purposes designated according to the provisions of sections 8–117 to 8–120. (Apr. 13, 1934. 48 Stat. 575, ch. 114, § 4.)

TRANSFER OF FUNCTIONS

The functions, powers and duties of the National Capital Park and Planning Commission were transferred to the National Capital Planning Commission by act June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1, which is classified to section 1–1009.

§ 8–121. Beach Parkway—Exchange of property to extend.

In order to extend Beach Parkway northward to Western Avenue as provided for by the plans of the National Capital Planning Commission for the park system of the District of Columbia and to preserve the flow of water in Rock Creek Park and to extend West Beach Drive to connect Beach Drive and Rock Creek Park with Western Avenue, the Secretary of the Interior is authorized to convey by and on behalf of the United States of America to the owners of parcel 78/5, or to such party or parties as said owner or owners shall designate, the title of the United States in and to a piece of land containing approximately fifty-five thousand square feet at and near the intersection of Western Avenue and West Beach Drive as proposed in accordance with the plan of the permanent system of highways of the District of Columbia, being a part of reservation 339: *Provided,* That the owners of said parcel 78/5 shall furnish the United States of America with a good and sufficient title in fee simple, free of all encumbrances, to that piece of land lying along and east of the center line of West Beach Drive as proposed in accordance with the plan of the permanent system of highways of the District of Columbia, and extending east to the creek immediately north of the present north line of United States reservation 432 and extending north to United States reservation 339 and containing approximately fifty-eight thousand five hundred square feet: *Provided further,* That the owners of parcel 78/5 dedicate to the District of Columbia for street purposes the west half, forty-five feet in width, of West Beach Drive as proposed in accordance with the plan of the permanent system of highways of the District of Columbia, along their property immediately north of the north line of reservation four hundred and thirty-two (432). (Aug. 27, 1935, 49 Stat. 881, ch. 741, § 1.)

TRANSFER OF FUNCTIONS

The functions, powers and duties of the National Capital Park and Planning Commission were transferred to the National Capital Planning Commission by act June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1, which is classified to section 1–1009.

§ 8–122. Beach Parkway—Dedication and conveyances of exchanged land.

The dedication and transfers provided for in section 8–121 hereof are designated approximately upon plat file numbered 3.9–97 in the files of the National Capital Planning Commission. The dedication and conveyances shall be by proper deed and other instruments containing full legal description by exact survey of the land exchanged and dedicated as provided for by law. (Aug. 27, 1935, 49 Stat. 881, ch. 741, § 2.)

TRANSFER OF FUNCTIONS

The functions, powers and duties of the National Capital Park and Planning Commission were transferred to the National Capital Planning Commission by act June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1, which is classified to section 1–1009.

§ 8–123. Beach Parkway—Power of Secretary of Interior to sell not curtailed.

Nothing in sections 8–121 to 8–123 shall be construed as curtailing the power of the Secretary of the Interior to sell the remainder of parcel 4 as provided for in Public Law Numbered 299, Seventy-second Congress, and should the exchange and dedication as provided for in section 8–121 fail to become effective the Secretary of the Interior is still authorized to sell the entire area of parcel 4 as provided for in that act. (Aug. 27, 1935, 49 Stat. 882, ch. 741, § 3.)

CROSS REFERENCE

Sale of public property, see § 9–301 et seq.

§ 8–124. Squares 612 and 613 made part of park system.

Squares 612 and 613, so called, shall become a part of the park system of the District of Columbia and be under the control of the Director of the National Park Service. (Apr. 17, 1917, 40 Stat. 10, ch. 3.)

TRANSFER OF FUNCTIONS

Transfer of functions to Director of National Park Service, see notes under section 8–108.

§ 8–125. Fort Davis and Fort Dupont Parks part of park system.

The public parks on the sites of Fort Davis and Fort Dupont shall become a part of the park system of the District of Columbia and be under the control of the Director of the National Park Service. (June 26, 1912, 37 Stat. 179, ch. 182; Feb. 26, 1925, 43 Stat. 983, ch. 339, § 3.)

TRANSFER OF FUNCTIONS

Transfer of functions to Director of National Park Service, see notes under section 8–108.

§ 8–126. Jurisdiction over reservation No. 185.

Control and jurisdiction over reservation one hundred and eighty-five is vested in the commissioners of the District of Columbia, said reservation to be used by said District as a property yard: *Provided,* That when in the judgment of the Director of the National Park Service the use of said reservation for park purposes is desirable, the commissioners of the District of Columbia, upon his request, are author-

ized and directed to retransfer said reservation to his jurisdiction. (May 18, 1910, 36 Stat. 383, ch. 248.)

TRANSFER OF FUNCTIONS

Transfer of functions to Director of National Park Service, see notes under section 8–108.

§ 8–127. Use of spaces or reservations for widening roadways.

When, in the judgment of the commissioners of the District of Columbia, the public necessity or convenience requires them to enter upon any of the spaces or reservations under the jurisdiction of the Director of the National Park Service for the purpose of widening the roadway of any street or avenue adjacent thereto or to establish sidewalks along the same, the Director of the National Park Service is authorized to grant the necessary permission upon the application of the commissioners. (July 1, 1898, 30 Stat. 570, ch. 543, § 4.)

TRANSFER OF FUNCTIONS

Transfer of functions to Director of National Park Service, see notes under section 8–108.

CROSS REFERENCE

Jurisdiction and control of streets, see § 7–102 and notes.

§ 8–128. Use of public grounds for playgrounds.

The Director of the National Park Service may authorize the temporary use of the Monument Grounds or ground south of the Executive Mansion or other reservations in the District of Columbia for playgrounds for children and adults, under regulations to be prescribed by him. (Mar. 3, 1903, 32 Stat. 1122, ch. 1007.)

TRANSFER OF FUNCTIONS

Transfer of functions to Director of National Park Service, see notes under section 8–108.

CROSS REFERENCE

Maintenance and improvement of playgrounds, see § 8–217.

§ 8–129. Licenses for temporary structures on reservations used as playgrounds.

The Director of the National Park Service is authorized to grant licenses, revocable by him, without compensation, to erect temporary structures upon reservations used as children's playgrounds, under such regulations as he may impose. (May 27, 1908, 35 Stat. 355, ch. 200, § 1.)

TRANSFER OF FUNCTIONS

Transfer of functions to Director of National Park Service, see notes under section 8–108.

§ 8–130. Part of Washington Aqueduct for playground purposes.

The Chief of Engineers is authorized to transfer for playground purposes the possession, use, and control of all that portion of the land of the Washington Aqueduct adjacent to the Champlain Avenue pumping station and lying outside of the fence around said pumping station existing on August 31, 1918, to the control and jurisdiction of the Commissioners of the District of Columbia. Nothing herein shall be construed as affecting the superintendence and control of the Secretary of the Army over the Washington Aqueduct, its rights, appurtenances, and fixtures connected with the same and over appropriations and expenditures therefor as now provided by law. (Aug. 31, 1918, 40 Stat. 951, ch. 164, § 1.)

CODIFICATION

Section is also classified to 40 U.S.C. § 100.

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343, title II. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of act Aug. 10, 1956, enacted Title 10 of the U.S. Code which continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

§ 8–131. Authority to make rules and regulations for playgrounds and recreation centers.

Authority is granted the commissioners to make rules and regulations governing the conduct of the municipal playgrounds and recreation centers coming under their control. (Mar. 3, 1915, 38 Stat. 905, ch. 80.)

TRANSFER OF FUNCTIONS

Community center and playgrounds department transferred to Recreation Board, see § 8–214.

CROSS REFERENCE

Rules and regulations generally, see § 1–226 and notes.

§ 8–132. Volunteer aid for playgrounds.

The supervisor of playgrounds of the District of Columbia may, in his discretion and with the consent and approval of the commissioners, accept the services of such persons as may volunteer to aid in the conduct, management, and upkeep of the said playgrounds: *Provided,* That this shall not be construed to authorize the expenditure or the payment of any money on account of any such volunteer service. (Mar. 3, 1917, 39 Stat. 1019, ch. 160.)

CROSS REFERENCES

Acceptance of volunteer services, see § 8–209.

Power of Commissioners to accept volunteer services see § 1–215.

§ 8–133. Buildings on reservations, parks, or public grounds—Authority of Congress.

There shall not be erected on any reservation, park, or public grounds, of the United States within the District of Columbia, any building or structure without express authority of Congress. (Aug. 24, 1912, 37 Stat. 444, ch. 355, § 1.)

CODIFICATION

Section is also classified to 40 U.S.C. § 68.

NOTES TO DECISIONS

Enjoining use of land

Authority having been given the Commissioners by this act to erect an engine house in a park, there is no right in an adjoining property-owner to enjoin such erection to divert the land from park purposes. *Reichelderfer* v. *Quinn* (1932, 53 S. Ct. 177, 287 U. S. 315, 77 L. Ed. 331, 83 A. L. R. 1429).

Property owners may restrain improper use of land acquired by condemnation for public grounds. *Quinn* v. *Dougherty* (1929, 30 F. 2d 749, 58 App. D. C. 339).

§ 8–134. Omitted.

CODIFICATION

Section, act Aug. 24, 1912, 37 Stat. 437, ch. 355, § 1, which provided that all plans and specifications for the construction of buildings in the National Zoological Park should be prepared under supervision of the municipal architect of the District of Columbia, and that all plans and specifications for bridges in such park should be

prepared under supervision of the engineer of bridges of the District of Columbia, has been omitted from this Code as no longer having relevancy to matters relating to the administration of the District of Columbia. Presidential Reorg. Plan No. 5 of 1952, set out in the appendix to title 1 of this Code, transferred these functions to the Board of Commissioners of the District of Columbia, and that Board, by general-redelegation Reorg. Order No. 1, July 1, 1952, set out in the appendix to title 1, redelegated them back to the officials mentioned (see, also, Reorg. Order No. 42, June 23, 1953, as amended, of the Board of the Commissioners, also set out in the appendix to title 1), but the said functions were transferred from the said Board of Commissioners to the Smithsonian Institution by Presidential Reorg. Plan No. 4, eff. Aug. 23, 1966, 31 F.R. 11137, set out in the appendix to title 1.

§ 8–135. Transfers of jurisdiction between Director and Commissioners of District—Change of official maps.

When in accordance with law or mutual legal agreement, spaces or portions of public land are transferred from the jurisdiction of the Director of the National Park Service as established by sections 5–204, 8–108, 8–110, 8–127, 8–135 and 8–143 to that of the commissioners of the District of Columbia, or vice versa, the letters exchanged between them of transfer and acceptance shall be sufficient authority for the necessary change in the official maps and for record when necessary. (July 1, 1898, 30 Stat. 570, ch. 543, § 5.)

CODIFICATION

Section is also classified to 40 U.S.C. § 79.

§ 8–136. Jurisdiction of reservation No. 32 transferred to Commissioners.

The jurisdiction and control of public reservation numbered thirty-two, bounded by Pennsylvania Avenue, Fourteenth Street, E Street, and Thirteen-and-a-half Street northwest, in the city of Washington, District of Columbia, is hereby transferred from the Chief of Engineers of the United States Army to the Commissioners of the District of Columbia, in order to provide a suitable approach to the new District building to be located fronting said reservation. (Feb. 10, 1904, 33 Stat. 12, ch. 155.)

§ 8–137. Jurisdiction of reservation No. 290 transferred to Commissioners.

The action of the commissioners in locating a pound and stable for the health department on reservation numbered two hundred and ninety, located along James Creek Canal at the intersection of South Capitol and I Streets southeast, under the authorization contained in the District Appropriation Act approved March 2, 1911, is ratified and confirmed, and the jurisdiction and control over said reservation is transferred to the commissioners of the District of Columbia; and the title to said reservation shall be in the name of the District of Columbia. (Mar. 4, 1913, 37 Stat. 962, ch. 150.)

§ 8–138. Jurisdiction of reservation No. 8 transferred to Commissioners.

The jurisdiction and control of such portion of public reservation numbered eight as may be required for the location and operation of a public convenience station and approaches thereto is hereby transferred from the Chief of Engineers of the United States Army to the commissioners of the District of Columbia, such transfer to take effect from the date of notice by said commissioners to the Chief of Engineers of the United States Army of the portion of said reservation selected, and said commissioners are further authorized to make all necessary rules and regulations for the management of said station and fix the charges to be made for the use thereof. (May 26, 1908, 35 Stat. 286, ch. 198.)

CROSS REFERENCE

Rules and regulations generally, see § 1–226 and notes.

§ 8–139. Public convenience stations—Establishment—Location—Control transferred to Commissioners.

The Commissioners of the District of Columbia are authorized and empowered to construct and establish, in the city of Washington, District of Columbia, two public convenience stations, each of the same to afford accommodations for twenty males and ten females.

The said public convenience stations shall be located on public space to be selected by the said commissioners of the District of Columbia. And the jurisdiction and control of such portion of any public reservation so selected as shall be required for the location of such stations and their approaches is hereby transferred from the Chief of Engineers of the United States Army to the commissioners of the District of Columbia, such transfer to take effect from the date of notice by the said commissioners to the Chief of Engineers of the United States Army of the location of sites of such stations. (Mar. 3, 1905, 33 Stat. 984, ch. 1414, §§ 1, 2.)

§ 8–140. Public convenience stations—Authority to make rules, regulations, and charges.

Upon the construction and establishment of the public convenience stations referred to in section 8–139 the said commissioners are further authorized and empowered to make all necessary rules and regulations for the management of the same, as well as to fix the charge, if any, to be made for the use of these conveniences. (Mar. 3, 1905, 33 Stat. 984, ch. 1414, § 3.)

APPROPRIATIONS

Section 4 of act Mar. 3, 1905, made an appropriation for the construction, establishment, and maintenance of said comfort stations.

§ 8–141. Part of reservation 13 transferred to Commissioners for use as burial ground.

All of that portion of reservation thirteen lying 600 feet east of the east curb line of Nineteenth Street east and south of the south line of B Street south is transferred to the control of the commissioners of the District of Columbia for the purpose of the burial of the indigent dead of the District, to be an addition to the burial grounds of the Washington Asylum. (Aug. 6, 1890, 26 Stat. 306, ch. 724.)

§ 8–142. Site of former Georgetown Reservoir transferred to jurisdiction of Commissioners.

The site of the former Georgetown Reservoir (Wisconsin Avenue, between R Street and Brown Place, northwest) is transferred to the jurisdiction and control of the Commissioners of the District of Columbia. (Feb. 23, 1931, 46 Stat. 1381, ch. 282.)

CROSS REFERENCE

Rules and regulations generally, see § 1–226 and notes.

§ 8–143. Authority to make regulations for care of public grounds.

The Director of the National Park Service and the said commissioners are authorized to make all needful rules and regulations for the Government and proper care of all the public grounds placed by sections 5–204, 8–108, 8–110, 8–127, 8–135 and 8–143, under their respective charge and control; and to annex to such rules and regulations such reasonable penalties as will secure their enforcement. (July 1, 1898, 30 Stat. 571, ch. 543, § 6.)

TRANSFER OF FUNCTIONS

Transfer of functions to Director of National Park Service, see notes under section 8–108.

CROSS REFERENCE

Control of land, buildings, and facilities of Recreation Board, see §§ 8–215 to 8–217.

NOTES TO DECISIONS

Approval of regulations

National Capital Park Regulations, promulgated by the Department of the Interior, are not required to be approved by the President. 1945 (40 Op. Atty. Gen. 418).

Evidence

Defendant's own testimony that his alleged indecent exposure in public park was purely accidental because he was urinating and did not know that anyone was observing him justified his conviction, where he knowingly exposed his person within a short distance and in full unobstructed view of a women's dormitory. *Davenport* v. *United States* (D. C. Mun. App. 1948, 56 A. 2d 851).

Indecent exposure

Though an alleged indecent exposure must be intentional in sense that criminal intent is essential element of any crime charged, the intent required is general and not specific, and an indecent exposure in a public place likely to be observed by others is a criminal offense regardless of purpose with which it is made; the only thing required being that defendant be aware of existence of facts making his conduct criminal. *Davenport* v. *United States* (D. C. Mun. App. 1948, 56 A. 2d 851).

Instructions

In prosecution for making an obscene and indecent exposure in a public park, refusal to charge that to find defendant guilty it was necessary to find that the exposure was "willful" and "deliberate" was not error, since "willful" and "deliberate" have varied meanings and without some qualifying explanation requested charge would have been misleading. *Davenport* v. *United States* (D. C. Mun. App. 1948, 56 A. 2d 851).

In view of defendant's failure to assign error regarding general charge, appellate court was required to assume that, in prosecution for obscene and indecent exposure in a public park, an instruction was given that the exposure was required to be intentional, in view of fact that record, though not setting forth charge in full, stated that court charged fully on all other issues. *Id.*

§ 8–144. Authority to make regulations—Extended to sidewalks.

The application of the rules and regulations prescribed prior to March 4, 1909, or that may be thereafter prescribed by the Director of the National Park Service, under the authority granted by sections 5–204, 8–108, 8–110, 8–127, 8–135 and 8–143, for the Government and proper care of all public grounds placed by that act under the charge and control of the said Director of the National Park Service, is hereby extended to cover the sidewalks around the public grounds and the carriageways of such streets as lie between and separate the said public grounds. (Mar. 4, 1909, 35 Stat. 994, ch. 299, § 1.)

TRANSFER OF FUNCTIONS

Transfer of functions to Director of National Park Service, see notes under section 8–108.

NOTES TO DECISIONS

Finality

The decision of the Commissioners of District in regulating use of driveways across sidewalk will not be disturbed, if it has any reasonable basis in the facts. *Brownlow* v. *O'Donoghue Bros.* (1921, 276 F. 636, 51 App. D.C. 114).

Reasonableness

The Commissioners of the District can make reasonable regulations for the use of driveways across sidewalks, but the right to regulate does not include the right to prohibit. *Brownlow* v. *O'Donoghue Bros.* (1921, 276 F. 636, 51 App. D.C. 114).

§ 8–145. Public spaces resulting from filling of canals under jurisdiction of director.

All public spaces resulting from the filling of canals in the original City of Washington, except such portions as are included in the navy yard or in actual use as roadways and sidewalks, and except the portions assigned by law to the District of Columbia for use as a property yard and the location of a sewerage pumping station, respectively, are placed under the jurisdiction of the Director of the National Park Service and shall be laid out as reservations as a part of the park system of the District of Columbia. (Aug. 1, 1914, 38 Stat. 633, ch. 223, § 1.)

CODIFICATION

Section is also classified to 40 U.S.C. § 82.

TRANSFER OF FUNCTIONS

Transfer of functions to Director of National Park Service, see notes under section 8–108.

§ 8–146. Rock Creek Park—Establishment.

The tract of land lying on both sides of Rock Creek, beginning at Klingle Ford Bridge, and running northwardly, following the course of said creek, acquired under the Act of September 27, 1890, chapter 1001, shall be perpetually dedicated and set apart as a public park or pleasure ground for the benefit and enjoyment of the people of the United States, to be known by the name of Rock Creek Park. (Sept. 27, 1890, 26 Stat. 492, ch. 1001, § 1.)

CODIFICATION

As enacted this section following the words "the course of said creek," contained the following language: "of a width of not less at any point than six hundred feet, nor more than twelve hundred feet, including the bed of the creek, of which not less than two hundred feet shall be on either side of said creek, south of Broad Branch road and Blagden Mill road and of such greater width north of said roads as the commissioners designated in this act may select, shall be secured, as hereinafter set out and be perpetually dedicated * * *," and at the end thereof following the words Rock Creek Park was a proviso clause reading: "The whole tract so to be selected and condemned under the provisions of this act shall not exceed two thousand acres nor the total cost thereof exceed the amount of money herein appropriated."

Sections 2–6 of act Sept. 27, 1890, which created a commission to select the land for a park and provided for the survey and acquisition thereof by purchase or condemnation, the assessment of the cost and expenses on the lands benefited, the collection of the assessments and the disposition of the proceeds thereof, and made an appropriation for the expenses, are omitted as executed.

CROSS REFERENCE

Building regulations for buildings abutting or adjoining Rock Creek Park, see § 5–410.

NOTES TO DECISIONS

Appraisal

The Rock Creek Park Commission, limited by the act creating it to the expenditure of a certain sum of money, and having appraised the land proposed to be taken at less than that amount, but fearing that many of the owners would not accept the amounts awarded, and that the appraisement by judicial proceeding would cause entire cost to exceed amount appropriated, should nevertheless proceed with its work, and if necessary make selection and acquire such of the lands selected most to be desired as would come within the appropriation. 1891 (20 Op. Atty. Gen. 67).

The President was authorized to determine, parcel by parcel, whether the valuation of the lands embraced within the reduced area of the contemplated Rock Creek Park, as recommended by the Rock Creek Park Commission, bringing the total cost within the amount appropriated by the act on which this section is based is reasonable or unreasonable. 1892 (20 Op. Atty. Gen. 377).

Where an appropriation for acquiring title to land for a public park is limited to $1,200,000, and the law required the President to decide that the prices to be paid for various parcels of land are reasonable, and the commission appointed by the act on which this section is based had presented for his decision a report of appraisers in condemnation that would make the cost of the park considerably exceed that amount, it would not be lawful for the President to decide that the prices as submitted are reasonable. 1892 (20 Op. Atty. Gen. 326).

Appraisers in proceedings to condemn land under act on which this section is based could rely not only upon evidence brought before them, but on their own judgment and observation, and could fix the value of the land at its market price for residence or other purposes, excluding speculative values. *Shoemaker* v. *United States* (1893, 13 S. Ct. 361, 147 U. S. 282, 37 L. Ed. 170).

The court refused to administer to the appraisers appointed under the act on which this section is based, an oath to fix the value of the lands to be taken upon the whole evidence, guided by the rules of law furnished by the court, but instead administered an oath to faithfully and impartially appraise the value to the best of their skill and judgment. Said act did not prescribe any form for the oath. This was a rightful exercise of the court's discretion, and the oath actually administered did not leave the appraisers at liberty to make their appraisement at their discretion without regard to the evidence. *Id.*

Assessments

The fact that a public park in the District of Columbia is dedicated by Congress to the use and enjoyment of the people of the United States as done by this section does not render inapplicable the rule as to assessments of benefits. *Craighill* v. *Lambert* (1898, 18 S. Ct. 217, 168 U. S. 611, 42 L. Ed. 599).

Commission, acquisition of land

The mere fact that the law on which this section is based required the commission, if unable to agree with the owner of the land selected within 30 days' time, to apply for an assessment of the value of such land as it had been unable to purchase at its appraised price, did not preclude the commission from later purchasing by agreement the land of certain property owners, although judicial proceedings had been commenced for the assessment of the value of the land. 1891 (20 Op. Atty. Gen. 129).

Constitutionality

The appropriation of a fixed sum to pay all expenses of the Park Commission, including the cost of lands taken, was merely a limitation of the amount to be expended by the Government, and was not a direction to the appraisers to keep within any given limit in valuing any particular piece of property, and hence section did not arbitrarily fix value of property taken, and was constitutional. *Shoemaker* v. *United States* (1893, 13 S. Ct. 361, 147 U. S. 282, 37 L. Ed. 170).

Section was constitutional, and did not impose a judicial function upon the President, whose duty was merely to decide whether the United States would take the land at the appraised value, and not to decide whether such value was reasonable. *Id.*

Section was not an attempt by Congress to exercise the appointing power, since its effect was merely to lay upon the two engineers, being officers already appointed, new duties germane to their offices. *Id.*

Act on which section is based provided for the assessment of a proportional part of the cost upon property specially benefited by the improvement, but in the condemnation proceedings held thereunder no special request as to the legal effect of this provision was made to the trial court, and there was no specific assignment of error as to it, nor was any person actually assessed for special benefits a party to the writ of error. Therefore the court was not called upon to consider the constitutionality of such provision. *Id.*

Proceedings of Commission, validity of

The validity and regularity of the proceedings culminating in recommendation of reduced area of contemplated park by Rock Creek Park Commission were judicial questions for the determination of the court and not for the Executive. 1892 (20 Op. Atty. Gen. 377).

§ 8–147. Rock Creek Parkway—Area.

The total area of lands finally to be acquired for said parkway shall not exceed the area and parcels described and delineated on map numbered 2, contained in House Document Numbered 1114 of the Sixty-fourth Congress, first session. (July 1, 1916, 39 Stat. 282, ch. 209, § 1; Mar. 4, 1921, 41 Stat. 1382, ch. 161, § 1.)

CODIFICATION

Section consolidates acts July 1, 1916, and Mar. 4, 1921.

CROSS REFERENCE

Area of park, see §§ 8–158, 8–159, and 8–160 note.

§ 8–148. Rock Creek Park—Control and regulations.

The public park authorized and established by section 8–146 shall be a part of the park system of the District of Columbia, defined by section 8–108 and shall be under the control of the Director of the National Park Service, whose duty it shall be, as soon as practicable, to lay out and prepare roadways and bridle paths, to be used for driving and for horseback riding, respectively, and footways for pedestrians; and whose duty it shall also be to make and publish such regulations as he deems necessary and proper for the care and management of the same. Such regulations shall provide for the preservation from injury or spoliation of all timber, animals, or curiosities within said park, and their retention in their natural condition, as nearly as possible. (Sept. 27, 1890, 26 Stat. 495, ch. 1001, § 7; July 1, 1918, 40 Stat. 650, ch. 113, § 1.)

AMENDMENT

1918—Act July 1, 1918, eliminated provisions which required park to be under the joint control of the Commissioners of the District of Columbia and the Chief of Engineers of the United States Army.

TRANSFER OF FUNCTIONS

Transfer of functions to Director of National Park Service, see notes under section 8–108.

NOTES TO DECISIONS

Prior Board

The board of control under this section, as originally enacted, had no power to authorize the water department of the District of Columbia to construct a reservoir for the use of the District within the limits of Rock Creek Park. 1897 (21 Op. Atty. Gen. 566).

§ 8–149. Rock Creek Park—Lease of buildings and grounds authorized.

The Director of the National Park Service is authorized to rent or lease, for periods not exceeding

one year at any one time, the buildings and arable ground in Rock Creek Park, for such rental as shall seem proper to the director, and deposit the proceeds of such rents or leases with the collector of taxes to the credit of the United States and said District in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the Treasury of the United States and the revenues of the District of Columbia. (Aug. 7, 1894, 28 Stat. 252, ch. 232; July 1, 1918, 40 Stat. 650, ch. 113, § 1; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

AMENDMENTS

1921—Act Feb. 21, 1921, changed the proportions from equal parts to those fixed by appropriations for the particular fiscal year.

1918—Act July 1, 1918, made Rock Creek Park a part of the park system.

TRANSFER OF FUNCTIONS

Transfer of functions to Director of National Park Service, see notes under section 8–108.

CROSS REFERENCE

Lump-sum appropriation for the District, see § 47–134.

§ 8–150. Rock Creek Park—Acceptance of dedicated property authorized.

The Director of the National Park Service is authorized to accept dedications of land for the purpose of adding to Rock Creek Park, without expense to the United States or the District of Columbia, and such land, when accepted, shall become a part of said park and be under the jurisdiction of the said director. (Apr. 27, 1904, 33 Stat. 376, ch. 1628.)

TRANSFER OF FUNCTIONS

Transfer of functions to Director of National Park Service, see notes under section 8–108.

§ 8–151. Rock Creek Park—Injury or diminution of the flow of water in Rock Creek.

In order to protect Rock Creek and its tributaries, none of the moneys appropriated on or before June 7, 1924, for the opening, widening, or extending of any street, avenue, or highway in the District of Columbia shall be expended for the opening, widening, or extension of any street, avenue, or highway which shall or may in the judgment of the District Commissioners permanently injure or diminish the existing flow of Rock Creek or any of its tributaries, nor shall permission so to do at private expense be granted to any private person or corporation except by the joint consent and approval of the Commissioners of the District of Columbia and the Director of the National Park Service. (June 7, 1924, 43 Stat. 574, ch. 302.)

TRANSFER OF FUNCTIONS

Transfer of functions to Director of National Park Service, see notes under section 8–108.

CROSS REFERENCE

Jurisdiction and control of streets, see § 7–102.

§ 8–152. Piney Branch Parkway part of park system.

The Piney Branch Parkway is made a part of the park system of the District of Columbia defined by section 8–108. (July 1, 1918, 40 Stat. 650, ch. 113, § 1.)

EXCHANGE OF LANDS AUTHORIZED

Act Aug. 3, 1939, 53 Stat. 1177, ch. 412, provided that "In order to better adjust the boundaries of Piney Branch Parkway and to make said parkway more usable and more readily developed, the Secretary of the Interior is authorized to convey, by and on behalf of the United States of America, to the owners of parcel 69/47, or to such party or parties as said owners shall designate, the title of the United States in and to a triangular piece of land containing approximately twenty-two thousand square feet at the northern boundary of Piney Branch Parkway near Argyle Terrace and abutting parcel 69/47: *Provided,* That the owners of said parcel 69/47 shall furnish the United States of America with a good and sufficient title in fee simple, free of all encumbrances, to a triangular piece of land containing approximately twenty-six thousand square feet, abutting the northern boundary of Piney Branch Parkway at its intersection with the eastern boundary of Rock Creek Park. The transfers provided for herein are designated approximately upon plat file numbered 3.6–114 in the files of the National Capital Park and Planning Commission. The conveyances shall be by proper deed and other instruments containing full legal description by exact survey of the land exchanged, as provided by law."

§ 8–153. Potomac Park—Establishment.

The entire reclaimed area formerly known as the Potomac Flats, together with the tidal reservoirs, are made and declared a public park, under the name of the Potomac Park, and to be forever held and used as a park for the recreation and pleasure of the people. (Mar. 3, 1897, 29 Stat. 624, ch. 375.)

CROSS REFERENCE

Building regulations for building abutting or adjoining Potomac Park and Parkway, see § 5–410.

§ 8–154. Potomac Park—Control.

The Potomac Park is made a part of the park system of the District of Columbia under the exclusive charge and control of the Director of the National Park Service and subject to the provisions of section 8–143. (Aug. 1, 1914, 38 Stat. 634, ch. 223, § 1.)

TRANSFER OF FUNCTIONS

Transfer of functions to Director of National Park Service, see notes under section 8–108.

§ 8–155. Potomac Park—Restriction on construction of lagoon or speedway.

No part of any money appropriated in any Act shall be expended for or toward the construction of any lagoon, or other artificial body of water, or speedway, on any portion of said park unless specifically authorized by Congress. (Aug. 1, 1914, 38 Stat. 634, ch. 223, § 1.)

§ 8–156. Potomac Park—Temporary occupancy by Department of Agriculture.

The Director of the National Park Service is authorized to grant permission to the Department of Agriculture for the temporary occupation of such area or areas of Potomac Park, not exceeding a total of seventy-five acres in extent, as may not be needed in any one season for the reclamation or park improvement, the said areas to be used by the Department of Agriculture as testing grounds: *Provided,* That nothing herein contained shall be construed to change the essential character of the lands so used, which lands shall continue to be a public park, as provided in section 8–153: *And provided further,* That said area or areas shall be vacated by the Department of Agriculture at the close of any season upon the request of the said director: *And provided further,* That the entire park shall remain under the charge of the said director. (Mar. 3, 1899, 30 Stat. 1378, ch. 458, § 2.)

CODIFICATION

Section is also classified to 40 U.S.C. § 89.

TRANSFER OF FUNCTIONS

Transfer of functions to Director of National Park Service, see notes under section 8–108.

§ 8–157. Potomac Park—Licenses for boathouses on banks of tidal reservoir.

Licenses may be granted for the erection of boathouses along the banks of the tidal reservoir on the Potomac River fronting Potomac Park, under regulations to be prescribed by the Director of the National Park Service, and all such licenses granted under this authority shall be revocable, without compensation, by the Secretary of the Army. (May 27, 1908, 35 Stat. 355, ch. 200, § 1.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343, title II. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of act Aug. 10, 1956, enacted Title 10 of the U.S. Code which continued the military department of the Army under the administrative supervision of a Secretary of the Army.

TRANSFER OF FUNCTIONS

Transfer of functions to Director of National Park Service, see notes under section 8–108.

§ 8–158. Parkway connecting Potomac Park with Zoological and Rock Creek Parks—Reimbursement of part of cost to United States.

For the purpose of preventing the pollution and obstruction of Rock Creek and of connecting Potomac Park with the Zoological Park and Rock Creek Park, a commission, to be composed of the Secretary of the Treasury, the Secretary of War, and the Secretary of Agriculture, is authorized and directed to acquire, by purchase, condemnation or otherwise, such land and premises as were not, on March 4, 1913, the property of the United States in the District of Columbia shown on the map on file in the office of the Engineer Commissioner of the District of Columbia, dated May 17, 1911, and lying on both sides of Rock Creek, including such portion of the creek bed as may be in private ownership, between the Zoological Park and Potomac Park; and the sum of $1,300,000 is hereby authorized to be expended toward the acquirement of such lands. All lands belonging, on March 4, 1913, to the United States or to the District of Columbia lying within the exterior boundaries of the land to be acquired by this section as shown and designated on said map are appropriated to and made a part of the parkway herein authorized to be acquired. One-half of the cost of the said lands shall be reimbursed to the Treasury of the United States out of the revenues of the District of Columbia in eight equal annual installments, with interest at the rate of 3 per centum per annum, upon the deferred payments. (Mar. 4, 1913, 37 Stat. 885, ch. 147, § 22.)

LANDS WITHIN PARKWAY

Act Sept. 1, 1916, ch. 433, 39 Stat. 689, provided certain described lands were reincluded as a part of the connecting parkway between Potomac Park, the Zoological Park, and Rock Creek Park.

Act July 1, 1916, ch. 209, § 1, 39 Stat. 282, directed that the lands when acquired for the parkway in question be part of the park system of the District of Columbia, subject to the provisions of § 8–108.

STREET ALTERATIONS

Acts June 29, 1922, ch. 249, § 1, 42 Stat. 708, and June 7, 1924, ch. 302, § 1, 43 Stat. 574, prohibited the granting of permission to open, widen, or extend, at private expense, any street, avenue, or highway in the District of Columbia which would or might in the judgment of the District Commissioners permanently injure or diminish the existing flow of Rock Creek or any of its tributaries. except by the joint consent and approval of the commissioners of the District of Columbia and the officer in charge of Public Buildings and Grounds (now the Director of the National Park Service).

ROCK CREEK AND POTOMAC PARKWAY COMMISSION

Act June 12, 1917, 40 Stat. 126, ch. 27, provided that: "To enable the commission created by section 22 of the Public Buildings Act approved March 4, 1913 (37 Stat. L. 885), to continue proceedings toward the acquisition of lands required for a connecting parkway between Potomac Park, the Zoological Park, and Rock Creek Park, $100,000, together with the unexpended balance of the appropriation for this purpose for the fiscal year 1917, to be available until expended and to be payable one-half out of the Treasury of the United States and one-half out of the revenues of the District of Columbia. The total area of lands finally to be acquired for said parkway shall not exceed the area and parcels described and delineated in the map numbered 2, contained in House Document Numbered 1114 of the Sixty-fourth Congress, first session."

CROSS REFERENCES

Building regulation for buildings abutting or adjoining certain parks and parkways, see § 5–410.

Transfer of National Zoological Park to control of regents of Smithsonian Institution, see 20 U.S.C. § 81.

NOTES TO DECISIONS

Lands outside boundaries

Described tract of land acquired by the United States for the Naval Observatory, was not within exterior boundaries of the parkway provided for in this section hence within jurisdiction of the Navy Department. 1924 (34 Op. Atty. Gen. 126).

§ 8–159. Boundaries of parkway authorized by section 8–158 changed.

The authority of the commission created by section 8–158 is extended to include the acquisition of such additional lands and premises lying adjacent to or in the immediate vicinity of the taking lines as shown on the map on file in the office of the executive and disbursing officer and known as the map of the Rock Creek and Potomac Parkway (in four sheets) dated May, 1923, as may in its discretion, subject to the approval of the Commission of Fine Arts, be necessary for the best development of the connecting parkway between Rock Creek Park, the Zoological Park, and Potomac Park: *Provided,* That the total sum expended for lands needed for this parkway shall not exceed that authorized by section 8–158, and amended by the Second Deficiency Act of May 5, 1926: *Provided further,* That the commission may exclude such lands and premises, not owned by the United States on March 2, 1929, but within the taking lines heretofore authorized for the said parkway, as may in its discretion, and upon the advice of the Commission of Fine Arts, be found not to be desirable or necessary for the connecting parkway. (Mar. 2, 1929, 45 Stat. 1523, ch. 542.)

§ 8–160. Connecting parkway to be part of park system.

When the lands authorized to be purchased pursuant to sections 8–147, 8–158, for a connecting park-

way between Potomac Park, the Zoological Park, and Rock Creek Park, shall have been acquired, said lands shall be a part of the park system of the District of Columbia subject to the provisions of section 8–108. (July 1, 1916, 39 Stat. 282, ch. 209.)

PARKS—ACQUISITION OF LAND AUTHORIZED

Act Feb. 28, 1923, 42 Stat. 1366, ch. 148, provided in part that: "To enable the commission created by section 22 of the Public Buildings Act approved March 4, 1913 (37 Stat. L. 885), to continue proceeding toward the acquisition of lands required for a connecting parkway between Potomac Park, the Zoological Park, and Rock Creek Park, $75,000: *Provided,* That the following areas and parcels described and delineated on map numbered 2, contained in House Document Numbered 1114, Sixty-fourth Congress, first session, as a part of total area to be acquired for said parkway shall be excluded from the total area finally to be acquired, to wit: Three hundred and fifteen square feet of lot 801 in square 2,541, three hundred and forty-nine square feet of lot 836, one thousand three hundred and three square feet of lot 74 in square 2,543, five hundred and forty-nine square feet of lot 58, two thousand one hundred and six square feet of lot 800 in square 1,262, three thousand six hundred square feet of lot 20 in square 23, one hundred and ninety-nine square feet of lot 80 in square 1,238, and fifty square feet of lot 3 in square numbered 1: *Provided further,* That the following-described lots and parcels that are without the taking line shall be included in the area finally to be acquired, namely, four thousand four hundred and eighty-three square feet of lot numbered 1, two thousand nine hundred and nineteen square feet of lot 2, three thousand two hundred and fifty-nine square feet of lot 3 in square 2,510, six thousand eight hundred and seventy-nine square feet of lot 1 in square 47, and about nine hundred and two square feet of lot 803 in square 2,543: *Provided further,* That in order to protect Rock Creek and its tributaries, none of the moneys herein or heretofore appropriated for the opening, widening, or extending of any street, avenue, or highway in the District of Columbia shall be expended for the opening, widening, or extension of any street, avenue, or highway which shall or may in the judgment of the District commissioners permanently injure or diminish the existing flow of Rock Creek or any of its tributaries, nor shall permission so to do at private expense be granted to any private person or corporation except by the joint consent and approval of the commissioners of the District of Columbia and the officer in charge of public buildings and grounds."

§ 8–161. Anacostia Park.

The entire area of the Anacostia River and Flats reclaimed and to be reclaimed from the mouth of the river to the District line is made and declared a part of the park system of the District of Columbia and designated Anacostia Park. (Aug. 31, 1918, 40 Stat. 950, 951, ch. 164, § 1.)

TREE NURSERY

Act May 7, 1926, 44 Stat. 405, ch. 251, transferred to the jurisdiction of the Commissioners of the District of Columbia a certain portion of the Anacostia Park for use as a tree nursery.

§ 8–162. Glover Parkway and Children's Playground.

The Commissioners of the District of Columbia are authorized and directed to accept the land lying along Foundry Branch between Massachusetts Avenue and Reservoir Street, dedicated by Charles C. Glover for park purposes, and containing approximately seventy-seven and one-half acres, as more accurately shown on map number 1003, filed in the office of the surveyor of the District of Columbia, which tract of land shall be known as "The Glover Parkway and Children's Playground"; and the said commissioners are further authorized to accept any dedications of additional land contiguous to this tract for park purposes. (June 6, 1924, 43 Stat. 464, ch. 271, § 1.)

§ 8–163. Glover Parkway and Children's Playground—Part of park system of District.

The Glover Parkway and Children's Playground and additions thereto, when acquired, shall become a part of the park system of the District of Columbia. (June 6, 1924, 43 Stat. 464, ch. 271, § 2.)

§ 8–164. Theodore Roosevelt Island—Acceptance authorized—Maintenance and development.

The Director of the National Park Service is authorized to accept and receive as a gift from the Theodore Roosevelt Association, for and in behalf of the United States, the island in the Potomac River heretofore variously known as Barbadoes, Analostan, and Masons Island, together with accretions thereto; and upon acceptance of this gift of land, the said island shall after May 21, 1932, be known as Theodore Roosevelt Island and shall be maintained and administered by the Director of the National Park Service as a natural park for the recreation and enjoyment of the public: *Provided,* That no general plan for the development of the island be adopted without the approval of the Theodore Roosevelt Association; and so long as this association remains in existence, no development, inconsistent with this plan, shall be executed without the association's consent. (May 21, 1932, 47 Stat. 163, ch. 200, § 1; Feb. 11, 1933, 47 Stat. 799, ch. 48, § 1; May 21, 1953, 67 Stat. 27, ch. 63, § 2.)

CHANGE OF NAME

Section 2 of act May 21, 1953, 67 Stat. 27, ch. 63, provided that any law enacted by the Congress prior to May 21, 1953, and now in effect which refers to the Roosevelt Memorial Association shall be deemed to refer to such Association by its new name, Theodore Roosevelt Association. Section 1 of act May 21, 1953, amended the act incorporating the Association so as to effect the change in name to "Theodore Roosevelt Association".

Act Feb. 11, 1933, changed the name of the island from "Roosevelt Island" to "Theodore Roosevelt Island."

TRANSFER OF FUNCTIONS

Transfer of functions to Director of National Park Service, see notes under section 8–108.

§ 8–165. Theodore Roosevelt Island—Means of access to be provided—Appropriation authorized.

The Director of the National Park Service is authorized to provide suitable means of access to and upon the said Theodore Roosevelt Island as appropriations are made available from time to time and subject to the approval of the National Capital Planning Commission; and the appropriations needed for such construction and annually for the care, maintenance, and improvement of the said lands and improvements, are hereby authorized to be made from any funds not otherwise appropriated from the Treasury of the United States. (May 21, 1932, 47 Stat. 164, ch. 200, § 2; Feb. 11, 1933, 47 Stat. 799, ch. 48, § 1.)

TRANSFER OF FUNCTIONS

Transfer of functions to Director of National Park Service, see notes under section 8–108.

"National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in view of act June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred

the functions, powers and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission. See section 1–1009.

§ 8–166. Theodore Roosevelt Island—Structures authorized.

The Director of the National Park Service is further authorized and directed to permit the Theodore Roosevelt Association to erect on said Theodore Roosevelt Island such monument or memorial and related structures as may be recommended by it and approved by the National Commission of Fine Arts and the National Capital Planning Commission. (May 21, 1932, 47 Stat. 164, ch. 200, § 3; Feb. 11, 1933, 47 Stat. 799, ch. 48, § 1; May 21, 1953, 67 Stat. 27, ch. 63, § 2.)

CHANGE OF NAME

"Theodore Roosevelt Association" was substituted for "Roosevelt Memorial Association (Incorporated)" to conform to the provisions of act May 21, 1953. See note under section 8–164.

TRANSFER OF FUNCTIONS

Transfer of functions to Director of National Park Service, see notes under section 8–108.

"National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in view of act June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the function, powers and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission. See section 1–1009.

§ 8–167. Theodore Roosevelt Island—Designation.

In all public documents, records, and maps of the United States in which such island is designated or referred to it shall be designated as "Theodore Roosevelt Island." (Feb. 11, 1933, 47 Stat. 799, ch. 48, § 2.)

§ 8–168. Public bathing beach authorized.

The Commissioners of the District of Columbia are hereby authorized and permitted to construct a beach and dressing houses upon the east shore of the tidal reservoir against the Washington Monument Grounds, and to maintain the same for the purpose of free public bathing, under such regulations as they shall deem to be for the public welfare; and the Secretary of the Army is requested to permit such use of the public domain as may be required to accomplish the objects above set forth. (Sept. 26, 1890, 26 Stat. 490, ch. 949.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343, title II. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of act Aug. 10, 1956, enacted Title 10 of the U.S. Code which continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

§ 8–169. Bathing pools and beaches—Construction authorized.

The Director of the National Park Service is authorized and directed to locate and construct in the District of Columbia, subject to the approval of the National Capital Planning Commission, and after consultation with the Commission of Fine Arts, as appropriations shall be provided therefor, artificial bathing pools or beaches, not exceeding 6 in number, with suitable buildings, shower baths, lockers, provisions for the use of filtered water, purification of the water, and all things necessary for the proper conduct of such pools or beaches, and to conduct and maintain the same. The cost of construction of any of these pools or beaches, with buildings and equipment, shall not exceed $150,000 each, and the appropriation of the sums necessary for the purposes named is hereby authorized to be paid in like manner as other appropriations for the expenses of the government of the District of Columbia. (May 4, 1926, 44 Stat. 394, ch. 234; Feb. 28, 1929, 45 Stat. 1412, ch. 384, § 1.)

AMENDMENT

1929—Act Feb. 28, 1929, changed the number of pools to be constructed from 2 to 6, and the cost of construction from a maximum of $345,000 for 2 to a maximum of $150,000 for each pool, with buildings and equipment.

TRANSFER OF FUNCTIONS

Transfer of functions to Director of National Park Service, see notes under section 8–108.

"National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in view of act June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission. See section 1–1009.

BATHING AND SWIMMING POOL

Act May 16, 1928, 45 Stat. 583, ch. 580, provided that: "A plot of ground comprising not to exceed forty-two thousand square feet in the southwest corner of square numbered 3,530, being a portion of the site of the McKinley High School and the Langley Junior High School, is hereby made available for one of the bathing pools authorized by the act approved May 4, 1926 [this section]."

CROSS REFERENCE

Lump-sum appropriation for the District, see § 47–134.

§ 8–170. Bathing pools and beaches—Operation—Fees.

The Director of the National Park Service may, in the interest of economy and good administration, with the consent of the commissioners of the District of Columbia, transfer for such period as he shall determine, to said commissioners the possession, control, and maintenance of any of said bathing pools or beaches. Otherwise they shall be operated and maintained by the said Director of the National Park Service and in either case the official conducting any bathing pool or beach is hereby authorized to charge and collect a reasonable fee for the use and enjoyment of such pool or beach, such fees to be paid weekly to the collector of taxes of the District of Columbia for deposit in the treasury to the credit of the District of Columbia. (May 4, 1926, ch. 234, as added Feb. 28, 1929, 45 Stat. 1412, ch. 384, § 2.)

TRANSFER OF FUNCTIONS

Transfer of functions to Director of National Park Service, see notes under section 8–108.

CROSS REFERENCES

Comprehensive recreation program, see § 8–209.
Disposition of fees, see § 47–126.
Recreation Board's trust fund, see § 8–211.
Trust fund for recreational fees, see § 8–211.

§ 8–171. Bathing pools and beaches—Operation—Funds.

The Director of the National Park Service in his discretion, is authorized to operate, through the Welfare and Recreational Association of Public Buildings and Grounds, bathing pools under his jurisdiction, and thereupon there may be deposited in the

treasury under the special fund to the credit of said association moneys received for the operation of such pools and be there available for the purposes of said special fund and this shall be a compliance with the provisions of sections 8–169 and 8–170. (July 3, 1930, 46 Stat. 1007, ch. 853.)

TRANSFER OF FUNCTIONS

Transfer of functions to Director of National Park Service, see notes under section 8–108.

CROSS REFERENCES

Comprehensive recreation program, see § 8–209.
Disposition of fees, see § 47–126.
Recreation Board's trust fund, see § 8–211.
Trust fund for recreational fees, see § 8–211.

Chapter 2.—RECREATION BOARD

ARTICLE I.—MEMBERSHIP OF THE RECREATION BOARD

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8–218. Services of other agencies.
8–219. Transfer of equipment, machinery, etc., of Community Center and Playgrounds Department.

ARTICLE I.—MEMBERSHIP OF THE RECREATION BOARD

§ 8–201. Recreation Board created.

There is hereby created in and for the District of Columbia a Recreation Board hereinafter referred to as "the Board". (Apr. 29, 1942, 56 Stat. 261, ch. 265.)

EFFECTIVE DATE

Section 8 of act April 29, 1942, provided that: "This Act [adding this chapter] shall take effect thirty days after the date of its approval [Apr. 29, 1942]."

REPEAL OF INCONSISTENT LAWS

Section 7 of act April 29, 1942, provided that: "All Acts or parts of Acts in conflict with this Act [this chapter] are hereby repealed."

CROSS REFERENCE

Park and playground system, see § 8–103 et seq.

NOTES TO DECISIONS

Playground designation

Practice of Recreation Board of District of Columbia in designating certain playgrounds as for white residents only was constitutional. *Camp et al.* v. *Recreation Board for District of Columbia et al.* (D.C.D.C. 1952, 104 F. Supp. 10).

Questions of policy

Recreation Board of the District of Columbia, having power and authority to conduct comprehensive program of public recreation and recreation centers, including playgrounds, has statutory jurisdiction to determine all questions of policy with respect to playgrounds under its control. *Camp et al.* v. *Recreation Board for District of Columbia et al.* (D.C.D.C. 1952, 104 F. Supp. 10).

§ 8–202. Composition of Board—Qualifications—Tenure.

The Board shall consist of seven members as follows: A representative of the Board of Commissioners selected by that Board; a representative of the Board of Education selected by that Board; the Superintendent of the National Capital Parks ex-officio; and four members, who shall have been for five years immediately preceding their selection bona fide residents of the District of Columbia, appointed by the Commissioners of the District of Columbia for a term of four years each, except the original appointments which shall be for terms of one, two, three, and four years, respectively. The appointment of the four citizens shall be without regard to race, sex, or creed, and shall take judicious account of the various parent, civic, and other organizations through which residents of the District voice their civic wishes and advance the common welfare. The two members of the Board representing the Board of Commissioners and the Board of Education shall be designated annually by their respective agencies. (Apr. 29, 1942, 56 Stat. 261, ch. 265, art. I, § 1.)

EFFECTIVE DATE

Section effective 30 days after Apr. 29, 1942, see note under section 8–201.

NOTES TO DECISIONS

Playground designation

Practice of Recreation Board of District of Columbia in designating certain playgrounds as for white residents only was constitutional. *Camp et al.* v. *Recreation Board for District of Columbia et al.* (D.C.D.C. 1952, 104 F. Supp. 10).

Questions of policy

Recreation Board of the District of Columbia, having power and authority to conduct comprehensive program of public recreation and recreation centers, including playgrounds, has statutory jurisdiction to determine all questions of policy with respect to playgrounds under its control. *Camp et al.* v. *Recreation Board for District of Columbia et al.* (D.C.D.C. 1952, 104 F. Supp. 10).

§ 8–203. Liability of members.

The members of the Board shall not be personally liable in damages for any official action of the said Board performed in good faith, nor shall any member of said Board be liable for any costs that may be taxed against them or the Board on account of any such official action; but such costs shall be charged to the District of Columbia and paid as other costs are paid in suits brought against the municipality; nor shall the said Board or any of its

members be required to give any supersedeas bond or security for costs or damages on any appeal whatever. (Apr. 29, 1942, 56 Stat. 261, ch. 265, art. I, § 2.)

EFFECTIVE DATE

Section effective 30 days after Apr. 29, 1942, see note under section 8–201.

§ 8–204. Appointment to vacancies.

Vacancies shall be filled for the unexpired term by the agency which made the original selection. (Apr. 29, 1942, 56 Stat. 262, ch. 265, art. I, § 3.)

EFFECTIVE DATE

Section effective 30 days after Apr. 29, 1942, see note under section 8–201.

§ 8–205. Compensation.

The members of the Board shall serve without compensation for such service. (Apr. 29, 1942, 56 Stat. 262, ch. 265, art. I, § 4.)

EFFECTIVE DATE

Section effective 30 days after Apr. 29, 1942, see note under section 8–201.

§ 8–206. Officers—Rules and regulations.

The Board shall select from among its citizen membership its Chairman and its secretary and is hereby authorized and empowered to adopt all necessary rules and regulations for the conduct of its business. (Apr. 29, 1942, 56 Stat. 262, ch. 265, art. I, § 5.)

EFFECTIVE DATE

Section effective 30 days after Apr. 29, 1942, see note under section 8–201.

§ 8–207. Meetings.

The Board shall hold stated meetings and such additional meetings as they may from time to time deem necessary. All meetings of the Board shall be open to the public. (Apr. 29, 1942, 56 Stat. 262, ch. 265, art. I, § 6.)

EFFECTIVE DATE

Section effective 30 days after Apr. 29, 1942, see note under section 8–201.

ARTICLE II.—FUNCTIONS AND ADMINISTRATIVE RESPONSIBILITIES OF THE BOARD

§ 8–208. Determination of general policy—Supervision of expenditures.

The Board shall determine all questions of general policy relating to public recreation in and for the District of Columbia, and shall supervise and direct expenditure of all appropriations and/or other funds made available to the Board. (Apr. 29, 1942, 56 Stat. 262, ch. 265, art. II, § 1.)

EFFECTIVE DATE

Section effective 30 days after Apr. 29, 1942, see note under section 8–201.

NOTES TO DECISIONS

Playground designation

Practice of Recreation Board of District of Columbia in designating certain playgrounds as for white residents only was constitutional. *Camp et al.* v. *Recreation Board for District of Columbia et al.* (D.C.D.C. 1952, 104 F. Supp. 10).

Questions of policy

Recreation Board of the District of Columbia, having power and authority to conduct comprehensive program of public recreation and recreation centers, including playgrounds, has statutory jurisdiction to determine all questions of policy with respect to playgrounds under its control. *Camp et al.* v. *Recreation Board for District of Columbia et al.* (D.C.D.C. 1952, 104 F. Supp. 10).

§ 8–209. Superintendent of Recreation—Appointment and duties—Qualifications—Other employees—Compensation—Volunteer services—Night differential for nonregularly scheduled work.

The Board is hereby authorized to appoint a Superintendent of Recreation, which position is hereby authorized and created, who shall be the chief executive officer of the Board but not a member thereof, and shall be charged with the general organization, administration, and supervision of the program of public recreation contemplated and provided for by this chapter. The Superintendent shall be a person of such training, experience, and capacity as will especially qualify him to discharge the duties of the office. He shall possess those qualifications of education, training, and experience in recreation work as well as executive and administrative experience which will assure a thorough knowledge of current theory and practice in public recreation and give promise of the administrative ability necessary to administer a program of public recreation in and for the Nation's Capital.

The Board, upon the recommendation of the Superintendent, is empowered to appoint, promote, demote, and terminate the employment of such personnel as are necessary to carry out the purposes of this chapter. The Superintendent may suspend for cause for a period not exceeding thirty days any employee of the Board.

All present personnel of the Community Center and Playgrounds Department whose services have heretofore been rated satisfactory shall be retained by the Board with the understanding that this provision does not contemplate the continued employment of individuals whose service is inefficient, and such personnel shall continue to function under existing rules and regulations until such time as classification and Civil Service requirements have been effected.

The Superintendent and all other regular annual personnel of the Recreation Board shall be employees of the District of Columbia. Their salaries and positions shall be fixed in accordance with section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters] without regard to race, sex, or creed, and the Civil Service requirements as agreed upon between the Civil Service Commission and the District Commissioners or any existing agreement between them relative to the selection and change of status of District of Columbia employees.

Upon recommendation of the Superintendent, the Board is authorized to employ, on a part-time basis, at rates of pay to be fixed by the Board without reference to section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters] and without reference to Civil Service requirements, and without regard to the prohibition against double salaries provided by section 58 of title 5, U. S. Code, such teachers, custodial, and

other employees of the United States, the District of Columbia, and the Board of Education, upon approval by the present employer, as may be necessary to keep in operation and to conduct therein appropriate phases of the recreation program authorized by this chapter.

The respective facilities of the United States, the District of Columbia, and the Board of Education shall, by the agreement of the respective agencies of the Government having control of such facilities, be made available to the Board under the terms of this chapter.

The Superintendent is authorized to employ for a ninety-day period as full- or part-time employees, such referees, umpires, swimming-pool guards and attendants, gymnasium and playground supervisors, and other similar special employees as may be necessary to carry out the recreation program authorized by this chapter, at rates of pay to be fixed by the Board without reference to section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters] and without reference to Civil Service requirements, and without regard to the prohibition against double salaries provided by section 58 of title 5, U. S. Code: *Provided,* That the retention in the District service of any such employees for a period longer than ninety days shall be subject to the approval of the Board.

The Board is authorized to accept upon recommendation of the Superintendent the gratis services of such persons as may volunteer to aid in the conduct of any of its activities.

Notwithstanding the provisions of section 5545 of title 5, U.S. Code, requiring regularity in the scheduled work between the hours of 6 o'clock postmeridian and 6 o'clock antimeridian, the Board shall have the power to prescribe rules and regulations governing the payment of night differential for nonregularly scheduled work between such hours by such of its employees as are subject to section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters] when such nonregularly scheduled work is within the employee's basic workweek: *Provided, however,* That all other provisions of such section 5545 shall be in full force and effect: *Provided, further,* That no night differential may be paid for night overtime work that is not regularly scheduled. (Apr. 29, 1942, 56 Stat. 262, ch. 265, art. II, § 2; Oct. 28, 1949, 63 Stat 972, ch. 782, title XI, § 1106(a); Apr. 23, 1958, 72 Stat. 97, Pub. L. 85–383, § 1.)

REFERENCES IN TEXT

Section 58 of title 5, U.S. Code (R.S. § 1763), referred to in this section, was repealed by act Aug. 19, 1964, 78 Stat. 492, Pub. L. 88–448, title IV, § 402(a)(1). It was subsequently covered by § 3105 of title 5, U.S.C., until the latter section, except for subsec. (e) thereof, was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a). Said § 3105, except for subsec. (e) thereof, is now covered by 5 U.S.C. § 5533. Said subsec. (e) of § 3105, while not repealed, was not included in the revision and enactment of title 5, U.S.C., by § 1 of said act Sept. 6, 1966, as it was not considered permanent and general.

CODIFICATION

The references in this section to "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]" were substituted for the references to "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classificattion Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

The references in this section to "section 5545 of title 5, U.S. Code," were substituted for the references to section 921 of title 5, U.S. Code, also on authority of § 7(b) of act Sept. 6, 1966, referred to in preceding paragraph of this note. Section 921 of title 5, U.S.C., was also repealed by § 8(a) of act Sept. 6, 1966, and is now covered by § 5545 of title 5, U.S.C.

AMENDMENTS

1958—Act April 23, 1958, added the last paragraph.

1949—Act Oct. 28, 1949, § 1106(a), which was a part of the Classification Act of 1949, and which has since been repealed, substituted "Classification Act of 1949" for "Classification Act of 1923". See codification note above.

EFFECTIVE DATE

Section effective 30 days after Apr. 29, 1942, see note under section 8–201.

CROSS REFERENCE

Acceptance of volunteer services, see § 8–132.

NOTES TO DECISIONS

Playground designation

Practice of Recreation Board of District of Columbia in designating certain playgrounds as for white residents only was constitutional. *Camp et al.* v. *Recreation Board for District of Columbia et al.* (D.C.D.C. 1952, 104 F. Supp. 10).

Questions of policy

Recreation Board of the District of Columbia, having power and authority to conduct comprehensive program of public recreation and recreation centers, including playgrounds, has statutory jurisdiction to determine all questions of policy with respect to playgrounds under its control. *Camp et al.* v. *Recreation Board for District of Columbia et al.* (D.C.D.C. 1952, 104 F. Supp. 10).

§ 8–210. Comprehensive program for public recreation.

The Board shall have power and authority to adopt, conduct, direct, or cause to be conducted or directed, under its supervision, a comprehensive program of public recreation which shall include the operation and direction of games, sports, arts and crafts, hobby shops, music, drama, speech, nursery play, dancing, lectures, forum for informal discussion, and such other physical, social, mental, and creative opportunities for leisure-time participation as the Board shall deem advisable to offer in major recreation centers, playfields, athletic fields, playgrounds, tennis courts, baseball diamonds, swimming pools, beaches, golf courses, community centers, and social centers in schools, parks, or other publicly owned buildings, as well as other recreational facilities which may be agreed upon between the Board and the agencies having jurisdiction over such facilities. The public properties utilized by the Board for the above purposes shall include those designated by the National Capital Planning Commission, in accordance with a comprehensive plan, as suitable and desirable units of the District of Columbia recreational system.

Nothing in this chapter contained shall be construed as affecting any rights under any existing lease or leases lawfully entered into by any agency mentioned or affected by this chapter, nor shall anything in this chapter contained be construed as affecting the right of any such agency in the future lawfully to enter into leases of land or premises under its control for recreational purposes. (Apr. 29, 1942, 56 Stat. 263, ch. 265, art. II, § 3.)

EFFECTIVE DATE

Section effective 30 days after Apr. 29, 1942, see note under section 8–201.

TRANSFER OF FUNCTIONS

"National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in view of act June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission. See section 1–1009.

CROSS REFERENCES

Glover Parkway and Children's Playground, see § 8–162.

Lease of lands acquired for playground purposes, see § 8–105.

Washington Aqueduct used for playground purposes, see § 8–130.

NOTES TO DECISIONS

Playground designation

Practice of Recreation Board of District of Columbia in designating certain playgrounds as for white residents only was constitutional. *Camp et al.* v. *Recreation Board for District of Columbia et al.* (D.C.D.C. 1952, 104 F. Supp. 10).

Questions of policy

Recreation Board of the District of Columbia, having power and authority to conduct comprehensive program of public recreation and recreation centers, including playgrounds, has statutory jurisdiction to determine all questions of policy with respect to playgrounds under its control. *Camp et al.* v. *Recreation Board for District of Columbia et al.* (D.C.D.C. 1952, 104 F. Supp. 10).

§ 8–211. Trust fund created—Depository for fees and receipts—Expenditures—Quarterly audit.

The Board is hereby authorized to create a trust fund similar to that now operated by the Community Center and Playgrounds Department in which shall be deposited all fees and receipts from those activities which the Board may deem it advisable to conduct on a fee basis or any other basis, the moneys in such trust fund to be available to the Board to defray in whole or in part the expense of conducting its activities, the fund to be audited quarterly by the auditor of the District of Columbia. (Apr. 29, 1942, 56 Stat. 263, ch. 265, art. II, § 4.)

EFFECTIVE DATE

Section effective 30 days after Apr. 29, 1942, see note under section 8–201.

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952 and effective Sept. 2, 1952. The function of the quarterly audit of the trust fund of the District of Columbia Recreation Board was transferred from the Auditor of the District of Columbia to the Internal Audit Officer, Department of General Administration by Reorganization Order No. 19. These orders were issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to Title 1, Administration.

CROSS REFERENCE

Trust fund for fees of bathing pools and beaches, see §§ 8–170 and 8–171.

§ 8–211a. Advances to superintendent of recreation.

CODIFICATION

Section, acts June 19, 1948, 62 Stat. 543, ch. 555, § 1; June 29, 1949, 63 Stat. 303, ch. 279, § 1; July 18, 1950, 64 Stat. 347, ch. 467, § 1; Aug. 3, 1951, 65 Stat. 172, ch. 292, § 11; July 5, 1952, 66 Stat. 391, ch. 576, § 11; July 31, 1953, 67 Stat. 295, ch. 299, § 11; July 1, 1954, 68 Stat. 394, ch. 449, § 10; July 5, 1955, 69 Stat. 262, ch. 272, § 9, which authorized the disbursing officer of the District of Columbia to advance to the superintendent of recreation sums of money not to exceed $4,000 at one time to be used for the expense of conducting activities of the Recreation Board under the trust fund created be section 8–211, is omitted since a general appropriation is presently made for the Recreation Board.

§ 8–212. Annual budget.

The Board shall prepare and submit to the Commissioners of the District of Columbia an annual budget itemizing the appropriations necessary for the performance of its functions and duties under this chapter, including appropriations necessary for the purchase of books, literature, newspapers, periodicals, technical reference material, trophies, and medals, and as provided in section 8–217, of this chapter, the Board's share of the cost of improvement, maintenance, and upkeep of the buildings and grounds used by the Board and which are under the jurisdiction of the Board of Education, the Board of Commissioners, or the National Park Service. (Apr. 29, 1942, 56 Stat. 263, ch. 265, art. II, § 5.)

EFFECTIVE DATE

Section effective 30 days after Apr. 29, 1942, see note under section 8–201.

§ 8–213. Annual report.

The Board shall submit to the Commissioners an annual report of its activities, together with recommendations for further activities and development, or curtailment. (Apr. 29, 1942, 56 Stat. 264, ch. 265, art. II, § 6.)

EFFECTIVE DATE

Section effective 30 days after Apr. 29, 1942, see note under section 8–201.

ARTICLE III.—RELATIONSHIP OF THE BOARD TO OTHER AGENCIES

§ 8–214. Transfer of functions of Community Center and Playgrounds Department—Transfer of unexpended funds.

All the functions of the Community Center and Playgrounds Department now under the joint control of the Board of Commissioners and the Board of Education are hereby transferred to and shall, after the effective date of this chapter, be vested in the said Recreation Board. The transfer of all such functions shall include transfer of the unexpended balance of the appropriation of the Community Center and Playgrounds Department, any unexpended balance in trust funds, and the salary of the coordinator now carried in the appropriation of the National Capital Parks. (Apr. 29, 1942, 56 Stat. 264, ch. 265, art. III, § 1.)

REFERENCES IN TEXT

Words "effective date of this chapter," means thirty days from date of its approval, April 29, 1942. See effective date note under section 8–201.

EFFECTIVE DATE

Section effective 30 days after Apr. 29, 1942, see note under section 8–201.

CROSS REFERENCE

Appropriation for acquisition of lands for playground purposes, see § 8–105.

NOTES TO DECISIONS

Playground designation

Practice of Recreation Board of District of Columbia in designating certain playgrounds as for white residents only was constitutional. *Camp et al.* v. *Recreation Board for District of Columbia et al.* (D.C.D.C. 1952, 104 F. Supp. 10).

Questions of policy

Recreation Board of the District of Columbia, having power and authority to conduct comprehensive program of public recreation and recreation centers, including playgrounds, has statutory jurisdiction to determine all questions of policy with respect to playgrounds under its control. *Camp et al.* v. *Recreation Board for District of Columbia et al.* (D.C.D.C. 1952, 104 F. Supp. 10).

§ 8–215. Control of lands, buildings, and facilities used.

The control of all land, buildings, and other facilities used by the Board shall be in accordance with agreements reached between the Board and the governmental agencies having jurisdiction over such properties. (Apr. 29, 1942, 56 Stat. 264, ch. 265, art. III, § 2.)

EFFECTIVE DATE

Section effective 30 days after Apr. 29, 1942, see note under section 8–201.

§ 8–216. Powers of Board of Education, Commissioners of District of Columbia, or National Park Service unabridged.

No power or authority conferred by this chapter shall be construed to abridge the powers of the Board of Education, the Commissioners of the District of Columbia, or the National Park Service to refuse the use of any ground, building, or facility under their individual or collective control whenever the use of any such ground, building, or facility for recreational purposes would interfere with the use or purpose for which such ground, building, or facility was acquired or created, and nothing herein expressed or implied shall be construed to abrogate any powers vested in the Board of Education by the Organic Act of 1906 insofar as the control of public education and all necessary facilities and personnel is concerned. (Apr. 29, 1942, 56 Stat. 264, ch. 265, art. III, § 3.)

EFFECTIVE DATE

Section effective 30 days after Apr. 29, 1942, see note under section 8–201.

CROSS REFERENCES

Authority of Board of Education, see §§ 31–801 and 31–802.

Erection of temporary structures, see § 8–129.

Use of public grounds for playgrounds, see § 8–128.

§ 8–217. Agreements for maintenance and improvement of playgrounds, etc., under control of Board of Education, Commissioners of District of Columbia, or National Park Service—Transfer of equipment and personnel.

The maintenance and improvement of all playgrounds and recreation areas and facilities now under the control of the Board of Education, or of the Commissioners of the District of Columbia, or of the National Park Service, or which may hereafter be acquired by any of said agencies for said purpose, may be provided for by agreement between the Board and the Board of Education, the Commissioners of the District of Columbia, and the National Park Service, respectively. The Board is hereby authorized to transfer to the said agencies such funds, equipment, and personnel as may be necessary to carry said agreements into effect. (Apr. 29, 1942, 56 Stat. 264, ch. 265, art. III, § 4.)

EFFECTIVE DATE

Section effective 30 days after Apr. 29, 1942, see note under section 8–201.

§ 8–218. Services of other agencies.

The Board is authorized to arrange with other governmental agencies for services on a reimbursable basis. (Apr. 29, 1942, 56 Stat. 264, ch. 265, art. III, § 5.)

EFFECTIVE DATE

Section effective 30 days after Apr. 29, 1942, see note under section 8–201.

§ 8–219. Transfer of equipment, machinery, etc., of Community Center and Playgrounds Department.

All equipment, machinery, supplies, and materials of the Community Center and Playgrounds Department shall, on the effective date of this chapter, be transferred to the Board. (Apr. 29, 1942, 56 Stat. 264, ch. 265, art. III, § 6.)

REFERENCES IN TEXT

Words "effective date of this chapter," mean thirty days from date of its approval, April 29, 1942. See effective date note under section 8–201.

EFFECTIVE DATE

Section effective 30 days after Apr. 29, 1942, see note under section 8–201.

TITLE 9.—PUBLIC BUILDINGS AND GROUNDS

Chap. Sec.
1. Regulating Provisions 9–101
2. Construction of Public Buildings 9–201
3. Sale of Public Lands 9–301
4. Exchange of District-owned Land 9–401
5. Repairs and Improvements 9–501

Chapter 1.—REGULATING PROVISIONS

Sec.
9–101. Wharf property—Control by Commissioners of District—Authority to make rules and regulations—Jurisdiction of Chief of Engineers.
9–102. Authority to make rules and regulations for wharf property—Leases—Rents.
9–103. Furnishing of steam to buildings in Judiciary Square—Payment—Installation expenses.
9–104. Secretary of the Interior authorized to furnish steam from Central Heating Plant.
9–105. Capitol grounds—Protection of buildings and property—Authority to make regulations.
9–106 to 9–117. Repealed.
9–118. Capitol grounds area.
9–119. Public travel in and occupancy of Capitol grounds.
9–120. Obstruction of roads in Capitol grounds.
9–121. Sale of goods in Capitol grounds—Advertising—Begging.
9–122. Removal or injury of property in Capitol grounds.
9–123. Firearms or fireworks, orations and loud language forbidden in Capitol grounds.
9–124. Parades or assemblages and displays forbidden in Capitol grounds.
9–125. Prosecution and punishment of offenses in Capitol grounds.
9–126. Policing of Capitol buildings and grounds—Powers of Capitol police—Arrests by Metropolitan police.
9–127. Employees in Capitol or Capitol Grounds to assist authorities.
9–128. Suspension of prohibition against use of Capitol Grounds.
9–129. Capitol Police Board power to suspend prohibitions.
9–130. Concerts on Capitol grounds.
9–131. Traffic regulations by Capitol Police Board—Penalties—Prosecutions.
9–132. "Capitol Buildings" defined.
9–133. District of Columbia buildings—Control of Commissioners.
9–134. Designation of employees to protect life and property outside the District—Powers of arrest—Weapons and uniforms.
9–135. Rules and regulations.
9–136. Penalty for violation of rules and regulations.
9–137. Acceptance of collateral for appearance before United States Commissioner—Deposit of collateral.
9–138. Agreements with States—Charges for services.
9–139. Tunnel, location of under Capitol and Botanic Garden grounds.
9–140. Approval of Architect of Capitol required—Prescription of conditions by him—Commissioners authorized to use certain areas for tunnel.
9–141. Right, title and interest to grounds used for tunnel to remain in the United States—Jurisdiction and responsibility for tunnel.
9–142. Restoration of grounds to their original condition.
9–143. United States not to incur any expense or liability in connection with tunnel.
Sec.
9–144. Architect authorized to convey to Commissioners of the District of Columbia certain grounds for construction of Innerloop Freeway System—Jurisdiction over grounds conveyed.
9–145. Commissioners authorized to use certain area bounded by Fourth Street, Pennsylvania Avenue, Third Street, and North Mall Drive Northwest, for tunnel—Conditions.

§ 9–101. Wharf property—Control by Commissioners of District—Authority to make rules and regulations—Jurisdiction of Chief of Engineers.

With the exceptions hereinafter provided, the Commissioners of the District of Columbia shall have the exclusive charge and control of all wharf property belonging to the United States or to the District of Columbia within said District, including all the wharves, piers, bulkheads, and structures thereon and waters adjacent thereto within the pier lines, and all slips, basins, docks, water-fronts, land under water, and structures thereon, and the appurtenances, easements, uses, reversions, and rights belonging thereto, which on March 3, 1899, were owned or possessed by the United States or the District of Columbia, or to which they or either of them was on that date or may thereafter become entitled, or which they or either of them may acquire under the provisions hereof or otherwise; and said Commissioners of the District of Columbia shall have exclusive charge and control of the repairing, building, rebuilding, maintaining, altering, strengthening, leasing, and protecting said property and every part thereof, and all the cleaning, dredging, and deepening necessary in and about the same within the pier lines. Said commissioners are also authorized and empowered to make all needful rules and regulations for the government and control of all wharves, piers, bulkheads, and structures thereon, and waters adjacent thereto within the pier lines, and all the basins, slips, and docks, with the land under water, in said District not owned by the United States or the District of Columbia: *Provided,* That the following described property shall be placed under the immediate jurisdiction and control of the Chief of Engineers of the United States Army: The banks of the Potomac River from the north line of the Arsenal Grounds to the southern curb line of N Street south; also five hundred linear feet of shore-line in the Flushing Reservoir at the foot of Seventeenth Street, west, and west from the western curb of said street, including a levee one hundred feet wide. (Mar. 3, 1899, 30 Stat. 1377, ch. 458, § 1.)

TRANSFER OF FUNCTIONS

Reorganization Order No. 18 issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952, created within the Department of General Administration an Administrative Services Office and established therein responsibility for the administration of real property owned or utilized by the Government of the District of Columbia. The order and plan are set out in the Appendix to Title 1, Administration.

CROSS REFERENCES

Harbor regulations, see §§ 22–1701 to 22–1703.
Jurisdiction and control over fish wharf, see § 10–135.

NOTES TO DECISIONS

Jurisdiction to grant wharfing privileges

Commissioners of District of Columbia, National Capital Park and Planning Commission, and United States Engineers Office had legal authority to make decisions involving eventual granting of wharfing facilities and privilege. *Decatur Corporation* v. *Friedman* (D.C.D.C. 1941, 39 F. Supp. 692, affirmed 135 F. 2d 812, 77 U.S. App. D.C. 326).

Riparian boundaries

Congress has granted power to Commissioners of District of Columbia to establish riparian boundaries. *Martin* v. *Standard Oil Co. of New Jersey* (1952, 198 F. 2d 523, 91 U.S. App. D.C. 84).

Riparian rights

Riparian rights claimed by the appellants, which originally were appurtenant to the land by virtue of its adjoining the Potomac River, passed to the United States by the conveyance which vested in them the ownership of the land on which the street was laid out and has been built. *Potomac Steamboat Co.* v. *Upper Potomac Steamboat Co.* (1884, 4 S. Ct. 15, 109 U. S. 672, 27 L. Ed. 1070).

The Compact of 1785 between Maryland and Virginia relating to the mutual use of the waters of the Potomac and the rights of riparian owners was never in force in the District of Columbia. *United States ex rel. Greathouse* v. *Hurley* (1933, 63 F. 2d 137, 61 App. D. C. 360).

§ 9–102. Authority to make rules and regulations for wharf property—Leases—Rents.

Said commissioners and the Chief of Engineers of the United States Army are authorized and empowered to make all needful rules and regulations for the government and proper care of all the property placed in their charge and under their respective control by the provisions of section 9–101 and to annex such reasonable penalties to said rules and regulations as will secure their enforcement; and also to make and enforce rules and regulations in regard to building and repairing wharves, the rental thereof, and the rate of wharfage. All rents so collected shall be covered into the treasury of the United States, to be placed to the credit of the United States and to the credit of the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the treasury of the United States and the revenues of the District of Columbia. No lease made under the provisions of said section 9–101 shall extend beyond the period of ten years. (Mar. 3, 1899, 30 Stat. 1378, ch. 458, § 2; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

AMENDMENT

1921—Act Feb. 22, 1921, provided that rents collected should be covered into the treasury of the United States, to be placed to the credit of the United States and to the District of Columbia, in the same proportions as appropriations for expenses are paid.

CROSS REFERENCES

Harbor regulations, see §§ 22–1701 to 22–1703.
Lump-sum appropriation for the District, see § 47–134.
Metropolitan Police charged with duty to enforce regulations for harbor, see § 4–106.
Rental of fish wharf, see § 10–135.

NOTES TO DECISIONS

License to erect wharf

The Chief of Engineers of the Army is not and never has been vested with authority to grant licenses for the erection of wharves along the river front of the city of Washington, D.C. 1886 (18 Op. Atty. Gen. 441).

Regulations, mandamus to compel

A mandamus will not lie to the mayor, board of aldermen, and board of common council of the city of Washington, to compel them "to make such regulations as they may deem proper, prescribing the manner of erecting private wharves within the limits of the city of Washington." *Kennedy* v. *Washington* (1829, 14 Fed. Cas. No. 7, 708, 3 Cranch C. C. 595).

§ 9–103. Furnishing of steam to buildings in Judiciary Square—Payment—Installation expenses.

The Secretary of the Interior, through the National Park Service is authorized to furnish steam from the Central Heating Plant to such buildings as may be erected by the District of Columbia on the property bounded by Fourth and Fifth Streets. and D and G Streets, Northwest, in the District of Columbia, and known as Judiciary Square: *Provided,* That the District of Columbia agrees to pay for the steam furnished at reasonable rates, not less than cost, as may be determined by the Secretary of the Interior: *And provided further,* That the District of Columbia agrees to provide all necessary connections with the Government mains at its own expense, and in a manner satisfactory to the Secretary of the Interior. (Apr. 27, 1937, 50 Stat. 95, ch. 136.)

§ 9–104. Secretary of the Interior authorized to furnish steam from Central Heating Plant.

The Secretary of the Interior, through the National Park Service is authorized to furnish steam from the Central Heating Plant to such buildings as may be erected by the District of Columbia on the property in the District of Columbia bounded by C Street, Third Street, Indiana Avenue, D Street, and John Marshall Place Northwest, and known as square 533; on the property bounded by C Street, John Marshall Place, Louisiana Avenue, and Sixth Street Northwest, and known as square 490; on the property bounded by Pennsylvania Avenue, John Marshall Place, C Street, and Sixth Street Northwest, and known as square 491; and on the property bounded by Pennsylvania Avenue, Third Street, C Street, and John Marshall Place Northwest, and known as reservation 10: *Provided,* That the District of Columbia agrees to pay for the steam furnished at reasonable rates, not less than cost, as may be determined by the Secretary of the Interior: *And provided further,* That the District of Columbia agrees to provide all necessary connections with the Government mains at its own expense, and in a manner satisfactory to the Secretary of the Interior. (June 21, 1939, 53 Stat. 852, ch. 236.)

NATIONAL ACADEMY OF SCIENCES

Act June 29, 1940, 54 Stat. 694, ch. 451, authorized the furnishing of steam from the Central Heating Plant to the National Academy of Sciences.

§ 9–105. Capitol grounds—Protection of buildings and property—Authority to make regulations.

The Sergeants at Arms of the Senate and of the House of Representatives are authorized to make such regulations as they may deem necessary for preserving the peace and securing the Capitol from defacement, and for the protection of the public property therein, and they shall have power to arrest and detain any person violating such regulations, until such person can be brought before the proper authorities for trial. (R. S., § 1820.)

DERIVATION

Act March 30, 1867, 15 Stat. 12, ch. 20, § 2; April 29, 1876, 19 Stat. 41, ch. 86.

CODIFICATION

Section is also classified to 40 U.S.C. § 193.

ENLARGEMENT OF CAPITOL GROUNDS

Act Mar. 4, 1929, 45 Stat. 1694, ch. 708, as amended, provided for the enlargement of the Capitol grounds, and is now covered by section 9–118.

WASHINGTON POST OFFICE—CUSTODY AND CONTROL

Act Mar. 1, 1933, 47 Stat. 1419, ch. 162, as amended June 10, 1933, Ex. Ord. No. 6166, § 1, provided that the Post Office Department shall have exclusive jurisdiction, control, and custody of the Washington City post office and the additions thereto, located at North Capitol Street and Massachusetts Avenue, to be operated and maintained by it the same as other public buildings under its custody and control.

CROSS REFERENCES

Jurisdiction of Metropolitan Police includes Federal buildings, see § 4–120.

Metropolitan Police, see § 4–101 et seq.

United States Park Police, see §§ 4–201 to 4–208.

White House Police, see 3 U.S.C. §§ 202–208.

CAPITOL GROUNDS

§§ 9–106 to 9–117. Repealed. July 31, 1946, 60 Stat. 720, ch. 707, § 15.

Sections 9–106 to 9–116 were from act July 1, 1882, 22 Stat. 126, ch. 258, § 1–11.

Section 9–117 was from act June 6, 1900, 31 Stat. 613, ch. 791, § 1.

Section 9–106 which related to trespass on Capitol grounds is now covered by § 9–119.

Section 9–107 which related to obstruction of roads is now covered by § 9–120.

Section 9–108 which related to sale of goods on Capitol grounds is now covered by § 9–121.

Section 9–109 which related to injuries to Capitol grounds is now covered by § 9–122.

Section 9–110 which related to fireworks on Capitol grounds is now covered by § 9–123.

Section 9–111 which related to parades on Capitol grounds is now covered by § 9–124.

Section 9–112 which related to prosecutions of offenses is now covered by § 9–125.

Section 9–113 which related to arrests on Capitol grounds is now covered by § 9–126.

Section 9–114 which related to employees' aid is now covered by § 9–127.

Section 9–115 which related to suspension of regulations over Capitol grounds is now covered by § 9–128.

Section 9–116 which related to authority of Capitol Police Commission to suspend regulations is now covered by § 9–129.

Section 9–117 which related to concerts on Capitol grounds is now covered by § 9–130.

PROSECUTIONS UNAFFECTED BY REPEAL

Sec. 15 of act of July 31, 1946, provided in part that: "*Provided, however,* That any violation of any of the provisions of said Acts hereby repealed, occurring before the date of this repeal [July 31, 1946], may be prosecuted to the same extent as if this Act had not been enacted."

§ 9–118. Capitol grounds area.

The United States Capitol Grounds shall comprise all squares, reservations, streets, roadways, walks, and other areas as defined on a map entitled "Map showing areas comprising United States Capitol Grounds", dated June 25, 1946, approved by the Architect of the Capitol and recorded in the Office of the Surveyor of the District of Columbia in book 127, page 8, and the jurisdiction and control over the United States Capitol Grounds, heretofore vested by law in the Architect of the Capitol, is hereby extended to the entire area of the United States Capitol Grounds as defined on the aforementioned map, and the Architect of the Capitol shall be responsible for the maintenance and improvement thereof: *Provided,* That those streets and roadways in said United States Capitol Grounds shown on said map as being under the jurisdiction and control of the Commissioners of the District of Columbia shall continue under such jurisdiction and control, and said Commissioners shall be responsible for the maintenance and improvement thereof: *Provided further,* That the Commissioners of the District of Columbia shall be permitted to enter any part of said United States Capitol Grounds for the purpose of repairing or maintaining or, subject to the approval of the Architect of the Capitol, for the purpose of constructing or altering, any utility service of the District of Columbia government. (July 31, 1946, 60 Stat. 718, ch. 707, § 1.)

CODIFICATION

Section is also classified to 40 U.S.C. §193a.

APPLICABILITY OF §§ 9–118 TO 9–132 TO OTHER LAWS

Section 16 (b) of act July 31, 1946, provided that "Nothing in this Act [sections 9–118 to 9–132] shall be construed to repeal, amend, alter, or supersede (1) section 1820 of the Revised Statutes (40 U.S.C. § 193); (2) an Act entitled 'An Act to protect the public property, turf and grass of the Capitol Grounds from injury', approved April 29, 1876 (19 Stat. 41; 40 U.S.C. § 214); (3) except as provided in section 9 of this Act [section 9–126], section 15 of an Act entitled 'An Act for the preservation of the public peace and the protection of property within the District of Columbia', approved July 29, 1892 (27 Stat. 325; 40 U.S.C. § 104); (4) the second proviso in the item 'Capitol garages' under the caption 'Capitol Buildings and Grounds' contained in an Act entitled 'An Act making appropriations for the legislative branch of the Government for the fiscal year ending June 30, 1933, and for other purposes', approved June 30, 1932 (47 Stat. 382, 391; 40 U.S.C. § 185a); or (5) an Act entitled 'An Act to authorize the use of part of the United States Capitol Grounds east of the Union Station for the parking of motor vehicles', approved July 8, 1943 (57 Stat. 390)."

NOTES TO DECISIONS

Jurisdiction

Capitol Police had jurisdiction to act upon traffic tie-up on boundary street of the Capitol Grounds in which they had jurisdiction and, therefore, had right to arrest defendant if he committed a misdemeanor in their presence while they were so acting. *Andersen* v. *United States* (D. C. Mun. App. 1957, 132 A. 2d 155).

Jury question

Ordinarily, in prosecution for simple assault occurring while officer is in process of arresting defendant for misdemeanor allegedly committed in officer's presence, conflicting evidence on question whether defendant had been committing a misdemeanor, would have to be resolved by the jury. *Andersen* v. *United States* (D. C. Mun. App. 1957, 132 A. 2d 155).

§ 9–119. Public travel in and occupancy of Capitol Grounds.

Public travel in and occupancy of said United States Capitol Grounds shall be restricted to the roads, walks, and places prepared for that purpose by flagging, paving, or otherwise. (July 31, 1946, 60 Stat. 718, ch. 707, § 2.)

CODIFICATION

Section is also classified to 40 U.S.C. § 193b.

§ 9–120. Obstruction of roads in Capitol Grounds.

It is forbidden to occupy the roads in said United States Capitol Grounds in such manner as to obstruct or hinder their proper use, or to use the roads in the area of said United States Capitol Grounds, south of Constitution Avenue and B Street and north of Independence Avenue and B Street, for the conveyance of goods or merchandise, except to or from the Capitol on Government service. (July 31, 1946, 60 Stat. 718, ch. 707, § 3.)

CODIFICATION

Section is also classified to 40 U.S.C. § 193c.

§ 9–121. Sale of goods in Capitol Grounds—Advertising—Begging.

It is forbidden to offer or expose any article for sale in said United States Capitol Grounds; to display any sign, placard, or other form of advertisement therein; to solicit fares, alms, subscriptions, or contributions therein. (July 31, 1946, 60 Stat. 718, ch. 707, § 4.)

CODIFICATION

Section is also classified to 40 U.S.C. § 193d.

§ 9–122. Removal or injury of property in Capitol Grounds.

It is forbidden to step or climb upon, remove, or in any way injure any statue, seat, wall, fountain, or other erection or architectural feature, or any tree, shrub, plant, or turf in said United States Capitol Grounds. (July 31, 1946, 60 Stat. 718, ch. 707, § 5.)

CODIFICATION

Section is also classified to 40 U.S.C. § 193e.

§ 9–123. Firearms or fireworks, orations and loud language forbidden in Capitol Grounds.

It is forbidden to discharge any firearm, firework or explosive, set fire to any combustible, make any harangue or oration, or utter loud, threatening, or abusive language in said United States Capitol Grounds. (July 31, 1946, 60 Stat. 718, ch. 707, § 6.)

CODIFICATION

Section is also classified to 40 U.S.C. § 193f.

§ 9–124. Parades or assemblages and displays forbidden in Capitol Grounds.

It is forbidden to parade, stand, or move in processions or assemblages in said United States Capitol Grounds, or to display therein any flag, banner, or device designed or adapted to bring into public notice any party, organization, or movement, except as hereinafter provided in sections 9–128 and 9–129. (July 31, 1946, 60 Stat. 719, ch. 707, § 7.)

CODIFICATION

Section is also classified to 40 U.S.C. § 193g.

Constitutionality

Disorderly conduct statute as applied to defendants who exceeded the authorization of their parade permit, disregarded cautions of police and willfully violated Capitol Grounds statute by blocking a public walkway and refusing to move on when validly ordered to do so by the police is not unconstitutional. *D. Feeley, A. Uhrie, B. Dunlap* v. *District of Columbia* (D.C. App. 1966, 220 A. 2d 325).

Evidence—Sufficiency of

Evidence sustained convictions of disorderly conduct of protest demonstrators who allegedly had ignored numerous requests by police to disperse and warnings that they would be violating law if they went past certain point and assembled on Capitol grounds, thereby exceeding limits of parade permit, and instead entered Capitol grounds where police advised them that they were violating law and unsuccessfully urged them to leave. *G. E. Jalbert et al.* v. *District of Columbia* (D.C. App. 1966, 221 A. 2d 94).

Evidence including showing that a group of 250 demonstrators exceeded authorization of their parade permit, disregarded cautions of police, willfully violated Capitol Grounds statute, blocked a public walkway, refused to move on when validly ordered to do so by police, and engaged in loud and boisterous conduct sustained conviction of violating disorderly conduct statute. *D. Feeley, A. Uhrie, B. Dunlap* v. *District of Columbia* (D.C. App. 1966, 220 A. 2d 325).

Purpose of statute

The Capitol Grounds statute has for its purpose the noninterference with work of the legislature, the maintenance of free and undisturbed movement of tourists and visitors into and around the seat of the nation's government and protection of landscape; the statute is clear and nondiscriminatory and prohibits any and all groups from parading or assembling in certain defined area, and as such, it is a permissible exercise of congressional power. *D. Feeley, A. Uhrie, B. Dunlap* v. *District of Columbia* (D.C. App. 1966, 220 A. 2d 325).

§ 9–125. Prosecution and punishment of offenses in Capitol Grounds.

Offenses against sections 9–119 to 9–124 shall be punishable by a fine not exceeding $100, or imprisonment not exceeding sixty days, or by both such fine and imprisonment, prosecution for such offenses to be had in the District of Columbia Court of General Sessions, upon information by the United States Attorney or any of his assistants: *Provided*, That in cases where public property is damaged in an amount exceeding $100, the offense shall be punishable by imprisonment for not more than five years. (July 31, 1946, 60 Stat. 719, ch. 707, § 8; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "The Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

CODIFICATION

Section is also classified to 40 U.S.C. § 193h.

Sentence

Since prosecutions were brought under general disorderly conduct sections rather than the Capitol Grounds statute, defendants should have been sentenced under statute providing that any person guilty of disorderly conduct in or about public buildings and public grounds shall upon conviction thereof be fined not more than $50 so that sentences of 91 days in jail were improper notwithstanding that government might have had a choice as to which statute it would proceed under. *D. Feeley, A. Uhrie, B. Dunlap* v. *District of Columbia* (D.C. App. 1966, 220 A. 2d 325).

§ 9–126. Policing of Capitol Buildings and Grounds—Powers of Capitol Police—Arrests by Metropolitan Police.

The Capitol Police shall police the United States Capitol Buildings and Grounds under the direction of the Capitol Police Board, consisting of the Sergeant at Arms of the United States Senate, the Sergeant at Arms of the House of Representatives, and the Architect of the Capitol, and shall have the power to enforce the provisions of sections 9–118 to 9–132 and regulations promulgated under section 9–131 and to make arrests within the United States Capitol Buildings and Grounds for any violations of any law of the United States or of any State, or any

regulation promulgated pursuant thereto: *Provided,* That the Metropolitan Police force of the District of Columbia are hereby authorized to make arrests within the United States Capitol Buildings and Grounds for any violations of any such laws or regulations, but such authority shall not be construed as authorizing the Metropolitan Police force, except with the consent or upon the request of the Capitol Police Board, to enter such buildings to make arrests in response to complaints or to serve warrants or to patrol the United States Capitol Buildings and Grounds, with the exception of the streets and roadways shown on the map referred to in section 9–118 as being under the jurisdiction and control of the Commissioners of the District of Columbia. For the purpose of this section, the word "grounds" shall include the House Office Building parking area. (July 31, 1946, 60 Stat. 719, ch. 707, § 9.)

CODIFICATION

Section is also classified to 40 U.S.C. § 212a.

CROSS REFERENCE

Definition of "Capitol Buildings" see § 9–132.

NOTES TO DECISIONS

Jurisdiction

Capitol Police had jurisdiction to act upon traffic tie-up on boundary street of the Capitol Grounds in which they had jurisdiction and, therefore, had right to arrest defendant if he committed a misdemeanor in their presence while they were so acting. *Andersen* v. *United States* (D. C. Mun. App. 1957, 132 A. 2d 155).

Jury question

Ordinarily, in prosecution for simple assault occurring while officer is in process of arresting defendant for misdemeanor allegedly committed in officer's presence, conflicting evidence on question whether defendant had been committing a misdemeanor, would have to be resolved by the jury. *Andersen* v. *United States* (D. C. Mun. App. 1957, 132 A. 2d 155).

§ 9–127. Employees in Capitol or Capitol Grounds to assist authorities.

It shall be the duty of all persons employed in the service of the Government in the Capitol or in the United States Capitol Grounds to prevent, as far as may be in their power, offenses against sections 9–118 to 9–132, and to aid the police, by information or otherwise, in securing the arrest and conviction of offenders. (July 31, 1946, 60 Stat. 719, ch. 707, § 10.)

CODIFICATION

Section is also classified to 40 U.S.C. § 193i.

§ 9–128. Suspension of prohibition against use of Capitol Grounds.

In order to admit of the due observance within the United States Capitol Grounds of occasions of national interest becoming the cognizance and entertainment of Congress, the President of the Senate and the Speaker of the House of Representatives, acting concurrently, are hereby authorized to suspend for such proper occasions so much of the prohibitions contained in sections 9–119 to 9–124, as would prevent the use of the roads and walks of the said grounds by processions or assemblages, and the use upon them of suitable decorations, music, addresses, and ceremonies: *Provided,* That responsible officers shall have been appointed, and arrangements determined which are adequate, in the judgment of said President of the Senate and Speaker of the House of Representatives, for the maintenance of suitable order and decorum in the proceedings, and for guarding the Capitol and its grounds from injury. (July 31, 1946, 60 Stat. 719, ch. 707, § 11.)

CODIFICATION

Section is also classified to 40 U.S.C. § 193j.

§ 9–129. Capitol Police Board power to suspend prohibitions.

In the absence from Washington of either of the officers designated in section 9–128, the authority therein given to suspend certain prohibitions of sections 9–118 to 9–132 shall devolve upon the other, and in the absence from Washington of both it shall devolve upon the Capitol Police Board: *Provided,* That notwithstanding the provisions of sections 9–124 and 9–128, the Capitol Police Board is hereby authorized to grant the Commissioners of the District of Columbia authority to permit the use of Louisiana Avenue for any of the purposes prohibited by said section 9–124. (July 31, 1946, 60 Stat. 719, ch. 707, § 12.)

CODIFICATION

Section is also classified to 40 U.S.C. § 193k.

§ 9–130. Concerts on Capitol Grounds.

Nothing in sections 9–118 to 9–129 shall be construed to prohibit the giving of concerts in the United States Capitol Grounds, at such times as will not interfere with the Congress, by any band in the service of the United States, when and as authorized by the Architect of the Capitol. (July 31, 1946, 60 Stat. 720, ch. 707, § 13.)

CODIFICATION

Section is also classified to 40 U.S.C. § 193*l*.

§ 9–131. Traffic regulations by Capitol Police Board—Penalties—Prosecutions.

(a) The Capitol Police Board, consisting of the Sergeant at Arms of the United States Senate, the Sergeant at Arms of the House of Representatives, and the Architect of the Capitol, shall have exclusive charge and control of the regulation and movement of all vehicular and other traffic, including the parking and impounding of vehicles and limiting the speed thereof, within the United States Capitol Grounds, except on those streets and roadways shown on the map referred to in section 9–118 as being under the jurisdiction and control of the Commissioners of the District of Columbia; and said Board is hereby authorized and empowered to make and enforce all necessary regulations therefor and to prescribe penalties for violation of such regulations, such penalties not to exceed a fine of $300 or imprisonment for not more than ninety days. Notwithstanding the foregoing provisions of this section those provisions of sections 40–601 to 40–617, for the violation of which specific penalties are provided in said sections, shall be applicable to the United States Capitol Grounds. Prosecutions for violation of such regulations shall be in the District of Columbia Court of General Sessions, upon information by the Corporation Counsel of the District of Columbia or any of his assistants.

(b) Regulations authorized to be promulgated under this section shall be promulgated by the Capitol Police Board and such regulations may be

amended from time to time by the Capitol Police Board whenever it shall deem it necessary: *Provided,* That until such regulations are promulgated and become effective, the traffic regulations of the District of Columbia shall be applicable to the United States Capitol Grounds.

(c) All regulations promulgated under the authority of this section shall, when adopted by the Capitol Police Board, be printed in one or more of the daily newspapers published in the District of Columbia, and shall not become effective until the expiration of ten days after the date of such publication, except that whenever the Capitol Police Board deems it advisable to make effective immediately any regulation relating to parking, diverting of vehicular traffic, or the closing of streets to such traffic, the regulation shall be effective immediately upon placing at the point where it is to be in force conspicuous signs containing a notice of the regulation. Any expenses incurred under this subsection shall be payable from the appropriation "Uniforms and Equipment, Capitol Police".

(d) It shall be the duty of the Commissioners of the District of Columbia, or any officer or employee of the government of the District of Columbia designated by said Commissioners, upon request of the Capitol Police Board, to cooperate with the Board in the preparation of the regulations authorized to be promulgated under this section, and any future amendments thereof. (July 31, 1946, 60 Stat. 720, ch. 707, § 14; July 11, 1947, 61 Stat. 308, ch. 211, §§ 1, 2; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CODIFICATION

Section is also classified to 40 U.S.C. § 212b.

AMENDMENTS

1947—Subsec. (b) amended by act July 11, 1947, § 1, which omitted reference to six months after July 31, 1946, as the time for promulgation of regulations and authorized amendment of regulations.

Subsec. (c) amended by act July 11, 1947, § 2, which authorized certain traffic regulations to be effective immediately upon placing conspicuous signs containing notice of regulations at the places affected thereby and added provisions for payment of expenses.

CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "The Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

NOTES TO DECISIONS

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Capitol Police had jurisdiction to act upon traffic tie-up on boundary street of the Capitol Grounds in which they had jurisdiction and therefore, had right to arrest defendant if he committed a misdemeanor in their presence while they were so acting. *Andersen* v. *United States* (D. C. Mun. App. 1957, 132 A. 2d 155).

Jury question

Ordinarily, in prosecution for simple assault occurring while officer is in process of arresting defendant for misdemeanor allegedly committed in officer's presence, conflicting evidence on question whether defendant had been committing a misdemeanor, would have to be resolved by the jury. *Andersen* v. *United States* (D. C. Mun. App. 1957, 132 A. 2d 155).

§ 9–132. "Capitol Buildings" defined.

The provisions of sections 9–118 to 9–125 and 9–127 to 9–131, shall not be construed to extend inside the Capitol Buildings; and the words "Capitol Buildings" as used in sections 9–118 to 9–132 shall be construed to include the United States Capitol, Senate Office Building, House Office Buildings, Capitol Power Plant, and Legislative Garage. (July 31, 1946, 60 Stat. 721, ch. 707, § 16 (a).)

CODIFICATION

Section is also classified to 40 U.S.C. § 193m.

§ 9–133. District of Columbia buildings—Control of Commissioners.

All buildings belonging to the District of Columbia shall be under the jurisdiction and control of the Commissioners of said District. (June 29, 1937, 50 Stat. 377, ch. 403, § 1.)

§ 9–134. Designation of employees to protect life and property outside the District—Powers of arrest—Weapons and uniforms.

(a) The Commissioners of the District of Columbia may designate any employee of the District to protect life and property in and on the buildings and grounds of any institution upon land outside the District acquired by the United States for the District of Columbia for the establishment or operation thereon of any sanitorium, hospital, training school, correctional institution, reformatory, workhouse, or jail: *Provided,* That such employee shall be bonded for the faithful discharge of such duties, and the Commissioners of the District of Columbia shall fix the penalty of any such bond. Whenever any employee is so designated he is hereby authorized and empowered (1) to arrest under a warrant within the buildings and grounds of any such institution any person accused of having committed within any such buildings or grounds any offense against the laws of the United States, or against any rule or regulation prescribed pursuant to sections 9–134 to 9–138; (2) to arrest without a warrant any person committing any such offense within such buildings or grounds, in his presence; or (3) to arrest without warrant within such buildings or grounds, any person whom he has reasonable grounds to believe has committed a felony in such buildings or grounds.

(b) Any individual having the power to arrest as provided in subsection (a) of this section may carry firearms or other weapons and shall wear such uniform with such identification badge as the Commissioners may direct or by regulation may prescribe. (July 3, 1956, 70 Stat. 488, ch. 508, § 1.)

§ 9–135. Rules and regulations.

The Commissioners may make and amend such rules and regulations as they deem necessary for the protection of life and property in or on the buildings and grounds of any such institution. (July 3, 1956, 70 Stat. 488, ch. 508, § 2.)

§ 9–136. Penalty for violation of rules and regulations.

Any person who knowingly and willfully violates any rule or regulation prescribed under sections 9–134 to 9–138 shall be guilty of a misdemeanor, and shall be fined not more than $500 or imprisoned not more than six months or both. (July 3, 1956, 70 Stat. 488, ch. 508, § 3.)

§ 9–137. Acceptance of collateral for appearance before United States Commissioner—Deposit of collateral.

The officer on duty in command of those employees designated by the Commissioners as provided in section 9–134 may accept deposit of collateral from any person charged with the violation of any rule or regulation prescribed under sections 9–134 to 9–138, for appearance in court or before the appropriate United States commissioner; and such collateral shall be deposited with the United States commissioner sitting in the district where the offense has been committed. (July 3, 1956, 70 Stat. 488, ch. 508, § 4.)

§ 9–138. Agreements with States—Charges for services.

The Commissioners may enter into agreements with any of the States, or any political subdivision thereof, where any such institution mentioned in section 9–134 is located, for such governmental services as the Commissioners shall deem necessary to the efficient and proper government of such institution, and they may, from time to time, agree to modifications in any such agreement: *Provided,* That where the charge for any such service is established by the laws of the State within whose territorial limits such institution is situated, the Commissioners may not pay for such service an amount in excess of the charge so established. There is hereby authorized to be appropriated such sums as may be necessary for the making of payment for services under any such agreement. (July 3, 1956, 70 Stat. 488, ch. 508, § 5.)

§ 9–139. Tunnel, location of under Capitol and Botanic Garden grounds.

The Commissioners of the District of Columbia are authorized and directed, in constructing, maintaining, and operating a vehicular tunnel in the city of Washington, District of Columbia, extending from the vicinity of Second and C Streets Southwest, to the vicinity of Third and Constitution Avenue Northwest, as a part of the Innerloop Freeway System, to locate a portion of such tunnel under square W–576, which is a part of the United States Botanic Garden grounds, and reservation 12, which is a part of the United States Capitol Grounds. (July 21, 1964, 78 Stat. 333, Pub. L. 88–381, § 1.)

§ 9–140. Approval of Architect of Capitol required—Prescription of conditions by him—Commissioners authorized to use certain areas for tunnel.

Subject to the approval of the Architect of the Capitol and to such conditions as he may prescribe, the Commissioners of the District of Columbia are authorized to make such use of square W–576 and reservations 12 and 6B as may be necessary for the construction of the tunnel, including borings and other preliminary work and storing of materials, and the reconstruction of that section of the Tiber Creek sewer located under square W–576 and reservation 6B. (July 21, 1964, 78 Stat. 334, Pub. L. 88–381, § 2.)

§ 9–141. Right, title and interest to grounds used for tunnel to remain in the United States—Jurisdiction and responsibility for tunnel.

Except as provided in section 9–144, nothing in sections 9–139 to 9–145 shall be construed to grant to the Commissioners of the District of Columbia any right, title, or interest in or to any real property of the United States, and reservation 12 shall in its entirety continue to be a part of the United States Capitol Grounds, and square W–576 shall in its entirety continue to be a part of the United States Botanic Garden grounds. The Commissioners shall have jurisdiction and control of, and sole responsibility for the operation and maintenance of, those portions of the tunnel beneath square W–576 and reservation 12. (July 21, 1964, 78 Stat. 334, Pub. L. 88–381, § 3.)

§ 9–142. Restoration of grounds to their original condition.

All areas of square W–576 and reservations 12 and 6B disturbed by reason of operations under sections 9–139 to 9–145 shall, except as otherwise provided in sections 9–139 to 9–145, be restored to their original condition to the satisfaction of the Architect of the Capitol. (July 21, 1964, 78 Stat. 334, Pub. L. 88–381, § 4.)

§ 9–143. United States not to incur any expense or liability in connection with tunnel.

Except as provided in section 9–144, the United States shall not incur any expense or liability whatsoever under or by reason of sections 9–139 to 9–145, or be liable under any claim of any nature or kind that may arise from the construction, or the operation or maintenance, of that portion of the tunnel authorized by sections 9–139 to 9–145. (July 21, 1964, 78 Stat. 334, Pub. L. 88–381, § 5.)

§ 9–144. Architect authorized to convey to Commissioners of the District of Columbia certain grounds for construction of Innerloop Freeway System—Jurisdiction over grounds conveyed.

The Architect of the Capitol is authorized to convey to the Commissioners of the District of Columbia, for purposes of constructing the Innerloop Freeway System, all, or so much as he determines necessary, of the right, title, and interest of the United States in and to reservations 6B, 6C, 6D, 6E, 6F, and 286 in the District of Columbia. Any real property conveyed under this section shall thereafter be under the sole jurisdiction and control of the Commissioners of the District of Columbia. (July 21, 1964, 78 Stat. 334, Pub. L. 88–381, § 6.)

§ 9–145. Commissioners authorized to use certain area bounded by Fourth Street, Pennsylvania Avenue, Third Street, and North Mall Drive Northwest, for tunnel—Conditions.

Notwithstanding the joint resolution entitled "Joint resolution providing for the construction and maintenance of a National Gallery of Art", approved March 24, 1937 (50 Stat. 51; 20 U.S.C. 71), the Commissioners of the District of Columbia are authorized to use the east sixty-five feet of the area bounded by Fourth Street, Pennsylvania Avenue, Third Street, and North Mall Drive Northwest, in the District of Columbia for the construction and maintenance of a vehicular tunnel, on condition that after such construction is completed (1) the surface thereof is maintained at its original grade, (2) no portion of the tunnel, including ventilating equipment and utilities, is nearer the surface than eight

feet, and (3) the surface ingress and egress to such property is not limited. (July 21, 1964, 78 Stat. 334, Pub. L. 88–381, § 7.)

Chapter 2.—CONSTRUCTION OF PUBLIC BUILDINGS

Sec.

9–201. Municipal center—Establishment.
9–202. Municipal center—Rental.
9–203. Electric light and power plants—Construction.
9–204. Public buildings—Loans for construction authorized — Projects enumerated — Location determined.
9–205. Public buildings—Funds available for acquiring lands for public use—Condemnation proceedings.
9–206. Public buildings—Reimbursement, proportion of tax receipts to be credited to reimbursement fund—Anticipating payments.
9–207. Public buildings—Reports to be submitted to Congress.
9–208. May borrow money from United States for public works—Approval of President—Certain projects authorized.
9–209. Purposes for which funds may be used.
9–210. Repayment of funds.
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9–216. Purposes for which funds may be used.
9–217. Repayment—Interest—Included in annual budget.
9–218. Estimates and report to Congress.
9–219. Supervision and approval of plans and specifications.
9–220. Construction program for public needs in education, health, welfare, public safety, recreation and other fields authorized—Financing conditions—Loans to be advanced to Commissioners—Rate of interest—Repayment of loans—June 30, 1973, last day for advancement of loans.

§ 9–201. Municipal center—Establishment.

The Commissioners of the District of Columbia are authorized and directed to acquire by purchase, condemnation, or otherwise, all of squares numbered 490, 491, 533, and reservation 10, in the District of Columbia, including buildings and other structures thereon, as a site for a municipal center, and to construct thereon necessary buildings to house municipal activities: *Provided,* That the Commissioners of the District of Columbia are hereby authorized to close and vacate such portions of streets and alleys as lie between or within such squares, as in the judgment of said commissioners may be necessary, and the portions of such streets and alleys so closed and vacated shall thereupon become parts of such sites: *Provided further,* That if this property or any part thereof shall be condemned, the Commissioners of the District of Columbia shall be entitled to enter immediately into the possession of any such property for which an award shall have been made by paying the amount of such award into the registry of the United States District Court for the District of Columbia. (Feb. 28, 1929, 45 Stat. 1408, ch. 379, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

Change of Name

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Transfer of Functions

Reorganization Order No. 42 of the Board of Commissioners dated June 23, 1953, established under the direction and control of the Engineer Commissioner, a Department of Buildings and Grounds headed by a Director. The purpose of the new Department is to provide for the construction, repair and improvement of the physical plant of the District of Columbia. The order sets out the functions of the new Department and its organization, abolished the former Department of Construction, the Office of the Municipal Architect, the Office of the Superintendent of District Buildings, the Division of Repairs and Improvements of the District of Columbia Repair Shop, and the Construction Division; and transferred all of their functions and positions to the Department of Buildings and Grounds. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to Title 1, Administration.

Appropriations

Appropriations for the construction of the municipal center were made by acts July 3, 1930, 46 Stat. 957, ch. 848; Feb. 23, 1931, 46 Stat. 1384, ch. 282, and June 29, 1932, 47 Stat. 350, ch. 308.

Cross References

Acceptance and maintenance of memorial fountain for Metropolitan Police Department, see § 4–901.

Construction of Children's tuberculosis sanitarium, see § 32–312.

Employment of agents in purchase of school sites or other public buildings, see § 1–812.

General provisions concerning streets, see § 7–102 and notes.

General provisions for closing alleys and streets through lands belonging to District of Columbia, see §§ 7–309 to 7–312.

Rules and regulations for wharf property, see §§ 9–101, 9–102.

Testing of building materials, see §§ 1–813, 1–814.

§ 9–202. Municipal center—Rental.

The Commissioners of the District of Columbia are authorized in their discretion to rent, until their removal becomes necessary, at fair rental values, buildings acquired by the District in the municipal center, and to use such part of the rentals heretofore and hereafter collected as may be necessary for expenses of collection, repairs, and alterations to buildings by day labor or otherwise, expenses of moving and preservation and operating expenses of such buildings as may continue in private occupancy, the balance of the rentals to be covered into the treasury to the credit of the revenues of the District of Columbia. (July 3, 1930, 46 Stat. 957, ch. 848.)

§ 9–203. Electric light and power plants—Construction.

No appropriation made before or after March 4, 1907, for the construction or equipment of any executive or municipal building in the District of Columbia shall be expended for the production of electricity for light or power, unless, in the judgment of the Secretary of the Treasury, such necessary electric current for light and power can not be obtained at a less cost. (Mar. 4, 1907, 34 Stat. 1371, ch. 2918, § 9.)

§ 9–204. Public buildings—Loans for construction authorized—Projects enumerated—Location determined.

The commissioners of the District of Columbia are hereby authorized to borrow for the District of Columbia from the Federal Emergency Administration of Public Works created by the National Industrial Recovery Act (which, for the purposes of sections 9–204 to 9–207, shall be construed to include any agency created or designated by the President for similar purposes under the Emergency Relief Appropriation Act of 1935); and said administration is authorized to lend to said commissioners the sum of $10,750,000, or any part thereof, out of funds authorized by law for said administration, for the acquisition, purchase, construction, establishment, and development of a tuberculosis hospital, a sewage-disposal plant, an extension of or addition to Gallinger Municipal Hospital, a jail or other enclosure for prisoners at Lorton, Virginia, and a building or buildings for the police court, the municipal court, the recorder of deeds, and the juvenile court, or any of them, said court buildings to be located on such portions or parts of Judiciary Square, or the area bounded by Fourth and Fifth Streets, D and G Streets, northwest, as shall be approved by said commissioners, and the National Capital Planning Commission, or any one or more of said projects as the said Commissioners may determine; and to advance to the Children's Hospital of the District of Columbia in compensation for clinical examination of tubercular children, the sum of $100,000 or so much thereof as may be necessary for alterations and enlargement of building, equipment, and accessories. (June 25, 1934, 48 Stat. 1215, ch. 743, § 1; May 6, 1935, 49 Stat. 174, ch. 91, § 1.)

AMENDMENT

1935—Act May 6, 1935 added the parenthetical clause and all the projects which follow provision for the jail at Lorton, Virginia.

CHANGE OF NAME

Act April 1, 1942, 56 Stat. 190, ch. 207, § 1, consolidated the police court and the municipal court into a single court, to be known as "The Municipal Court for the District of Columbia". Act July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1, changed the name of the court to the "District of Columbia Court of General Sessions". Provisions identical with those of such act July 8, 1963, were contained in act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which was repealed by act Dec. 23, 1963, 77 Stat. 620, Pub. L. 88–241, § 21a.

TRANSFER OF FUNCTIONS

Reorganization Order No. 57 of the Board of Commissioners dated June 30, 1953, combined with Reorganization Order No. 52, dated June 30, 1953, District of Columbia Pound, and redesignated Organization Order No. 141 dated February 11, 1964, established under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and para-medical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D.C. Code. The order prior to redesignation abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanitorium, and the Anatomical Board and transferred their functions and positions to the new department. The organization of the new department was set out in the order which was issued pursuant to Reorganization Plan No. 5 of 1952. The redesignated order and plan are set out in the Appendix to Title 1, Administration.

"National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in view of act June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission. See section 1–1009.

CROSS REFERENCE

Limitation on borrowing power, see § 9–212.

§ 9–205. Public buildings—Funds available for acquiring lands for public use—Condemnation proceedings.

The sum authorized by section 9–204, or any part thereof, shall, when borrowed, be available to the commissioners of the District of Columbia for the acquisition by dedication, purchase, or condemnation of the fee simple title to land, or rights or easements in land, for the public uses authorized by sections 9–204 to 9–207, and for the preparation of plans, designs, estimates, models, and contracts, for architectural, and other necessary professional services, without reference to section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters] and section 5 of title 41, U.S. Code, for the construction of buildings, including materials and labor, heating, lighting, elevators, plumbing, landscaping, and all other appurtenances, and the purchase and installation of machinery, apparatus, and any and all other expenditures necessary for or incident to the complete construction of the aforesaid buildings and plants. All contracts, agreements, and proceedings in court for condemnation or otherwise, pursuant to sections 9–204 to 9–207, shall be had and made in accordance with existing provisions of law, except as otherwise herein provided. (June 25, 1934, 48 Stat. 1215, ch. 743, § 2; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a).)

CODIFICATION

The reference in this section to "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

AMENDMENT

1949—Act Oct. 28, 1949, § 1106(a), which was a part of the Classification Act of 1949, and which has since been repealed, substituted "Classification Act of 1949" for "Classification Act of 1923". See codification note above.

§ 9–206. Public buildings—Reimbursement, proportion of tax receipts to be credited to reimbursement fund—Anticipating payments.

Seventy per centum of so much of said sum authorized by section 9–204 as may be expended as therein provided shall be reimbursed to the Federal Emergency Administration of Public Works from any funds in the treasury to the credit of the District of Columbia, as follows, to wit: Not less than $1,000,000 on the 30th day of June each year after such sum

shall have been advanced to said District until the full amount expended hereunder is reimbursed, without interest for the first three years after any such advances and with interest at not exceeding 4 per centum per year thereafter on annual balances as of each June 30: *Provided,* That whenever the District of Columbia is under obligation by virtue of the provisions of section 4 of Public Act Numbered 284, Seventy-first Congress, entitled "An Act for the acquisition, establishment, and development of the George Washington Memorial Parkway, and so forth," approved May 29, 1930 (46 Stat. 485, ch. 354), to reimburse the United States for sums appropriated by the Congress under that Act, the total reimbursement required under both that Act and sections 9–204 to 9–207 shall be not less nor more than $1,300,000 in any one fiscal year: *Provided,* That the Commissioners may, in their discretion, repay more than said amount: *And provided further,* That the Commissioners may, in their discretion, allocate any reimbursement as between the sums due by them to the United States under the aforesaid Act and the sums due by them to the Federal Emergency Administration of Public Works under sections 9–204 to 9–207: *Provided,* That such sums as may be necessary for the reimbursement herein required of or permitted by the District of Columbia, and for the payment of interest, shall be included in the annual estimates of the Commissioners of the District of Columbia, the first reimbursement to be made on June 30, 1936. Until 70 per centum of so much of said sum authorized by section 9–204 as may be expended as therein provided shall be reimbursed to the Federal Emergency Administration of Public Works, with interest as provided in this section, 10 cents of the tax levied and collected upon each $100 of the assessed valuation of all real and tangible personal property subject to taxation in the District of Columbia shall be deposited in the treasury of the United States to the credit of a special account for such reimbursement to the Federal Emergency Administration of Public Works and shall not be available for any other purpose. The commissioners may, in their discretion, anticipate from said special account the payments required by sections 9–204 to 9–207: *Provided,* That whenever the District of Columbia is under obligation by virtue of the provisions of section 4 of said Public Act Numbered 284, Seventy-first Congress, reimbursement shall be not less than $300,000 in any one fiscal year. (June 25, 1934, 48 Stat. 1215, ch. 743, § 3; May 6, 1935, 49 Stat. 175, ch. 91, § 2.)

AMENDMENT

1935—Act May 6, 1935, added the final proviso.

§ 9–207. Public buildings—Reports to be submitted to Congress.

The Commissioners of the District of Columbia shall submit with their annual estimates to the Senate and the House of Representatives a report of their activities and expenditures under section 9–204. (June 25, 1934, 48 Stat. 1216, ch. 743, § 4.)

§ 9–208. May borrow money from United States for public works—Approval of President—Certain projects authorized.

The commissioners of the District of Columbia are hereby authorized to accept advancements for the District of Columbia from the Federal Emergency Administration of Public Works, created by the National Industrial Recovery Act, and said administration with the approval of the President is authorized to advance to said commissioners the sum of $18,150,000, or any part thereof, in addition to any sums heretofore advanced to the District of Columbia by said administration, out of funds authorized by law for said administration, for the acquisition, purchase, construction, establishment, and development of public works, including among others a building or buildings for the municipal court, the recorder of deeds, and the juvenile court, or any of them, said buildings to be located on such portions or parts of Judiciary Square, or the area bounded by Fourth and Fifth Streets, D and G Streets, Northwest, or upon such other area or areas as shall be approved by said commissioners and the National Capital Planning Commission and the making of such advances is hereby included among the purposes for which funds heretofore appropriated or authorized for said administration, including funds appropriated by the Public Works Administration Appropriation Act of 1938, may be used, in addition to the other purposes specified in the respective acts appropriating or authorizing said funds. (June 25, 1938, 52 Stat. 1203, ch. 704, § 1.)

CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

TRANSFER OF FUNCTIONS

The functions of the Federal Works Administration of Public Works were transferred to the office of the Federal Works Administrator by Ex. Ord. No. 9357, June 30, 1943, 8 F.R. 9041.

All functions of the Federal Work Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, were transferred to the Administrator of General Services by act June 30, 1949, 63 Stat. 380, ch. 288, title I, § 103(a), which is classified to 5 U.S.C. § 630(a).

The functions, powers and duties of the National Capital Park and Planning Commission were transferred to the National Capital Planning Commission by act June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1. See section 1–1009.

§ 9–209. Purposes for which funds may be used.

The sum authorized by section 9–208, or any part thereof shall, when advanced, be available to the commissioners of the District of Columbia for the acquisition by dedication, purchase, or condemnation of the fee-simple title to land, or rights or easements in land, for the public uses authorized by sections 9–208 to 9–212, and for the preparation of plans, designs, estimates, models, and specifications; and for architectural and other necessary professional services without reference to section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters] and section 5 of title 41, U. S. Code; for the construction of buildings, including materials and labor, heating, lighting, elevators, plumbing, landscaping, and all other appurtenances, and the purchase and installation of machinery, furniture, equipment, ap-

paratus, and any and all other expenditures necessary for or incident to the complete construction and equipment for use of the aforesaid buildings and plants. All contracts, agreements, and proceedings in court for condemnation or otherwise, pursuant to sections 9–208 to 9–212 shall be had and made in accordance with existing provisions of law except as otherwise herein provided. (June 25, 1938, 52 Stat. 1204, ch. 704, § 2; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a).)

CODIFICATION

The reference in this section to "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

AMENDMENT

1949—Act Oct. 28, 1949, § 1106(a), which was a part of the Classification Act of 1949, and which has since been repealed, substituted "Classification Act of 1949" for "Classification Act of 1923." See codification note above.

§ 9–210. Repayment of funds.

The Federal Emergency Administration of Public Works shall be repaid 55 per centum of any moneys advanced under section 9–208 in annual instalments over a period of not to exceed twenty-five years with interest thereon for the period of amortization: *Provided,* That such sums as may be necessary for the reimbursement herein required of the District of Columbia, and for the payment of interest, shall be included in the annual estimates of the Commissioners of the District of Columbia, the first reimbursement to be made on June 30, 1941: *Provided further,* That whenever the District of Columbia is under obligation by virtue of the provisions of section 4 of Public Act Numbered 284, Seventy-first Congress [46 Stat. 485, ch. 354], reimbursement under that Act shall be not less than $300,000 in any one fiscal year. (June 25, 1938, 52 Stat. 1204, ch. 704, § 3.)

TRANSFER OF FUNCTIONS

Transfer of functions of the Federal Works Administration of Public Works to the Administrator of General Services, see notes under section 9–208.

§ 9–211. Estimates and report to Congress.

The Commissioners of the District of Columbia shall submit with their annual estimates to the Congress a report of their activities and expenditures under section 9–208. (June 25, 1938, 52 Stat. 1204, ch. 704, § 4.)

§ 9–212. Limitations on borrowing power.

The Commissioners of the District of Columbia are not authorized to borrow any further sum or sums under the provisions of sections 9–204 to 9–207. (June 25, 1938, 52 Stat. 1204, ch. 704, § 5.)

§ 9–213. Interest on funds borrowed from Public Works Administration.

The commissioner of Public Works, under the direction and supervision of the Federal Works Administrator, and the commissioners of the District of Columbia are authorized to amend existing contracts and agreements by which funds have been loaned or advanced or are obligated to be loaned or advanced to said commissioners, for the acquisition, purchase, construction, establishment, and development of public works, pursuant to the authority of sections 9–204 to 9–207, or sections 9–208 to 9–212, so as to provide for the payment of interest on the amounts of such loans and advances to be repaid to the Public Works Administration at such rate as would, in the opinion of the Secretary of the Treasury, be the lowest interest rate available to the District of Columbia were said District authorized by law to issue and sell obligations to the public at the par value thereof, in a sum equal to the repayable amounts of such loans and advances, maturing serially over a period of fifteen years in approximately equal annual installments, including both principal and interest, and secured by a first pledge of and lien upon all the general-fund revenues of said District. (July 1, 1940, 54 Stat. 706, ch. 494, § 1.)

TRANSFER OF FUNCTIONS

Transfer of functions of the Federal Works Administrator to the Administrator of General Services, see notes under section 9–208.

The Public Works Administration and its functions were transferred to the office of the Federal Works Administrator by Ex. Ord. No. 9357, June 30, 1943, 8 F.R. 9041.

§ 9–214. Interest to be determined by Secretary of Treasury.

The Secretary of the Treasury is authorized and directed to advise the Commissioner of Public Works and the Commissioners of the District of Columbia of such interest rate which, in his opinion and in the aforesaid circumstances, would be available to the District of Columbia on July 1, 1940. (July 1, 1940, 54 Stat. 706, ch. 494, § 2.)

TRANSFER OF FUNCTIONS

All functions, powers and duties of the Commissioner of Public Works were transferred to the office of the Federal Works Administrator by Ex. Ord. No. 9357, June 30, 1943, 8 F.R. 9041.

Transfer of functions of Federal Works Administrator to Administrator of General Services, see notes under section 9–208.

§ 9–215. Authorized to borrow additional funds for public works—Approval of President—Certain project specified.

The commissioners of the District of Columbia are hereby authorized to accept advancements for the District of Columbia from the Federal Emergency Administration of Public Works, or its successor, and said administration, or its successor, with the approval of the President is authorized to advance to said commissioners the sum of $450,000, or any part thereof, in addition to any sums heretofore advanced to the District of Columbia by said administration, or its successor, out of funds authorized by law for said administration, or its successor, for a building for the office of the recorder of deeds to be located on premises now known as 515 D Street Northwest, formerly used as the police court, as recommended by a committee appointed by the commissioners under order of January 12, 1940, and the making of such advances is hereby included among the purposes

for which funds heretofore appropriated or authorized for said administration or its successor, including funds appropriated by the Public Works Administration Appropriation Act of 1938, may be used, in addition to the other purposes specified in the respective acts appropriating or authorizing said funds. (July 11, 1940, 54 Stat. 757, ch. 583, § 1.)

CHANGE OF NAME

For consolidation of police court, referred to in this section, with municipal court, to form the Municipal Court of the District of Columbia, and change of name of last named court to District of Columbia Court of General Sessions, see note under § 9–204.

TRANSFER OF FUNCTIONS

Transfer of functions of the Federal Works Administration of Public Works to the Administrator of General Services, see notes under section 9–208.

§ 9–216. Purposes for which funds may be used.

The sum authorized by section 9–215, or any part thereof shall, when advanced, be available to the commissioners of the District of Columbia for the preparation of plans, designs, estimates, models, and specifications; and for architectural and other necessary professional services required for carrying out the provisions of sections 9–215 to 9–219; for the construction of a recorder of deeds building, including materials and labor, heating, lighting, elevators, plumbing, landscaping, transportation or rental thereof, and all other appurtenances, and the purchase and installation of machinery, furniture, equipment, apparatus, and any and all other expenditures necessary for or incident to the complete construction and equipment for use of the aforesaid building and plant. (July 11, 1940, 54 Stat. 757, ch. 583, § 2.)

§ 9–217. Repayment — Interest — Included in annual budget.

The Federal Emergency Administration of Public Works, or its successor, shall be repaid 55 per centum of any moneys advanced under section 9–215 in annual instalments over a period of not to exceed twenty-five years with interest thereon at such rate as is agreed upon by the commissioners of the District and the Federal Emergency Administration of Public Works, or its successor, for the period of amortization: *Provided,* That such sums as may be necessary for the reimbursement herein required of the District of Columbia, and for the payment of interest, shall be included in the annual estimates of the commissioners of the District of Columbia, the first reimbursement with interest to be made not later than June 30, 1944: *Provided further,* That whenever the District of Columbia is under obligation by virtue of the provisions of section 4 of Public Act Numbered 284, Seventy-first Congress, 46 Stat. 482, ch. 354, reimbursement under that Act shall not be less than $300,000 in any one fiscal year. (July 11, 1940, 54 Stat. 757, ch. 583, § 3.)

TRANSFER OF FUNCTIONS

Transfer of functions of the Federal Works Administration of Public Works to the Administrator of General Services, see notes under section 9–208.

§ 9–218. Estimates and report to Congress.

The Commissioners of the District of Columbia shall submit with their annual estimates to the Congress a report of their activities and expenditures under section 9–215. (July 11, 1940, 54 Stat. 758, ch. 583, § 4.)

§ 9–219. Supervision and approval of plans and specifications.

The plans and specifications for all building construction administered by the Commissioners of the District of Columbia shall be prepared under the supervision of the municipal architect, and those for school buildings after consultation with the Board of Education, and shall be approved by the Commissioners and all such construction shall be in conformity to such plans and specifications. (July 1, 1943, 57 Stat. 324, ch. 184, § 1.)

MUNICIPAL ARCHITECT

Office of the Municipal Architect abolished and functions transferred to the Department of Buildings and Grounds, see Reorg. Order No. 42, set out in the Appendix to Title 1, Administration.

§ 9–220. Construction program for public needs in education, health, welfare, public safety, recreation and other fields authorized—Financing conditions—Loans to be advanced to Commissioners—Rate of interest—Repayment of loans—June 30, 1973, last day for advancement of loans.

(a) A program of construction to meet capital needs of the government of the District of Columbia is hereby authorized. Such program shall include, without limitation, projects relating to activities to meet the needs of the public in the fields of education, health, welfare, public safety, recreation, and other general government activities.

(b) To assist in financing the cost of constructing facilities required for activities financed by the general fund of the District, the Commissioners are hereby authorized to accept loans for the District from the United States Treasury and the Secretary of the Treasury is hereby authorized to lend to the Commissioners such sums as may hereafter be appropriated, except that (1) the total principal amount of loans advanced pursuant to this section shall not exceed $290,000,000 and (2) $50,000,000 of the principal amount of loans authorized to be advanced pursuant to this subsection shall be utilized to carry out the purposes of the National Capital Transportation Act of 1965 and (3) $40,000,000 of the principal amount of loans authorized to be advanced pursuant to this subsection shall be utilized to carry out the purposes of titles I and II of the District of Columbia Public Education Act. Any loan for use in any fiscal year must first be specifically requested of the Congress in connection with the budgets submitted for the District, with a full statement of the work contemplated to be done and the need thereof, and such work must be approved by the Congress. Such approval shall not be constructed to alter or to eliminate the procedures for consultation, advice, and recommendation provided in the National Capital Planning Act of 1952. Such loans shall be an addition to any other loans heretofore or hereafter made to the Commissioners for any other purpose, and when advanced shall be deposited in the Treasury of the United States to the credit of the general fund of the District.

(c) The loans authorized pursuant to this section, or any part or parts thereof, shall be advanced to

the Commissioners on their requisition therefor, shall be available to the Commissioners for carrying out the said construction program, and shall be available until expended.

(d) Loans made under this section during any six-month period (beginning with the six-month period ending December 31, 1958) shall be at a rate of interest determined by the Secretary of the Treasury as of the beginning of such period which, in his judgment, would reflect the cost of money to the Treasury for borrowings at a maturity approximately equal to one-half of the period of time the loan is outstanding.

(e) Any loan advanced pursuant to this section shall be repaid to the Secretary of the Treasury in substantially equal payments, including principal and interest, within a period of thirty years beginning on July 1 of the second fiscal year following the date on which each such advance is credited to the general fund.

(f) No loans shall be advanced pursuant to this section after June 30, 1973. (June 6, 1958, 72 Stat. 183, Pub. L. 85–451, § 1; Aug. 27, 1963, 77 Stat. 130, Pub. L. 88–104, § 2(a)(b); Sept. 8, 1965, 79 Stat. 665, Pub. L. 89–173, § 5(b); Sept. 30, 1966, 80 Stat. 857, Pub. L. 89–610, title VI, § 601; Nov. 7, 1966, 80 Stat. 1434, Pub. L. 89–791, title III, § 301(b).)

REFERENCES IN TEXT

The National Transportation Act of 1965, referred to in subsection (b), is set out as sections 1–1421 to 1–1426 and as amendments of section 1–1404 and of subsection (b) of this section.

The National Capital Planning Act of 1952, referred to in subsec. (b), is classified to sections 1–1001 to 1–1013, and to 40 U.S.C. § 71 et seq.

Titles I and II of the District of Columbia Education Act, referred to in subsec. (b) are classified to §§ 29–415, 29–415 note, 29–416 to 29–418, 29–420, 31–1601, 31–1601 note, 31–1602 to 31–1605, and 31–1621 to 31–1625.

AMENDMENTS

1966—Section 301(b) of act Nov. 7, 1966, amended subsec. (b) by increasing ceiling of District's borrowing authority from $250,000,000 to $290,000,000, and added provisions that $40,000,000 of principal amount of loans so authorized should be utilized to carry out purposes of titles I and II of District of Columbia Public Education Act.

1966—Section 601 of act Sept. 30, 1966, amended subsec. (b) by changing the figure "$225,000,000" to "$250,000,000", and by changing the phraseology.

1965—Section 5(b) of act Sept. 8, 1965, amended subsection (b) by changing the figure "$175,000,000" to "$225,000,000" and by inserting the fourth proviso.

1963—Section 2(a) of act Aug. 27, 1963, amended subsection (b) by striking out "$75,000,000" and inserting in lieu thereof "$175,000,000." Section 2(b) amended subsection (f) by striking out "June 30, 1963" and inserting in lieu thereof "June 30, 1973."

DEFINITIONS; CONSTRUCTION; SEVERABILITY OF PROVISIONS; RULES AND REGULATIONS

For definition of "Commissioners", as used in act Sept. 30, 1966, Pub. L. 89–610, amending subsec. (b) of this section, construction of such act, severability of provisions with repect thereto, and authority to make rule and regulations to carry out provisions thereof, see §§ 1002—1005 of such act, set out as a note under § 25–124.

DEFINITIONS

Section 3 of act June 6, 1958, provided that: "As used in this Act [adding this section and amending section 47–2501b] the term 'District' means the District of Columbia and the term 'Commissioners' means the Board of Commissioners of the District of Columbia."

Chapter 3.—SALE OF PUBLIC LANDS

Sec.
9–301. Commissioners authorized to sell real estate.
9–302. Expenses of sales of real estate.
9–303. Commissioners to execute deeds to sell real estate.
9–304. Secretary of Interior authorized to sell certain real estate in National Park Service.
9–305. Solicitation for bids.
9–306. Expenses of sales.

§ 9–301. Commissioners authorized to sell real estate.

The Commissioners of the District of Columbia, with the approval of the National Capital Planning Commission, are authorized and empowered in their discretion, for the best interests of the District of Columbia, to sell and convey, in whole or in part, to the highest bidder at public or private sale, real estate now or hereafter owned in fee simple by the District of Columbia for municipal use, in the District of Columbia, which the commissioners and the National Capital Planning Commission find to be no longer required for public purposes. (Aug. 5, 1939, 53 Stat. 1211, ch. 449, § 1.)

TRANSFER OF FUNCTIONS

"National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in view of act June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission. See section 1–1009.

Reorganization Order No. 18 issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952, 66 Stat. 824, created within the Department of General Administration an Administrative Services Office and established therein responsibility for the administration of real property owned or utilized by the Government of the District of Columbia. The order and plan are set out in the Appendix to Title 1, Administration.

CROSS REFERENCES

Disposal of Industrial Home School, see § 32–503.

Duty of Director of National Park Service to report sales of public lands so that said lands may be entered for taxation, see § 47–409.

Exemption from operation of law requiring license to deal in real estate, see § 45–1402.

Reimbursement of funds advanced upon disposal of real estate of charitable or reformatory institutions, see § 32–1003.

Rent, sale, or exchange of lands acquired under District of Columbia Alley Dwelling Act, see §§ 5–103 to 5–116.

Sale of lands and buildings under Alley Dwelling Act, see §§ 5–103, 5–114.

Sale of lands not needed for public purposes, see § 16–1332 to 16–1334.

§ 9–302. Expenses of sales of real estate.

The said commissioners are further authorized to pay the reasonable and necessary expenses of sale of each parcel of land sold, and shall deposit the net proceeds thereof in the treasury of the United States to the credit of the District of Columbia. (Aug. 5, 1939, 53 Stat. 1211, ch. 449, § 2.)

§ 9–303. Commissioners to execute deeds to sell real estate.

The said commissioners are hereby authorized to execute proper deeds of conveyance for real estate sold under the provisions of this chapter, which shall contain a full description of the land sold, either by metes and bounds, or otherwise, according to law. (Aug. 5, 1939, 53 Stat. 1211, ch. 449, § 3.)

CROSS REFERENCE

General provisions for execution of instruments by Commissioners, see § 1–214.

§ 9–304. Secretary of Interior authorized to sell certain real estate in National Park Service.

The Secretary of the Interior, with the approval of the National Capital Planning Commission, is hereby authorized, in his discretion, for the best interests of the United States, to sell and convey, in whole or in part, by proper deed or instrument, any real estate held by the United States in the District of Columbia and under the jurisdiction of the National Park Service, which may be no longer needed for public purposes, for cash, or on such deferred-payment plan as the Secretary of the Interior may approve, at a price not less than that paid for it by the government and not less than its present appraised value as determined by him. (Aug. 5, 1939, 53 Stat. 1211, ch. 449, § 4.)

TRANSFER OF FUNCTIONS

"National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in view of act June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission. See section 1–1009.

§ 9–305. Solicitation for bids.

In selling any parcel of land under this chapter, said secretary shall cause such public or private solicitation for bids or offers to be made as he may deem appropriate, and shall sell the parcel to the party agreeing to pay the highest price therefor if such price is otherwise satisfactory: *Provided,* That in the event the price offered or bid by the owner of any lands abutting the lands to be sold equals the highest price offered or bid by any other party, the parcel may be sold to such abutting owner. (Aug. 5, 1939, 53 Stat. 1211, ch. 449, § 5.)

§ 9–306. Expenses of sales.

Said secretary is further authorized to pay the reasonable and necessary expenses of sale of each parcel of land sold, and shall deposit the net proceeds thereof in the treasury to the credit of the United States and the District of Columbia in the proportion that each paid the appropriations from which the parcels of land were acquired or were obligated to pay the same, at the time of acquisition, by reimbursement. (Aug. 5, 1939, 53 Stat. 1211, ch. 449, § 6.)

REPEAL OF INCONSISTENT LAWS

Section 7 of act Aug. 5, 1939, provided: "That all Acts and parts of Acts which may be inconsistent or in conflict with this Act [this chapter] are hereby repealed to the extent of the inconsistency or conflict."

Chapter 4.—EXCHANGE OF DISTRICT-OWNED LAND

Sec.
9–401. Commissioners empowered to effect exchange.
9–402. Publication of intended exchange.
9–403. Authorization for execution of proper deed of conveyance.
9–404. Authority to pay or receive amounts as part of consideration for exchange.

§ 9–401. Commissioners empowered to effect exchange.

Where two lots or parcels of land abut each other and one of such lots or parcels belongs to the District of Columbia, the Commissioners of the District of Columbia, with the approval of the National Capital Planning Commission, are hereby authorized and empowered, when in their judgment and discretion it is for the best interest of the District of Columbia, to exchange such District-owned land, or part thereof, for the abutting lot or parcel of land, or part thereof. (Aug. 1, 1951, 65 Stat. 150, ch. 283.)

CODIFICATION

Section comprises part of the first sentence of act Aug. 1, 1951. Remainder of act Aug. 1, 1951, is classified to sections 9–402 to 9–404.

TRANSFER OF FUNCTIONS

"National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in view of act June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission. See section 1–1009.

§ 9–402. Publication of intended exchange.

No such exchange shall be made unless the Commissioners of said District shall, thirty days prior thereto, publish in a newspaper of general circulation in the said District a notice of their intention to make such exchange and such notice shall include a description by lot or parcel number or otherwise of all lots or parcels to be exchanged and the appraised value thereof. (Aug. 1, 1951, 65 Stat. 150, ch. 283.)

CODIFICATION

Section comprises the proviso from the first sentence of act Aug. 1, 1951. Remainder of act Aug. 1, 1951, is classified to sections 9–401, 9–403 and 9–404.

§ 9–403. Authorization for execution or acceptance of proper deed of conveyance.

The said Commissioners are hereby authorized to execute a proper deed of conveyance for the land belonging to the District to be conveyed and to accept a proper deed of conveyance from the owner of such abutting real estate. (Aug. 1, 1951, 65 Stat. 150, ch. 283.)

CODIFICATION

Section comprises the second sentence of act Aug. 1, 1951. Remainder of act Aug. 1, 1951, is classified to sections 9–401, 9–402 and 9–404.

§ 9–404. Authority to pay or receive amounts as part of consideration for exchange.

If, in the opinion of the Commissioners, the value of the land to be conveyed to the District is in excess of the value of the land to be conveyed by the District, the Commissioners are authorized to pay, within the limitation of appropriations therefor, to the abutting property owner the amount of such excess as determined by the Commissioners, on the basis of an appraisal, and, if the value of the land to be conveyed by the District is in excess of the value of the land to be conveyed to the District, the Commissioners shall require the abutting property owner to pay such excess as determined by the Commissioners, on the basis of an appraisal, as part of the consideration for the said exchange. (Aug. 1, 1951, 65 Stat. 150, ch. 283.)

CODIFICATION

Section comprises the third sentence of act Aug. 1, 1951. Remainder of act Aug. 1, 1951, is classified to sections 9–401 to 9–403.

Chapter 5.—REPAIRS AND IMPROVEMENTS

Sec.
9–501. Repairs and improvements—Working fund.

§ 9–501. Repairs and improvements—Working fund.

On and after July 1, 1954, work performed for repairs and improvements may be by contract or otherwise, except for amounts exceeding $5,000 which shall be determined by the Commissioners; and the Commissioners are authorized to establish a working fund for such purposes without fiscal year limitation, said fund to be reimbursed for repairs and improvements performed under that fund from funds available for these purposes, and payments are authorized to be made to said fund in advance if required by the Director of Buildings and Grounds subject to subsequent adjustments, from funds available for necessary expenses, including allowances for privately owned automobiles. (July 1, 1954, 68 Stat. 394, ch. 449, § 5; July 23, 1959, 73 Stat. 238, Pub. L. 86–104, § 15; Apr. 8, 1960, 74 Stat. 30, Pub. L. 86–412, § 15.)

AMENDMENTS

1960—Act Apr. 8, 1960, substituted "except for amounts exceeding $5,000 which shall be determined by the Commissioners" for "as determined by the Director of Buildings and Grounds for amounts not exceeding $5,000 and as determined by the Commissioners for amounts exceeding $5,000."

1959—Act July 23, 1959, required the Director of Buildings and Grounds to make the determination where amount involved is $5,000 or less, and the Commissioners where the amount involved is in excess of $5,000.

CONTINUATION OF 1960 ACT

Section 15 (80 Stat. 1173) of act Nov. 2, 1966, Pub. L. 89–743 (District of Columbia Appropriation Act, 1967), provided in part that "Except as otherwise provided herein, limitations and legislative provisions contained in the District of Columbia Appropriation Act, 1961 [act April 8, 1960, 74 Stat. 17, Pub. L. 86–412], shall be continued for the fiscal year, 1967". Similar provisions, making the same extensions of the said 1961 Appropriation Act (act April 8, 1960) for prior years, were contained in the following appropriation acts:

1966—July 16, 1965, 79 Stat. 242, Pub. L. 89–75, § 15.
1965—Aug. 22, 1964, 78 Stat. 593, Pub. L. 88–479, § 15.
1964—Dec. 30, 1963, 77 Stat. 840, Pub. L. 88–352, § 15.
1963—Oct. 23, 1962, 76 Stat. 1155, Pub. L. 87–867, § 15.
1962—Sept. 21, 1961, 75 Stat. 564, Pub. L. 87–265, § 15.

Section 15 of the above-mentioned 1961 Appropriation Act (act April 8, 1960), in amending section 5 of the act of July 1, 1954, classified to this section, specifically amended a permanent provision.

TITLE 10.—WEIGHTS, MEASURES, AND MARKETS

Chap. Sec.
1. Weights, Measures, and Markets..... 10–101

Chapter 1.—WEIGHTS, MEASURES, AND MARKETS

Sec.
10–101. Department of Weights, Measures, and Markets created—Director—Assistants and employees.
10–101a. Director of Weights, Measures, and Markets.
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10–103. Director to have exclusive powers—Weighing and measuring devices to be examined—Condemnation of devices not conforming to standards—Unapproved weighing and measuring devices not to be possessed or used—Director not required to approve devices belonging to United States.
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10–114. Containers for fluid and frozen dairy products—Labeling.
10–115. Standard containers for sale of fruits, vegetables, and other dry commodities—No sales except in standard containers or by weight or count.
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10–121. "Barrel of corn" defined.
10–122. Automatic measuring pumps—"Out of use" sign—Inspection.
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10–124a. Investigation and detection of misrepresentation and false advertising in connection with food sales—Appropriation.
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Sec.
10–127. Commissioners may establish tolerances and specifications.
10–128. Weighmasters—Public scales—Fees.
10–129. Powers and duties of Director conferred on assistants and inspectors.
10–130. Enactment and enforcement of rules and regulations—Supervision of produce and other markets—Investigations and reports.
10–131. "Commissioners" to mean Commissioners of the District of Columbia—"Director" to mean Director of weights, measures, and markets.
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10–136. Markets—Disposition of receipts—Charges.
10–137. Farmers' produce market—Regulations—Charges.

§ 10–101. Department of Weights, Measures, and Markets created—Director—Assistants and employees.

There is hereby created an executive department in the government of the District of Columbia which shall be known as the Department of Weights, Measures, and Markets. Such department shall be in charge of a Director of Weights, Measures, and Markets, who shall be appointed by and be under the direction and control of the Commissioners of the District of Columbia. He shall have the custody and control of such standard weights and measures of the United States as are now or shall hereafter be provided by the District of Columbia, which shall be the only standards for weights and measures in said District.

The commissioners are also authorized to appoint, on the recommendation of the Director, such assistants, inspectors, and other employees for which Congress may, from time to time, provide. (Mar. 3, 1921, 41 Stat. 1217, ch. 118, § 1; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1.)

CODIFICATION

Provision for a salary of $2,500 per annum was omitted as superseded by the Classification Act of 1949 (Oct. 28, 1949, 63 Stat. 954, ch. 782). That act, as amended, has since been repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a), and is now covered by 5 U.S.C. § 305, chapter 51, subchapter III of chapter 53, and §§ 5341, 5342, 5504, 5509, 7154.

CHANGE OF NAME

The name of "Superintendent of Weights, Measures, and Markets" was changed to "Director of Weights, Measures, and Markets" by act Apr. 11, 1946. See section 10–101a.

TRANSFER OF FUNCTIONS

Reorg. Order No. 55 of the Board of Commissioners dated June 30, 1953, as amended, established under the direction and control of a Commissioner a Department of Licenses and Inspection, set out the purpose, organization, and functions of the Department, established the Inspection Division to administer and enforce the standard weights and measure law, transferred to the Department the functions and postions of the Department of

Weights, Measures, and Markets and abolished the latter Department in accordance with the provisions of 1952 Reorg. Plan No. 5. See note under section 1–246.

All functions, duties, powers and authority vested in the Department of Weights, Measures, and Markets and the Director thereof on July 1, 1952, the effective date of 1952 Reorg. Plan No. 5, and transferred to the Board were delegated to and continued to be vested in the Department and its Director, until otherwise ordered, by Reorg. Order No. 1 of the Board of Commissioners, dated July 1, 1952.

All functions of the Department of Weights, Measures, and Markets, including functions of the Director, other officers, employees and subordinate agencies, were transferred to the Board of Commissioners, such Department, including the office of Director thereof, was abolished effective at such time as the Board should specify but not later than June 30, 1953, a new office or agency was authorized to be established with such name or title as the Board should determine, and the Board was empowered to delegate the performance of any of its functions with stated exceptions, including the transferred functions, to any member of the Board or any other officer, employee or agency of the Government of the District of Columbia and to transfer personnel, property, records and funds by 1952 Reorg. Plan No. 5, eff. July 1, 1952, 66 Stat. 824.

The Reorganization Orders and Plan are set out in the Appendix to Title 1, Administration.

CROSS REFERENCES

Annual estimate of salaries, see § 47–205.

Commissioners' authority to regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47–2344, 47–2345.

Federal laws relating to weights and measures, see 15 U.S.C. §§ 201 et seq. and §§ 271 et seq.

United States Cotton Standards Act, see 7 U.S.C. § 51 et seq.

United States Grain Standards Act, see 7 U.S.C. § 71 et seq.

§ 10–101a. Director of Weights, Measures, and Markets.

After April 11, 1946, the Superintendent of Weights, Measures, and Markets shall be known as the Director of Weights, Measures, and Markets. (Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1.)

CODIFICATION

Section was not enacted as a part of the District of Columbia Weights and Measures Act which comprises this chapter.

TRANSFER OF FUNCTIONS

Status of Department of Weights, Measures, and Markets and Director thereof, see notes under section 10–101.

§ 10–102. Director to give bond and take oath.

The Director shall, before entering upon the performance of his duties, give bond to the District of Columbia in the penal sum of $5,000, signed by two sureties or by a bonding company, to be approved by the Commissioners, conditioned on the faithful discharge of the duties of his office, and shall take and subscribe an oath or affirmation before the Commissioners that he will faithfully and impartially discharge the duties of his office, which bond and oath shall be deposited with the Commissioners. (Mar. 3, 1921, 41 Stat. 1217, ch. 118, § 2; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1.)

CHANGE OF NAME

The name of "Superintendent of Weights, Measures, and Markets" was changed to "Director of Weights, Measures, and Markets" by act Apr. 11, 1946. See section 10–101a.

TRANSFER OF FUNCTIONS

Status of Department of Weights, Measures and Markets and Director thereof, see notes under section 10–101.

§ 10–103. Director to have exclusive powers—Weighing and measuring devices to be examined—Condemnation of devices not conforming to standards—Unapproved weighing and measuring devices not to be possessed or used—Director not required to approve devices belonging to United States.

The Director and, under his direction, his assistants and inspectors, shall have exclusive power to perform all the duties provided in this chapter. They shall, at least every six months, and oftener when the Director thinks proper, inspect, test, try, and ascertain whether or not they are correct, all weights, scales, beams, measures of every kind, instruments or mechanical devices for weighing or measuring, and all tools, appliances, or accessories connected with any or all such instruments or mechanical devices for weighing or measuring used or employed in the District of Columbia by any owner, agent, lessee, or employee in determining the weight, size, quantity, extent, area, or measurement of quantities, things, produce, or articles of any kind offered for transportation, sale, barter, exchange, hire, or award, or the weight of persons for a charge or compensation, and shall approve and seal, stamp, or mark, in the manner prescribed by the Commissioners, such devices or appliances as conform to the standards kept in the office of the Director, and shall seize and destroy or mark, stamp, or tag with the word "condemned" such as do not conform to the standards, and shall also mark the date of such condemnation upon the same. Any weight, scale, beam, measure, weighing or measuring device of any kind which shall be found to be unsuitable for the purpose for which it is intended to be used or of defective construction or material shall be condemned. No person shall use or, having the same under his control, shall permit to be used for any of the purposes enumerated in this chapter any weight, scale, beam, measure, weighing or measuring device whatsoever unless the same has been approved in accordance with the provisions of this chapter within six months prior to such use, or that does not conform to the standards kept in the office of the Director of Weights, Measures, and Markets, or that does not bear the approval seal, stamp, or mark prescribed by the Commissioners, or which, having been condemned, has not thereafter been approved as provided in this chapter.

Any person who shall acquire or have in his possession after March 3, 1921 any scale, weighing instrument, or nonportable measure or measuring device, subject to inspection or test under the provisions of this chapter, which has not been approved in accordance with the provisions of this chapter within six months prior to acquisition or possession and which does not bear the approval seal, stamp, or mark prescribed by the Commissioners, shall notify the Director in writing at his office, giving a general description thereof, and the street and number or other location where same may be found, and it shall be the duty of the Director to cause the same to be inspected and tested within a reasonable time after receipt of such notice. Any person who shall acquire or have in his possession after March 3, 1921, any portable measure or measuring device, subject to inspection or test under the provisions of this chapter, which has not

been approved in accordance with the provisions of this chapter within six months prior to acquisition or possession and which does not bear the approval seal, stamp, or mark prescribed by the Commissioners shall cause the same to be taken to the office of the Director for inspection and test.

Every peddler, hawker, huckster, transient merchant, or other person with no fixed or established place of business shall, before using any weight, scale, measure, weighing or measuring device for any of the purposes enumerated in this chapter, cause the same to be taken to the office of the Director for inspection and test semi-annually, and shall not use for the purposes herein mentioned any weight, scale, measure, weighing or measuring device which has not been approved within six months prior to the time of such use, and does not bear the approval seal, stamp, or mark prescribed by the Commissioners. (Mar. 3, 1921, 41 Stat. 1217, ch. 118, § 3; Apr. 27, 1945, 59 Stat. 96, ch. 99, § 1; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1.)

AMENDMENT

1945—Act Apr. 27, 1945, amended section by inserting in first sentence of second par. "after March 3, 1921" following "in his possession", omitting "unapproved" following "his possession any", inserting "which has not * * * by the Commissioners", following "said sections", by inserting in second sentence of second par. "after March 3, 1921" following "in his possession", omitting "unapproved" following "his possession any", inserting "under the provisions * * * by the Commissioners" following "inspection or test", by adding at end of the third par. "and does not * * * by the Commissioners,", and by omitting par. (4), making the provisions inapplicable to United States Government devices.

CHANGE OF NAME

The name of "Superintendent of Weights, Measures, and Markets" was changed to "Director of Weights, Measures, and Markets" by act Apr. 11, 1946. See section 10–101a.

TRANSFER OF FUNCTIONS

Status of Department of Weights, Measures, and Markets and Director thereof, see notes under section 10–101.

CROSS REFERENCES

Adulteration of food and drugs, see §§ 33–101 to 33--110.
Disposition of fees, see § 47–126.
Enforcement of law regulating labeling of potatoes, see §§ 22–3409 to 22–3412.

§ 10–103a. Advancement of moneys by disbursing officer.

CODIFICATION

Section is transferred to section 1–263.

§ 10–104. Weighing and measuring devices to be approved after alteration or repair—Condemnation tag not to be altered.

No person shall use or, having the same under his control, permit to be used, any weight, scale, measure, weighing or measuring device, or any attachment or part thereof after the same has been altered or repaired without the same having been inspected and approved as provided in this chapter after such alterations or repairs have been made, and no persons shall alter, obliterate, detach, obscure, or conceal any condemnation seal, stamp, mark, tag, or label, attached or impressed by the Director or any of his assistants or inspectors, without written permission of the Director. (Mar. 3, 1921, 41 Stat. 1218, ch. 118, § 4; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1.)

CHANGE OF NAME

The name of "Superintendent of Weights, Measures, and Markets" was changed to "Director of Weights, Measures, and Markets" by act Apr. 11, 1946. See section 10–101a.

TRANSFER OF FUNCTIONS

Status of Department of Weights, Measures, and Markets and Director thereof, see notes under section 10–101.

§ 10–105. Director or assistants not to be hindered in making inspection.

No person shall neglect, fail, or refuse to exhibit any weight, scale, beam, measure, weighing or measuring device, subject to inspection or test under the provisions of this chapter, to the Director or any of his assistants or inspectors for the purpose of inspection and test and no persons shall in any manner obstruct, hinder, or molest the Director or any of his assistants, inspectors, or other employees in the performance of their duties. (Mar. 3, 1921, 41 Stat. 1218, ch. 118, § 5; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1.)

CHANGE OF NAME

The name of "Superintendent of Weights, Measures, and Markets" was changed to "Director of Weights, Measures, and Markets" by act Apr. 11, 1946. See section 10–101a.

TRANSFER OF FUNCTIONS

Status of Department of Weights, Measures, and Markets and Director thereof, see notes under section 10–101.

§ 10–106. Director to keep record of inspections.

The Director shall keep in his office a record of weighing and measuring devices inspected, which record shall show the type of device, the name and address of the owner, the date of inspection, and whether the same was approved or condemned. Such record shall be open to the public during regular office hours. (Mar. 3, 1921, 41 Stat. 1219, ch. 118, § 6; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1.)

CHANGE OF NAME

The name of "Superintendent of Weights, Measures, and Markets" was changed to "Director of Weights, Measures, and Markets" by act Apr. 11, 1946. See section 10–101a.

TRANSFER OF FUNCTIONS

Status of Department of Weights, Measures, and Markets and Director thereof, see notes under section 10–101.

§ 10–107. False measure prohibited—Limitation on prices.

No person shall sell, offer for sale, keep, or expose for sale anywhere in the District of Columbia any commodity of any kind as a weight, measure, or numerical count greater than the actual or true weight, measure, or numerical count thereof, and no person shall take or attempt to take more than the actual and true weight, measure, or numerical count of any commodity, when, as buyer, he is permitted by the seller to determine the weight, measure, or numerical count thereof. No person shall charge or collect for any commodity or commodities a sum greater than the price or prices indicated or quoted at the time of sale. No person shall charge, collect, or accept any money for any commodity which he shall not have delivered or which he shall not have agreed to deliver. When a whole number or fraction, or both, are used in representing the price or quantity

of any commodity, thing, or service offered or exposed for sale, such number or combination of numbers shall be of such size as to indicate clearly the price or quantity of such commodity, thing or service. (Mar. 3, 1921, 41 Stat. 1219, ch. 118, § 7; Apr. 27, 1945, 59 Stat. 97, ch. 99, § 2.)

AMENDMENT

1945—Act Apr. 27, 1945, added the second, third, and fourth sentences.

NOTES TO DECISIONS

Defenses

Lack of intent to cheat is no defense. *Great A. & P. Tea Co.* v. *District of Columbia* (1937, 89 F. 2d 502, 67 App. D. C. 30, certiorari denied 57 S. Ct. 794, 301 U. S. 691, 81 L. Ed. 1347).

Implied representation of weight

In prosecution for selling under weight, there was an implied representation of weight by statement of price per pound, and total cost. *Great A. & P. Tea Co.* v. *District of Columbia* (1937, 89 F. 2d 502, 67 App. D.C. 30, certiorari denied 57 S. Ct. 794, 301 U.S. 691, 81 L. Ed. 1347).

§ 10–108. Commodities sold by weight—Net weight—"Ton" defined.

When any commodity is sold by weight it shall be net weight. When any commodity is sold by the ton, it shall be understood to mean two thousand pounds avoirdupois. (Mar. 3, 1921, 41 Stat. 1219, ch. 118, § 8; Mar. 31, 1945, 59 Stat. 45, ch. 46, § 1.)

AMENDMENT

1945—Act Mar. 31, 1945, amended section by omitting "except coal" following "any commodity" in second sentence, and omitted third sentence which read "Coal shall be sold by the long ton, consisting of two thousand two hundred and forty pounds avoirdupois.".

EFFECTIVE DATE OF 1945 AMENDMENT

Section 2 of act Mar. 31, 1945, provided that the amendment of this section should take effect on Apr. 1, 1945.

§ 10–109. Regulation of coin-in-slot and automatic vending devices—Responsible person—Placard—Contents.

No person, firm, or corporation shall erect, operate, or maintain, or cause to be erected, operated, or maintained within the District of Columbia any coin-in-the-slot machine or automatic vending device without placing in charge thereof some responsible person. No such machine shall be maintained for use when the same is not in perfect working order, and the person in charge as well as the owner of such machine or device shall be held responsible for operating or maintaining any such machine or device which is not in perfect working order. A sign or placard shall be placed on every such machine or device in a conspicuous place and shall contain the name and business address of the owner and of the person in charge of such machine or device, and shall state that the person in charge of such machine or device will refund to any person money deposited by him for which the commodity or service promised expressly or impliedly has not been received, and such person shall so refund such money. (Mar. 3, 1921, 41 Stat. 1219, ch. 118, § 9.)

CROSS REFERENCE

Criminal penalty for using slugs, see § 22–1407.

§ 10–110. Sales tickets—Furnished on request—Contents.

Every person, firm, or corporation shall, when a sales ticket is given with a purchase, cause such sales ticket to show the correct name and address of such person, firm, or corporation and the weight, measure, or numerical count, as the case may be, of each commodity sold to the purchaser, and every such person, firm, or corporation is hereby required to deliver such sales ticket to such purchaser when requested to do so by such purchaser at the time of sale. (Mar. 3, 1921, 41 Stat. 1219, ch. 118, § 10.)

§ 10–111. Coal, charcoal, and coke—Sale by weight—Delivery ticket—Verification of weight—Sales of less than a ton—Sales in packages of 100 pounds or less—Liquid contents—Vehicles to display vendor's name.

It shall be unlawful to sell or offer for sale in the District of Columbia any coal, charcoal, or coke in any manner other than by weight. No person shall sell or deliver or attempt to deliver to any purchaser within the District of Columbia any coal, charcoal, or coke unless the quantity so sold or delivered or attempted to be delivered to each purchaser shall have been weighed separately. No person shall deliver to any purchaser within the District of Columbia any coal, charcoal, or coke unless the same shall have been kept separated from any other coal, charcoal, coke, or other commodity after same has been weighed as aforesaid until final delivery thereof.

No person shall deliver or attempt to deliver any coal, charcoal, or coke in a quantity of one-fourth of a ton or more without accompanying the same by a delivery ticket and a duplicate thereof, the original of which shall be in ink or indelible substance, on each of which shall be clearly and distinctly expressed the following information:

(a) The gross weight of the load, the tare weight of the delivery vehicle, and the net weight of the coal, charcoal, or coke expressed in pounds avoirdupois;

(b) The name of the owner and location of the scale on which the coal, charcoal, or coke shall have been weighed;

(c) Name and address of the seller and of the purchaser; and

(d) The name of the person who weighed said coal, charcoal, or coke.

Upon demand of the Director or any of his assistants or inspectors upon the person in charge of the vehicle of delivery, the original of these tickets shall be surrendered to the official making such demand. The duplicate ticket shall be delivered to the purchaser of said coal, charcoal, or coke, or to his agent or representative, at the time of delivery of such coal, charcoal, or coke. Upon demand of the Director or any of his assistants or inspectors, or of the purchaser or intended purchaser, his agent, or representative, the person delivering such coal, charcoal, or coke shall convey the same forthwith to a public scale, owned and operated as hereinafter provided, or to any legally approved private scale in the District of Columbia, the owner of which may consent to its use, and shall permit the verifying of the weight, and after the delivery of such coal, charcoal, or coke shall return forthwith with the wagon, truck, or other vehicle used to the same scale and permit to be verified the weight of the wagon, truck or other vehicle.

When coal, charcoal, or coke is sold in quantities of one-fourth ton or more, it shall be sold in quantities of one-fourth ton, one-half ton, one ton, or in multiples of a ton. When coal, charcoal, or coke is sold in quantities of less than one-fourth ton, it shall be weighed at the time of delivery or sold in packages containing one hundred pounds, fifty pounds, twenty-five pounds, fifteen pounds, or ten pounds. No package of coal, charcoal, or coke shall be made for sale, kept for sale, offered for sale, exposed for sale, or sold unless it shall have distinctly and conspicuously printed on the outside thereof in plain bold-face type, not smaller than thirty-six point, the name of the commodity, the quantity of contents in pounds, and the name and address of the maker of said package. When coal, charcoal, or coke is sold and delivered in packages, no delivery ticket shall be required.

No coal, charcoal, or coke shall be sold which contains at the time the weight is taken more water or other liquid substance than is due to the natural condition of the coal, charcoal, or coke.

Every vendor of coal, charcoal, or coke shall cause his name and address to be distinctly and conspicuously displayed in letters and figures at least four inches high on both sides of every vehicle used by or for him for the sale or delivery of coal, charcoal, or coke. In case of an estate, the trustee, administrator, or executor, or other person in charge of the affairs of such estate shall be deemed to be the vendor. (Mar. 3, 1921, 41 Stat. 1219, ch. 118, § 10; Apr. 27, 1945, 59 Stat. 97, ch. 99, § 3; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1.)

AMENDMENT

1945—Act Apr. 27, 1945, amended section generally.

CHANGE OF NAME

The name of "Superintendent of Weights, Measures, and Markets" was changed to "Director of Weights, Measures, and Markets" by act Apr. 11, 1946. See section 10–101a.

TRANSFER OF FUNCTIONS

Status of Department of Weights, Measures, and Markets and Director thereof, see notes under section 10–101.

§ 10–112. Ice—Sale by weight—Scales for weighing.

It shall be unlawful to sell, within the District of Columbia, any ice in any manner other than by weight, such weight to be ascertained at the time of delivery of such ice, and every person, or in case of a firm, copartnership, or corporation, the person in charge of its business in the District of Columbia, engaged in the sale of ice shall keep on each of his or its wagons or other vehicles used in the sale or delivery of ice, while in use, a scale suitable for weighing ice which has been tested and approved in accordance with the provisions of this chapter. Every scale used for weighing ice in making sales in quantities of one hundred pounds or less shall have graduations of one pound or less. Scales used for weighing ice in making sales in quantities of more than one hundred pounds may have graduations of five pounds or less. (Mar. 3, 1921, 41 Stat. 1220, ch. 118, § 12.)

§ 10–113. Bread—Standard loaf—Label—Permissible variation in weight.

The standard loaf of bread manufactured for sale, sold, offered, or exposed for sale in the District of Columbia shall weigh one pound avoirdupois, but bread may also be manufactured for sale, sold, offered, or exposed for sale in loaves of one-half pound, one pound and a half, or multiples of one pound, but shall not be manufactured for sale, sold, offered, or exposed for sale in other than the aforesaid weights. Every loaf of bread manufactured for sale, sold, offered, or exposed for sale in the District of Columbia shall have affixed thereon in a conspicuous place, a label at least one inch square, or, if round, at least one inch in diameter, upon which label there shall be printed in plain bold-face Gothic type, not smaller than twelve point, the weight of the loaf in pound, pounds, or fractions of a pound, as the case may be, whether the loaf be a standard loaf or not, the letters and figures of which shall be printed in black ink upon white paper. The business name and address of the maker, baker, or manufacturer of the loaf shall also be plainly printed on each such label. Every seller of bread in the District of Columbia shall keep a suitable scale which shall have been inspected and approved in accordance with the provisions of this chapter in a conspicuous place in his bakery, bakeshop, or store, or other place where he is engaged in the sale of bread, and shall, whenever requested by the buyer, and in the presence of the buyer, weigh the loaf or loaves of bread sold or offered for sale. Nothing herein shall apply to crackers, pretzels, buns, rolls, scones, or to loaves of fancy bread weighing less than one-fourth of one pound avoirdupois, or to what is commonly known as stale bread, provided the seller shall, at the time the sale is made, expressly state to the buyer that the bread so sold is stale bread: *Provided*, That any loaf of bread weighing within 10 per centum in excess or within 4 per centum less than standard weight shall be deemed of legal weight. (Mar. 3, 1921, 41 Stat. 1220, ch. 118, § 13; Aug. 24, 1921, 42 Stat. 201, ch. 92.)

AMENDMENT

1921—Act Aug. 24, 1921, inserted in the first sentence after "loaves of one-half pound" the words "one pound and a half" and in the same sentence changed the word "weight" to "weights."

§ 10–114. Containers for fluid and frozen dairy products—Labeling.

(a) All fluid and frozen dairy products, including but not limited to whole milk, skimmed milk, cultured milk, sweet cream, sour cream, buttermilk, chocolate milk, chocolate drink, ice cream, and frozen custard, and frozen dairy desserts such as sherbet, water ice, and ice milk, shall, when sold or offered for sale in package form, be packaged only in units of gallons, one and one-half gallons, two and one-half gallons, integral multiples of the gallon, or binary-submultiples of the gallon of not less than one fluid ounce. Packages of less than one fluid ounce shall be permitted if the net contents of each such package are clearly and permanently marked thereon and if the labeling of the package conforms with the requirements of this Act or such package be one of a number of identical packages in an outside container the total contents and labeling of which conform with the requirements of this Act. Notwithstanding the foregoing, frozen dairy products and frozen dairy desserts may be sold or offered for sale in individually package or wrapped portions

each containing four or more but less than sixteen fluid ounces, in integral multiples of one ounce, or, if less than four ounces, in multiples of one-half ounce. The package or wrapper of each individual portion of any such frozen dairy product or frozen dairy dessert shall be clearly labeled to show the net contents in fluid ounces. When two or more such individual portions of a frozen dairy product or frozen dairy dessert are sold or offered for sale in an outside container, the exterior of such container shall be clearly labeled to show the number of individual portions contained therein and the total net contents of such container, in fluid ounces.

(b) Bottles or containers used for the retail sale of milk, buttermilk, chocolate milk, chocolate drink, or cream shall have clearly blown or otherwise permanently marked in the side of each bottle or container, or printed on the cap or stopple thereof, the name and address of the person, firm, or corporation who or which bottled such milk, buttermilk, chocolate milk, chocolate drink, or cream and the capacity of such bottle or container, except that a package containing less than one fluid ounce need not be labeled as to quantity if such package be one of a number of identical packages in an outside container the total contents and labeling of which conform with the requirements of this Act. (Mar. 3, 1921, 41 Stat. 1221, ch. 118, § 14; Apr. 27, 1945, 59 Stat. 98, ch. 99, § 4; Aug. 7, 1964, 78 Stat. 382, Pub. L. 88–405, § 1.)

REFERENCES IN TEXT

The "Act" referred to in the text is the act of Mar. 3, 1921, 41 Stat. 1221, ch. 118, as amended, generally classified to chapter 1, title 10.

AMENDMENTS

1964—Section 1 of act Aug. 7, 1964, amended section to read as above set out.

1945—Act Apr. 27, 1945, amended section by omitting "when filled to the bottom of the cap seat, stopple, or other designating mark" in the first sentence.

CROSS REFERENCES

Other provisions for the marking of milk bottles and containers, see § 33–314.

Registration of trade-mark, see §§ 48–201 et seq., §§ 48–301 et seq.

§ 10–115. Standard containers for sale of fruits, vegetables, and other dry commodities—No sales except in standard containers or by weight or count.

Standard containers for the sale of fruits, vegetables, and other dry commodities in the District of Columbia shall be as follows:

(a) Standard barrel for fruits, vegetables, and other dry commodities other than cranberries, shall be of the following dimensions when measured without distention of its parts: Length of stave, twenty-eight and one-half inches; diameter of heads, seventeen and one-eighth inches; distance between heads, twenty-six inches; circumference of bulge, sixty-four inches, outside measurement; and the thickness of staves not greater than four-tenths of an inch: *Provided,* That any barrel of a different form having a capacity of seven thousand and fifty-six cubic inches shall be a standard barrel. The standard barrel for cranberries shall be of the following dimensions when measured without distention of its parts: Length of staves, twenty-eight and one-half inches; diameter of head, sixteen and one-fourth inches; distance between heads, twenty-five and one-fourth inches; circumference of bulge, fifty-eight and one-half inches, outside measurement; and the thickness of staves not greater than four-tenths of an inch. It shall be unlawful to sell, offer, or expose for sale in the District of Columbia a barrel containing fruits or vegetables or any other dry commodity of less capacity than the standard barrels defined in this section, or subdivisions thereof known as the third, half, and three-quarter barrel.

(b) Standards for climax baskets for grapes and other fruits and vegetables shall be the two-quart basket, four-quart basket, and twelve-quart basket, respectively.

The standard two-quart climax basket shall be of the following dimensions: Length of bottom piece, nine and one-half inches; width of bottom piece, three and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, three and seven-eighths inches, outside measurement; top of basket, length eleven inches and width five inches, outside measurement. Basket to have a cover five by eleven inches, when a cover is used.

The standard four-quart climax basket shall be of the following dimensions: Length of bottom piece, twelve inches; width of bottom piece, four and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, four and eleven-sixteenths inches, outside measurement; top of basket, length fourteen inches; width six and one-fourth inches, outside measurement. Basket to have cover six and one-fourth inches by fourteen inches, when cover is used.

The standard twelve-quart climax basket shall be of the following dimensions: Length of bottom piece, sixteen inches; width of bottom piece, six and one-half inches; thickness of bottom piece, seven-sixteenths of an inch; height of basket, seven and one-sixteenth inches, outside measurement; top of basket, length nineteen inches, width nine inches, outside measurement. Basket to have cover nine inches by nineteen inches, when cover is used.

(c) The six-basket carrier crate for fruits and vegetables shall contain six four-quart baskets, each basket having a capacity of two hundred and sixty-eight and eight-tenths cubic inches.

(d) The four-basket flat crate for fruits and vegetables shall contain four three-quart baskets, each basket having a capacity of two hundred and one and six-tenths cubic inches.

(e) The standard box, basket, or other container for berries, cherries, shelled peas, shelled beans, and other fruits and vegetables of similar size shall be of the following capacities standard dry measure: One-half pint, pint, and quart. The one-half pint shall contain sixteen and eight-tenths cubic inches; the pint shall contain thirty-three and six-tenths cubic inches; the quart shall contain sixty-seven and two-tenths cubic inches.

(f) Standard lug boxes for fruits and vegetables shall be the one-half bushel box and the one-bushel box.

The one-half bushel lug box shall be of the following inside dimensions: Length, seventeen inches; width, ten and five-tenths inches; depth, six inches.

The one-bushel lug box shall be of the following inside dimensions: Length, twenty and three-fourths

inches; width, thirteen inches; depth, eight inches; and no lug box of other than the foregoing dimensions shall be used in the District of Columbia.

(g) The standard hampers for fruits and vegetables shall be the one-peck hamper, one-half bushel-hamper, one-bushel hamper, and one and one-half-bushel hamper.

The one-peck hamper shall contain five hundred and thirty-seven and six-tenths cubic inches; the one-half-bushel hamper shall contain one thousand and seventy-five and twenty-one one-hundredths cubic inches. The one-bushel hamper shall contain two thousand one hundred and fifty and forty-two one-hundredths cubic inches, and the one and one-half-bushel hamper shall contain three thousand two hundred and twenty-five and sixty-three one-hundredths cubic inches.

(h) The standard round-stave baskets for fruits and vegetables shall be the one-half-bushel basket, one-bushel basket, one and one-half-bushel basket, and two-bushel basket.

The one-half-bushel basket shall contain one thousand and seventy-five and twenty-one one-hundredths cubic inches. The one-bushel basket shall contain two thousand one hundred and fifty and forty-two one-hundredths cubic inches. The one- and one-half-bushel basket shall contain three thousand two hundred and twenty-five and sixty-three one-hundredths cubic inches, and the two-bushel basket shall contain four thousand three hundred and eighty-four one-hundredths cubic inches.

(i) The standard apple box shall contain two thousand one hundred and seventy-three and five-tenths cubic inches and be of the following inside dimensions: Length, eighteen inches; width, eleven and one-half inches; depth, ten and one-half inches.

(j) The standard pear box shall be of the following inside dimensions: Length, eighteen inches; width, eleven and one-half inches; depth, eight and one-half inches.

(k) The standard onion crate shall be of the following inside dimensions: Length, nineteen and five-eighths inches; width, eleven and three-sixteenths inches; depth, nine and thirteen-sixteenths inches.

(*l*) No person shall sell, offer, or expose for sale in the District of Columbia any fruits, vegetables, grain, or similar commodities in any manner except in the standard containers herein prescribed or by weight or numerical count; and no person shall sell, offer, or expose for sale, except by weight or numerical count, in the District of Columbia any commodity in any container herein prescribed which does not contain, at the time of such offer, exposure, or sale, the full capacity of such commodity compactly filled: *Provided,* That fresh beets, onions, turnips, rhubarb, and other similar vegetables, usually and customarily sold by the bunch, may be sold by the bunch.

All kale, spinach, and other similar leaf vegetables shall be sold at retail by net weight. (Mar. 3, 1921, 41 Stat. 1221, ch. 118, § 15.)

CROSS REFERENCES

Apples in interstate commerce, standard grades and containers, see 21 U.S.C. §§ 20—23.

Standard barrel for fruits, vegetables, and other dry commodities other than cranberries, see 15 U.S.C. §§ 234—236.

§ 10–116. Substitutes for dry measure prohibited.

Nothing in this chapter contained shall be construed as permitting the use as a dry measure or substituting for a dry measure any of the following containers: Barrels, boxes, lug boxes, crates, hampers, baskets, or climax baskets; and the use of any such container as a measure is hereby expressly prohibited, and the user shall be fined or imprisoned as herein provided for other violations of this chapter. (Mar. 3, 1921, 41 Stat. 1223, ch. 118, § 16.)

§ 10–117. Packages of food to be marked with weight, measure, or count—Commissioners may authorize variation, tolerances, and exemptions as to small packages.

No person shall sell, offer, or expose for sale in the District of Columbia any food in package form unless the quantity of contents is plainly and conspicuously marked on the outside of each package in terms of weight, measure, or numerical count. The commissioners are authorized to establish and allow reasonable variation, tolerances, and exemptions as to small packages. (Mar. 3, 1921, 41 Stat. 1223, ch. 118, § 16½.)

§ 10–118. Cord of wood—Standard—Commissioners to fix standard load of certain split wood.

A cord of wood shall contain one hundred and twenty-eight cubic feet. Wood more than eight inches in length shall be sold by the cord or fractional part thereof, and when delivered shall contain one hundred and twenty-eight cubic feet per cord when evenly and compactly stacked. Split wood, eight inches or less in length, may be sold by such standard loads as shall be fixed by the commissioners. (Mar. 3, 1921, 41 Stat. 1223, ch. 118, § 17.)

§ 10–119. Standard liquid gallon, quart, pint, half pint, gill, and fluid ounce—Automatic pumps.

The standard liquid gallon shall contain two hundred and thirty-one cubic inches; the half gallon, one hundred and fifteen and five-tenths cubic inches; the quart, fifty-seven and seventy-five hundredths cubic inches; the pint, twenty-eight and eight hundred and seventy-five thousandths cubic inches; the half pint, fourteen and four hundred and thirty-seven thousandths cubic inches; the gill, seven and two hundred and eighteen thousandths cubic inches; the fluid ounce, one and eight-tenths cubic inches; and no liquid measure of other than the foregoing capacities, except multiples of the gallon, shall be deemed legal liquid measure in the District of Columbia: *Provided,* That any automatic pump for the measurement of gasoline shall have graduations of fractional parts of a gallon in terms of either decimal or binary-submultiple subdivisions. (Mar. 3, 1921, ch. 18, §§ 18, 18a, as added July 7, 1932, 47 Stat. 609, ch. 442, and amended Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1; Aug. 7, 1964, 78 Stat. 382, Pub. L. 88–405, § 2.)

AMENDMENTS

1946—Act Apr. 11, 1946, added proviso to first paragraph.

1932—Act July 7, 1932, added the second paragraph.

PARTIAL REPEAL

The second paragraph of this section was repealed by section 2, act Aug. 7, 1964, 78 Stat. 382, Pub. L. 88–405.

Section, act Mar. 3, 1921, ch. 118, § 18a, as added July 7, 1932, 47 Stat. 609, ch. 442, as amended Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1. It dealt with the standard measure for ice cream and like products. See new provisions in section 10–114.

§ 10–120. Measure for shucked oysters, fish, meat, butter, and cheese.

Shucked oysters shall be sold only by liquid measure or numerical count, and whenever there is included in the sale by measure of shucked oysters more than 10 per centum of oyster liquid or other liquid substance, the vendor shall be deemed guilty of selling short measure. All fish, meat, poultry, meat products, lard, lard substitutes, butter, butter substitutes, and cheese shall be sold by avoirdupois weight. (Mar. 3, 1921, 41 Stat. 1223, ch. 118, § 19; Apr. 27, 1945, 59 Stat. 99, ch. 99, § 6.)

AMENDMENT

1945—Act Apr. 27, 1945, amended section by inserting in the last sentence "meat, poultry, meat products, lard, lard substitutes, butter, butter substitutes and cheese."

§ 10–121. "Barrel of corn" defined.

Three hundred and fifty pounds of corn on the cob shall constitute a barrel and two hundred and eighty pounds of shelled corn shall constitute a barrel: *Provided,* That nothing in this section shall be held to prohibit the sale of corn on the cob by the barrel. (Mar. 3, 1899, 30 Stat. 1346, ch. 432, § 2.)

CODIFICATION

Section was not enacted as a part of the District of Columbia Weights and Measures Act which comprises this chapter.

§ 10–122. Automatic measuring pumps—"Out of use" sign—Inspection.

Every user of an automatic measuring pump or similar device, shall, when the supply of the commodity which he is measuring for sale with such pump or similar device, is insufficient to deliver correct measure of such commodity by the usual or customary method of operating such pump or device or when, for any cause whatever, such pump or device does not, by the usual or customary method of operating same, deliver correct measure, place a sign with the words, "Out of use" in a conspicuous place on such pump or device where it may readily be seen, and shall forthwith cease to use the same until his supply of such commodity is replenished or until such pump or device is repaired, adjusted, or otherwise put in condition to deliver correct measure. All automatic measuring pumps or other similar measuring devices in use shall be subject to inspection, and approval or condemnation, whether used for measuring or not. (Mar. 3, 1921, 41 Stat. 1223, ch. 118, § 20.)

§ 10–123. Sale of pro rata quantity to be at pro rata price unless purchaser informed to contrary.

Whenever any commodity is offered for sale at a stated price for a stated quantity, a smaller quantity shall be sold at a pro rata price unless the purchaser is informed to the contrary at the time of sale. (Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 21.)

§ 10–124. Director shall weigh, measure, and inspect commodities.

The Director, or under his direction, his assistants and inspectors, shall from time to time weigh or measure and inspect packages or amounts of commodities of whatever kind kept for sale, offered or exposed for sale, sold, or in the process of delivery, in order to determine whether or not the same are kept for sale, offered for sale, or sold in accordance with the provisions of this chapter, and no person shall refuse to permit such weighing, measuring, or inspection whenever demanded by the Director or any of his assistants or inspectors. (Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 22; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1.)

CHANGE OF NAME

The name of "Superintendent of Weights, Measures, and Markets" was changed to "Director of Weights, Measures, and Markets" by act Apr. 11, 1946. See section 10–101a.

TRANSFER OF FUNCTIONS

Status of Department of Weights, Measures, and Markets and Director thereof, see notes under section 10–101.

§ 10–124a. Investigation and detection of misrepresentation and false advertising in connection with food sales—Appropriation.

The Director of Weights, Measures, and Markets is further authorized to make purchases of food in connection with the investigation and detection of sales of food by misrepresentation or false advertising in violation of sections 22–1411 to 22–1413; and there are authorized to be appropriated annually such sums as may be necessary for carrying out the purposes of this section. (Mar. 3, 1921, ch. 118, § 22½, as added Apr. 27, 1945, 59 Stat. 99, ch. 99, § 5, and amended Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1.)

CHANGE OF NAME

The name of "Superintendent of Weights, Measures, and Markets" was changed to "Director of Weights, Measures, and Markets" by act Apr. 11, 1946. See section 10–101a.

TRANSFER OF FUNCTIONS

Status of Department of Weights, Measures, and Markets and Director thereof, see notes under section 10–101.

§ 10–125. Vending of weights and weighing or measuring devices by Director or his employees prohibited.

It shall be unlawful for the Director or any employee of his office to vend any weights, measures, weighing or measuring device, or to offer or expose the same for sale, or to be interested, directly or indirectly, in the sale of same. (Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 23; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1.)

CHANGE OF NAME

The name of "Superintendent of Weights, Measures, and Markets" was changed to "Director of Weights, Measures, and Markets" by act Apr. 11, 1946. See section 10–101a.

TRANSFER OF FUNCTIONS

Status of Department of Weights, Measures, and Markets and Director thereof, see notes under section 10–101.

§ 10–126. Director and assistants to have police power—Badges—Entries with or without warrant—Vendors—Peddlers—May be stopped.

There is hereby conferred upon the Director, his assistants and inspectors, police power, and in the exercise of their duties they shall, upon demand, exhibit their badges to any person questioning their authority; and they are authorized and empowered to make arrests of any person violating any of the

provisions of this chapter. The Director, his assistants, and inspectors may, for the purpose of carrying out and enforcing the provisions of this chapter and in the performance of their official duties, with or without formal warrant, enter or go into or upon any stand, place, building, or premises, except a private residence, and may stop any vendor, peddler, dealer, vehicle, or person in charge thereof for the purpose of making inspections or tests. (Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 24; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1.)

CHANGE OF NAME

The name of "Superintendent of Weights, Measures, and Markets" was changed to "Director of Weights, Measures, and Markets" by act Apr. 11, 1946. See section 10–101a.

TRANSFER OF FUNCTIONS

Status of Department of Weights, Measures, and Markets and Director thereof, see notes under section 10–101.

CROSS REFERENCE

Other provision concerning search, with or without warrant, see § 23–301.

§ 10–127. Commissioners may establish tolerances and specifications.

The Commissioners are hereby authorized and empowered to establish tolerances and specifications for scales, weights, measures, weighing or measuring instruments or devices, and containers used in the District of Columbia. The Commissioners shall prescribe and allow for barrels, containers, and packages, provided for in this chapter the same specifications, variations, or tolerances that have been prescribed or established, or that may hereafter be prescribed or established for like barrels, containers, or packages by any officer of the United States in accordance with any requirement of an act of Congress. (Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 25.)

§ 10–128. Weighmasters—Public scales—Fees.

The Commissioners are authorized to appoint public weighmasters and grant licenses for the location of public scales in the District of Columbia under such regulations as they may prescribe, and authorize such weighmasters to charge such fees as the Commissioners may approve and fix in advance, and they may grant permits, revocable on thirty days' notice, for the location of such public scales on public space under their control. No person other than a duly appointed and qualified public weighmaster shall do public weighing or make any charge or accept any compensation therefor. (Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 26.)

§ 10–129. Powers and duties of Director conferred on assistants and inspectors.

The powers and duties granted to and imposed on the Director by this chapter, are also hereby granted to and imposed on his assistants and inspectors when acting under his instructions. (Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 27; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1.)

CHANGE OF NAME

The name of "Superintendent of Weights, Measures, and Markets" was changed to "Director of Weights, Measures, and Markets" by act Apr. 11, 1946. See section 10–101a.

TRANSFER OF FUNCTIONS

Status of Department of Weights, Measures, and Markets and Director thereof, see notes under section 10–101.

§ 10–130. Enactment and enforcement of rules and regulations—Supervision of produce and other markets—Investigations and reports.

The Commissioners are authorized and empowered to make such regulations as may be necessary for the control, regulation, and supervision of all markets owned by the District of Columbia and the Director, under the direction of the Commissioners, shall have supervision of all produce and other markets owned by the District of Columbia, shall enforce such regulations regarding the operation of the same as the Commissioners may make, shall make such investigations regarding the sale, distribution, or prices of commodities in the District of Columbia as the Commissioners may direct, and shall make reports and recommendations in connection therewith. (Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 28; Apr. 27, 1945, 59 Stat. 99, ch. 99, § 7; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1.)

AMENDMENT

1945—Act Apr. 27, 1945, amended section by adding "The Commissioners are * * * Columbia and" preceding "the Superintendent".

CHANGE OF NAME

The name of "Superintendent of Weights, Measures, and Markets" was changed to "Director of Weights, Measures, and Markets" by act Apr. 11, 1946. See section 10–101a.

TRANSFER OF FUNCTIONS

Status of Department of Weights, Measures, and Markets and Director thereof, see notes under section 10–101.

CROSS REFERENCE

Rules and regulations in general, see § 1–226.

§ 10–131. "Commissioners" to mean Commissioners of the District of Columbia—"Director" to mean Director of weights, measures, and markets.

Wherever the word "Commissioners" is used in this chapter, it shall be construed to mean the Commissioners of the District of Columbia. Whenever the word "Director" is used in this chapter, it shall be construed to mean the Director of Weights, Measures, and Markets. (Mar. 3, 1921, 41 Stat. 1225, ch. 118, § 29; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1.)

CHANGE OF NAME

The name of "Superintendent of Weights, Measures, and Markets" was changed to "Director of Weights, Measures, and Markets" by act Apr. 11, 1946. See section 10–101a.

TRANSFER OF FUNCTIONS

Status of Department of Weights, Measures, and Markets and Director thereof, see notes under section 10–101.

§ 10–132. "Person"—Construction—Singular words to include plural.

The word "person," as used in this chapter, shall be construed to include copartnerships, companies, corporations, societies, and associations. Whenever any word in this chapter, is used in the singular, it shall be construed to mean either singular or plural, and wherever any word in this chapter is used in the plural, it shall be construed to mean either plural or singular, as the circumstances demand. (Mar. 3, 1921, 41 Stat. 1225, ch. 118, § 30.)

§ 10–133. Separability of provisions.

Each section of this chapter, and every provision of each section, is hereby declared to be an independent section or provision, and the holding of any section or provision of any section to be void, ineffective, or unconstitutional for any cause whatever shall not be deemed to affect any other section or provision thereof. (Mar. 3, 1921, 41 Stat. 1225, ch. 118, § 31.)

§ 10–134. Penalties—Conduct of prosecutions.

Any person violating any of the provisions of this chapter shall be punished by a fine not to exceed $500, or by both such fine and imprisonment not to exceed six months. All prosecutions under this chapter shall be instituted by the corporation counsel or one of his assistants in the District of Columbia Court of General Sessions. (Mar. 3, 1921, 41 Stat. 1225, ch. 118, § 32; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court. See section 11–901.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

NOTES TO DECISIONS

Intent

To permit a defendant charged with a violation of the statute to avoid the consequences by contending that it was a mistake on his part, without intent to cheat and defraud the customer, would measurably defeat the purpose of the statute. *Great A. & P. Tea Co.* v. *District of Columbia* (1937, 89 F. 2d 502, 67 App. D. C. 30, certiorari denied 57 S. Ct. 794, 301 U. S. 691, 81 L. Ed. 1347).

§ 10–135. Jurisdiction over fish wharf and market—Leases, rentals, fees—Regulations.

The Commissioners of the District of Columbia are authorized and directed in the name of the District of Columbia to exclusively control, regulate, and operate as a municipal fish wharf and market, the water frontage on the Potomac River lying south of Water Street, between Eleventh and Twelfth Streets, including the buildings and wharves thereon, and said wharf shall constitute the sole wharf for the landing of fish and oysters for sale in the District of Columbia; and said commissioners shall have power to make leases, fix and determine rentals, wharfage and dockage fees, and to collect and pay the same into the treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the treasury of the United States and the revenues of the District of Columbia, and to make and amend, from time to time, all such regulations as they may deem proper for the control, regulation, and operation of said municipal fish wharf and market. (Mar. 19, 1906, 34 Stat. 72, ch. 958; Mar. 4, 1913, 37 Stat. 941, ch. 150; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

CODIFICATION

Section was not enacted as a part of the District of Columbia Weights and Measures Act which comprises this chapter.

Act Mar. 19, 1906, read as follows: "The commissioners of the District of Columbia be, and they are hereby, authorized and empowered to make such regulations as they may deem proper for the sale of the rights and privileges of the fish wharf in the District of Columbia: *Provided*, That no letting or sale of such rights or privileges shall be for a longer term than one year."

Prior to Act Feb. 22, 1921, the section provided that rentals and fees should be paid into the treasury, one-half to the credit of the United States and one-half to the credit of the District of Columbia.

CROSS REFERENCES

Annual Federal payment, see § 47–134.
Harbor regulations, see §§ 22–1701 to 22–1703.
Other provisions concerning wharves, and rental thereof, see §§ 9–101, 9–102.
Rental of municipal center, see § 9–202.
Rules and regulations generally, see § 1–226.

§ 10–136. Markets—Disposition of receipts—Charges.

On and after July 1, 1906, all receipts of the Wholesale Producers' Market, including the receipts for the occupation of the south side of B street northwest, and the farmers' street markets adjacent to the Eastern, Western and Georgetown markets, respectively, shall be paid to the collector of taxes, to the credit of the revenues of the District, weekly. The commissioners are hereby authorized to make such reasonable charges for the use of space at the above-mentioned street markets as may be deemed just, but in no case shall the collections for such space and for labor, and the sweeping, cleaning and hauling away of refuse at such space exceed the sum of twenty cents per day for each space occupied, and the market masters of the several markets herein mentioned shall make such collections daily and make a return thereof, with a sworn statement, weekly to the collector of taxes to the credit of the revenues of the District of Columbia. (June 27, 1906, 34 Stat. 485, ch. 3553; Mar. 4, 1913, 37 Stat. 940, ch. 150; Mar. 3, 1921, 41 Stat. 1225, ch. 118, § 33.)

AMENDMENTS

1921—Act Mar. 3, 1921, repealed the act appointing a sealer and assistant sealer of weights and measures in the District of Columbia, so that the provision for payment of receipts to the collector of taxes through the sealer of weights and measures, which appeared in the 1906 Act has been omitted.

1913—Act Mar. 4, 1913, changed the limitation of 10 cents per day to 20 cents per day.

CROSS REFERENCES

Disposition of fees, see § 47–128.
Rental of municipal center, see § 9–202.

§ 10–137. Farmers' produce market—Regulations—Charges.

The area of squares 354 and 355 and the portion of F Street southwest within the adjacent curb lines of Tenth and Eleventh Streets southwest when same shall have been acquired and closed, shall be used and occupied by the District of Columbia as and for the purposes of a wholesale farmers' produce market.

The said commissioners of the District of Columbia are hereby authorized to make, promulgate, and enforce all appropriate rules and regulations for the control and operation of such market when established, and may establish a reasonable scale of

charges to be paid by farmers and others making use of the market or of any of its appurtenant facilities. (Mar. 2, 1929, 45 Stat. 1487, ch. 501.)

CODIFICATION

Section was not enacted as a part of the District of Columbia Weights and Measures Act which comprises this chapter.

By act July 3, 1930, 46 Stat. 952, ch. 848, the following appropriation in connection with the farmers' produce market was made: "For the acquisition of squares numbered 354 and 355, including all necessary expenses for the clearing and leveling of the ground, the erection of protection sheds and suitable stands and stalls, and the installation of sanitary conveniences and heating and telephone service, in accordance with the provisions of the Act entitled 'An Act authorizing acquisition of a site for the farmers' produce market, and for other purposes,' approved March 2, 1929 (45 Stat., p. 1487), $300,000, to be immediately available."

With reference to this market, act Aug. 5, 1939, 53 Stat. 1215, ch. 457, provided that, "Whereas a farm market was conducted on Louisiana Avenue between Ninth and Twelfth Streets for thirty or forty years under the supervision of the Department of Agriculture; and

"Whereas the farmers were induced to give up this market on condition that other land of equal size and value would be obtained; and

"Whereas three hundred thousand dollars was appropriated in March 1929 for this purpose; and

"Whereas two city blocks, known as 354 and 355 in southwest Washington, were obtained and deeded to the District of Columbia to be used expressly for a farmers' market; and

"Whereas part of block 355 has now been taken for a District inspection station in direct opposition to this agreement and breaking the implied contract that this project would be available for a farm market; and

"Whereas there is danger of the rest of the market also being confiscated: Therefore be it

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the remaining parts of these lots shall from now on be inviolate as a farmers' market and shall not be taken from them as long as needed by said farmers as a market place."

CROSS REFERENCE

Rental of municipal center, see § 9–202.

NOTES TO DECISIONS

Center market

Under the act of May 20, 1870, chartering the Washington Market Company and authorizing the establishment of a market in the City of Washington, and the rental of stalls therein by auction, holders of stalls are not authorized to continue in possession of such stalls indefinitely upon payment of rental. *Washington Market Co.* v. *Hoffman* (1879, 101 U. S. 112, 11 Otto 112, 25 L. Ed. 782).

The act of May 20, 1870, chartering the Washington Market Co. and authorizing the erection of a market building, provided for the rental of stalls to the highest bidder at auction, and that at the end of 30 years the City of Washington might take possession on paying for the buildings and improvements, and that the property should revert to the United States in 99 years. *Washington Market Co.* v. *Hoffman* (1879, 101 U. S. 112, 11 Otto 112, 25 L. Ed. 782). See, also, *District of Columbia* v. *Washington Market Co.* (1883, 2 S. Ct. 543, 108 U. S. 243, 27 L. Ed. 714).

The act incorporating the Washington Market Company (Act May 20, 1870), and fixing the terms for the use of the public property granted to it, did not establish an irrevocable trust for the poor of Washington City, nor disable itself from authorizing any subsequent changes in the conditions of the grant, nor estop the market company from becoming parties to an arrangement for additional uses of the land on an equitable apportionment of the rent. *District of Columbia* v. *Washington Market Co.* (1883, 2 S. Ct. 543, 108 U. S. 243, 27 L. Ed. 714).

The act of May 20, 1870, ch. 108, 16 Stat. 124, chartering the Washington Market Co., was not repealed by act of March 4, 1921, 41 Stat. 1441. *Nusbaum* v. *District of Columbia* (1928, 24 F. 2d 622, 58 App. D. C. 47).

Proprietary function

Operation of public market by District of Columbia is a proprietary function and District is liable for injuries to a customer at a public market, under the law relating to its proprietary obligation as the owner and operator of property used for business purposes to one invited there as a customer, and the mere fact that the market is operated pursuant to a specific mandate of Congress does not change that principle. *District of Columbia* v. *Green* (1955, 223 F. 2d 312, 96 U.S. App. D.C. 20).

PART II

JUDICIARY AND JUDICIAL PROCEDURE

Part II, consisting of Titles 11 to 17 inclusive, was enacted by Pub. L. 88–241, § 1, Dec. 23, 1963, 77 Stat. 478, effective Jan. 1, 1964

TITLE 11. ORGANIZATION AND JURISDICTION OF THE COURTS.
TITLE 12. RIGHT TO REMEDY.
TITLE 13. PROCEDURE GENERALLY.
TITLE 14. PROOF.
TITLE 15. JUDGMENTS AND EXECUTIONS—FEES AND COSTS.
TITLE 16. PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS.
TITLE 17. REVIEW.

TITLE 11.—ORGANIZATION AND JURISDICTION OF THE COURTS

Title 11 was enacted by Pub. L. 88–241

For disposition of former sections of this title, see table following Title 49

Chap.		Sec.
1.	General Provisions	11–101
3.	United States Court of Appeals for the District of Columbia Circuit	11–301
5.	United States District Court for the District of Columbia	11–501
7.	District of Columbia Court of Appeals	11–701
9.	District of Columbia Court of General Sessions	11–901
11.	Domestic Relations Branch of Court of General Sessions	11–1101
13.	Small Claims and Conciliation Branch of Court of General Sessions	11–1301
15.	Juvenile Court of the District of Columbia	11–1501
17.	Miscellaneous Provisions Relating to Courts and Judges	11–1701
19.	Coroner	11–1901
21.	Attorneys	11–2101
23.	Jurors and Jury Commissioners	11–2301

ENACTING CLAUSE

Section 1 of act Dec. 23, 1963, Pub. L. 88–241, 77 Stat. 478, provided in part: "That the general and permanent laws relating to the judiciary and judicial procedure of the District of Columbia are revised, codified, and enacted as Part II of the District of Columbia Code, 'Judiciary and Judicial Procedure', and may be cited 'D.C. Code §—', as follows:"

EFFECTIVE DATE

Section 20 of act Dec. 23, 1963, Pub. L. 88–241, 77 Stat. 620, provided: "This Act shall take effect on January 1, 1964."

SAVINGS AND SEVERABILITY PROVISIONS

Section 14 of act Dec. 23, 1963, Pub. L. 88–241, 77 Stat. 618, provided: "If any part of Part II of the District of Columbia Code, as set out in section 1 of this Act [Titles 11 to 17], is held invalid, the remainder of Part II shall not be affected thereby."

LEGISLATIVE CONSTRUCTION

Section 15 of act Dec. 23, 1963, Pub. L. 88–241, 77 Stat. 618, provided: "An inference of a legislative construction may not be drawn by reason of the subchapter, chapter, or title in Part II of the District of Columbia Code, as set out in section 1 of this Act, in which any section is placed, or by reason of the catchlines used."

PROVISIONS RELATING TO COURTS, JUDGES AND EMPLOYEES—CONTINUATION OF EXISTING LAW

Section 17 of act Dec. 23, 1963, Pub. L. 88–241, 77 Stat. 618, provided in part: "(a) Part II of the District of Columbia Code, set out in section 1 of this Act [Titles 11 to 17], with respect to the organization of each of the several courts and their divisions and branches therein provided for, is a continuation of existing law, and the tenure of the judges, officers, and employees thereof, in office on January 1, 1964, is not affected by its enactment, but each of them shall continue to serve in the same capacity under the appropriate provisions of Part II, as set out in section 1 of this Act [Titles 11 to 17], pursuant to his prior appointment. Loss of rights, interruption of jurisdiction, or prejudice to matters pending in any of those courts on the effective date this Act shall not result from its enactment."

APPROPRIATIONS

Section 18 of act Dec. 23, 1963, Pub. L. 88–241, 77 Stat. 619, provided: "There are authorized to be appropriated such sums as may be necessary to carry out the provisions of Part II, District of Columbia Code, as set out in section 1 of this Act [Titles 11 to 17]."

TABLE OF BRITISH STATUTES OMITTED

Section 19 of act Dec. 23, 1963, Pub. L. 88–241, 77 Stat. 619, provided that the following British statutes have no further force and effect in the District of Columbia:

(1) 9 Henry III (1225), chapter 8, sections 1, 2, 3, 4 (D.C. Code, 1961 ed., secs. 15–213, 16–2003 to 16–2005);

(2) 13 Edward I (1285), chapter 31 (D.C. Code, 1961 ed., sec. 11–321);

(3) 14 Edward III (1340), chapter 6, section 1 (D.C. Code, 1961 ed., sec. 13–304);

(4) 36 Edward III (1362), chapter 15, section 1 (D.C. Code, 1961 ed., sec. 13–201);

(5) 17 Richard II (1393), chapter 6, section 1 (D.C. Code, 1961 ed., sec. 13–219);

(6) 11 Henry IV (1409), chapter 3, section 1 (D.C. Code, 1961 ed., sec. 13–307);

(7) 9 Henry V (1421), chapter 4, section 1 (D.C. Code, 1961 ed., sec. 13–305);
(8) 4 Henry VI (1425), chapter 3, section 1 (D.C. Code, 1961 ed., sec. 13–306);
(9) 8 Henry VI (1429), chapter 12, sections 2, 4 (D.C. Code, 1961 ed., secs. 13–308 to 13–310);
(10) 8 Henry VI (1429), chapter 15, section 1 (D.C. Code, 1961 ed., sec. 13–311);
(11) 4 Henry VII (1487), chapter 20 (D.C. Code, 1961 ed., sec. 13–220);
(12) 23 Henry VIII (1531), chapter 15, section 1 (D.C. Code, 1961 ed., sec. 11–1517);
(13) 18 Elizabeth (1576), chapter 14, sections 1, 2 (D.C. Code, 1961 ed., sec. 13–314);
(14) 27 Elizabeth (1585), chapter 5, sections 1, 2 (D.C. Code, 1961 ed., secs. 13–206, 13–207);
(15) 4 James I (1606), chapter 3, section 2 (D.C. Code, 1961 ed., sec. 11–1517);
(16) 21 James I (1623), chapter 13, sections 2, 3 (D.C. Code, 1961 ed., sec. 13–315);
(17) 16 Charles II (1664), chapter 7, sections 2, 3 (D.C. Code, 1961 ed., secs. 16–706, 16–707);
(18) 16 and 17 Charles II (1664), chapter 8, sections 1, 2, 5 (D.C. Code, 1961 ed., secs. 13–316, 13–317);
(19) 29 Charles II (1676), chapter 3, sections 14, 15, 16 (D.C. Code, 1961 ed., secs. 15–104, 15–207);
(20) 29 Charles II (1676), chapter 7, section 6 (D.C. Code, 1961 ed., sec. 13–102);
(21) 8 and 9 William and Mary (1697), chapter 11, sections 1, 8 (D.C. Code, 1961 ed., secs. 11–1518, 13–205, 15–111);
(22) 4 Anne (1705), chapter 16, sections 1, 2, 4, 7, 11, 12, 27 (D.C. Code, 1961 ed., secs. 13–206, 13–210, 13–212, 13–218, 13–318, 13–319, 16–101);
(23) 6 Anne (1707), chapter 18, sections 1, 2, 3, 4, 5 (D.C. Code, 1961 ed., secs. 16–527 to 16–531);
(24) 9 Anne (1710) chapter 14, sections 1, 2, 4, 5, 8 (D.C. Code, 1961 ed., secs. 16–701 to 16–705);
(25) 9 Anne (1710), chapter 20, section 7 (D.C. Code, 1961 ed., sec. 13–320);
(26) 5 George I (1718), chapter 13, section 1 (D.C. Code, 1961 ed., sec. 13–312);
(27) 4 George II (1731), chapter 26, section 1 (D.C. Code, 1961 ed., sec. 13–202);
(28) 4 George II (1731), chapter 28, sections 2, 3, 4 (D.C. Code, 1961 ed., secs. 16–532 to 16–534);
(29) 6 George II (1733), chapter 14, section 5 (D.C. Code, 1961 ed., sec. 13–203); and
(30) 11 George II (1738), chapter 19, section 12 D.C. Code, 1961 ed., sec. 16–502).

REPEALS AND PRESERVATION OF RIGHTS AND LIABILITIES

Section 21 of act Dec. 23, 1963, Pub. L. 88–241, 77 Stat. 620, provided: "(a) The sections of the Revised Statutes of the District of Columbia, and Acts or parts of Acts, enumerated in the schedule below, are hereby repealed. Any rights or liabilities existing under the statutes or parts thereof so repealed, and any cases, actions or proceedings instituted under, or growing out of, any of the statutes or parts thereof so repealed, are not affected by the repeal. However, laws becoming effective after August 10, 1963, and inconsistent with this Act, shall supersede it to the extent of the inconsistency.

"(b) If any section of the Revised Statutes of the District of Columbia, or act, or part of an act, listed in the schedule below, has been repealed heretofore, the fact of its being listed in the schedule below shall not be construed as a revival thereof or as a recognition or acknowledgment that the section, act, or part of an act was in force at the time of the specific repeal effected by this section." [The "schedule below" referred to in text is set out as a part of Pub. L. 88–241.]

Chapter 1.—GENERAL PROVISIONS

Sec.
11–101. Judicial power.

§ 11–101. Judicial power

The judicial power in the District of Columbia is vested in:

(1) inferior courts, namely,

The District of Columbia Court of General Sessions;

The Juvenile Court of the District of Columbia; and

(2) superior courts, namely,

The District of Columbia Court of Appeals;

The United States District Court for the District of Columbia;

The United States Court of Appeals for the District of Columbia Circuit; and

The Supreme Court of the United States.

(Dec. 23, 1963, 77 Stat. 478, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–101, 11–751a, 11–771a (Mar. 3, 1901, ch. 854, § 2, 31 Stat. 1190; Mar. 19, 1906, ch. 960, 34 Stat. 73; Feb. 17, 1909 ch. 134, 35 Stat. 623; June 7, 1934, ch. 426, 48 Stat. 926; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, §§ 1, 6, 56 Stat. 190, 194; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 6, 76 Stat. 1171, 1172; July 8, 1963, Pub. L. 88–60, §§ 1, 6, 77 Stat. 77, 78).

Section consolidates section 11–101 of D.C. Code, 1961 ed., with section 11–751a thereof which changed the name of the Muncipal Court for the District of Columbia to the District of Columbia Court of General Sessions, and with section 11–771a thereof which changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals. The latter two sections are also shown as consolidated with a number of other sections carried in this revised part, to indicate the basis for substituting these new court designations.

Word "Circuit" is added to the name of the United States Court of Appeals for the District of Columbia, to conform with Title 28 U.S.C. §§ 41, 43, and Rule 1 of the General Rules of the Court.

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS UNDER PRIOR LAW

Constitutional courts

The District Court of the United States for the District of Columbia and the United States Court of Appeals for the District of Columbia are constitutional courts of the United States ordained and established under article 3 of the Federal Constitution, *O'Donoghue* v. *United States* (1933, 53 S. Ct. 740, 289 U.S. 516, 77 L. Ed. 1356).

Historical

In 1863, all the powers and jurisdiction, previously possessed by the Circuit Court of the District, including the appellate jurisdiction from justices of the peace, were transferred by Congress to the Supreme Court of the District of Columbia. *Capital Traction Co.* v. *Hof* (1899. 19 S. Ct. 580, 174 U.S. 1, 43 L. Ed. 873).

Justices of the peace

Justices of the peace in the District were judicial officers, and held their office for five years. They were authorized to hold courts, and have cognizance of personal demands of value of $20. *Marbury* v. *Madison* (1803, 5 U.S. 137, 1 Cranch 137, 2 L. Ed. 60).

Historical survey of justice of the peace courts. *Capital Traction Co.* v. *Hof* (1899, 19 S. Ct. 580, 174 U.S. 1, 43 L. Ed. 873).

Organic Act of February 27, 1801, 2 Stat. 103, ch. 15, § 11, provided for justices of the peace and fixed the compensation which they were to have for their services in holding their courts. This compensation was given in the form of fees, payable when the services were rendered. That the justice's compensation could not be diminished during his continuance in office, seemed to follow as a necessary consequence from the provisions of the Constitution. *O'Malley* v. *Woodrough* (1939, 59 S. Ct. 838, 307 U.S. 277, 83 L. Ed. 1289, 122 A.L.R. 1379).

Municipal court

The municipal court is a part of the judicial system of the District. *Moses v. Hayes* (1911, 36 App. D.C. 194).

Terms

Under the terms of the act establishing the Supreme Court of the District, the court consisted of four justices any three of whom could hold a general term, and any one of whom could hold a Circuit Court or special term for the purposes and under the conditions therein prescribed, or could hold a District Court of the United States in the same manner and with the same powers and jurisdiction as are possessed and exercised by the Federal District Courts within the several States. *Smith* v. *Mason* (1871, 81 U.S. 419, 14 Wall. 419, 20 L. Ed. 748).

Chapter 3.—UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUBCHAPTER I.—COURT OFFICERS AND EMPLOYEES

Sec.
11–301. Deputy clerks signing for clerk; authentication.
11–302. Reporter; general duties.

SUBCHAPTER II.—JURISDICTION

11–321. Appellate jurisdiction.

SUBCHAPTER III.—MISCELLANEOUS PROVISIONS

11–341. Distribution of reports; sale.

SUBCHAPTER I.—COURT OFFICERS AND EMPLOYEES

§ 11–301. Deputy clerks signing for clerk; authentication

The deputy clerks for the United States Court of Appeals for the District of Columbia Circuit may sign the name of the clerk of the court to any official act required by law or by the practice of the court to be performed by the clerk, and may authenticate his signature by affixing the seal of the court thereto when the impress of the seal is necessary to its authentication. In such a case the signature shall be—

————— ————, Clerk.
By ————— ————, Deputy Clerk.

(Dec. 23, 1963, 77 Stat. 479, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–204 (Feb. 9, 1963, ch. 74, § 4, 27 Stat. 435; July 30, 1894, ch. 172, § 1, 28 Stat. 160; Mar. 3, 1901, ch. 854, § 224, 31 Stat. 1224; June 30, 1902, ch. 1329, 32 Stat. 528; Aug. 23, 1912, ch. 350, 37 Stat. 412; Feb. 22, 1921, ch. 70, § 7, 41 Stat. 1144; Mar. 4, 1923, ch. 265, 42 Stat. 1488; May 21, 1928, ch. 659, 45 Stat. 645; June 25, 1948, ch. 646, § 15, 62 Stat. 988; May 24, 1949, ch. 139, § 137, 63 Stat. 108).

Word "Circuit" is added to state the full name of the United States Court of Appeals. See revision note under section 11–101.

Minor changes are made in phraseology.

CROSS REFERENCE

Appointment of clerks, criers, bailiffs and messengers, see 28 U.S.C. §§ 711–713.

§ 11–302. Reporter; general duties

The United States Court of Appeals for the District of Columbia Circuit may appoint a reporter, who shall serve during the pleasure of the court, and who shall report, edit, and publish the court's opinions, in a form prescribed by it. (Dec. 23, 1963, 77 Stat. 479, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–206 (Feb. 9, 1963, ch. 74, § 10, 27 Stat. 436; July 30, 1894, ch. 172, § 3, 28 Stat. 162; Mar. 3, 1901, ch. 854, § 229, 31 Stat 1226; July 1, 1902, ch. 1352, 32 Stat. 609; Mar. 4, 1923, ch. 265, 42 Stat. 1488; May 24, 1949, ch. 139, § 138, 63 Stat. 109).

Section is taken, with minor changes in phraseology, from first paragraph of section 11–206 of D.C. Code, 1961 ed. Remainder of section 11–206 is carried into section 11–341 herein.

Word "Circuit" is added to state the full name of the United States Court of Appeals. See revision note under section 11–101.

Other provisions relating to officers and employees of the United States courts of appeals, of the judges thereof, and of federal courts generally, are set out in Title 28 U.S.C. §§ 711 et seq., 951 et seq.

SUBCHAPTER II.—JURISDICTION

§ 11–321. Appellate jurisdiction

(a) In addition to its jurisdiction otherwise conferred by law, the United States Court of Appeals for the District of Columbia Circuit has jurisdiction of appeals from judgments of the District of Columbia Court of Appeals, including judgments of that court rendered on review of orders and decisions of the administrative agencies of the District of Columbia specified by section 11–742(a).

(b) A party aggrieved by a judgment of the District of Columbia Court of Appeals may seek a review thereof by the United States Court of Appeals for the District of Columbia Circuit by petition for the allowance of an appeal. (Dec. 23, 1963, 77 Stat. 479, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–771a, 11–772, 11–773 (Apr. 1, 1942, ch. 207, §§ 7, 8, 56 Stat. 195, 196; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Oct. 23, 1962, Pub. L. 87–873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88–60, § 6, 77 Stat. 78).

Subsec. (a) is new in form, but does not make any new law, considering the provisions carried into subsec. (b). The latter provisions represent a consolidation of the last sentence of subsec. (f) of section 11–772 of D.C. Code, 1961 ed., which authorized aggrieved parties to seek reviews in the United States Court of Appeals, in the manner provided by section 11–773 thereof, of judgments in the Municipal Court of Appeals (now, District of Columbia Court of Appeals) on appeals from certain administrative orders and decisions; and the first sentence of section 11–773, which contained the general provision authorizing aggrieved parties to seek reviews in the United States Court of Appeals. The single, consolidated provision, as set out in subsec. (b) of this section, is couched in general terms and applies to all judgments of the District of Columbia Court of Appeals, whether entered in connection with an appeal from an order of decision of an administrative agency or otherwise. Actually, it follows the language of the first sentence of section 11–733 of D.C. Code, 1961 ed.

Section 11–771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

For remainder of sections 11–772 and 11–773 of D.C. Code, 1961 ed., see tables.

NOTES TO DECISIONS

I. UNDER PRIOR LAW

Ambiguous pleading

Where buyer's complaint, whereby buyer sought damages for fraudulent representations in an amount within Municipal Court's jurisdiction, was ambiguous in that it did not clearly disclose whether rescission was sought or damages after rescission, and seller did not raise jurisdictional question in Municipal Court and Municipal Court considered only the damage claim, the action was within Municipal Court's jurisdiction, notwithstanding that the amount involved in a rescission action would have been in excess of jurisdictional amount. *Whelan* v. *Hirshon* (1956, 232 F. 2d 339, 98 U.S. App. D.C. 82).

Dismissal

Where plaintiffs appealed to Municipal Court of Appeals from order denying motion for clarification of order dismissing their action for want of prosecution and, after affirmance petitioned United States Court of Appeals for allowance of appeal on question of whether a dismissal for nonappearance in municipal court is with or without prejudice, dismissal of petition for appeal was required, since only question involved in case was right to clarification of order of dismissal. *Taylor* v. *Yellow Cab Co. of D.C.* (1948, 169 F. 2d 299, 83 U.S. App. D.C. 399).

II. Under Present Law

Jurisdiction

There might have been merit in defendant's contention that alternative sentence of twenty-five dollar fine or 15 days in jail was not "less than $50", within meaning of Code, and that he should have had an appeal as of right to District of Columbia Court of Appeals, but such claim was not properly before United States Court of Appeals for District of Columbia Circuit where defendant challenging denial of discretionary appeal, had not raised issue in court below. *Hollingsworth* v. *United States* (1966, 360 F. 2d 842, 124 U.S. App. D.C. 27).

Notwithstanding Code provision that there should be no further appeal when judges of District of Columbia Court of Appeals were of opinion that appeal should be denied, United States Court of Appeals for District of Columbia Circuit had jurisdiction to review action of District of Columbia Court of Appeals in unanimously denying discretionary appeal from conviction in District of Columbia Court of General Sessions. *Id.*

Questions not raised below

There might have been merit in defendant's contention that alternative sentence of twenty-five dollar fine or 15 days in jail was not "less than $50", within meaning of Code, and that he should have had an appeal as of right to District of Columbia Court of Appeals, but such claim was not properly before United States Court of Appeals for District of Columbia Circuit where defendant, challenging denial of discretionary appeal, had not raised issue in court below. *Hollingsworth* v. *United States* (1966, 360 F. 2d 842, 124 U.S. App. D.C. 27).

SUBCHAPTER III.—MISCELLANEOUS PROVISIONS

§ 11–134. Distribution of reports; sale

(a) The reporter of the United States Court of Appeals for the District of Columbia Circuit shall furnish and deliver one copy of each volume of the reports of the opinions of the court, immediately after publication, to each judge of the following courts in the District:

(1) The United States Court of Appeals;
(2) The United States District Court;
(3) The District of Columbia Court of Appeals;
(4) The Court of General Sessions;
(5) The Juvenile Court; and
(6) The Tax Court of the United States.

and the copies so received by each judge shall, upon his death, resignation, retirement, or removal from office, be delivered to his successor.

(b) The court shall approve the sale price for the reports of its opinions at not more than $6.50 per volume. (Dec. 23, 1963, 77 Stat. 479, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Similar Provisions

Provisions similar to those of subsec. (b) of this section were contained in the following Judiciary Appropriation Acts:

1966—Nov. 8, 1966, 80 Stat. 1500, Pub. L. 89–797, title IV, § 403.

1965—Sept. 2, 1965, 79 Stat. 639, Pub. L. 89–164, Title IV, § 403.

1964—Aug. 23, 1964, 78 Stat. 730, Pub. L. 88–527, Title IV, § 403.

1963—Dec. 30, 1963, 77 Stat. 796, Pub. L. 88–245, Title IV, § 403.

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–206, 11–207, 11–751a (Feb. 9, 1893, ch. 74, § 10, 27 Stat. 436; July 30, 1894, ch. 172, § 3, 28 Stat. 162; Mar. 3, 1901, ch. 854, § 229, 31 Stat. 1226; July 1, 1902, ch. 1352, 32 Stat. 609; Mar. 4, 1923, ch. 265, 42 Stat. 1488; Feb. 25, 1929, ch. 314, 45 Stat. 1287; June 7, 1934, ch. 426, 48 Stat. 926; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, § 1, 56 Stat. 190; June 25, 1948, ch. 646, § 32(a)(b), 62 Stat. 991; May 24, 1949, ch. 139, §§ 127, 138, 63 Stat. 107, 109; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section consolidates second paragraph of section 11–206 with section 11–207 of D.C. Code, 1961 ed., and with section 11–751a thereof which changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions. Section 11–751a is also shown as consolidated with a number of other sections carried into this revised part, to indicate the basis for substituting the new court designation.

In subsec. (a), references to the District of Columbia Court of Appeals, the Juvenile Court, and the Tax Court of the United States are inserted for completeness.

Also in subsec. (a), "retirement," is inserted after "resignation," to render more complete the provisions relating to delivery of the volumes to successors.

The provisions of section 11–207 of D.C. Code, 1961 ed., were derived from a provision of the District of Columbia Appropriation Act for 1930 (act Feb. 25, 1929, ch. 314, cited above), relating to the price, per volume, of the court's reports, and were repeated in the District of Columbia Appropriation Act for 1933 (ch. 308, 47 Stat. 368), and other District of Columbia appropriation acts down to and including act Aug. 9, 1939, ch. 633, § 1, 53 Stat. 1309. The same provision, commencing with 1940, appears in the Judiciary Appropriation Acts rather than in the District of Columbia Appropriation Acts. See, for example, act May 14, 1940, ch. 189, title IV, 54 Stat. 207 (210), and subsequent Judiciary Appropriation Acts down to and including act Oct. 18, 1962, Pub. L. 87–843, title IV, § 403, 76 Stat. 1100. In view of the repetition of the provision in annual appropriation acts for such a long period of time, this section (subsec. (b)) makes the provision permanent.

Changes are made in phraseology and arrangement.

Remainder of section 206 of D.C. Code, 1961 ed., is carried into section 11–302 herein.

Chapter 5.—UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SUBCHAPTER I.—COURT OFFICERS AND EMPLOYEES

Sec.
11–501. Appointment of auditor, messengers, and other officers.
11–502. Duties of deputy clerks.
11–503. Secretarial and clerical assistants for United States Commissioners; expenses.
11–504. Register of Wills; oath; bond; clerk of Probate Court.
11–505. Powers and duties of Register of Wills; restrictions; penalties.
11–506. Deputies and other employees under Register of Wills; dutis.

SUBCHAPTER II.—JURISDICTION

11–521. Civil and criminal jurisdiction.
11–522. Probate and guardianship jurisdiction.
11–523. Concurrent jurisdiction of desertion and nonsupport cases.

SUBCHAPTER III.—MISCELLANEOUS PROVISIONS

11–541. Seal of Probate Court.

SUBCHAPTER I.—COURT OFFICERS AND EMPLOYEES

§ 11–501. Appointment of auditor, messengers, and other officers

The United States District Court for the District of Columbia may appoint an auditor for the court, a messenger for each judge, and all officers of the court necessary for the due administration of justice. (Dec. 23, 1963, 77 Stat. 480, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–312 (Mar. 3, 1863, ch. 91, 12 Stat. 762; Mar. 3, 1901, ch. 854, § 65, 31 Stat. 1200; June 30, 1902, ch. 1329, 32 Stat. 522; Apr. 19, 1920, ch. 153, 41 Stat. 455; Apr. 3, 1926, ch. 103, 44 Stat. 234; June 25, 1936, ch. 804, 49 Stat. 1921; May 24, 1949, ch. 139, § 136, 63 Stat. 108).

Changes are made in phraseology.

CROSS REFERENCE

Appointments of clerks, law clerks, etc., see 28 U.S.C. § 751 et seq.

NOTES TO DECISIONS UNDER PRIOR LAW

Annual account of fiduciaries

Where will creating trust and naming trustee did not require trustee to account to court, mere appointment of substitute trustee and his choosing to ask court's instruction in regard to a particular matter did not bring trustee within court rule requiring fiduciary administering estate under "supervision" of court to file annual account and report. *Smithson* v. *Callahan* (1944, 141 F. 2d 13, 78 U.S. App. D.C. 355).

Under rule requiring fiduciary administering an estate under "supervision" of court to file annual account and report, quoted word implies more than power in court to intervene, in its discretion, in order to prevent or redress improper action by trustee and implies a duty in trustee to consult court before taking action. *Id.*

Appointments

Appointment of elisor unauthorized, without showing disqualification of marshal or coroner. *Doherty* v. *Kalmbach* (1937, 87 F. 2d 539, 66 App. D.C. 322).

Reference, rules of

District Court rule providing for domestic relations commissioner with authority to investigate cases involving determination of question of temporary custody of child or question of amount of temporary maintenance for a wife or child and providing that when no objections are filed to report, court shall have authority to act on report without hearing, provides a convenient method by which facts may be secured and presented in interlocutory matters when both parties consent to its use, and rule is not invalid or beyond court's power to adopt. *Brown* v. *Brown* (1942, 134 F. 2d 505, 77 U.S. App. D.C. 73).

Where under District Court rule providing for domestic relations commissioner with authority to investigate cases involving determination of question of temporary custody of child, father who had instituted suit for custody of child had full power to prevent application of rule to him by objecting to commissioner's report, the father was not entitled to an order that his motion for amendment of pendente lite custody order be not referred to the commissioner for investigation and report. *Id.*

The purpose of the District Court rule providing for a domestic relations commissioner with authority to investigate cases involving determination of question of temporary custody of child or question of amount of temporary maintenance for wife or child and to make report and recommendation in such matters is not to deprive party of opportunity to present such evidence as he wishes to offer in the usual manner and the rule does not make the report evidence or admissible in evidence. *Id.*

§ 11–502. Duties of deputy clerks

The clerk of the United States District Court for the District of Columbia may designate deputy clerks to perform his duties in his name, who may sign his name to any official act required by law or by the practice of the court to be performed by the clerk, and may authenticate the signature by affixing the seal of the court thereto when the seal is necessary to its authentication. In such a case the signature shall be—

———— ————, Clerk.

By ———— ————, Deputy Clerk.

(Dec. 23, 1963, 77 Stat. 480, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–401 (Mar. 3, 1963, ch. 91, 12 Stat. 762; Mar. 3, 1901, ch. 854, § 174, 31 Stat. 1218; June 30, 1902, ch. 1329, 32 Stat. 527; Dec. 15, 1941, ch. 574, § 1, 55 Stat. 801; June 25, 1948, ch. 646, § 14, 62 Stat. 988).

The first sentence of section 11–401 of D.C. Code, 1961 ed., provided as follows: "The clerk of the United States District Court for the District of Columbia may assign any of the deputy clerks in his office to duty in the general or special terms of the court, except the probate term". This sentence is omitted, and in its place and in place of the words at the beginning of the second sentence: "Any of the duties of the clerk may be performed in his name by any of the deputy clerks". The words "The clerk of the United States District of Columbia may designate deputy clerks to perform his duties in his name" are inserted at the beginning of the second sentence. Under prior law, the District Court had a general term for the transaction of business (but not for the hearing of causes), and special terms for the hearing of causes, which were designated, respectively, as the circuit court, equity court, criminal court, probate court, and district court. These statutory distinctions were repealed subsequent to the enactment, in 1948, of Title 28, United States Code, under which the District of Columbia was made a judicial district (28 U.S.C. § 88). Most of the provisions in that title relating to district courts embrace the United States District Court for the District of Columbia (28 U.S.C. §§ 132, 451). Sections 137—141 thereof govern the division of business and terms of district courts. Under section 138, each court, by rule, fixes the times for holding its regular terms, and section 141 provides in part that special terms, pursuant to court rules approved by the judicial council of the circuit, may be held upon such notice as the court orders, and that any business may be transacted at a special term which might be transacted at a regular term.

The Register of Wills serves as clerk of the court in matters relating to probate, the administration of estates, and guardianship, hence it is not necessary to retain the exception in the above-quoted sentence, or a similar one, with respect to probate, as the section, as revised, is still restricted to assignment only of duties of the regular clerk, and he apparently has no duties in the matters referred to.

Changes are made in phraseology.

For additional powers and duties of district court clerks and deputies, see Title 28, U.S.C., §§ 751, 956.

CROSS REFERENCE

Appointment of deputy clerks, clerical assistants, etc., see 28 U.S.C. § 751.

§ 11–503. Secretarial and clerical assistants for United States Commissioners; expenses

Each United States commissioner for the District may employ secretarial and clerical assistants in such number and incur such other expenses as

the District Court considers necessary. (Dec. 23, 1963, 77 Stat. 480, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–332 (June 29, 1953, ch. 159, § 403, 67 Stat. 102).

§ 11–504. Register of Wills; oath; bond; clerk of Probate Court

(a) The United States District Court for the District of Columbia shall appoint, and may remove, a Register of Wills, who shall take an oath for the faithful and impartial discharge of the duties of his office. The office of the Register of Wills is a part of the District Court, and chapter 41 of Title 28, United States Code, applies thereto.

(b) The Register of Wills shall give bond, with two or more sureties, to be approved by the chief judge of the court, in the sum of $5,000:

(1) faithfully to discharge the duties of his office; and

(2) seasonably to record (A) the decrees and orders of the court in any of the matters over which the court exercises its jurisdiction or powers as the Probate Court, (B) all wills proved before him or the court, and (C) all other matters directed to be recorded in the court or in his office.

The bond shall be entered in full upon the minutes of the court, and the original filed with the records thereof.

(c) The Register of Wills shall:

(1) act as clerk of the court in all matters over which the court exercises its jurisdiction or powers as the Probate Court;

(2) keep and certify the court's records in those matters; and

(3) generally, with respect to those matters, exercise the powers and perform the duties that might otherwise properly be exercised or performed by the regular clerk of the court.

(Dec. 23, 1963, 77 Stat. 481, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 19–401, 19–402, 19–409 (R.S.D.C. §§ 929, 930; Mar. 3, 1901, ch. 854, §§ 116, 120, 31 Stat. 1208, 1209; Aug. 2, 1949, ch. 383, § 3, 63 Stat. 491, and Act Aug. 2, 1949, ch. 383, §§ 1, 4, 63 Stat. 491; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(a)(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Section consolidates sections 19–401, 19–402, and 19–409 of D.C. Code, 1961 ed., with that part of section 1 of act of Aug. 2, 1949, ch. 383, 63 Stat. 491, which, for budgetary and administrative purposes, transferred the office of the Register of Wills from the government of the District of Columbia to the Administrative Office of the United States Courts (although in this revised section the transfer provisions are omitted, as executed), and made chapter 41 of Title 28, United States Code, applicable thereto, and section 4 of the 1949 act, that provided that the office of the Register of Wills should be a part of the District Court.

In subsec. (b)(2), words "of the court in any matters over which the Court exercises its jurisdiction or powers as the Probate Court" are substituted for words in section 19–402 of the D.C. Code, 1961 ed., "of the judge of the District Court holding the special term for probate court business for the District"; and in subsec. (c)(1), words "act as clerk of the court in all matters over which the Court exercises its jurisdiction or powers as the Probate Court" are substituted for words in section 19–409 of the D.C. Code, 1951 ed., "act as clerk of the said probate term". See revision note under section 11–502 herein.

Changes are made in phraseology and arrangement.

§ 11–505. Powers and duties of Register of Wills; restrictions; penalties

(a) The Register of Wills may:

(1) receive inventories and accounts of sales, examine vouchers, and state accounts of executors, administrators, collectors, and guardians, subject to final approval by the court;

(2) take the probate of claims against the estates of deceased persons that are properly brought before him, and approve or reject claims not exceeding $300; and

(3) take the probate of wills and accept the bonds of executors, administrators, collectors, and guardians, subject to approval by the court.

(b) In matters over which the court has jurisdiction or exercises powers as the Probate Court, the Register of Wills shall:

(1) make full and fair entries of the proceedings of the court;

(2) make a fair record in a strong-bound book of all wills proved before him or the court, and of other matters required by law to be recorded in the court;

(3) lodge original papers filed with him in a place of safety appointed by the court;

(4) make out and issue every summons, process, and order of the court;

(5) make fair tables of his fees, and post them in a conspicuous place in his office for the inspection of persons having business therein;

(6) in every respect, act under the control and direction of the court; and

(7) pay into the treasury all fees, costs, and other moneys collected by him, except uncollected fees not required by law to be prepaid, and make returns thereof to the Director of the Administrative Office of the United States Courts under regulations prescribed by the Director.

(c) The Register of Wills may not:

(1) practice law in any court of the District or of the United States; or

(2) demand or receive any fee, gratuity, gift, or reward, for giving his advice in any matter relating to his office.

(d) The Register of Wills shall forfeit the sum of $10 for each day that the tables referred to in clause (5) of subsection (b) of this section are missing through his neglect, which may be recovered as other debts for the same amount are recoverable. Of the amount so paid or recovered, one-half shall be for the use of the District, and one-half shall be for the use of the informer.

(e) If the Register of Wills or a person acting for him takes a greater fee than the fee provided for by law, he shall pay to the party injured $50, which may be recovered as other debts for the same amount are recoverable. (Dec. 23, 1963, 77 Stat. 481, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 19–403, 19–404a, 19–406, 19–407, 19–408, 19–410, 19–411 (Maryland Act, 1779, ch. 25; Maryland Act 1781, ch. 16; Maryland Act 1786, ch. 10; Apr. 2, 1792, ch. 16, § 9, 1 Stat. 248; R.S.D.C. §§ 933–

935; Mar. 3, 1901, ch. 854, § 121, 31 Stat. 1209; June 30, 1902, ch. 1329, 32 Stat. 525; Mar. 4, 1923, ch. 265, 42 Stat. 1488; Apr. 24, 1926, ch. 176, 44 Stat. 322; Aug. 7, 1946, ch. 792, 60 Stat. 889; Aug. 2, 1949, ch. 383, § 5, 63 Stat. 491).

Section consolidates part of section 19–403 of D.C. Code, 1961 ed., with sections 19–404a, 19–406, 19–407, 19–408, 19–410 and 19–411 thereof. For remainder of section 19–403, see section 11–506 herein.

Sections 19–410 and 19–411 of D.C. Code, 1961 ed., which were derived from the old Maryland statutes and the Act of Congress Apr. 2, 1792, ch. 16, § 9, 1 Stat. 248, cited above, provided:

Section 19–410:

"No person, being register of wills shall plead as an attorney at law in any court in the District of Columbia for any person or persons, on any pretence whatsoever; and no register of wills as aforesaid shall exact, extort, demand, take, accept, or receive, from any person whatsoever, any fee or fees, gratuity, gift, or reward, for giving his advice in any matter or thing that will be transacted in the courts of the District of Columbia, under the penalty of $80, current money for every such offense".

Section 19–411:

"The register of wills shall not demand, take, or receive, from any person whatever any fee, gratuity, gift or reward, for giving his advice in any matter or thing relative to his office, under the penalty of $133.33, for every offense.".

The restrictions imposed in the two sections quoted above are consolidated and preserved in subsec. (c) of this revised section but the penalties are omitted as inconsistent with each other, obsolete, or in any event unnecessary. The Register of Wills is now an officer of the District Court, and subject not only to its direction and control, but also to removal by the court, in its discretion, for misconduct or any other reason. See section 11–504 herein. See, also, section 401(2) of Title 18, United States Code, under which courts of the United States may punish such contempt of their authority as misbehavior of any of their officers in their official transactions.

Words "exact", "extort", "take", and "accept" are omitted from clause (2) of subsec. (c) of this section as covered by "demand" and "receive", as the case may be; and, in subsec. (e) reference to "forfeit" is omitted as covered by "pay".

Changes are made in phraseology.

§ 11–506. Deputies and other employees under Register of Wills; duties

(a) The Register of Wills, with the approval of the court, may appoint necessary deputies, clerical assistants and other employees in such number as may be approved by the Director of the Administrative Office of the United States Courts. With the approval of the court, the Register of Wills may remove any of the personnel so appointed.

(b) The personnel appointed pursuant to this section shall be under the supervision and control of the Register of Wills, and shall perform such duties as he or the court directs. The deputies may perform acts necessary in the administration of the office of the Register of Wills and the certification of the records of the court which the Register may perform. (Dec. 23, 1963, 77 Stat. 482, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 19–403 (Mar. 3, 1901, ch. 854, § 121, 31 Stat. 1209; June 30, 1902, ch. 1329, 32 Stat. 525; Mar. 4, 1923, ch. 265, 42 Stat. 1488; Apr. 24, 1926, ch. 176, 44 Stat. 322; Aug. 7, 1946, ch. 792, 60 Stat. 889).

Section is derived from that part of section 19–403 of D.C. Code, 1961 ed., which related to the appointment of deputies and other personnel in the office of the Register of Wills.

Section 19–403 of D.C. Code, 1961 ed., authorized the Register of Wills to appoint five deputies, and to appoint and fix the number of compensation of the employees of the "said probate court" (which was the designation of a former statutory special term of the District Court) and the office of the Register, and contained a proviso that "the employees of said office shall not be in excess of the number actually necessary for the proper conduct of the office of said register of wills". However, the Register of Wills is now an officer of the District Court, is appointed by that court, and the provisions of chapter 41 (section 601 et seq.) of Title 28, United States Code, apply to his office (see section 11–504 herein, and revision note thereunder). Chapter 41 of Title 28, United States Code, relates to the Administrative Office of the United States Courts, and section 601(a)(5) thereof provides that the Director of the Administrative Office shall fix the compensation of "clerks of court, deputies * * * [etc.] and other employees of the courts whose compensation is not otherwise fixed by law". Further, under section 751 of Title 28, United States Code, the regular clerk of the District Court appoints, with the approval of the court, necessary deputies (with no statutory restriction on the number, presumably because of the necessity for the court's approval), clerical assistants, "and employees in such number as may be approved by the Director of the Administrative Office of the United States Courts". Section 751 of that title also provides that the clerk may remove such deputies and other employees, with the approval of the court. That section, as stated, relates to the regular clerks of the district courts, and it does not apply to the Register of Wills, but, in view of the changed status of the office of the Register of Wills (since 1949), and the functions, under section 601 of Title 28, United States Code, of the Director of the Administrative Office, with respect to the office of the Register, it would seem that provisions similar to those of section 751 of Title 28, United States Code, relating to regular district court clerks, should apply to the Register and the deputies and other employees in his office. Therefore, the provisions of section 19–403 as herein revised, place no restriction on the number of deputies to be appointed, but make the appointments subject to approval of the court; omit the proviso prohibiting the appointment of other employees in a number in excess of the number actually necessary, and provide for approval of the number by the Director of the Administrative Office; omit the provisions which related to the fixing, by the Register, of the compensation of the employees; and provide, for the purpose of completeness, that the personnel appointed under this section shall be under the supervision and control of the Register of Wills, and shall perform such duties as he or the court directs. The section also inserts the provision that, with the approval of the court, the Register may remove any of the personnel so appointed.

Changes are made in phraseology.

For remainder of section 19–403 of D.C. Code, 1961 ed., see section 11–505 herein.

SUBCHAPTER II.—JURISDICTION

§ 11–521. Civil and criminal jurisdiction

(a) Except in actions or proceedings over which exclusive jurisdiction is conferred by law upon other courts in the District, the United States District Court for the District of Columbia, in addition to its jurisdiction as a United States district court and to any other jurisdiction conferred by law, has all the jurisdiction possessed and exercised by it on January 1, 1964, and has original jurisdiction of all:

(1) civil actions between parties, where either or both of them are resident or found within the District; and

(2) offenses committed within the District.

(b) Except as otherwise specially provided, an action may not be brought in the District Court by original process against a person who is not resident or found within the District. (Dec. 23, 1963, 77 Stat. 482, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–305, 11–306, 11–308 (R.S.D.C. §§ 763, 767; Feb. 27, 1877, ch. 69, § 2, 19 Stat. 253; Mar. 3, 1901, ch. 854, §61, 31 Stat. 1199; Mar. 3, 1911, ch. 231, § 289, 36 Stat. 1167; June 25, 1948, ch. 646, § 39, 62 Stat. 992; May 24, 1949, ch. 139, § 135, 63 Stat. 108).

Section consolidates sections 11–305, 11–306, and 11–308 of D.C. Code, 1961 ed.

In subsec. (a), words "September 1, 1963" are substituted for "August 31, 1948," to reflect the date on which this revised title will become effective.

The exception clause is inserted at the beginning of subsec. (a) for the purpose of clarity and completeness.

To conform more closely with modern usage, "original jurisdiction" is substituted for "cognizance"; and "offenses" is substituted for "crimes and offenses". See Title 28, U.S.C., §§ 1331, 1332; Title 18, U.S.C., §§ 1, 3231.

Also with respect to terms and phrases used in section 11–306 of D.C. Code, 1961 ed., in this section as revised, "civil actions" is substituted for "cases in law and equity", as the former term is all inclusive. The Federal Rules of Civil Procedure apply in the United States District Court for the District of Columbia (since it is a United States district court; see Rule 1 thereof, and Title 28, U.S.C., §§ 88, 132, 133), and Rule 2 thereof provides for only one form of action in such courts, to be known as a "civil action".

The following provisions of section 11–306 of D.C. Code, 1961 ed., are omitted as covered by provisions in Title 28, U.S.C. (see § 1331 et seq. thereof): "and also of all actions or suits of a civil nature at common law or in equity, in which the United States shall be plaintiffs or complainants; and of all seizures on land or water, and all penalties and forfeitures made, arising or accruing under the laws of the United States".

Changes are made in phraseology.

CROSS REFERENCES

Appeal from action of Board of Education in revoking license of institution of learning, see § 29–417.

Appointment of Board of Education, see § 31–101.

Appointment of jury commissioners, see § 11–2303.

Appointment of trustee for benefit of creditors, see § 28–2105.

Condemnation of land for minor streets and alleys, see § 7–313.

Condemnation of land for permanent highways, see § 7–202.

Designation of officer to take bonds and collateral, see § 23–610.

Determination of terms and conditions of joint use of certain railroad facilities, see § 7–1213.

Elections, petition for recount, see § 1–1111.

Enforcement of lien for cost of constructing Benning Bridge, see § 7–514.

Enforcement of lien for cost of constructing Michigan Avenue Viaduct, see § 7–520.

Enforcement of lien for cost of subway under Baltimore and Ohio tracks in vicinity of Chestnut Street, Fern Place, and Piney Branch Road, see § 7–523.

Enforcement of lien to recover part of cost of construction of viaducts and subways, see § 7–1215.

Enjoining unlawful operation of medical and dental colleges, see § 31–904.

Jurisdiction in voting right cases under "Voting Rights Act of 1965", see 42 U.S.C. §§ 1973—1973p.

Jurisdiction over trust for burial grounds, see § 27–113

Probation system, see § 24–101 et seq.

Procedings to close public highways under Street Adjustment Act, see § 7–405.

Review of action of Nurses' Examining Board in refusing to register or reregister nurse, see § 2–407.

Revocation or suspension of dental licenses, see §§ 2–311, 2–312.

Revocation or suspension of license of dental hygienists, see § 2–325.

Revocation or suspension of license of podiatrist, see §§ 2–707, 2–708.

Revocation or suspension of nurse's registration, see § 2–407.

Revocation or suspension of physician's license, see § 2–123.

Violations of laws concerning Capitol building, grounds, and terraces, see § 9–125.

Jurisdiction of U.S. District Courts, see 28 U.S.C. § 1331 et seq.

Venue of proceedings in U.S. District Courts, see 28 U.S.C. § 1391 et seq.

JURISDICTION IN CERTAIN DOMESTIC RELATIONS MATTERS

Section 16 of act, Dec. 23, 1963, provided as follows: "Chapter 11 of Title 11 of the District of Columbia Code, as set out in section 1 of this Act [Titles 11 to 17], does not divest the United States District Court for the District of Columbia of jurisdiction and power to consider, and to enter and enforce judgments, orders, and decrees in any action, application, or proceeding, as described in section 11–1141 of the Code, filed in the District Court prior to the effective date of section 105 of the Act of April 11, 1956 (ch. 204, 70 Stat. 112), to the same extent as if chapter 11 had not been enacted."

NOTES TO DECISIONS

I. UNDER PRIOR LAW

In general

By this section the justices of the Supreme Court of the District (District Court of the United States for the District of Columbia) were vested with the power and jurisdiction of judges of the District Courts of the United States. *Federal Trade Comm.* v. *Klesner* (1927, 47 S. Ct. 557, 274 U.S. 145, 71 L. Ed. 972).

The fact that District Court for District of Columbia was known as the "Supreme Court of the District of Columbia", when act Feb. 13, 1925, ch. 229, § 1, 43 Stat. 938, amending 28 U.S.C. § 345 and restricting direct review by Supreme Court of District Court judgments became law, did not exclude the District Court for District of Columbia from such restriction, since at that time the Supreme Court of District of Columbia possessed the jurisdiction of a District Court of the United States. *United States* v. *Belt* (1943, 63 S. Ct. 1278, 319 U.S. 521, 87 L. Ed. 1559).

Actions against United States

In suit by stockholders of steamship company against members of Maritime Commission to recover stock delivered to Commission under contract providing aid for company, on ground that Commission was unauthorized to acquire shares outright and that, in any event, contract resulted in no more than a pledge of shares, determination of whether suit was one against United States over which District Court would have no jurisdiction depended upon decision on merits, and District Court had jurisdiction to determine its jurisdiction by proceeding to a decision on the merits. *Land* v. *Dollar* (1947, 67 S. Ct. 1009, 330 U.S. 731, 91 L. Ed. 1209).

Alien Property Custodian

50 U.S.C. App. § 35(b) providing that in time of war property of any foreign country or national thereof shall vest as directed by the President and seizure of a friendly alien's property by Alien Property Custodian, pursuant to President's directive, did not nullify 50 U.S.C. App. § 9 (a) providing that any person not an enemy or ally thereof claiming any property transferred to Alien Property Custodian might institute suit in District Court to obtain possession thereof. *Uebersee Finanz-Korporation, A. G.* v. *Markham* (1947, 158 F. 2d 313, 81 U.S. App. D.C. 284, affirmed 68 S. Ct. 174, 332 U.S. 480, 92 L. Ed. 88).

Amount in controversy

In determining if value of matter in controversy in a case is sufficient for jurisdictional requirements of federal court, absolute certainty as to value is not essential, and present probability that damages will exceed the sum is enough. *Friedman* v. *International Association of Machinists* (1955, 220 F. 2d 808, 95 U.S. App. D.C. 128, certiorari denied 76 S. Ct. 51, 350 U.S. 824, 100 L. Ed. 736).

If matter in controversy in a case exceeds the value of $3,000, exclusive of interest and costs, the jurisdictional requirements of the Judicial Code and the District of Columbia Code are satisfied insofar as the amount involved is concerned. *Id.*

District Court for District of Columbia did not have jurisdiction of action to have trust impressed on funds amounting to $1,980 or, in alternative, for money judg-

ment, regardless of whether complaint would have formerly been denoted a suit at law or a bill in equity, in view of § 11–755 giving Municipal Court exclusive jurisdiction of "civil actions" involving "personal property" having value less than $3,000. *Klepinger* v. *Rhodes* (1944, 140 F. 2d 697, 78 U.S. App. D.C. 340, certiorari denied 64 S. Ct. 1047, 322 U.S. 734, 88 L. Ed. 1568).

Back pay of Federal employee

The District Court was without jurisdiction to award judgment for back pay to employee in the Immigration and Naturalization Service of the Department of Justice who had been dismissed as a probationary employee without notice. *Borak* v. *Biddle* (1944, 141 F. 2d 278, 78 U.S. App. D.C. 374, certiorari denied 65 S. Ct. 42, 323 U.S. 738, 89 L. Ed. 591).

Conspiracy

Supreme Court has jurisdiction to try conspiracy entered into the District of Columbia, although the overt act is shown to have been committed in another jurisdiction or even in a foreign country. *Hyde* v. *Shine* (1905, 25 S. Ct. 760, 199 U.S. 62, 50 L. Ed. 90).

Conspiracy to commit offense against the United States is triable in the Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia), sitting as a criminal court. *Pitts* v. *Peak* (1931, 50 F. 2d 485, 60 App. D.C. 195).

Charge of conspiracy against the United States is triable before Supreme Court of District sitting as a criminal court. *Id.*

Costs, laws relating to

Section 815 of title 28, U.S.C., disallowing costs to plaintiff recovering less than $500 in action brought in District Court of United States where jurisdictional amount exceeds such sum is applicable to District Court of the United States for the District of Columbia. *Silverman* v. *Central Amusement Co.* (D.C.D.C. 1943, 49 F. Supp. 364).

"Court of the United States"

The Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia) is a "court of the United States." *Benson* v. *Henkel* (1905, 25 S. Ct. 569, 198 U.S. 1, 49 L. Ed. 919). See, also, *O'Donoghue* v. *United States* (1933, 53 S. Ct. 740, 289 U.S. 516, 77 L. Ed. 1356).

The Supreme Court of the District of Columbia has power to punish for contempt of court. *Moss* v. *United States* (1904, 23 App. D.C. 475).

Criminal Appeals Act

This section does not constitute the Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia) a District Court for the purposes of the Criminal Appeals Act. *United States* v. *Burroughs* (1933, 53 S. Ct. 574, 289 U.S. 159, 77 L. Ed. 1096).

Declaratory judgment

Heirs of a putative husband may utilize declaratory judgment technique to attack validity of foreign divorce decree of person claiming to be wife of putative husband. *Gordon et al.* v. *Matthews* (1959, 273 F. 2d 525, 106 U.S. App. D.C. 400).

When confronted with a request for declaratory relief more properly amenable to disposition in another forum, court has broad measure of discretion whether to grant prayer and it may decline to entertain the action. *Id.*

Discretion

The Court of Appeals has jurisdiction to review matters resting in the discretion of the trial justices. *Billings* v. *Field* (1910, 36 App. D.C. 16). See, also, *Degge* v. *Hitchcock* (1910, 35 App. D.C. 218, affirmed 33 S. Ct. 639, 229 U.S. 162, 57 L. Ed. 1135).

Dismissal

Suit will be dismissed where an indispensable party is not joined *Mine Safety Appliances Co.* v. *Knox* (D.C.D.C. 1945, 59 F. Supp. 733, affirmed 66 S. Ct. 219, 326 U.S. 371, 90 L. Ed. 140).

Enforcement of Sherman Law

This section is plain and unambiguous, and transfers to the District Courts all the jurisdiction and power that the Circuit Courts had with regard to the enforcement of the Sherman Law. *Wogan Bros., Inc.* v. *American Sugar Ref. Co.* (D.C. La. 1914, 215 F. 273).

Enjoining orders of Secretary of Agriculture

The general equity jurisdiction of the District Court for the District of Columbia authorized it to hear suit to enjoin the Secretary of Agriculture from enforcing allegedly illegal provisions of order dealing with marketing of milk in Greater Boston, Mass., area. *Stark* v. *Wickard* (1944, 64 S. Ct. 559, 321 U.S. 288, 88 L Ed. 733).

Emergency Price Control Act

50 U.S.C. App. § 924(d), The Emergency Price Control Act, confers exclusive jurisdiction on Emergency Court of Appeals to determine validity of any regulation or order issued under said sections and District Court of United States for District of Columbia was without jurisdiction of action for declaratory judgment that regulation of Price Administrator was invalid and to enjoin enforcement of regulation notwithstanding contention that Secretary of Agriculture, Price Administrator, and Director of Economic Stabilization conspired to avoid statutory standards for promulgation of orders affecting agricultural commodities. *Cooper* v. *Anderson* (1946, 156 F. 2d 564, 81 U.S. App. D.C. 166),

Exclusive jurisdiction

This section giving District Court of United States for District of Columbia jurisdiction of all civil actions brought by the United States, confers a privilege and does not impose a restriction on the United States, and, therefore, the District Court does not have exclusive jurisdiction of actions brought by the United States in the District of Columbia. *Ridgley* v. *United States* (D.C. Mun. App. 1946, 45 A. 2d 475).

Foreign agents

In proceeding in the United States District Court for District of Columbia by a foreign power to compel its agents in the United States to turn over funds and records in their hands to another agency of such power where power was represented in the jurisdiction by its ambassador who instituted the suit and defendants were residents of the jurisdiction and had made a general appearance through their attorney, court had jurisdiction over the parties. *Republic of China* v. *Pang-Tsu-Mow et al.* (D.C.D.C. 1951, 101 F. Supp. 646, affirmed 201 F. 2d 195, 91 U.S. App. D.C. 324, certiorari denied 73 S. Ct. 784, 345 U.S. 925, 97 L. Ed. 1356).

Forum non conveniens

On record in action arising out of automobile collison occurring in Maryland, in which state all of parties and most of witnesses resided, it was not abuse of discretion for federal district court for District of Columbia, which knew that case could not be transferred to another federal court, to dismiss complaint on ground of forum non conveniens. *Gross et ano.* v. *Owen* (1955, 221 F. 2d 94, 95 U.S. App. D.C. 222).

Habeas Corpus

The Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia), is without jurisdiction to inquire into the grounds of the detention of persons unlawfully restrained of their liberty beyond the District of Columbia. *McGowan* v. *Moody* (1903, 22 App. D.C. 148).

Historical

When Maryland railroad extended limits into District of Columbia, as the unity of the road was unchanged in name and locality, it was proper and allowed by act of Congress, and under 2 Stat. 103, ch. 15, § 6, the District court had jurisdiction for injuries done on said road although outside of the District. *Baltimore & O. R. Co.* v. *Harris* (1870, 79 U.S. 65, 12 Wall. 65, 20 L. Ed. 354).

The Supreme Court of the District of Columbia had the same powers and jurisdiction that had previously belonged to the Circuit Court which it superseded; and the appellate power of this court was declared to be the same as that which it had, by law, over the Circuit Court. *Baltimore & P. R. Co.* v. *Trustees of the Sixth Presbyterian Church* (1873, 86 U.S. 64, 19 Wall. 64, 22 L. Ed. 97).

Authority to issue writs of mandamus in cases in which the parties are by common law entitled to them was vested in the Supreme Court of the District of Columbia. *United States ex rel. McBride* v. *Schurz* (1880, 102 U.S. 378, 12 Otto 378, 26 L. Ed. 167).

Circuit Court of Appeals did not have jurisdiction of criminal cases in District of Columbia. *In re Health* (1892, 12 S. Ct. 615, 144 U.S. 92, 36 L. Ed. 358).

Act of February 6, 1889, did not authorize a writ of error from Circuit Court to the Supreme Court of the District to review a judgment in general term affirming a judgment of the trial court which convicted a person of a capital offense. *Cross* v. *United States* (1892, 12 S. Ct. 842, 145 U.S. 571, 36 L. Ed. 821).

16 Stat. 160, ch. 141, § 4, provided that the several general terms and special terms of the various courts, Circuit, District, and Criminal, should be considered terms of the Supreme Court of the District and that their judgments should be the judgments of the Supreme Court, but that this should not affect the right of appeal as provided by law. *Id.*

The Supreme Court had no jurisdiction to review on writ of error, a judgment of the Court of Appeals to the District in a criminal matter under § 8 of the act of February 9, 1893, ch. 74, 27 Stat. 434. *Chapman* v. *United States* (1896, 17 S. Ct. 76, 164 U.S. 436, 41 L. Ed. 504).

Judicial notice

Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia) must take judicial notice of the laws of the States. *Moore* v. *Pywell* (1907, 29 App. D.C. 312, 9 L.R.A., N.S., 1078).

United States District Court for District of Columbia could not take judicial notice of municipal ordinance of the District of Columbia establishing speed limits. *Gardner* v. *Capital Transit Co.* (1946, 152 F. 2d 288, 80 U.S. App. D.C. 297, certiorari denied 66 S. Ct. 824, 327 U.S. 795, 90 L. Ed. 1021).

The district court of the United States for the District of Columbia will take judicial notice of the public statutes to a state. *Hicks* v. *Hicks* (D.C.D.C. 1948, 80 F. Supp. 219).

Jurisdiction—District Court of the United States

By this section the Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia) was given the same powers and the same jurisdiction as District Courts of the United States. *Federal Trade Comm.* v. *Klesner* (1927, 47 S. Ct. 557, 274 U.S. 145, 71 L. Ed. 972).

The Supreme Court of the District of Columbia (Distric Court of the United States for the District of Columbia) is a District Court within this section. *Claiborne-Annapolis Ferry Co.* v. *United States* (1937, 57 S. Ct. 440, 285 U.S. 382, 76 L. Ed. 808). See, also, *In re Macfarland* (1908, 30 App. D.C. 365, appeal dismissed 30 S. Ct. 402, 215 U.S. 614, 54 L. Ed. 349); *Moder* v. *United States* (1933, 64 F. 2d 703, 62 App. D.C. 65); *Ormsby* v. *United States* (C.C.A. 6, 1921, 273 F. 977).

The District Court of United States for District of Columbia has all the ordinary and usual jurisdiction of a state court in respect to matters which in a state would be exercised by a state court, and it has all jurisdiction and powers of United States District Court elsewhere. *King* v. *Wall & Beaver Street Corporation* (1944, 145 F. 2d 377, 79 U.S. App. D.C. 234).

—— Generally

Statutory jurisdiction of United States District Court for the District of Columbia in law and equity between parties, both or either of which shall be resident or be found within the district, extends also to application for enlargement of judgment of divorce from bed and board to a judgment for absolute divorce. *Bottomley* v. *Bottomley* (1958, 262 F. 2d 23, 104 U.S. App. D.C. 311).

An action by citizens of New Jersey against defendant, a foreign corporation doing business in the District of Columbia, for injuries sustained by plaintiff from a collision between a bus and truck in West Virginia was a transitory tort action as to which the District Court could take jurisdiction. *David Blake et al.* v. *Capitol Greyhound lines* (1955, 222 F. 2d 25, 95 U.S. App. D.C. 334).

In view of fact that suit against father for maintenance of children is a personal, transitory action, when father's residence was in District of Columbia, children were entitled to sue him therein, notwithstanding fact of their own residence in Virginia. *Scholla* v. *Scholla* (1953, 201 F. 2d 211, 92 U.S. App. D.C. 9).

Under section granting federal district court for District of Columbia cognizance of all cases in law and equity between parties, both or either of which shall be resident or be found within said district, federal district court for District of Columbia possessed jurisdiction to grant relief in suit between aliens, where suit was brought in District and defendants submitted to process of court. *Pang-Tsu Mow* v. *Republic of China* (1952, 201 F. 2d 195, 91 U.S. App. D.C. 324, certiorari denied 73 S. Ct. 784, 345 (U.S. 925, 97 L. Ed. 1356).

In a civil action brought by the United States to recover less than $3,000.00, the district court acquired jurisdiction and should have entertained the suit, since by this and previous statutes the United States has expressly conferred upon its district courts jurisdiction of its suits and the statutes have not limited this jurisdiction. *United States* v. *Kloman* (1949, 176 F. 2d 27, 85 U.S. App. D.C. 96).

Every United States District Court is court of general original jurisdiction in respect to cases and controversies arising within federal areas, or federal reservations, located geographically within district. *North Branch Products, Inc.* v. *Fisher* (D.C.D.C. 1960, 179 F. Supp. 843).

—— Law governing

The District Court of United States for District of Columbia is both a federal district court governed by national legislation respecting venue, jurisdiction, and procedure, and a local trial court of general jurisdiction governed by local legislation embodied in this Code. *Fehlhaber Pile Co.* v. *Tennessee Val. Authority* (1946, 155 F. 2d 864, 81 U.S. App. D.C. 124).

—— Limitation

Where the actual damages recoverable are within the exclusive jurisdiction of the Municipal Court, the District Court of the United States has no jurisdiction, and a mere ad damnum clause will not confer it. *Minick* v. *Associates Inv. Co.* (1940, 110 F. 2d 267, 71 App. D.C. 367).

Where maker, who had given deed of trust on automobile as security for note, alleged that transaction was fraudulent and usurious and that defendant had seized automobile on maker's default and maker demanded damages in an aggregate amount of $2,000, an order that defendants disclose the state of the account between the parties, and an injunction against the sale of the automobile, District Court for District of Columbia did not have jurisdiction of the action. *Rowe* v. *Nolan Finance Co.* (1944, 142 F. 2d 93, 79 U.S. App. D.C. 35).

—— Withholding of

The federal District Courts may in their discretion properly withhold the exercise of the jurisdiction conferred upon them where there is no lack of another suitable form. *Paley* v. *Solomon* (D.C.D.C. 1945, 59 F. Supp. 887).

Where action by plaintiff against defendant was instituted in District Court for District of Columbia before defendant instituted action against plaintiff on same cause of action in federal District Court for Maryland, even though plaintiff filed counterclaim in Maryland action, when trial in Maryland resulted in hung jury, plaintiff had right to insist on trial of his case in District of Columbia *Brooks Transp. Co.* v. *McCutcheon* (1946, 154 F. 2d 841, 80 U.S. App. D.C. 406).

Law governing

Constitutional provision empowering Congress to exercise exclusive legislation in all cases whatsoever over District of Columbia must be harmonized with constitutional definition of judicial power of United States, and so harmonized requires conclusion that when parts of Maryland and Virginia became originally incorporated within District of Columbia, the authority of Congress over the ceded area enabled it to clothe courts of District with jurisdiction like that left behind in Maryland and Virginia. *Pang-Tsu Mow* v. *Republic of China* (1952, 201 F. 2d 195, 91 U.S. App. D.C. 324, certiorari denied 73 S. Ct. 784, 345 U.S. 925, 97 L. Ed. 1356).

The District Court of United States for District of Columbia is both a federal district court governed by national legislation respecting venue, jurisdiction, and procedure, and a local trial court of general jurisdiction governed by local legislation embodied in this Code. *Fehlhaber Pile Co.* v. *Tennessee Val. Authority* (1946, 155 F. 2d 864, 81 U.S. App. D.C. 124).

Local jurisdiction

Courts of District of Columbia have local jurisdiction precisely as though they were courts of one of states. *Western Urn Manufacturing Co et ano.* v. *American Pipe and Steel Corporation* (C.A.D.C. 1960, 284 F. 2d 279).

Maintenance actions

The "public policy" of the District of Columbia does not require its courts to take jurisdiction of a matrimonial dispute between two persons who are neither domiciled in the District nor even residents thereof, especially where there is no showing that the welfare of children, rights of property, or other public interests in the District are affected. *Melvin* v. *Melvin* (1942, 129 F. 2d 39, 76 U.S. App. D.C. 56).

Under the doctrine "forum non conveniens" the District Court's jurisdiction of actions for separate maintenance between nonresidents domiciled elsewhere should not be exercised unless unusual circumstances justify trial in the District of Columbia. *Id.*

The District Court properly accepted jurisdiction of a wife's action for separate maintenance, even though husband and wife were nonresidents domiciled outside the District of Columbia, where husband's work when not traveling was in the District and husband's domicile was uncertain, both parties lived a few miles away, and husband at one time lived in the District. *Id.*

Negligence

Statute providing that civil action wherein jurisdiction is founded only on diversity of citizenship may be brought only in judicial district where all plaintiffs or all defendants reside was not applicable to an action arising out of an automobile accident in the District of Columbia brought by a New York resident against servicemen who were stationed in Virginia, when action was not founded on diversity of citizenship but on general jurisdiction of United States District Court for the District of Columbia. *F. B. Boardman* v. *J. Martocchia et ano.* (D.C.D.C. 1963, 216 F. Supp. 830).

The United States District Court for the District of Columbia has the jurisdiction of United States district courts generally and all the ordinary and usual jurisdiction of a state court. *Id.*

United States District Court for District of Columbia had jurisdiction of suit filed by New York resident against servicemen, who were stationed in Virginia and who were served pursuant to statute relating to service of process on nonresidents involved in automobile accident in the District of Columbia. *Id.*

Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia) has jurdisdiction of action for negligence causing death where the act complained of was committed in the District, notwithstanding the fact that death occurred elsewhere. *Moore* v. *Pywell* (1907, 29 App. D.C. 312, 9 L.R.A., N.S. 1078).

Personal liability for acts

Chief Justice and Associate Justice when affixing their signature to an order for disbarment act within scope of their official authority and within jurisdiction of the court and they are not liable for damages therefrom. *Fletcher* v. *Wheat* (1939, 100 F. 2d 432, 69 App. D.C. 259, certiorari denied 59 S. Ct. 794, 307 U.S. 621, 83 L. Ed. 1500).

Probate proceedings

Action for declaration that plaintiffs were the surviving heirs and next of kind of decedent, whose marriage to defendant was allegedly invalid on ground that decree of divorce obtained by defendant from a prior husband in Virginia was obtained by fraud on a Virginia court, should have been brought in probate court. *Gordon et al.* v. *Matthews* (1959, 273 F. 2d 525, 106 U.S. App. D.C. 400).

Process, issuance of

Under this chapter covering jurisdiction of courts in District of Columbia, District Court of United States for District of Columbia may exercise jurisdiction if defendants are found within the District, but process from District Court may not issue or be served on any person not an inhabitant of or found within the District. *King* v. *Wall & Beaver Street Corporation* (1944, 145 F. 2d 377, 79 U.S. App. D.C. 23).

In derivative action by New York stockholders against Connecticut citizens who were temporarily living in District of Columbia, and Maryland corporation which had not transacted business in District of Columbia, jurisdiction of District Court of United States for District of Columbia could not be sustained by applying this chapter to jurisdictional question involving the Connecticut citizens and ignoring the restrictive provison precluding service of process on person not an inhabitant of or found within District, and by applying exception to 28 U.S.C. § 112, with relation to service of process on corporation and ignoring the restrictive provisions of 28 U.S.C. § 112, in relation to jurisdiction as to the individual defendants. *Id.*

Punish for contempt

An attorney while as a witness need not disclose the name of party for reason that he promised not to divulge his name, and he is not guilty of contempt of court, for this would require him to divulge a privileged communication. *Elliott* v. *United States* (1904, 23 App. D.C. 456).

Redemption of real property

The right to redeem Maryland land foreclosed in Maryland or to set aside or modify foreclosure decree could only be granted by Maryland court, and not by District of Columbia court. *Smith* v. *Schlein* (1944, 144 F. 2d 257, 79 U.S. App. D.C. 166).

Removal of prisoner to District

One properly indicted in the District of Columbia may be removed from a district in which he is found to the District of Columbia to await trial. *Benson* v. *Henkel* (1905, 25 S. Ct. 569, 198 U.S. 1, 49 L. Ed. 919).

Residents

Where, at time of filing of action and service of process defendants were actually but temporarily residing in District of Columbia and had actual citizenship in Connecticut where they maintained permanent home, the defendants were not "residents" of District of Columbia, within 28 U.S.C. § 112. *King* v. *Wall & Beaver Street Corporation* (1944, 145 F. 2d 377, 79 U.S. App. D.C. 234).

Safety Appliance Act

Circuit branch of Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia) has jurisdiction to entertain suit for violation of safety appliance act. *United States* v. *Baltimore & O. R. Co.* (1906, 26 App. D.C. 581).

Seaman's action for injuries

Under this section, abolishing the Circuit Court, concurrent jurisdiction of seamen's action for personal injuries rested in the United States District Court and the state court. *Pitts* v. *Peak* (1931, 50 F. 2d 485, 60 App. D.C. 195). See, also, *Cook* v. *Alaska S. S. Co.* (D.C., Wash., 1881, 8 Fed. 2d 207).

Suit to restrain Federal Trade Commission

Court held to have jurisdiction of suit to restrain and set aside order of Federal Trade Commission, not proceeding under § 5, of the Federal Trade Commission Act (15 U.S.C. § 345), seeking to compel the officers of an unincorporated association to produce documents, where refusal to comply with the order will subject such officers to a criminal penalty under § 10 of the Federal Trade Commission Act (U.S.C., title 15, § 50), and will thus deprive them of their constitutional rights. *Federal Trade Comm.* v. *Millers Nat. Federation* (1928, 23 F. 2d 968, 57 App. D.C. 360).

Venue

District Court of District of Columbia has jurisdiction to entertain a suit for injunctive relief brought against the Brotherhood of Locomotive Firemen and Enginemen when service of process is legally perfected to enforce petitioners' rights to nondiscriminatory representation

by their statutory representaives in collecive bargaining negotiations. *Graham* v. *Brotherhood of Locomotive Firemen and Enginemen* (1949, 70 S. Ct. 14, 338 U.S. 232, 94 L. Ed. 1).

Writs tested by Chief Justice

Since the transfer of the Circuit Courts to the District Courts, writs from them may be properly tested by the Chief Justice. *Union Tool Co.* v. *Wilson* (1922, 42 S. Ct. 427, 259 U.S. 107, 66 L. Ed. 848).

II. Under Present Law

Foreign corporations

Swiss corporation's filing and prosecution of civil action in District of Columbia to recover property consisting of stock of Delaware corporation established presence of the corporation in the District and subjected corporation to process therein in action by two citizens to enjoin Attorney General and Secretary of Treasury from paying any part of corporation's share of proceeds of sale of the stock to corporation on ground that citizens and others had suffered under the "Nazi Conspiracy" and that Swiss corporation was creature of German corporation profiting therefrom. *W. Kelberine et al.* v. *Societe Internationale, etc., et al.* (1966, 363 F. 2d 989, 124 U.S. App. D.C. 989).

Jurisdiction of District Court

Action brought by husband, who had been granted divorce in Maryland on ground of wife's desertion, to declare forfeited wife's one-half interest in funds arising from sale of marital domicile in Maryland was an equity action which District of Columbia court had jurisdiction of on basis of its general grant of authority under statute. *R. Hardy, Sr.* v. *E. C. Hardy* (D.C.D.C. 1966, 250 F. Supp. 956).

Liable to suit

Foreign corporation which comes into District of Columbia for purpose of filing and prosecuting in District Court a suit concerning certain property cannot by restricting authority of its resident agent immunize itself against suit in the same court involving the same property. *W. Kelberine* v. *Societe Internationale, etc.* (1966, 363 F. 2d 989, 124 U.S. App. D.C. 989).

§ 11–522. Probate and guardianship jurisdiction

(a) The United States District Court for the District of Columbia has and may exercise all the power and jurisdiction by law held and exercised by the Orphans' Court of Washington County, District of Columbia, prior to June 21, 1870.

(b) In addition to the jurisdiction conferred by subsection (a) of this section, the District Court has full power and authority and plenary jurisdiction to:

(1) hear and determine questions relating to the execution or validity of wills devising real property within the District of Columbia, and of wills and testaments properly presented for probate in the court, and admit them to probate and record;

(2) take the proof of wills of either personal or real property and admit them to probate and record, and for cause revoke the probate thereof;

(3) grant, and, for any of the causes prescribed by law, revoke, letters testamentary, letters of administration, letters ad colligendum, and letters of guardianship, and appoint successors to those persons whose letters are revoked;

(4) hear, examine, and decree upon accounts, claims, and demands existing between executors or administrators and legatees, or persons entitled to a distributive share of an intestate estate, or between wards and their guardians;

(5) enforce the rendition of inventories and accounts by executors, administrators, collectors, guardians, and trustees required to account to the court; and

(6) enforce the distribution of estates by executors and administrators, and the payment or delivery by guardians of money or property belonging to their wards.

(c) Neither the execution nor the validity of a will or testament admitted to probate and record in the court may be impeached or examined collaterally. Subject to other provisions of this Part or other provisions of law, it is res judicata in all respects and to all persons.

(d) In exercising its powers and jurisdiction under this section, the District Court is known as the Probate Court.

(e) This section does not affect the jurisdiction conferred upon the Juvenile Court of the District of Columbia by section 11–1551(a)(3). (Dec. 23, 1963, 77 Stat. 482, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–501, 11–503, 11–504 (Feb. 27, 1801, ch. 15, § 12, 2 Stat. 107; June 21, 1870, ch. 141, § 4, 16 Stat. 160; June 8, 1898, ch. 394, 30 Stat. 434; Mar. 3, 1901, ch. 854, §§ 116, 117, 119, 31 Stat. 1208; June 30, 1902, ch. 1329, 32 Stat. 525; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(a)(b); May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Section consolidates sections 11–501 and 11–503 of D.C. Code, 1961 ed., and that part of section 11–504 thereof that also related to the powers and jurisdiction of the District Court in probate matters.

The provision of section 11–501 of D.C. Code, 1961 ed., that the "special term" of the District Court, "known prior to March 3, 1901, as the orphans' court, shall be designated the probate court, and the judge holding said court shall have and exercise all the power and jurisdiction by law held and exercised by the orphans' court of Washington County, District of Columbia, prior to June 21, 1870", is omitted as obsolete, and is replaced by subsec. (a) of this section, which provides that "The United States District Court for the District of Columbia has and may exercise all the power and jurisdiction by law held and exercised by the Orphans' Court of Washington County, District of Columbia, prior to June 21, 1870", and by subsec. (d) of this section, which provides that "In exercising its powers and jurisdiction under this section, the District Court is known as the Probate Court". For a discussion of the former statutory provisions designating certain special terms of the District Court as the circuit court, equity court, criminal court, probate court, and district court, and the repeal and supersedure thereof, see revision note under section 11–502 herein.

For the same reason as given the preceding paragraph, the first part of the proviso in section 11–504 of D.C. Code, 1961 ed., "That the jurisdiction of said probate court shall not be exclusive of the jurisdiction of the said equity court to entertain suits by legatees or next of kin against executors or administrators, or by wards against their guardians for an accounting" is also omitted as obsolete.

Subsec. (e) is new, and is inserted for the purpose of construction. The Juvenile Court, under section 11–1551(a)(4) herein, has jurisdiction to determine the custody or guardianship of the persons of children under 18 years of age, in certain circumstances.

Changes are made in phraseology and arrangement.

For remainder of section 11–504 of D.C. Code, 1961 ed., see tables.

Cross References

Fees and costs, see § 15–701 et seq.

Probate code, see Titles 18—21.

Register of Wills as clerk of Probate Court, see § 11–504.

NOTES TO DECISIONS

I. Under Prior Law

In general

"It is not the province of a probate court to become a court of construction; that function belongs to the

ordinary courts of law or equity." *Vestry* v. *Bostwick* (1896, 8 App. D.C. 452). See, also, *McIntire* v. *McIntire* (1899, 14 App. D.C. 337, affirmed 24 S. Ct. 196, 192 U.S. 116, 48 L. Ed. 369).

Jurisdiction and powers of probate court are substantially the same as those of its predecessor under the former laws. *Richardson* v. *Daggett* (1904, 24 App. D.C. 440). See, also, *Miniggio* v. *Hutchins* (1915, 43 App. D.C. 1177).

Although the probate court is one of limited jurisdiction, it has all the authority necessarily implied in the act of its creation. *Guthrie* v. *Welch* (1905, 24 App. D.C. 562).

Court, in its sound discretion, may remove collector. *Id.*

The provisions of 1901 code, § 141 (§ 19–313) are permissive and not mandatory. *Young* v. *Norris Peters Co.* (1906, 27 App. D.C. 140).

The probate court of the District of Columbia is one of limited powers and jurisdiction. *Watkins* v. *Rives* (1942, 125 F. 2d 33, 75 U.S. App. D.C. 109).

Alternative penalties

That the penalty imposed was $25 or 30 days did not take case out of this section requiring application for allowance of appeal where penalty imposed was less than $50, since the alternative of imprisonment may be avoided by payment of the fine. *Yeager* v. *District of Columbia* (D.C. Mun. App. 1943, 33 A. 2d 629).

Appeal to general term

An appeal to the general term from the final order of probate made in the special term, which was not based upon a judicial determination of facts, but merely upon the finding of a jury of necessity, brought into review before the general term all the questions of law that are properly presented by the bill of exceptions taken at the trial. *Ormsby* v. *Webb* (1890, 10 S. Ct. 478, 134 U.S. 47, 33 L. Ed. 805).

Appointing new administrator

"Once letters have been granted to a party upon a misstatement or misconception of the facts, the same may be revoked and the party really entitled thereto appointed." *Emery* v. *Emery* (1917, 45 App. D.C. 576).

Probate court has power, over objection of surviving administrator, to appoint an administrator to fill a vacancy caused by the death of one of two administrators. *Dennis* v. *Hamilton* (1918, 48 App. D.C. 160), distinguishing *Williams* v. *Williams* (1904, 24 App. D.C. 214).

Bill of exceptions on appeal

"A proceeding in a probate court is not a proceeding in equity, and final orders therein are reviewable only in accordance with the practice at common law. * * * And the evidence in such cases must be brought up in bill of exceptions." *Craighead* v. *Alexander* (1912, 38 App. D.C. 229).

Caveat

Upon reversal of judgment sustaining caveat, and its remand, the case is reinstated in the court below upon the issue as originally framed. If caveator insists on new trial, he is entitled to it. Until the case is disposed of, the probate court is without jurisdiction to probate the will. *Hutchins* v. *Hutchins* (1920, 261 F. 460, 49 App. D.C. 118).

Where will was admitted to probate July 5, 1938 and letters testamentary issued, a caveat filed June 30, 1939 will be dismissed insofar as it is a caveat to a will of personal property. *Hengesbach* v. *Hengesbach* (1940, 114 F. 2d 845, 73 App. D.C. 1).

Claims against estate

"The probate court is without jurisdiction to compel an executor or administrator to pay a claim asserted against a decedent's estate." *Miniggio* v. *Hutchins* (1915, 43 App. D.C. 117). See, also, *Dante* v. *Miniggio* (1917, 46 App. D.C. 162).

Claims of son in the amount of $318.30 as against sister involving rents from deceased father's property held not against an administratrix within meaning of this section, but were within jurisdiction of the municipal court. *Shields* v. *Shields* (1939, 101 F. 2d 255, 69 App. D.C. 331).

Contempt

Where probate court of District of Columbia had personal jurisdiction in main cause, that jurisdiction continued in that cause for purpose of making court's decree effective and in civil contempt proceeding for purpose of enforcing the original decree. *Watkins* v. *Rives* (1942, 125 F. 2d 33, 75 U.S. App. D.C. 109).

Where status of petitioner as an executor was fixed by will which he offered for probate, and, under the will and without necessity for ratification of his appointment by letters testamentary, he was authorized to perform certain acts in relation to the estate, and, instead of renouncing the appointment, petitioner acted upon his testamentary authority, he thereby voluntarily submitted himself to the jurisdiction of the probate court of the District of Columbia, so that the probate court had jurisdiction to commit petitioner for contempt where he failed to comply with a turn-over order following determination of invalidity of the will. *Id.*

Where petitioner seeking writ of habeas corpus offered for probate a will in which he was named as executor and he acted upon testamentary authority, but after determination of invalidity of will he failed to comply with order directing him to turn over assets of deceased's estate, the probate court of the District of Columbia properly exercised its power by adjudging petitioner guilty of contempt for his refusal to comply with the turn-over order. *Id.*

Continuance of jurisdiction

Where United States District Court holding Probate Court once assumed jurisdiction over parties to proceedings involving guardianship of child, that jurisdiction continued for all purposes, and if either party felt aggrieved by the orders of the court his remedy lay with that court or on appeal therefrom. *Johnson* v. *Austin, Guardian etc.* (D.C. Mun. App. 1960, 162 A. 2d 495).

Jurisdiction of the United States District Court holding Probate Court did not stop short of enforcing its own decrees in proceedings to remove guardian of child and appoint another guardian. *Id.*

Contracts of executors

"In view of its supervisory power over their accounts a court of probate, of course, has a check upon the contracts of executors and administrators, and yet it has neither power to make contracts for them nor to direct or authorize them to make any." *MacKie* v. *Howland* (1894, 3 App. D.C. 461).

Costs and counsel fees

Where ordinarily dispute involved in action by widow against administrator to recover her distributive share of estate would be within jurisdiction of federal District Court for the District of Columbia sitting as a Court of Probate, but action was brought in Municipal Court of the District of Columbia because administrator had given a special bond, which relieved him from accounting and made personally answerable for debts and claims against estate, and it was determined that widow was entitled to prevail, administrator was not entitled to allowance of attorneys' fees. *Otho Ashton et ano.* v. *Arravera Ashton* (D.C. Mun. App. 1955, 117 A. 2d 459).

Counsel fee paid upon petition of certain legatees, said petition stating that counsel "had been managing their interests" and not reserving any right to have it finally charged against the estate, was properly charged against said legatees' interest. *McIntire* v. *McIntire* (1899, 14 App. D.C. 337, 20 App. D.C. 134, affirmed 24 S. Ct. 196, 192 U.S. 116, 48 L. Ed. 369).

An executor who has unsuccessfully defended a will may obtain counsel fees and costs incurred by him even though after term has expired at which judgment was rendered, for the costs and expenses chargeable in the probate court are costs of administration, payable out of the estate and is in control of the court during the whole period of administration. *Tuohy* v. *Hanlon* (1901, 18 App. D.C. 226).

In contest between next of kin of a testator and his legatees as to validity of will, the orphans' court has no power to allow counsel fees for defending the will so far as it will affect claims of creditors who have nothing to do with the contest. *Hamilton* v. *Shillington* (1902, 19 App. D.C. 268).

If upon the trial of the issues the executor sustains the validity of the will, or if he shows that he acted in good faith throughout, although the will may be overthrown for the want of testamentary capacity in the

deceased, he may, in the discretion of the court, have an allowance for costs and counsel fees; but if will is not sustained, undue influence and bad faith decided against him, he should not be entitled to an allowance. *Kengla* v. *Randall* (1903, 22 App. D.C. 463).

There was no error in the allowance made for attorneys' fees to the administratrix. She was entitled to the services of an attorney in winding up the estate, and there is no evidence that the services were not worth the sum allowed, or that they were exclusively for the personal benefit of the administratrix. *Howard* v. *Howard* (1912, 38 App. D.C. 575).

Supreme Court, as a probate court, has power to grant an allowance to executors for counsel fees and costs from the estate, when they had unsuccessfully defended the validity of the will. *Hutchins* v. *Hutchins* (1919, 48 App. D.C. 286).

Custody of minors

The United States District Court holding Probate Court has jurisdiction to grant custody of minors in guardianship cases. *Johnson* v. *Austin, Guardian etc.* (D.C. Mun. App. 1960, 162 A. 2d 495).

Jurisdiction over guardianship matters is given to United States District Court holding Probate Court, while Domestic Relations jurisdiction is vested in Domestic Relations Branch of the Municipal Court. *Id.*

Distribution

The court has jurisdiction to order partial distribution. *McLane* v. *Cooper* (1895, 5 App. D.C. 276).

Probate Court has jurisdiction over residuum of estate of which testator died intestate. *Sinnott* v. *Kenaday* (1898, 12 App. D.C. 115). See, also, *Sinnott* v. *Kenaday* (1899, 14 App. D.C. 1, reversed on other grounds 21 S. Ct. 233, 179 U.S. 606, 45 L. Ed. 339).

Escheat

The probate court has power, in absence of next of kin, to order in a proper case the payment of residuum of intestate's estate to an escheatee, as § 18–717 provides. *Frazier* v. *Kutz* (1944, 139 F. 2d 380, 78 U.S. App. D.C. 241).

The probate court, upon a finding that there are no heirs of deceased intestate, has power to decree distribution to District of Columbia as escheatee. *Id.*

The probate court's jurisdiction to hear, determine and decree upon all claims between executors and administrators and legatees or persons entitled to a distributive share of an intestate estate includes duty of finding that there are or that there are not statutory heirs, and upon the finding to make distribution as § 18–717 requires. *Id.*

Historical

An appeal lay to the United States Supreme Court from the judgment of the Circuit Court of the District of Columbia affirming a judgment of the Orphan's Court of Alexandria County, dismissing a petition to revoke the probate of a will. *Carter* v. *Cutting* (1814, 12 U.S. 251, 8 Cranch 251, 3 L. Ed. 553). See, also, *West* v. *Smith* (1844, 49 U.S. 402, 8 How. 402, 12 L. Ed. 1130).

The 1870 act (16 Stat. 160 ch. 141, § 4) abolished the orphans' court and invested the justice holding the special term of the Supreme Court for that purpose with the powers and jurisdiction then held and exercised by the former court, subject to the provisions giving an appeal to the general term from any order involving the merits, which is expressed in § 5, act of March 3, 1863. *Ormsby* v. *Webb* (1890, 10 S. Ct. 478, 134 U.S. 47, 33 L. Ed. 805).

Supreme Court of the District, in special and general term respectively, has, by virtue of successive acts of Congress, the probate jurisdiction formerly exercised by the Orphans' Court and the Court of Chancery of the State of Maryland and by the Orphans' Court and Circuit Court of the United States for the District; with authority also, at a special term, to order any matter to be heard in the first instance at a general term. *Campbell* v. *Porter* (1896, 16 S. Ct. 871, 162 U.S. 478, 40 L. Ed. 1044).

Jurisdiction

If probate court invested only with authority over wills and the settlement of estates should proceed to try parties for public offenses, jurisdiction over the subject of offenses being entirely wanting in the court, and this being known to the judge, his commission would afford no protection to him in the exercise of usurped authority. *Bradley* v. *Fisher* (1867, 80 U.S. 335, 13 Wall. 335, 20 L. Ed. 646).

The question of the jurisdiction of the court below can be raised by either party or by the court on its own motion. *Campbell* v. *Porter* (1896, 16 S. Ct. 871, 162 U.S. 478, 40 L. Ed. 1044).

Action for declaration that plaintiffs were the surviving heirs and next of kin of decedent, whose marriage to defendant was allegedly invalid on ground that decree of divorce obtained by defendant from a prior husband in Virginia was obtained by fraud on a Virginia court, should have been brought in probate court. *Gordon et al.* v. *Matthews* (1959, 273 F. 2d 525, 106 U.S. App. D.C. 400).

The probate court of the District of Columbia has limited jurisdiction. *Perkins* v. *Berger* (1944, 145 F. 2d 856, 79 U.S. App. D.C. 286).

Jurisdiction of District Court

Although recourse to District Court may be necessary to effectuate decrees of District Court holding Probate Court, Probate Court is but an arm of District Court and the full judicial machinery of the District Court is available to enforce lawful decrees of its component parts. *Johnson* v. *Austin, Guardian etc.* (D.C. Mun. App. 1960, 162 A. 2d 495).

Even if the United States District Court holding Probate Court were powerless to enforce a custody decree, other avenues are open in the District Court to give litigants relief through enforcement of such a decree. *Id.*

New trial

In granting a new trial, the court may limit the scope thereof. *Ecker* v. *Potts* (1940, 112 F. 2d 581, 72 App. D.C. 174).

The action of a trial court in granting or refusing a new trial is not reviewable unless there is a clear case of abuse of discretion. *Id.*

Order as final judgment

On order at special term, admitting a will to probate and record, is a final judgment reviewable by the general term; and such review, in this case a proceeding involving the validity of a will, is a "case," the final judgment of which can be reviewed by the Supreme Court of the United States. *Ormsby* v. *Webb* (1890, 10 S. Ct. 478, 134 U.S. 47, 33 L. Ed. 805).

A judgment admitting a will to probate may be reviewed by the United States Supreme Court. *Campbell* v. *Porter* (1896, 16 S. Ct. 871, 162 U.S. 478, 40 L. Ed. 1044).

Ousting jurisdiction

Administration proceedings for property within the District, in a court of the District having proper jurisdiction, need not be dismissed because one of the parties asks for letters of administration in another jurisdiction on the claim that deceased had been domiciled in such State. *Overby* v. *Gordon* (1900, 20 S. Ct. 603, 177 U.S. 214, 44 L. Ed. 741).

Power of court

The probate court of the District of Columbia is empowered to enforce its decrees with those powers which may be exercised by courts of equity. *Watkins* v. *Rives* (1942, 125 F. 2d 33, 75 U.S. App. D.C. 109).

Powers

The Probate Court of the District of Columbia has only the powers expressly conferred on it by law, and is a court of limited jurisdiction. *Fidelity & Deposit Co. of Maryland* v. *McQuade* (1941, 123 F. 2d 337, 74 App. D.C. 383).

Proof of wills

Probate court has exclusive jurisdiction to take proof of wills and to admit the same to probate and record. *Gracie* v. *American Secur. & Trust Co.* (1921, 277 F. 543, 51 App. D.C. 141).

Purpose

The object of this section creating the probate court was to provide a tribunal in which it might be judicially determined who takes property left by a deceased intestate. *Frazier* v. *Kutz* (1944, 139 F. 2d 380, 78 U.S. App. D.C. 241).

Revocation

Where decedent's sister obtained letters of administration on false representation that decedent had been divorced from his widow, district court did not abuse its discretion in revoking letters, even though representation was not in bad faith. *Randall* v. *Bockhorst* (1956, 232 F. 2d 334, 98 U.S. App. D.C. 77).

Under District of Columbia statute specifying causes for which letters of administration may be revoked, an administrator may be removed because his or her original appointment was due to misconception by appointing court of material facts, arising from misstatement by applicant for letters, even though this cause is not specified in statute. *Id.*

Sale of real estate

Although in Maryland before 1798, the orphans' court had no authority to order a sale of a ward's real estate, the orphans' court of the District of Columbia, with the approval of the Circuit Court of the United States of that District sitting in chancery, had such power. *Thaw* v. *Ritchie* (1887, 10 S. Ct. 1037, 136 U.S. 519, 34 L. Ed. 531).

Under this section, jurisdiction of the probate court over suits of creditors to subject real estate of decedents to payment of their debts was not exclusive of the jurisdiction of the equity court. *West* v. *McLaughlin* (1927, 18 F. 2d 813, 57 App. D.C. 163).

Title to property

See *Holzbeierlein* v. *Grant* (1941, 117 F. 2d 26, 73 App. D.C. 154).

Where party allegedly holding money as trustee for a minor under an active executory trust created by written instrument never admitted and in fact denied right of minor or minor's guardian to possession of money, the probate court had no jurisdiction to determine who was entitled to possession, since that court has no jurisdiction to decide a dispute regarding the title or the right of possession of personalty. *Jones* v. *Dunlap* (1940, 115 F. 2d 689, 73 App. D.C. 59).

—— Real estate

Determination of title to real estate devised by will held to be within general jurisdiction of a court of equity. *Beyer* v. *Le Fevre* (1902, 22 S. Ct. 765, 186 U.S. 114, 46 L. Ed. 1080).

Prior to act of June 8, 1898 (30 Stat. 434) (§ 11–501), "the probate of a will was evidence of its validity only so far as it affected personal property. As showing the passage of title to real estate the instrument itself must have been produced, with the proof of subscribing witnesses." *Young* v. *Norris Peters Co.* (1906, 27 App. D.C. 140).

Trial by jury

A proceeding for the probate of a will is not a suit in equity, but one in which the parties have the right to trial by jury. *Campbell* v. *Porter* (1896, 16 S. Ct. 871, 162 U.S. 478, 40 L. Ed. 1044).

Unprobated will as evidence

Where plaintiff sought to enjoin obstruction of right of way easement on theory that plaintiff and her predecessors in title continuously, openly, notoriously, and adversely used right of way for more than 20 years, unprobated will of plaintiff's predecessor which had been filed in probate court was properly received to prove privity, a transfer of possession, and continuity of interest. *Bonds* v. *Smith* (1944, 143 F. 2d 369, 79 U.S. App. D.C. 118).

Will lost or destroyed

The will must be shown to have been irretrievably lost or destroyed, and that it had been duly and properly executed and attested; and that its destruction, if in the lifetime of the testator, was wholly without his knowledge or consent, at the time, or his subsequent ratification. *Fitzgerald* v. *Wynne* (1893, 1 App. D.C. 107).

II. Under Present Law

Jurisdiction of probate court

District of Columbia probate court has full and plenary jurisdiction to hear, examine, and adjudicate accounts, claims, and demands between personal representatives and legatees or heirs but is not empowered to hear and determine disputes between personal representatives and estate creditors. *R. A. Bishop, Executor, etc.* v. *G. L. Baker et ano.* (D.C. App. 1966, 221 A. 2d 912).

Will of nonresident

"American will" of United States citizen who died domiciled in Italy, disposing of stocks, bonds and cash all located in District of Columbia and under which District residents were named executors was properly admitted to probate in District over objection of sole heir and next of kin where question was whether probate should be in District or in foreign country and there was no suggestion that will actually could be probated anywhere else but only that it should not be probated in District. *Montgomery* v. *National Savings and Trust Co.* (1966, 356 F. 2d 806, 123 U.S. App. D.C. 53).

§ 11–523. Concurrent jurisdiction of desertion and nonsupport cases

The United States District Court for the District of Columbia has original jurisdiction, concurrently with the Juvenile Court of the District of Columbia, of all cases arising under sections 22–903 to 22–905, relating to desertion or nonsupport. (Dec. 23, 1963, 77 Stat. 483, Pub. L. 88–241, § 1, eff. Jan. 1, 1964).

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–907, 11–961 (Mar. 19, 1906, ch. 960, § 6, 34 Stat. 73; June 1, 1938, ch. 309, 52 Stat. 596; July 2, 1940, ch. 525, 54 Stat. 735; Jan. 11, 1951, ch. 1225, §§ 1, 13, 64 Stat. 1240, 1242).

Section consolidates the second sentence of subsec. 2 of section 11–907, and the first part of subsec. (a) of section 11–961, of D.C. Code, 1961 ed., both of which conferred jurisdiction on the District Court, concurrently with the Juvenile Court, of the desertion and nonsupport cases referred to. The same provisions are carried into section 11–1557 herein. For remainder of sections 11–907 and 11–961, see tables.

The reference to sections "22–903 to 22–905" is substituted for the reference in section 11–907 of D.C. Code, 1961 ed., to sections "22–902 to 22–905". This change from "22–902" to "22–903" conforms, not only with the provisions of section 11–961 of D.C. Code, 1961 ed., with which the provisions are herein consolidated, but, also, with the intent of Congress. See act July 2, 1940, ch. 525, 54 Stat. 735, which, in amending section 11–907, referred only to act Mar. 23, 1906 (ch. 1131, 34 Stat. 86; D.C. Code, 1961 ed., §§ 11–903 to 11–905). See, also, revision note under section 11–1556 herein. Section 11–902 is from act Mar. 3, 1901, ch. 847, § 4, 31 Stat. 1095.

The reference in section 11–961 of D.C. Code, 1961 ed., to section "22–906" is changed to "22–905" to conform, not only with the provisions of section 11–907 of D.C. Code, 1961 ed., consolidated herein, but, also, with act Jan. 11, 1951, ch. 1225, § 13, 64 Stat. 1242, from which section 11–961 was derived. That act refers only to the above-cited section 22–906, as amended (D.C. Code, 1961 ed., §§ 22–903 to 22–905). It does not make any reference to act May 18, 1910, ch. 248, 36 Stat. 403, from which section 22–906 of D.C. Code, 1961 ed., is derived.

Changes are made in phraseology.

SUBCHAPTER III.—MISCELLANEOUS PROVISIONS

§ 11–541. Seal of Probate Court

The Probate Court shall keep a seal for the court, and for the office of the Register of Wills. The seal shall be affixed to all certificates of the Probate Court, or of the Register, and to every process and writ of every kind issued from it. (Dec. 23, 1963, 77 Stat. 483, Pub. L. 88–241, § 1, eff. Jan. 1, 1964).

Revision Notes

Based on D.C. Code, 1961 ed., § 11–505 (Act of Maryland 1798, ch. 101, subch. 15, § 12; Comp. Stat. D.C., 1894, ch. 35, § 50; Mar. 3, 1901, ch. 854, § 116, 31 Stat. 1208).

Changes are made in phraseology.

Chapter 7.—DISTRICT OF COLUMBIA COURT OF APPEALS

SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

Sec.
11–701. Continuation of court; court of record; seal.
11–702. Composition; appointment, qualifications, tenure, salaries, and oath of judges; removal.
11–703. Absence, disability, or disqualification of judges; vacancies; quorum.
11–704. Clerks for judges; compensation.

SUBCHAPTER II.—COURT OFFICERS AND EMPLOYEES

11–721. Clerk; compensation; powers and duties.
11–722. Deputy clerks and other employees; compensation; duties.

SUBCHAPTER III.—JURISDICTION

11–741. Orders and judgments of Court of General Sessions and Juvenile Court.
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SUBCHAPTER IV.—MISCELLANEOUS PROVISIONS

11–761. Contempt powers.
11–762. Oaths, affirmations and acknowledgments.

SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

§ 11–701. Continuation of court; court of record; seal

(a) The District of Columbia Court of Appeals shall continue as a court of record in the District.

(b) The court shall have a seal. (Dec. 23, 1963, 77 Stat. 483, Pub. L. 88–241, § 1, eff. Jan. 1, 1964).

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–771, 11–771a (Apr. 1, 1942, ch. 207, § 6, 56 Stat. 194; July 28, 1949, ch. 369, § 3, 63 Stat. 483; Oct. 25, 1949, ch. 706, § 2, 63 Stat. 887; July 11, 1955, ch. 302, § 1, 69 Stat. 290; July 18, 1958, Pub. L. 85–539, § 1, 72 Stat. 398; Oct. 23, 1962, Pub. L. 87–873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88–60, § 6, 77 Stat. 78).

Section is taken from part of the first paragraph and all of the second paragraph of section 11–771 of D.C. Code, 1961 ed.

Section 11–771a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11–771a, enacted by the Act of Oct. 23, 1962, changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

The provisions, as revised, continue the District of Columbia Court of Appeals which, as the Municipal Court of Appeals for the District of Columbia, had been created by section 11–771 of D.C. Code, 1961 ed.

Changes are made in phraseology and arrangement.

Most of the provisions of section 11–771 of D.C. Code, 1961 ed., are carried into this chapter. For complete distribution of that section in this revised part, see tables.

§ 11–702. Composition; appointment, qualifications, tenure, salaries, and oath of judges; removal

(a) The District of Columbia Court of Appeals shall consist of a chief judge and two associate judges appointed by the President of the United States, by and with the advice and consent of the Senate.

(b) A person may not be appointed as a judge of the court unless he:

(1) is a bona fide resident of the area consisting of the District of Columbia, Montgomery and Prince Georges Counties in Maryland, Arlington and Fairfax Counties in Virginia, and the city of Alexandria, Virginia, and has maintained an actual place of abode in the area for at least five years prior to his appointment; and

(2) has been actively engaged in the practice of law in the District of Columbia for a period of at least five years immediately prior to his appointment.

(c) Each judge shall be appointed or reappointed for a term of ten years, which terms shall be staggered as heretofore provided for; and he shall continue in office until the appointment and qualification of his successor.

(d) The chief judge shall receive an annual salary of $25,000, and each associate judge shall receive an annual salary of $24,500.

(e) Each judge, when appointed, shall take the oath prescribed for judges of courts of the United States.

(f) A judge may be removed only in the manner and for the causes provided for the removal of Federal judges. (Dec. 23, 1963, 77 Stat. 484, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; Aug. 14, 1964, 78 Stat. 431, Pub. L. 88–426, § 306(i)(2).)

AMENDMENT

1964—Section 306(i)(2) of act Aug. 14, 1964, amended subsection (d) by changing $19,000 to $25,000 and changing $18,500 to $24,500.

EFFECTIVE DATE OF ACT AUG. 14, 1964

See note to section 1–204a.

GROUP INSURANCE PROVISIONS OF ACT AUG. 14, 1964

See note to section 1–204.

RETROACTIVE SALARY PROVISIONS OF ACT AUG. 14, 1964

See note to section 1–204a.

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–771; 11–771a (Apr. 1, 1942, ch. 207, § 6, 56 Stat. 194; July 28, 1949, ch. 369, § 3, 63 Stat. 483; Oct. 25, 1949, ch. 706, § 2, 63 Stat. 887; July 11, 1955, ch. 302, § 1, 69 Stat. 290; July 18, 1958, Pub. L. 85–539, § 1, 72 Stat. 398; Aug. 24, 1962, Pub. L. 87–586, § 1(b), 76 Stat. 398; Oct. 23, 1962, Pub. L. 87–873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88–60, § 6, 77 Stat. 78).

Section is taken from part of the third paragraph, all of the fourth and fifth paragraphs, and part of the sixth paragraph of section 11–771 of D.C. Code, 1961 ed. Most of the provisions of that section are carried into this chapter. For complete distribution of that section in this revised part, see tables.

Section 11–771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

The words in the fourth paragraph of section 11–771 of D.C. Code, 1961 ed., "or who shall have been a judge of one of the courts of the District of Columbia,", that followed the residence requirement, constituted a temporary provision, and are omitted from this section as obsolete.

The provision in the fourth paragraph of section 11–771 of D.C. Code, 1961 ed., that, with respect to qualifications of appointees, service during the "present emergency" in the armed forces of the United States should be included in the computation of the five-year requirements specified therein, referred to service during the emergency occasioned by World War II, and is omitted as obsolete.

Because of the lapse of time since section 11–771 of D.C. Code, 1961 ed., was enacted on Apr. 1, 1942, and the completion of the original staggered terms, the provisions in subsec. (c) of this section are substituted for the provisions in the fifth and sixth paragraphs of that section that the chief judge should be appointed for a term of 10 years and the associate judges should be appointed initially for terms of 8 and 6 years each, and that subsequent appointments and reappointments should be for terms of 10 years each.

Changes are made in phraseology and arrangement.

§ 11–703. Absence, disability, or disqualification of judges; vacancies; quorum

(a) When a judge of the District of Columbia Court of Appeals is absent, disabled, or disqualified, or when there is a vacancy in the office of judge of the court, the chief judge may designate and assign any judge of the District of Columbia Court of General Sessions to act temporarily as a judge of the court.

(b) When the chief judge of the court is absent, disabled, or disqualified, the judge next in seniority according to the date of his commission shall exercise his powers.

(c) Two judges of the court constitute a quorum. (Dec. 23, 1963, 77 Stat. 484, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–771, 11–771a (Apr. 1, 1942, ch. 207, § 6, 56 Stat. 194; July 28, 1949, ch. 369, § 3, 63 Stat. 483; Oct. 25, 1949, ch. 706, § 2, 63 Stat. 887; July 11, 1955, ch. 302, § 1, 69 Stat. 290; July 18, 1958, Pub. L. 85–539, § 1, 72 Stat. 398; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 6, 76 Stat. 1171, 1172; July 8, 1963, Pub. L. 88–60, §§ 1, 6, 77 Stat. 77, 78).

Section is taken from part of the third and part of the sixth paragraphs of section 11–771 of D.C. Code, 1961 ed. Most of the provisions of that section are carried into this chapter. For complete distribution of the section in this revised part, see tables.

Sections 11–751a and 11–771a of D.C. Code, 1961 ed., both enacted by the act of Oct. 23, 1962, are also cited as sources of this section, as (1) section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions, and (2) section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

Changes are made in phraseology and arrangement.

§ 11–704. Clerks for judges; compensation

Each judge of the District of Columbia Court of Appeals may appoint and remove a personal clerk and shall fix his compensation in accordance with section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]. (Dec. 23, 1963, 77 Stat. 484, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

CODIFICATION

The reference in this section to "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–771, 11–771a (Apr. 1, 1942, ch. 207, § 6, 56 Stat. 194; July 28, 1949, ch. 369, § 3, 63 Stat. 483; Oct. 25, 1949, ch. 706, § 2, 63 Stat. 887; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; July 11, 1955, ch. 302, § 1, 69 Stat. 290; July 18, 1958, Pub. L. 85–539, § 1, 72 Stat. 398; Oct. 23, 1962, Pub. L. 87–873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88–60, § 6, 77 Stat. 78).

Section is taken from part of the seventh paragraph of section 11–771 of the D.C. Code, 1961 ed. Most of the provisions of that section are carried into this chapter. For complete distribution of the section in this revised part, see tables.

Section 11–771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–771a changed the name of the Muncipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

Changes are made in phraseology and arrangement.

SUBCHAPTER II.—COURT OFFICERS AND EMPLOYEES

§ 11–721. Clerk; compensation; powers and duties

The District of Columbia Court of Appeals shall appoint, and may remove, a clerk, and shall fix his compensation in accordance with section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters].

The clerk shall exercise the same powers and perform the same duties in regard to matters within the jurisdiction of the court as are exercised and performed by the clerk of the United States Court of Appeals for the District of Columbia Circuit, as far as the latter may be applicable. (Dec. 23, 1963, 77 Stat. 483, Pub. L. 88–241, § 1, eff. Jan. 1, 1964).

CODIFICATION

The reference in this section to "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–771, 11–771a (Apr. 1, 1942, ch. 207, § 6, 56 Stat. 194; July 28, 1949, ch. 369, § 3, 63 Stat. 483; Oct. 25, 1949, ch. 706, § 2, 63 Stat. 887; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; July 11, 1955, ch. 302, § 1, 69 Stat. 290; July 18, 1958, Pub. L. 85–539, § 1, 72 Stat. 398; Oct. 23, 1962, Pub. L. 87–783, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88–60, § 6, 77 Stat. 78).

Section is taken from part of the seventh paragraph of section 11–771 of the D.C. Code, 1961 ed. Most of the provisions of that section are carried into this chapter. For complete distribution of the section in this revised part, see tables.

Section 11–771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

Changes are made in phraseology and arrangement.

§ 11–722. Deputy clerks and other employees; compensation; duties

Subject to the approval of the chief judge, the clerk of the District of Columbia Court of Appeals may appoint and remove such deputy clerks and other employees of the court as he deems necessary. The chief judge shall fix the compensation of the personnel so appointed in accordance with section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters].

The Clerk shall supervise and direct the deputies and employees so appointed. (Dec. 23, 1963, 77 Stat. 485, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

CODIFICATION

The reference in this section to "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–771, 11–771a (Apr. 1, 1942, ch. 207, § 6, 56 Stat. 194; July 28, 1949, ch. 369, § 3, 63 Stat. 483; Oct. 25, 1949, ch. 706, § 2, 63 Stat. 887; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; July 11, 1955, ch. 302, § 1, 69 Stat. 290; July 18, 1958, Pub. L. 85–539, § 1, 72 Stat. 398; Oct. 23, 1962, Pub. L. 87–873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88–60, § 6, 77 Stat. 78).

Section is taken from part of the seventh paragraph of section 11–771 of D.C. Code, 1961 ed. Most of the provisions of that section are carried into this chapter. For complete distribution of the section in this revised part, see tables.

Section 11–771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as secton 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

Changes are made in phraseology and arrangement.

SUBCHAPTER III.—JURISDICTION

§ 11–741. Orders and judgments of Court of General Sessions and Juvenile Court

(a) The District of Columbia Court of Appeals has jurisdiction of appeals from:

(1) final orders and judgments of the District of Columbia Court of General Sessions, including final orders and judgments of the Small Claims and Conciliation Branch and the Domestic Relations Branch of that court;

(2) interlocutory orders of the District of Columbia Court of General Sessions, including interlocutory orders of the Domestic Relations Branch of that court, whereby the possession of property is changed or affected, such as orders dissolving writs of attachment and the like; and

(3) final orders and judgments of the Juvenile Court of the District of Columbia.

(b) Except as provided by subsection (c) of this section, a party aggrieved by an order or judgment specified by subsection (a) of this section may appeal therefrom as of right to the District of Columbia Court of Appeals.

(c) Reviews of judgments of the Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions, and of judgments in the criminal division of that court where the penalty imposed is less than $50, shall be by application for the allowance of an appeal, filed in the District of Columbia Court of Appeals. (Dec. 23, 1963, 77 Stat 485, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–767, 11–771, 11–771a, 11–772 (Apr. 1, 1942, ch. 207, §§ 6, 7, 8, 56 Stat. 194–196; July 28, 1949, ch. 369, § 3, 63 Stat. 483; Oct. 25, 1949, ch. 706, § 2, 63 Stat. 887; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Apr. 11, 1956, ch. 204, § 111, 70 Stat. 113; July 18, 1958, Pub. L. 85–539, § 1, 72 Stat. 398; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 6, 76 Stat. 1171, 1172; July 8, 1963, Pub. L. 88–60, §§ 1, 6, 77 Stat. 77, 78).

Section consolidates part of the first paragraph of section 11–771, and the first and second sentences (including the proviso) of subsec. (a) of section 11–772, with section 11–767 of D.C. Code, 1961 ed., which extended to a party aggrieved by a final or interlocutory order or judgment entered in the Domestic Relations Branch of the Municipal Court the same right of appeal available in respect to a final or interlocutory order or judgment entered in the civil branch of that court. For remainder of sections 11–771 and 11–772, see tables.

Sections 11–751a and 11–771a of D.C. Code, 1961 ed., both enacted by the act of Oct. 23, 1962, are also cited as sources of this section, as (1) section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions, and (2) section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

In subsec. (c), "criminal division" is substituted for "Criminal Branch". See section 11–901 herein and revision note thereunder.

Changes are made in phraseology and arrangement.

CROSS REFERENCE

Appeals to District of Columbia Court of Appeals, see § 17–301 et seq.

NOTES TO DECISIONS

I. UNDER PRIOR LAW

In general

The Municipal Court of Appeals for the District of Columbia cannot extend language of statute so as to include a class of appeals which Congress plainly did not intend to be within court's jurisdiction. *Brown* v. *Randle & Garvin* (D.C. Mun. App. 1943, 32 A. 2d 104).

The Municipal Court of Appeals for the District of Columbia has no power to entertain special appeals nor discretionary power with reference to interlocutory orders. *Id.*

An unsuccessful party cannot reinvest himself with a lost right of appeal by moving to set aside the judgment and grant new trial. *Crowley* v. *Wood* (D.C. Mun. App. 1943, 31 A. 2d 861).

Generally, applications for allowance of appeal from judgment of Small Claims and Conciliation Branch of Municipal Court of District of Columbia are allowed only when there is a showing of apparent error or a question of law which has not been, but should be, decided by Municipal Court of Appeals. *Ionescue* v. *Dettmers* (D.C. Mun. App. 1947, 53 A. 2d 287). See, also, *American Storage Co.* v. *Briggs* (D.C. Mun. App. 1948, 56 A. 2d 557).

In brokers' action against restaurant owners for commissions for attempted sale of restaurant, agreement between restaurant owners and prospective buyers for sale of business, subsequent to trial and subsequent to submission of case on appeal, could not affect decision of reviewing court. *Young* v. *De Vito* (D.C. Mun. App. 1948, 56 A. 2d 558).

Abuse of discretion

Penalty of suspension or revocation of license, to be imposed upon a broker guilty of conduct in violation of statute, was a matter wholly within discretionary power of real estate commission. *P. R. Kelley* v. *Real Estate Commission of the District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 415).

Where petitioner for rehearing of determination which suspended his real estate broker's license for a period of 120 days, had an opportunity to present his testimony at hearing, and had offered facts in mitigation, Real Estate Commission of District of Columbia did not abuse its discretion in refusing to grant rehearing especially in view of fact that Commission had before it counter-affidavits which sharply contradicted the material allegation of petitioner's affidavit for rehearing. *Posner* v. *Martin, Adams and Jones, as members of Real Estate Commission, etc.* (D.C. Mun. App. 1957, 135 A. 2d 156).

Affirmance

The Municipal Court of Appeals is entitled to affirm a decision which it believes correct, even though the reasons given for the decision by the trial court are erroneous. *Plant* v. *Plant* (D.C. Mun. App. 1948, 57 A. 2d 204).

Allowance of appeal

Municipal Court of Appeals' denial of allowance of appeal constituted affirmance of judgment of conviction, and trial court could not thereafter vacate and set aside judgment. *District of Columbia* v. *Bosley* (D.C. Mun. App. 1961, 173 A. 2d 218).

Municipal Court of Appeals takes jurisdiction in order to determine whether appeal will be allowed when application for allowance of appeal is filed. *Id.*

Where application for leave to appeal from judgment of Small Claims and Conciliation Branch of Municipal Court merely stated that court denied defendant right to present a complete defense without any facts to support the conclusion, application would be denied. *American Storage Co.* v. *Briggs* (D.C. Mun. App. 1948, 56 A. 2d 557).

Appealable issues

Where defendant motor carrier by a motion to quash service of process raised question of jurisdiction of Municipal Court for the District of Columbia because of service on a person allegedly not authorized to accept service of process, defendant could participate in trial on merits and preserve right to present question on appeal. *Atlas Van Lines* v. *Austin* (D.C. Mun. App. 1945, 44 A. 2d 696).

A finding or verdict on sharply conflicting evidence presents no reviewable issue on appeal. *McKenna* v. *Wilcox* (D.C. Mun. App. 1945, 41 A. 2d 303).

Government's contention that because a fine was suspended, there was no final sentence from which an appeal may be taken, is erroneous. *Smith* v. *District of Columbia* (D.C. Mun. App. 1950, 71 A. 2d 766).

The unauthorized suspension of execution of sentence did not take away appellant's right of appeal. The court had the power to impose the sentence and the void suspension did not void the sentence. *Ziegler* v. *District of Columbia* (D.C. Mun. App. 1950, 71 A. 2d 618).

Assignment of errors

Where record contained a full stenographic report of proceedings and testimony, Municipal Court of Appeals overlooked violation of its rules and considered various points argued in brief but which were not specifically assigned as error. *Watwood* v. *Potomac Chemical Co.* (D.C. Mun. App. 1945, 42 A. 2d 728).

Assignment of errors must be specific and must be filed prior to filing proposed statement of proceedings and evidence. *Lee* v. *United States* (D.C. Mun. App. 1944, 40 A. 2d 250).

Appellants' failure to file a statement of errors, was a breach of rules. *Hoover* v. *Babcock* (D.C. Mun. App. 1947, 53 A. 2d 591).

In Municipal Court's statement of proceedings and evidence, recital of evidence was surplusage when not called for by any of the errors assigned by appealing defendants, and could not establish trial court's lack of jurisdiction. *Brooks* v. *Trigg* (D.C. Mun. App. 1947, 51 A. 2d 302).

Where alleged ruling by trial judge refusing to direct verdict for plaintiff did not appear in stenographic transcript or in record and there was neither written prayer for preemptory instruction nor verbal request therefor, plaintiffs could not predicate assignment of error on a refusal to direct a verdict. *Krupsaw* v. *W. T. Cowan, Inc.* (D.C. Mun. App. 1948, 61 A. 2d 624).

Where appellant assigned part of the judgment as error but did not mention it in his brief, the court would consider the assignment of error as abandoned and hence would not reach it. *Consumers Credit Service* v. *Craig* (D.C. Mun. App. 1950, 75 A. 2d 525).

Contention that the trial court should not have believed the testimony of prosecuting witness but should have believed appellant's testimony is not subject to review as an assignment of error. *Cohen* v. *United States* (D.C. Mun. App. 1949, 63 A. 2d 854).

Basis for revocation of motorist's permit

Where motorist was granted a hearing to show cause why his operator's permit should not be revoked, the hearing officer was only required to find that the motorist had accumulated sufficient points to warrant revocation, that the evidence offered in mitigation was not sufficient to justify an exception, and that motorist was not a fit person to operate a motor vehicle in the District of Columbia, before he was justified in revoking motorist's permit. *Ritch, Jr.* v. *Director of Vehicles and Traffic of District of Columbia* (D.C. Mun. App. 1956, 124 A. 2d 301).

Burden of proof

It is well established that proof of delivery of goods and failure of bailee to retain them makes out a prima facie case for plaintiff, even in the case of gratuitous bailment. Where defendant offered no explanation or justification for his loss did offer proof regarding care of a car in his possession, burden of proof was not shifted to defendant but remained always with plaintiff presenting a question of fact for determination by the trial court. *Firestone Tire and Rubber Company* v. *Billow, To the Use of American Automobile Insurance Company* (D.C. Mun. App. 1949, 65 A. 2d 338).

In a suit against an attorney for negligence, the plaintiff must prove three things in order to recover: The attorney's employment, his neglect of a reasonable duty, and his negligence as the proximate cause of the loss to the client. *Niosi* v. *Aiello* (D.C. Mun. App. 1949, 69 A. 2d 57).

The general rule that the burden of proof in its true sense remains throughout the trial upon the party who affirms is not to be limited in application where the facts as to a given issue are solely or peculiarly within the knowledge of one party, although authorities may be found which seemingly place upon this party the burden of proving such facts. *Lang* v. *F. G. Arwood and Co.* (D.C. Mun. App. 1949, 65 A. 2d 194).

In an insured's action on a policy insuring against any loss arising from any cause whatsoever, with certain exceptions, the burden of proving that the loss comes within the exception rests on the insurer. *Id.*

Change in law

A change in the law between a nisi prius and an appellate decision requires reviewing court to apply changed law. *Cosby* v. *Shoemaker* (D.C. Mun. App. 1943, 34 A. 2d 27).

Where landlord made no motion for mistrial after objecting to opening statement of tenants' counsel that landlord's action to recover possession of premises was not brought in good faith and was motivated by dispute over an increase in rent, claim that court erred in overruling such objection could not be considered. *Daly* v. *Scala* (D.C. Mun. App. 1944, 39 A. 2d 478).

Save in exceptional cases, appellate court can review only points specifically brought to attention of and ruled upon by trial court. *Lee* v. *United States* (D.C. Mun. App. 1944, 40 A. 2d 250).

Objection to instruction presented for first time in appellate court was too late. *Collins* v. *United States* (D.C. Mun. App. 1945, 41 A. 2d 515).

Commission's authority to suspend

Where real estate broker's license was renewed on July 1, 1958, for one year and on July 2, he was served with an order of Real Estate Commission charging him with three acts of alleged misconduct occurring prior to July 1, 1958, commission had power to suspend broker's license by reason of charges of misconduct even though commission had knowledge thereof on renewal date of license. *Eiland* v. *Ahearn et al., etc.* (D.C. Mun. App. 1959, 153 A. 2d 312).

Conclusiveness of findings

Where there was a direct conflict of evidence in bastardy case, question was one for trier of the facts and not for the Municipal Court of Appeals for the District of Columbia on appeal. *Harrison* v. *District of Columbia* (D.C. Mun. App. 1954, 103 A. 2d 204).

In action by dentist whose office formerly was in defendant's building, for damages resulting when fire extinguisher fluid was sprayed on some of plaintiff's dental

equipment by defendant's employees when awning outside of plaintiff's office caught fire, evidence justified judgment adverse to plaintiff on grounds that there was no showing of negligence on defendant's part and that if defendant was negligent there was no showing that such negligence was proximate cause of damage suffered by plaintiff. *Davis* v. *Professional Bldg. Corp.* (D.C. Mun. App. 1954, 99 A. 2d 754).

In action by landlord for breach of oral lease, evidence sustained determination that parties had never had a meeting of minds as to terms of proposed letting. *Gruening* v. *Donaldson* (D.C. Mun. App. 1953, 96 A. 2d 846).

In action for injuries and property damage resulting when defendant's automobile skidded onto wrong side of road and struck plaintiff's automobile, evidence was sufficient to sustain finding that defendant was not negligent. *Simmons* v. *Ward* (D.C. Mun. App. 1952, 91 A. 2d 566).

In action by landlord to recover possession of leased premises on ground that he had in good faith contracted to sell property for immediate and personal use, and occupancy as dwelling by purchaser, evidence of looseness and some suspicious circumstances attending sale were by no means strong enough to require trial court or appellate court sitting in review to hold as a matter of law that there was bad faith in transaction or that purchaser had not acquired property for his own use. *Sigmond* v. *Kern* (D.C. Mun. App. 1951, 78 A. 2d 236).

The Municipal Court of Appeals cannot disturb a verdict if it is supported by substantial evidence. *De Bobula* v. *Coppedge* (D.C. Mun. App. 1944, 40 A. 2d 255).

Ultimate findings of fact of a trial court, if reached upon an application of erroneous legal standards, are not binding upon the appellate court. *Zis* v. *Herman* (D.C. Mun. App. 1944, 39 A. 2d 65).

Generally, negligence is a matter of fact to be determined by trial court, and if supported by substantial evidence its determination cannot be reviewed on appeal, and the same principle applies to contributory negligence. *Eclov* v. *Dalton* (D.C. Mun. App. 1944, 38 A. 2d 661).

Findings of trial judge, supported by substantial evidence, cannot be disturbed. *Ferranti* v. *Capital Transit Co.* (D.C. Mun. App. 1944, 38 A. 2d 116).

The Municipal Court of Appeals is not at liberty to set aside trial judge's findings of fact unless they are clearly erroneous. *Goldberg* v. *Roumel* (D.C. Mun. App. 1946, 47 A. 2d 790).

Where the Municipal Court of Appeals could not say that the evidence as a whole was such as to justify holding that trial judge was plainly wrong in deciding for plaintiff on his claim, the judgment would be affirmed. *Rossiter* v. *National Sav. & Trust Co.* (D.C. Mun. App. 1946, 46 A. 2d 540).

Where evidence was such that either of two different conclusions might reasonably have been drawn therefrom and Municipal Court of Appeals could not say with conviction that trial judge's finding was plainly wrong or without evidence to support it, judgment could not be disturbed. *Little* v. *Dilling* (D.C. Mun. App. 1946, 46 A. 2d 371).

In action for legal services rendered to defendant charged with sedition, wherein evidence was in conflict on essential issues whether plaintiff had agreed to act without compensation, whether agreement extended beyond beginning of trial, whether arrangement required plaintiff to certify to affidavit of prejudice, and whether plaintiff actually performed services entitling him to compensation, trial judge's finding for defendant could not be disturbed. *Id.*

Where municipal court judge in a case without a jury first made a general finding for plaintiff and then on defendant's motion entered judgment for defendant, findings of trial court could not be treated as conclusive on appeal. *Rice* v. *Simmons* (D.C. Mun. App. 1947, 53 A. 2d 587).

Where municipal court judge found that garage operator was negligent in failing to lock customer's automobile which was placed overnight in lot without a watchman, but that such negligence was not the proximate cause of injury to another parked automobile which was run into by one who had stolen such unlocked automobile, such findings of fact could not be disturbed on appeal. *Eesley* v. *Dottellis* (D.C. Mun. App. 1948, 61 A. 2d 564).

On appeal from judgment of conviction, appellate court cannot reweigh evidence or override trial court's fact findings, unless judgment is plainly wrong or without evidential support, though government produced only one witness, whose testimony contained elements of weakness and contradictions and two witnesses testified for defense. *Filippone* v. *District of Columbia* (D.C. Mun. App. 1948, 61 A. 2d 565).

General finding of trial court on factual issue cannot be overridden on appeal if there is sufficient evidence in the record, together with inferences to be fairly drawn therefrom to sustain the finding. *Hollingsworth* v. *Rieffer* (D.C. Mun. App. 1948, 57 A. 2d 199).

Rarely is expert testimony as to value binding on the trier of the facts and it is never binding when inconsistent with other evidence. *Urciolo* v. *Sachs* (D.C. Mun. App. 1948, 62 A. 2d 308).

Ruling of trial court on question of knowledge by plaintiff of liability printed on claim check is one of fact, and cannot be disturbed where there is sufficient evidence to support it. *Lucas* v. *Auto City Parking Co.* (D.C. Mun. App. 1948, 62 A. 2d 557).

Court has no right to substitute its own judgment as to how the case should have been decided on the facts. *Goldberg* v. *Stouck* (D.C. Mun. App. 1950, 76 A. 2d 785).

The evidence clearly presented questions of fact as to negligence and contributory negligence. In such case, the findings of the trial court must stand. *Shipp* v. *Weaver* (D.C. Mun. App. 1950, 75 A. 2d 925).

Trial court's findings are to be accepted if supported by evidence or are not plainly wrong. *Rogers* v. *Cox* (D.C. Mun. App. 1950, 75 A. 2d 776).

A trial judge may not find the absence of negligence or contributory negligence as matter of law unless the evidence is so clear as to be beyond question. *Wohlstetter* v. *Capital Transit Co.* (D.C. Mun. App. 1948, 62 A. 2d 797).

The weight of the evidence is a question for the trier of the facts and a finding of fact supported by substantial evidence cannot be set aside on appeal. *Cohen* v. *United States* (D.C. Mun. App. 1949, 63 A. 2d 854).

Concurrent sentences

Where court imposed concurrent sentences based on findings of guilt on two charges of disorderly conduct and record on appeal revealed that court was justified in finding defendant guilty on one of the charges, even if evidence was insufficient to establish that he had been guilty with respect to other charges, he could not successfully complain of sentence for such other charge on appeal. *Craddock* v. *United States and District of Columbia* (D.C. Mun. App. 1959, 153 A. 2d 649).

Construction

Where defendants were found guilty on 18 counts of information for violation of Minimum Wage Law, and fine of $25 was imposed under each count, but fines under 14 counts were made concurrent with fines under other counts, so that result was that fines totaled $100, action of Municipal Court would be deemed the entering of one judgment in excess of $50, and therefore it was not necessary for defendants to comply with this section providing that reviews of judgments in criminal branch of Municipal Court, where penalty imposed is less than $50, shall be by application for allowance of appeal within 3 days from date of judgment. *Chambers* v. *District of Columbia* (1952, 194 F. 2d 336, 90 U.S. App. D.C. 153).

Continuance

Generally, postponement or continuance of trial is within discretion of trial court, and its action will not be disturbed on appeal except for an abuse of discretion. *Boyer* v. *United States* (D.C. Mun. App. 1944, 40 A. 2d 247, reversed on other grounds 150 F. 2d 595, 80 U.S. App. D.C. 202, 166 A. L. R. 209).

Where illness of defendant prevented trial, motion for continuance rests in sound discretion of the Trial Court and is not subject to reversal, unless discretion is abused or not in accordance with fixed legal principles. *Etty* v. *Middleton* (D.C. Mun. App. 1948, 62 A. 2d 371).

Costs

Municipal Court Rule prescribing that costs shall be allowed as of course to prevailing party may be unwise

and unduly restrictive but is not unreasonable as a matter of law. *Slater* v. *Cannon* (D.C. Mun. App. 1952, 93 A. 2d 92).

The question whether intervenor in summary proceedings by landlord against tenant for possession of realty, was entitled to judgment for cost of stenographic transcript when landlord took a voluntary nonsuit, was a matter for the trial court, and until the trial court passed specifically on that question, the Municipal Court of Appeals had nothing to review. *Schwaner* v. *George* (D.C. Mun. App. 1948, 56 A. 2d 161).

Where costs consisted of a charge for the reporter's transcript of the trial, they must be disallowed since such charges under the rules are not recoverable as costs. *Holmes* v. *Floyd E. Davis Company* (D.C. Mun. App. 1949, 66 A. 2d 212).

Usage and practice, as well as statutory law, determine whether the cost of a bond is taxable and it was not error to disallow a bond premium as a taxable cost. *Thompson* v. *Clark* (D.C. Mun. App. 1949, 64 A. 2d 166).

An unusual item of expense, such as the cost of a reporter's transcript, cannot properly be taxed as costs either by the Municipal Court or the Municipal Court of Appeals. In the absence of express statutory authority, attorney's fees are not taxable as costs nor are expenses incurred in attempting to take the deposition of plaintiff in advance of trial. *Id.*

Counsel fees may be awarded as a condition of the vacating of the judgment of the garnishee, and the rule that, in the absence of statutory authority, attorneys' fees are not taxable as costs has no application since the payment of counsel fees is not imposed as costs but as a condition to obtaining relief to which the party is not entitled as a matter of right. *Bridgett* v. *Perpetual Building Association* (D.C. Mun. App. 1950, 75 A. 2d 780).

Directed verdict

Defendant having proceeded with submission of its own evidence after denial of its motion for directed verdict at close of plaintiff's case was precluded from seeking review of such action on appeal. *Woodward & Lothrop* v. *Heed* (D.C. Mun. App. 1945, 44 A. 2d 369).

Defendant who introduced evidence waived her right to complain of court's refusal to direct a verdict at close of plaintiff's case. *Henderson* v. *Allison* (D.C. Mun. App. 1945, 44 A. 2d 220).

The trial court is not justified in directing a verdict where there is substantial evidence upon which jury may base a conviction. *Collins* v. *United States* (D.C. Mun. App. 1945, 41 A. 2d 515).

On appeal from judgment on verdict directed for defendants, Municipal Court of Appeals was required to consider as admitted, every fact in evidence that tended to sustain plaintiff's case together with every inference reasonably deductible therefrom. *Resnick* v. *Wolf & Cohen* (D.C. Mun. App. 1946, 49 A. 2d 809).

The practice of submitting cases to the jury and reserving determination of questions of law raised on motion for a directed verdict, so that if the Municipal Court of Appeals disagrees with the trial court's ruling on motion for directed verdict, the jury's verdict can be reinstated without necessity for a new trial, is commendable. *Id.*

Failure to interpose motion for directed verdict at close of all testimony and secure ruling thereon precludes party from questioning sufficiency of evidence on appeal. *Krupsaw* v. *W. T. Cowan, Inc.* (D.C. Mun. App. 1948, 61 A. 2d 624).

On appeal from judgment on directed verdict for defendants, evidence of plaintiffs was taken in light most favorable to plaintiffs. *Young* v. *De Vito* (D.C. Mun. App. 1948, 56 A. 2d 558). See, also, *Snyder* v. *Thorniley* (D.C. Mun. App. 1948, 62 A. 2d 316).

Directed verdict in favor of the District was proper where there was no evidence showing the defendant's automobile ran through a depression and collided with plaintiff's automobile in road maintained by the District. *Bale* v. *District of Columbia* (D.C. Mun. App. 1949, 62 A. 2d 551).

The Municipal Court should use more frequently special verdicts as authorized by court rules in multiple controversies or complicated situations for such procedure tends to produce better defined issues of fact, better focused legal questions, and clearer and safer results. *Bill's Auto Rental, Inc.* v. *Bonded Taxi Company* (D.C. Mun. App. 1950, 72 A. 2d 254).

Court may set aside a verdict supported by substantial evidence where in its opinion it is contrary to the weight of the evidence, or is based upon evidence which is false. Even though the evidence be sufficient to preclude the direction of a verdict, it is still duty of the appellate court to exercise such power to prevent miscarriage of justice. *Capital Transit Co.* v. *Crusade* (D.C. Mun. App. 1949, 68 A. 2d 207).

A defendant does not lose his right to make a motion for a directed verdict in his favor even though he has himself offered evidence. Such a party is entitled to make such a motion even though he has made his opening statement. *Niosi* v. *Aiello* (D.C. Mun. App. 1949, 69 A. 2d 57).

Discretion of court

A ruling refusing new trial will not be disturbed except for an abuse of discretion. *District Hauling & Construction Co.* v. *Argerakis* (D.C. Mun. App. 1943, 34 A. 2d 31).

The right of appeal is a statutory right, and Municipal Court of Appeals has no discretion to entertain appeals not taken in accordance with this section requiring application for allowance of appeal where penalty is less than $50, nor can language of this section be extended. *Yeager* v. *District of Columbia* (D.C. Mun. App. 1943, 33 A. 2d 629).

Ordinarily, the denial of motion for new trial is nonappealable, but refusal to grant new trial on ground of newly discovered evidence may be ground for reversal where an abuse of discretion appears, since newly discovered evidence does not appear on the record supporting judgment and the only possibility for review of the ruling lies in appeal from denial of motion for new trial. *Hamilton* v. *United States* (1944, 140 F. 2d 679, 78 U.S. App. D.C. 316).

Where accused was convicted in the morning for offense committed the night before, trial court abused its discretion in denying motion for new trial for newly discovered evidence when court indulged in hypothetical interpretation of statement of newly discovered evidence in affidavit in order to make it consistent with testimony it was intended to rebut. *Id.*

The granting of a mistrial because of prejudicial newspaper publicity is within sound discretion of trial judge. *Serman* v. *United States* (D.C. Mun. App. 1944, 36 A. 2d 556).

The question whether trial should continue on without a recess past the dinner hour is a matter in the realm of discretion of trial judge. *Shapiro* v. *Vautier* (D.C. Mun. App. 1944, 36 A. 2d 349).

Whether a jury shall be permitted to view premises is discretionary with trial court and its action thereon is reviewable only for abuse. *Coleman* v. *Chudnow* (D.C. Mun. App. 1944, 35 A. 2d 925).

Whether testimony shall be received on motion for new trial is largely in discretion of trial court and except in clear cases action of trial court in such matters ought not to be disturbed. *Id.*

Whether discretion to grant or refuse a continuance is abused depends upon whether it is exercised in the furtherance of justice, and, if it serves to delay or defeat justice, it may well be deemed an "abuse of discretion". *Potomac Small Loan Co.* v. *Myles* (D.C. Mun. App. 1944, 34 A. 2d 609).

The Municipal Court of Appeals for the District of Columbia does not have discretionary power to entertain special appeals from interlocutory orders. *Atlas Van Lines* v. *Austin* (D.C. Mun. App. 1945, 44 A. 2d 696).

Under civil rule 53(b), authorizing trial court to grant relief from judgment entered against party through his mistake, inadvertence, surprise or excusable neglect, ordinarily that is a matter in trial court's discretion and is not reviewable. *Barnes* v. *Conner* (D.C. Mun. App. 1945, 44 A. 2d 925).

Where defendant had made clear to court and to plaintiff that defendant intended to defend the case, continuance of one day was granted, court's alleged intention that defendant should file his papers prior to call of next day's calendar was not clearly expressed and defendant filed his affidavit of defense and demand for jury trial a few hours after default was entered, refusal to vacate default was an abuse of discretion. *Id.*

Rules limiting time for various steps on appeal in the Municipal Court of Appeals were not adopted for the convenience of the court but in the interest of an orderly an expeditious appellate procedure as prescribed by the Congress. *Karika* v. *District of Columbia* (D.C. Mun. App. 1946, 47 A. 2d 93).

The refusal of a new trial may not be reviewed on appeal unless there is clear abuse of discretion. *Brown* v. *Haas* (D.C. Mun. App. 1950, 72 A. 2d 39).

Trial court did not commit error when, after the jury had retired, it gave further instructions at jury's request as to what constituted a trespass and refused plaintiff's counsel's request for additional instructions on the ground that such instructions would only confuse the jury. *Munsey* v. *Safeway Stores* (D.C. Mun. App. 1949, 65 A. 2d 598).

Trial court did not abuse its discretion by not reinstating a second action on the mere showing that plaintiff's counsel through inadvertence failed to appear and was in another court at the time. *Jarcy* v. *Griffith* (D.C. Mun. App. 1949, 65 A. 2d 919).

Where trial court stated to counsel for the defendant "Don't you ever again ask a question like that before me or you will be done with", it did not violate the rule that a trial judge should not use language which tends to bring an attorney into contempt before the jury. It is within the judge's province to admonish and rebuke counsel as occasion may require, and to use other preventative measures necessary to maintain the dignity of the court. In rebuking counsel, the degree of severity is left to the trial judge so long as it does not prevent the party from having a fair trial. *Rosenberg* v. *District of Columbia* (D.C. Mun. App. 1949, 66 A. 2d 489).

It was not an abuse of discretion for trial court to refuse moving party leave to amend after verdict, where she knew or should have known what the pending litigation would probably develop. Having lost on one defense, she had no right to have case reopened to assert a new one. *Boyle* v. *Smith* (D.C. Mun. App. 1949, 64 A. 2d 428).

A court may not limit cross-examination upon a pertinent subject at the outset, but after a substantial exploration of the subject, a judge is within his right in limiting examination which may become needlessly protracted. Where the record discloses that on a trial for the illegal sale of alcoholic beverages, appellant's counsel was permitted to cross-examine freely and fully all government witnesses, there was no undue restriction or limitation upon the right of cross-examination. *Davenport* v. *District of Columbia* (D.C. Mun. App. 1949, 65 A. 2d 209, appeal denied 180 F. 2d 909).

Where government witness admitted that, during a recess, he had talked with another government witness who had been excluded from the court room, trial court did not abuse its discretion in permitting him to testify. *Id.*

Allowance or refusal of a motion to set aside a default is within the discretion of the Trial Court. Such discretion implies conscientious judgment which takes into account the law, the particular circumstances and competing considerations. *Manos* v. *Fickenscher* (D.C. Mun. App. 1949, 62 A. 2d 791).

While the rules of the court contemplate that leave to amend shall be freely given, it is not their purpose to allow amendments under any and all circumstances. *Buchanan* v. *Farmer* and *Light* v. *Farmer* (D.C. Mun. App. 1948, 62 A. 2d 367).

Allowance or refusal of a motion to set aside a default is within the sound discretion of trial court. *Huff* v. *Kraft* (D.C. Mun. App. 1949, 63 A. 2d 667).

Whether a defense shall stand or be set aside rests in the sound discretion of the trial court, and where, before denying the motion to vacate, the trial court heard all the testimony to determine whether appellant had a meritorious defense and was convinced that no such defense existed, discretion was not abused. *Schoon* v. *Marvins Credit, Inc.* (D.C. Mun. App. 1949, 65 A. 2d 212).

It was error for trial court to refuse to exercise its discretion in setting aside a dismissal since a refusal to exercise discretion has the same effect as an abuse of discretion. *Quick* v. *Paregol* (D.C. Mun. App. 1949, 68 A. 2d 211).

Dismissal

Where Municipal Court of Appeals lacked jurisdiction of appeal in a criminal case, the appeal must be dismissed although appellee made no motion to dismiss and did not raise the question in his brief, since neither silence nor consent of the parties could confer jurisdiction on appeal, and lack of jurisdiction must be noticed even though the parties desire a decision on the merits. *Yeager* v. *District of Columbia* (D.C. Mun. App. 1943, 33 A. 2d 629).

The denial of motion to dismiss action was not a "final" or appealable order and dismissal of appeal from such decision was required. *De Bobula* v. *Tamamian* (D.C. Mun. App. 1947, 55 A. 2d 204).

Where brief for appellant set out twenty-two alleged errors occurring at trial but contained no statement of the case with references to the transcript of record and no arguments in support of the claim of error as required by rule and where the errors assigned would require searching through the two hundred-page transcript, the so-called brief is no brief at all and the appeal must be dismissed. *Poole* v. *Hurlbert* (D.C. Mun. App. 1949, 67 A. 2d 266).

Where record on appeal was not only filed late but was filed without authority in complete disregard of order refusing further extensions, the appeal should be dismissed. *Greene* v. *Mindell* (D.C. Mun. App. 1950, 72 A. 2d 775).

Due process

Where motorist was granted a hearing to show cause why his motor vehicle operator's permit should not be revoked and orally stated at the hearing that the revocation would deprive him of his means of livelihood in that his occupation was that of a truck driver, motorist could not claim that he was deprived of due process on the ground that the director of vehicles and traffic failed to advise him that he was entitled to the assistance of counsel at the hearing. *Ritch, Jr.* v. *Director of Vehicles and Traffic of District of Columbia* (D.C. Mun. App. 1956, 124 A. 2d 301).

Duty of court

In absence of objection, a duty is nevertheless imposed on court to notice an excess of jurisdiction and to limit review to appealable orders or judgments. *Ray* v. *Bruce* (D.C. Mun. App. 1943, 31 A. 2d 693).

Evidence

In action for damage to plaintiff's untenanted home, consisting of freezing and bursting of radiators and pipes, due to failure of defendant to deliver fuel oil to home after it had promised to do so on day on which plaintiff had called by telephone, evidence sustained finding that contract existed between parties binding defendant to deliver oil on that day, despite fact that defendant had no record of telephone call. *Woodson Co.* v. *Sakran* (D.C. Mun. App. 1957, 129 A. 2d 175).

Even if landlord and subtenant had agreed as to terms of new lease between them, evidence sustained determination that parties did not intend to be bound by agreement until it was executed in formal document and that landlord's delay in executing and returning lease did violence to one of express conditions of proposed agreement. *Gruening* v. *Donaldson* (D.C. Mun. App. 1953, 96 A. 2d 846).

The Municipal Court of Appeals does not have power to weigh evidence or render decisions on factual disputes. *Keefe* v. *Moskin Stores* (D.C. Mun. App. 1953, 95 A. 2d 336).

In action against former employee for cash and merchandise shortages, for which employee had contracted to be liable in absence of showing that shortages were caused by persons other than employee and his fellow employees, evidence was sufficient to sustain finding that former employee had breached his contract. *Id.*

In action for damage to plaintiff's automobile allegedly resulting from its collision with the open, left-front door of defendant's parked automobile, wherein defendant filed counterclaim for his damages, evidence sustained finding and judgment in defendant's favor on both claim and counterclaim. *Kuzminsky* v. *Wagner* (D.C. Mun. App. 1952, 87 A. 2d 411).

In seller's action for balance on a shipment of fruit and also for share of profits in a carload of bananas which seller claimed it and buyer agreed to handle in a joint venture, evidence was sufficient to sustain findings that shipment of fruit was in fact sold by seller to buyer, that carload of bananas was subject to mutual agreement between seller and buyer under which they were to share mutually in profits or losses on joint venture, and that there was in fact a profit on transaction in which seller was entitled to share. *Spivey* v. *W. B. Florence Banana Co.* (D.C. Mun. App. 1951, 78 A. 2d 861).

In action by landlord against tenant to recover possession of dwelling house on ground that he had in good faith contracted to sell property for immediate and personal use and occupancy as dwelling by purchaser, evidence sustained trial court's finding that plaintiff had in good faith contracted as alleged. *Sigmond* v. *Kern* (D.C. Mun. App. 1951, 78 A. 2d 236).

Appellate court examines evidence only to test its sufficiency. *Collins* v. *United States* (D.C. Mun. App. 1945, 41 A. 2d 515).

The Municipal Court of Appeals may not substitute its judgment on conflicting evidence for that of the trial court. *Modern Engineering & Service Corp.* v. *McCrea* (D.C. Mun. App. 1946, 46 A. 2d 767).

Where defendant went to the jury without moving for a directed verdict at close of the case, she could not challenge the sufficiency of the evidence on appeal by assigning as error the refusal to grant a judgment notwithstanding verdict. *Snyder* v. *Thorniley* (D.C. Mun. App. 1948, 62 A. 2d 316).

Question of weight of evidence was for trial court as trier of the facts, and was not subject to review on appeal. *Etty* v. *Federal Consulting Service* (D.C. Mun. App. 1948, 59 A. 2d 692).

On appeal from judgment entered on jury's verdict, Municipal Court of Appeals was bound to accept jury's determination of the facts and could not reweigh the evidence. *Lyons* v. *Capital Transit Co.* (D.C. Mun. App. 1948, 62 A. 2d 312).

Reviewing court determines only whether there was sufficient evidence to support trial court's finding. *De Bobula* v. *Winston* (D.C. Mun. App. 1948, 57 A. 2d 742).

A general finding for plaintiff requires appellate court to accept evidence most favorable to his case. *Shu* v. *Basinger* (D.C. Mun. App. 1948, 57 A. 2d 295).

Preliminary evidentiary questions such as the competency of a witness and the admissibility of the evidence are within the control of the trial judge, but these questions must be distinguished from credibility and the weight to be assigned to competent and admissible testimony. *Fowel* v. *Wood* (D.C. Mun. App. 1949, 62 A. 2d 636).

Declaration made from a few moments to five or ten minutes after an accident neither met test of spontaneity nor closeness of time so as to be considered part of the res gestae. *Bale* v. *District of Columbia* (D.C. Mun. App. 1949, 62 A. 2d 551).

As a general rule any evidence which is logically probative of some fact in issue is relevant and prima facie admissible unless it conflicts with some settled exclusionary rule. *Id.*

Admission in evidence of an "incidental book" maintained at police precinct to show District had notice of the depression in District road was harmless error where there was other evidence covering the same subject and the report would have no relevancy without testimony connecting the depression with the accident. *Id.*

Weight of the evidence and credibility of the witness are questions for the trial court. *Rogers* v. *Cox* (D.C. Mun. App. 1950, 75 A. 2d 776).

The weight of the evidence is a question for the trier of the facts, and a finding of fact supported by substantial evidence cannot be set aside by an appellate court. The trier of the facts is the judge of the credibility of witnesses. *Soresi* v. *Repetti* (D.C. Mun. App. 1950, 76 A. 2d 585).

Testimony offered as character evidence was inadmissible where plaintiff's good character had not been put in issue. *Boyle* v. *Smith* (D.C. Mun. App. 1949, 64 A. 2d 428).

No error was committed in excluding federal and district income tax returns by which defendant proposed to show that the business was owned and operated by her alone and not as a partnership where such evidence would have been merely corroborative of other evidence, verbal and documentary. *Id.*

An offer made in compromise is not admissible in evidence. The test is whether the statement is made conditionally or unconditionally. A conditional concession is not admissible whereas an unconditional assertion is admissible. *Firestone Tire and Rubber Company* v. *Billow, To the Use of American Automobile Insurance Company* (D.C. Mun. App. 1949, 65 A. 2d 338).

It is necessary that one objecting to evidence make known to the court and opposing parties the precise ground on which he relies, since grounds not raised in the trial court will not be considered on appeal. *Id.*

It was not error for trial court to refuse to permit police officer to testify regarding the extent to which arrest followed from tips or information given to the police, where the information sought was immaterial. *Glover* v. *Jewish War Veterans of United States* (D.C. Mun. App. 1949, 68 A. 2d 233).

Where an owner signed a listing agreement with broker, authorizing sale on specified terms if and when a purchaser was found, it was not error for trial court to permit the owner to testify that she had signed on the assurance that time of her occupancy would be extended if she had no place to go. Such testimony does not vary a written contract by parole testimony and was not offered to contradict any written instrument, but only to show misrepresentation. *Ellis* v. *Morgan* (D.C. Mun. App. 1949, 65 A. 2d 797).

One cannot speculate on allowing evidence to be introduced, participate in developing it, and then, when evidence proves unfavorable, demand that it be stricken. *Lewis* v. *Shiffers* (D.C. Mun. App. 1949, 67 A. 2d 269).

While it is well established that the proof of delivery and failure of the bailee to return makes out a prima facie case for the plaintiff, even in case of a gratuitous bailment, requiring the defendant to go forward with proof, such proof need not necessarily consist of an explanation or justification of the loss. *Columbia Operating Corp.* v. *Kettler* (D.C Mun. App. 1949, 67 A. 2d 267).

Findings of fact

Under point system which provided for assessment of points against a motorist for "moving" traffic violations, Director of Vehicles and Traffic could not accept finding of guilt under information charging motorist with traveling more than 25 miles an hour in a 25 mile zone as proof that motorist was guilty of speeding 40 miles per hour as stated in arresting charge and therefore he could not assess points against motorist on basis of arresting charge. *Chappelle* v. *Board of Commissioners of District of Columbia* (D.C. Mun. App. 1955, 110 A. 2d 697).

Findings by trial court for landlord on questions whether landlord had breached lease by failing to make repairs properly and whether tenant was damaged by breach were not plainly wrong. *Burka* v. *Seidenberg* (D.C. Mun. App. 1954, 108 A. 2d 159).

It was not error for the trial court to deny appellant's request for findings of fact and conclusions of law, for trial court rules provide that in actions tried on the facts without a jury the court may, if requested by any party, find the facts specially and state separately its conclusions of law. The rule is permissive, not mandatory. *Eide* v. *Traten* (D.C. Mun. App. 1950, 73 A. 2d 522).

Although there was no requirement that trial court file findings of fact, where judgment was entered on specific findings leaving undetermined a material issue of fact as to which evidence was conflicting, Municipal Court of Appeals could require finding on such issue. *Provident Life Ins. Co.* v. *Grant* (D.C. Mun. App. 1943, 31 A. 2d 885).

An order overruling a motion to quash service on garnishee was interlocutory and not appealable, but appeal was properly taken from final judgment, as against claim that application for appeal was not filed within statutory time. *Atlantic Coast Line R. Co.* v. *Goldberg* (D.C. Mun. App. 1944, 39 A. 2d 563).

The rule that findings of fact are entitled to great weight in an appellate court is modified where such findings are based wholly on depositions. *Rogers* v. *Cox* (D.C. Mun. App. 1950, 75 A. 2d 776).

Instructions

Defendant's request for instruction that opinion evidence of a handwriting expert is so weak as scarcely to deserve a place in our system of jurisprudence was properly refused as not stating the law. *Boyer* v. *United States* (D.C. Mun. App. 1945, 40 A. 2d 247, reversed on other grounds 150 F. 2d 595, 80 U.S. App. D.C. 202, 166 A.L.R. 209).

Trial court had duty of including in its charge a definition of reasonable doubt, and appellate court could not assume that trial court failed in its duty in such respect. *Id.*

Charge to jury cannot be considered piecemeal but must be viewed in its entirety. *Henderson* v. *Allison* (D.C. Mun. App. 1945, 44 A. 2d 220).

Where the text of the instructions was not included in the record and the court cannot tell what parts of the sections in question were read, and the record shows that defendant's only objection to the court's charge was confined to that portion of it relating to unjust enrichments, we cannot consider such objection on appeal. *Hillyard* v. *Smither & Mayton, Inc.* (D.C. Mun. App. 1950, 76 A. 2d 166).

Instructions must be suited to the facts of the particular case and the judge should explain the law of the case, state the issues involved, and should also point out the essentials to be proved on one side or the other. *Reese* v. *Wells* (D.C. Mun. App. 1950, 73 A. 2d 899).

Police officers, who, though privately employed, are engaged in keeping law and order in a public place, are neither informers nor detectives engaged in the business of spying for hire and are not the type of witnesses whose testimony the court must instruct shall be received with caution. *Davenport* v. *District of Columbia* (D.C. Mun. App. 1949, 65 A. 2d 209, appeal denied 180 F. 2d 909, 85 U.S. App. D.C. 430).

Joint appeal

Where eight separate changes were consolidated for trial and verdict of guilty and a fine of $25 was imposed for each offense, defendant could not consider the total of the fines imposed as one penalty and file a joint appeal, since judgment in each case was a single judgment from which there was no right of appeal but only the right to make application for appeal. *Yeager* v. *District of Columbia* (D.C. Mun. App. 1943, 33 A. 2d 629).

Judgment notwithstanding verdict

Where appellants made no motion for directed verdict at trial, Municipal Court of Appeals would not review ruling refusing judgment notwithstanding verdict. *Krupsaw* v. *W. T. Cowan, Inc.* (D.C. Mun. App. 1948, 61 A. 2d 624).

Reviewing court, in judging the correctness of decision entering a judgment notwithstanding the verdict, applies the same tests as are applied upon review of ruling on motion for directed verdict. *Vaughn* v. *Neal* (D.C. Mun. App. 1948, 60 A. 2d 234).

There is a difference between the legal discretion of the court to set aside a verdict as against the weight of evidence, and the obligation of the court to withdraw a case from the jury or direct a verdict for insufficiency of evidence. In the latter case, it must be so insufficient in fact as to be insufficient in law. In the former case, it is merely insufficient in fact and it may be either insufficient in law, or may have more weight, and not enough to justify the court in exercising the control which the law gives it to prevent unjust verdicts, to allow a verdict to stand. *Capital Transit Co.* v. *Crusade* (D.C. Mun. App. 1949, 69 A. 2d 207).

Judicial notice

Municipal Court of Appeals took judicial notice of wartime difficulties in obtaining laundry service as well as many other services in the District of Columbia, but refused to assume therefrom that it was impossible for a customer of one laundry to find another laundry willing and able to accept him as a customer. *Manhattan Co.* v. *Goldberg* (D.C. Mun. App. 1944, 38 A. 2d 172).

The court will take judicial notice of adoption of OPA regulations and existence of official acts necessary to their validity. *Sherman* v. *United States* (D.C. Mun. App. 1944, 36 A. 2d 556).

Municipal Court of Appeals for the District of Columbia took judicial notice that Criminal Division of the Municipal Court was in session on Monday, July 5, 1943, for the arraignment and trial of persons held under arrest and unable to give collateral or bond, notwithstanding that that Monday was a legal holiday. *Burns* v. *District of Columbia* (D.C. Mun. App. 1944, 34 A. 2d 714).

Court took judicial notice that suffering and inability to get about and climb stairs is normal sequel of most surgical operations, especially in the presence of pregnancy. *Barnett* v. *Bachrach* (D.C. Mun. App. 1943, 34 A. 2d 626).

The Municipal Court of Appeals will take judicial notice that Government of the United States has no connection with Inter-Allied Shipping Pool and that such Pool does not exist as an agency of the United States Government and is not created by agreement to which United States is a party. *Trost* v. *Tompkins* (D.C. Mun. App. 1945, 44 A. 2d 226).

The Municipal Court of Appeals would take judicial notice of appeal in prior case between the same parties. *Block* v. *Wilson* (D.C. Mun. App. 1947, 54 A. 2d 646).

Courts will judicially notice that desks are ordinarily and properly used by officers and employees of the government for keeping their personal effects. *Blok* v. *United States* (D.C. Mun. App. 1950, 70 A. 2d 55).

Court will take judicial notice that during the war the government and various persons in official and unofficial positions urged that the public forego luxury items which consumed manpower and critical war materials. It cannot be said as a matter of law that the landlord's refusal to supply such items rendered him guilty of a service standard violation. *Connolly* v. *B. F. Saul Co., Inc.* (D.C. Mun. App. 1949, 68 A. 2d 236).

Courts may take judicial notice that the period of human gestation is about two hundred eighty days or nine calendar months. *Monday* v. *United States* (D.C. Mun. App. 1950, 76 A. 2d 68).

Jurisdiction

Generally, Municipal Court of Appeals' jurisdiction is restricted to review of final orders or judgments. *Morfessis* v. *Hollywood Credit Clothing Co.* (D.C. Mun. App. 1960, 163 A. 2d 825).

The Municipal Court of Appeals for the District of Columbia has no power of review over actions of administrative agencies of the District of Columbia except as conferred by statute, and only decisions of Board of Examiners and Registrars of Architects reviewable by such court are those which annul or revoke a certificate. *Norton* v. *L. M. Leisering et al.* (D.C. Mun. App. 1956, 125 A. 2d 56).

Where petitioner was issued certificate of registration by Board of Examiners and Registrars of Architects in 1925, and renewed such certificate in 1926, but permitted it to lapse in 1927, and took no further action with respect thereto until he unsuccessfully applied for restoration of his certificate in 1950, petitioner's certificate was not revoked, and denial of renewal thereof in 1950 and from time to time thereafter was not tantamount to a revocation which would have been reviewable by the Municipal Court of Appeals for the District of Columbia. *Id.*

Under certain circumstances, denial by Board of Examiners and Registrars of Architects of certificate of registration to architect could be tantamount to a revocation of such certificate, and, therefore, the Municipal Court of Appeals for the District of Columbia, which can review board's decision in annulling or revoking a certificate, is not completely without jurisdiction over board's renewal procedure. *Id.*

Municipal Court of Appeals for District of Columbia has no jurisdiction to review orders of Board of Revocation and Review of Hackers' Identification Licenses for District of Columbia. *Johnson* v. *Board of Commissioners of the District of Columbia* (D.C. Mun. App. 1955, 116 A. 2d 161).

Where motion to vacate judgment and quash attachment rested on claim that service on defendant had not been made and that Small Claims Branch of District of Columbia Municipal Court acquired no jurisdiction over defendant, motion was sufficiently broad to include by implication an attack on service of process, and irregularity was cured by subsequent filing of motion to quash

service, and filing of motion to vacate judgment and quash attachment was "special" and not "general appearance," and going to trial on merits after denial of such motion did not preclude defendant from raising jurisdictional question on appeal. *Ellerbe* v. *Goldberg* (D.C. Mun. App. 1948, 60 A. 2d 232).

Under this section providing that any party aggrieved by any final order or judgment of the Municipal Court for the District of Columbia may appeal to the Municipal Court of Appeals, such court had jurisdiction of government's appeal from an order of the municipal court for such district quashing a warrant of arrest in a disorderly house case, in view of § 23–105 entitling the government to appeal in criminal prosecutions. *United States* v. *Basiliko* (D.C. Mun. App. 1944, 35 A. 2d 185).

In a class B action involving less than $500, Municipal Court rules apply, and trial court erred in ruling that defendant waived jurisdiction by failing to raise it by motion since rules do not preclude raising any defense available; further, jurisdiction over subject matter may never be conferred by consent and may even be questioned for first time on appeal. *Duvall* v. *Southern Municipal Corp.* (D.C. Mun. App. 1949, 63 A. 2d 336).

Law governing

The Municipal Court of Appeals for District of Columbia must follow the law as stated in highest appellate court of the District. *Davidson* v. *Jones* (D.C. Mun. App. 1943, 34 A. 2d 261).

In absence of local statutes governing landlord's liability to tenant, Municipal Court of Appeals must look to the common law as reflected in decisions of Supreme Court, of United States Court of Appeals, and the courts of some of the states. *Hariston* v. *Washington Housing Corp.* (D.C. Mun. App. 1946, 45 A. 2d 287).

Mandate

Mandate of appellate court from which the trial court had no power to deviate, clearly required that there be a trial on the merits, completely unemcumbered by any earlier proceedings below. Even upon a reversal with general directions, the case stands in the trial court in the same position as if no trial had been held, pleadings can be amended or new ones filed, new issues framed, and a complete new trial will result, subject only to the restriction that the new proceedings shall not be inconsistent with the opinion of the appellate court. *Glenn* v. *Mindell* (D.C. Mun. App. 1950, 74 A. 2d 835).

Mandatory revocation

Where it was mandatory on the Commissioners to revoke the defendant's operator's permit when notified of his conviction of operating a motor vehicle while intoxicated, the defendant was not entitled to a hearing on the matter of revocation and administrative review. *Oliver* v. *Silver* (D.C. Mun. App. 1959, 155 A. 2d 719).

Misrepresentation

In proceeding to review decision of Real Estate Commission suspending petitioners' licenses for period of ten days, record supported Commission's findings that petitioners had made substantial misrepresentations in advertising property in area zoned against multiple-family dwellings as having apartment, and that petitioners had demonstrated such unworthiness to act as licensed real estate brokers as to endanger interests of public. *Ehrlich et ano.* v. *Real Estate Commission* (D.C. Mun. App. 1956, 118 A. 2d 801).

Modification of judgment

Where judgment for insured for recovery of disability benefits under life policy and for return of premiums was incorrectly computed in favor of insured, Municipal Court of Appeals ordered insured to file a remittitur of excessive amount or, in the alternative, ordered a new trial. *National Life Ins. Co.* v. *White* (D.C. Mun. App. 1944, 38 A. 2d 663).

Where no authority was cited in support of proposition and record contained no evidence from which its soundness could be determined, appellate court would not pass upon such proposition. *Manhattan Co.* v. *Goldberg* (D.C. Mun. App. 1944, 38 A. 2d 172).

A judgment appealed from may be modified by reducing amount thereof when computation of amount due appellee is clear on record. *Group Health Ass'n* v. *Shepherd* (D.C. Mun. App. 1944, 37 A. 2d 749).

Moot questions

Where defendant on conviction was sentenced to pay a fine of $25 or serve 25 days, and he paid fine without attempting to stay judgment and without making protest or giving notice of intent to appeal, the payment which was voluntary, satisfied the judgment, rendered case "moot" and precluded defendant from appealing. *Hanback* v. *District of Columbia* (D.C. Mun. App. 1944, 35 A. 2d 189).

A federal appellate court will not review a moot case. *Id.*

Where in District of Columbia Municipal Court no supersedeas bond was filed to stay judgment for landlord for possession of an apartment and United States marshal evicted tenant, who stated restitution was expected if the appeal from judgment was successful, the surrender of possession was not voluntary, and appeal was not moot. *Zindler* v. *Buchanon* (D.C. Mun. App. 1948, 61 A. 2d 616).

It is not the duty of the court to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue. Moreover, it has often been decided where possession of land was involved under an alleged lease, the question becomes moot after the expiration of such lease. *Alpert* v. *Wolf* (D.C. Mun. App. 1950, 73 A. 2d 525).

Where petitioner failed to post bond and was committed to jail the case became moot after petitioner served his sentence upon its expiration there was no longer a subject matter on which the judgment of court could operate. Reversal of the judgment cannot operate to undo or restore the petitioner to the penalty of the term of imprisonment which he has served. *Hill* v. *United States* (D.C. Mun. App. 1950, 75 A. 2d 138).

The question of refusal to require the posting of a supersedeas bond pending appeal has become moot because even if a supersedeas bond had been posted, it would have expired by its own terms upon the reversal of the judgment which the bond superseded. *Daime* v. *Price* (D.C. Mun. App. 1950, 71 A. 2d 611).

Motion for summary judgment

In motion for summary judgment, it is not enough for an affiant to state that he has personal knowledge of the facts but he must state facts in detail showing that he has personal knowledge, and the burden of establishing the non-existence of any genuine issue is upon the moving party. *Schwartz* v. *Sandidge* (D.C. Mun. App. 1949, 63 A. 2d 869).

—— New Trial

Refusal to grant a new trial may be reviewed by Municipal Court of Appeals only if there is an abuse of discretion. *Henderson* v. *Allison* (D.C. Mun. App. 1945, 44 A. 2d 220).

The grant or refusal of new trial may be reviewed on appeal only where there is a clear abuse of discretion. *Palmer Const. Co.* v. *Patouillet* (D.C. Mun. App. 1945, 42 A. 2d 273).

Trial judge's disposition of a motion for new trial is not subject to appellate review unless an abuse of discretion is shown. *Peay* v. *Parks* (D.C. Mun. App. 1945, 42 A. 2d 250).

Once an appeal is perfected, trial court is without power to order a new trial. *Maltby* v. *Thompson* (D.C. Mun. App. 1947, 55 A. 2d 142).

To warrant new trial in Municipal Court on ground of newly discovered evidence, evidence must be in fact newly discovered since trial, it must be shown that it was not due to want of diligence that movant did not discover evidence sooner, evidence relied on must not be merely cumulative or impeaching, and it must be such as would probably produce a different verdict if new trial were granted. *Imhoff* v. *Walker* (D.C. Mun. App. 1947, 51 A. 2d 309).

Plaintiff was not entitled to new trial on ground of alleged newly discovered evidence, where affidavits in support of motion revealed incidents practically all of which had taken place in plaintiff's presence. *Imhoff* v. *Walker* (D.C. Mun. App. 1947, 51 A. 2d 309). See, also, *Krupsaw* v. *W. T. Cowan, Inc.* (D.C. Mun. App. 1948, 61 A. 2d 624).

Fact that trial judge kept case, which had been submitted to him without jury, under advisement for some 13 months did not so taint finding as to require granting of new trial and refusal of new trial was not an abuse of discretion, notwithstanding that only a factual issue was involved. *Eberhard* v. *Mehlman* (D.C. Mun. App. 1948, 60 A. 2d 540).

An order granting a new trial was not a "final order", was not reviewable and dismissal of attempted appeal from such order was required. *De Grazia* v. *Anderson* (D.C. Mun. App. 1948, 58 A. 2d 306). See, also, *Snyder* v. *Thorniley* (D.C. Mun. App. 1948, 62 A. 2d 316).

Since judgment will not be entered until after a new trial is had, plaintiff cannot appeal from an order which is not a final order or judgment. An order made within the time limited by the rules and granting a new trial is not appealable, since the effect of the motion to reinstate the "judgment" was to test the validity of the grant of the new trial. A litigant is not allowed to do by indirection what he could not do directly. *Students Book Company* v. *Semerjian* (D.C. Mun. App. 1949, 66 A. 2d 487).

Where the chief reason given to support a motion for dismissal was a desire to file the suit anew and demand a jury trial on the ground that refusal to permit dismissal subjected her to material injury and deprived her of fundamental rights, the court did not abuse discretion in rejecting such motion when moving party failed to comply with the rule relating to jury trial. Failure to make timely demand therefor constituted a waiver thereof. *Mercer* v. *Equitable Life Insurance Society* (D.C. Mun. App. 1949, 65 A. 2d 207).

Counsel cannot be permitted to make the motion for new trial a vehicle for asserting objections retroactively or for grounding an appeal on a theory never presented during the trial. *Germaine* v. *Cramer* (D.C. Mun. App. 1949, 65 A. 2d 573).

Granting or denying a motion for a new trial is not an appealable order unless it is shown that the trial court has abused its discretion. *Capital Transit Co.* v. *Crusade* (D.C. Mun. App. 1949, 68 A. 2d 207).

Where defendant moved for a new trial for judgment notwithstanding verdict, trial court must act upon each, and granting of motion for judgment is not ground for summarily denying motion for new trial. *Crusade* v. *Capital Transit Co.* (D.C. Mun. App. 1949, 63 A. 2d 878). See, also, *Capital Transit Co.* v. *Crusade* (D.C. Mun. App. 1949, 68 A. 2d 207).

Where evidence was introduced and no announcement of suprise nor request made for any continuance or recess in order to make use of the evidence claimed to have been damaging to plaintiff's case, it cannot be said that the refusal of the trial court to set aside the judgment and award a new trial on the grounds of newly discovered evidence was an abuse of discretion. *Mutual Benefit Health and Accident Association* v. *McGinn* (D.C. Mun. App. 1950, 75 A. 2d 643).

The granting or denial of a motion for new trial based on newly discovered evidence is within descretion of trial court. *Kreis* v. *Block* (D.C. Mun. App. 1950, 75 A. 2d 523).

Motion to vacate sentence

Procedure for vacating sentence of prisoner twice sentenced by Juvenile Court of District of Columbia for nonsupport and claiming right to release for double jeopardy was not governed by 28 U.S.C. § 2255, relating to motion to vacate sentence of federal prisoner. *Burke* v. *United States* (D.C. Mun. App. 1954, 103 A. 2d 347).

Negligence Causing Death Act

The Municipal Court for the District of Columbia does not have jurisdiction of an action under the Negligence Causing Death Act, though recovery sought is limited to $3,000, the maximum jurisdictional amount of an action in the Municipal Court, since the United States Court of Appeals is the only court to which appeals may be taken in such an action, and therefore the trial of such an action must be had exclusively in the United States District Court. *Eatmon* v. *Driggers* (D.C. Mun. App. 1956, 125 A. 2d 847).

New trial

Where it appears probable that a trial court has by comment invaded the fact finding function of the jury, particularly in a criminal case, a new trial ought to be awarded. *Prezzi* v. *United States* (D.C. Mun. App. 1948, 62 A. 2d 196).

While a new trial does not automatically follow every general reversal, such will ordinarily be the result. Where there is doubt as to what further proceedings are to be taken by the trial court after reversal, such doubt is generally resolved by granting a new trial. *Price* v. *Daime* (D.C. Mun. App. 1950, 71, A. 2d 608).

Notice of appeal

Where there had been a timely filing of a notice of appeal with clerk of the municipal court, municipal court thereafter lost jurisdiction and had no power to authorize a new trial during pendency of such appeal. *Morfessis* v. *Hollywood Credit Clothing Co.* (D.C. Mun. App. 1960, 163 A. 2d 825).

Appeal is perfected and Municipal Court of Appeals' jurisdiction attaches upon the timely filing of a notice of appeal with clerk of the municipal court and at the same time trial court loses jurisdiction over matter and may not thereafter reopen judgment. *Id.*

Where penalty imposed was less than $50 and defendant's right to review is by application for allowance of an appeal and not by notice of appeal, defendant's notice of appeal filed in the Municipal Court and not in the Municipal Court of Appeals could not be regarded as an "application for allowance of appeal". *Yeager* v. *District of Columbia* (D.C. Mun. App. 1943, 33 A. 2d 629).

Where defendant took no action within the time limited for filing a notice of appeal, defendant's motion for leave of court to file notice of appeal was denied for want of jurisdiction to hear the appeal. *Beach* v. *District of Columbia* (D.C. Mun. App. 1946, 44 A. 2d 926).

Rules provide that notice of appeal in civil cases shall be filed with the clerk of the trial court within ten days of the date of the judgment or order appealed from. Such time limit is jurisdictional and may not be enlarged or extended either by the trial court or by this court. *Holland* v. *Eng* (D.C. Mun. App. 1950, 75 A. 2d 143).

The time for filing notice of appeal is jurisdictional and cannot be extended by the trial court or by this court. *Glenn* v. *Mindell* (D.C. Mun. App. 1950, 74 A. 2d 835).

Rules of this court make the filing of the notice of appeal jurisdictional. When such notice is filed out of time, court has no power to review the case. *Syndicated Construction Corp.* v. *Ross* (D.C. Mun. App. 1950, 73 A. 2d 899).

Orders reviewable

Waiver of jurisdiction over juvenile by juvenile court is not a "final order or judgment" appealable to municipal court of appeals. *M. A. Kent, Jr.* v. *C. Reid, Superintendent, etc., and District of Columbia* (1963, 316 F. 2d 331, 114 U.S. App. D.C. 330).

If district court should deny motion to dismiss indictment against juvenile made on ground of lack of jurisdiction because of want of full investigation by juvenile court before waiver of jurisdiction, order would be reviewable by Court of Appeals in event of ultimate conviction. *Id.*

Although order refusing to vacate default judgment is final and appealable, order vacating default judgment as general rule is not final and therefore not appealable. *E. Brenner* v. *A. E. Williams* (D.C. App. 1963, 190 A. 2d 263).

Where court vacates judgment after time within which it has power to do so, proceeding is beyond jurisdiction of court and is subject to appellate review. *Id.*

In action to recover personalty where on plaintiff's motion the trial court appointed a receiver of the records pending final disposition and defendant moved to vacate the order appointing the receiver, the appointment of the receiver "changed or affected" possession of the property and the order was reviewable though not final. *Bressler* v. *Bressler* (D.C. Mun. App. 1959, 155 A. 2d 255).

Under this section limiting jurisdiction of Municipal Court of Appeals for District of Columbia to hear appeals from interlocutory order to orders whereby possession of property is changed or affected, order denying motion to quash writ of attachment is not appealable. *Clark* v. *District Discount Co.* (D.C. Mun. App. 1959, 151 A. 2d 198).

To be appealable, an interlocutory order must be one which, if carried into effect, would change or affect possession by changing the status quo ante the order, under this section limiting jurisdiction of Municipal Court of Appeals for District of Columbia to review interlocutory orders to those orders whereby possession of property is changed or affected. *Id.*

Order overruling motion to quash service is not final and not appealable. *Id.*

An order denying a motion for summary judgment was not a final order or judgment and was therefore not appealable. *Moyer* v. *Moyer* (D.C. Mun. App. 1957, 134 A. 2d 649).

With certain exceptions, jurisdiction of Municipal Court of Appeals is limited to review of final orders and judgments. An order granting a new trial in automobile accident case was not a final order and not appealable, particularly, where claim was merely that trial court had improperly exercised its acknowledged authority. *Sellers* v. *Taylor et ano.* (D.C. Mun. App. 1955, 117 A. 2d 394).

Ordinarily an order vacating a default judgment is not final and is therefore not appealable, but when court vacates judgment after the time within which it has power to do so, vacating order is appealable. *Harco Inc.* v. *Greenville Steel and Foundry Co.* (D.C. Mun. App. 1955, 112 A. 2d 920).

An order refusing to vacate default judgment is final and appealable. *Id.*

Municipal Court of Appeals for the District of Columbia has jurisdiction to review only such orders as are final. *Heller* v. *Edwards, et al.* (D.C. Mun. App. 1954, 104 A. 2d 528).

Test of finality within this section is whether the order is one which disposes of the whole case, leaving nothing for court to do except to execute judgment it has rendered. *Id.*

Defendant's motion to stay proceedings in Municipal Court for the District of Columbia because of pendency of defendant's own suit against plaintiffs, based on same transaction or occurrence and filed in United States District Court subsequent to commencement of Municipal Court action, did not dispose of the action, but required that it be tried on the merits, and hence such order was not appealable. *Id.*

In suit in municipal court for District of Columbia for possession of realty, where question of title was interjected by defendant by attaching to his motion for a stay a copy of his complaint in district court for specific performance of alleged contract to purchase disputed property and such interjection was in violation of plaintiff's right to have title pleaded in method prescribed by statute, stay order of Municipal Court was appealable. *Ourisman Chevrolet, Inc.* v. *Suber* (D.C. Mun. App. 1954, 104 A. 2d 252).

Orders overruling motion to vacate order overruling a motion for summary judgment, overruling motion to dismiss, overruling motion for production of documents, and ordering plaintiff to file answer to counterclaim by specified date, were interlocutory matters and orders were not appealable. *Hankerson* v. *Tillman* (D.C. Mun. App. 1952, 88 A. 2d 191).

Where the trial court dismissed three separately stated counterclaims of defendant interposed in an action brought by plaintiff landlord for rent and water charges, but instead of amending or refusing to amend, defendant appealed from order of dismissal and also filed with trial court a stipulation, signed by counsel for both parties, extending time within which counterclaims might be amended to and including five days after disposition and termination of defendant's appeal, although trial court was not a party to stipulation, order was not an "appealable order". *McChesney* v. *Moore* (D.C. Mun. App. 1951, 78 A. 2d 389).

An order striking out item of damage from complaint and bill of particulars did not finally dispose of rights of the parties, and was not reviewable by the Municipal Court of Appeals for the District of Columbia. *Brown* v. *Randle & Garvin* (D.C. Mun. App. 1943, 32 A. 2d 104).

An order striking out item of damage from complaint and bill of particulars was neither a "final order or judgment", nor an "interlocutory order whereby possession of property is changed or affected", within this section. *Id.*

An appeal taken during pendency of motion for new trial was subject to dismissal on ground that there was no "final judgment". *Hamilton* v. *United States* (D.C. Mun. App. 1943, 31 A. 2d 887, reversed on other grounds 140 F. 2d 679, 78 U.S. App. D.C. 316).

A judgment is not "final" and is not appealable while a motion for new trial, seasonably filed, remains undecided. *Id.*

Ordinarily trial court's action on motion for new trial is not subject to review on appeal unless there is shown a clear abuse of discretion. *Franklin* v. *Chas. C. Schulman Co.* (D.C. Mun. App. 1943, 31 A. 2d 871).

Where matters raised by motion to set aside judgment and grant new trial could have been reviewed by timely appeal from the original judgment, action on such motion was not appealable. *Crowley* v. *Wood* (D.C. Mun. App. 1943, 31 A. 2d 861).

Ruling on motion to vacate judgment rendered because of a party's default in appearing or pleading is not reviewable except for an abuse of discretion. *Ray* v. *Bruce* (D.C. Mun. App. 1943, 31 A. 2d 693).

Order denying motion filed within term at which judgment was entered, to vacate default judgment against garnishee, is not an "appealable order." *Id.*

Where motion for new trial was granted after entry of verdict, there was no "final judgment" from which an appeal would lie until after a new trial was had. *Phillips* v. *Marvin's Credit* (D.C. Mun. App. 1944, 35 A. 2d 825).

Accused does not ordinarily have the right to an independent appeal from a ruling on a motion to quash a warrant of arrest. *United States* v. *Basiliko* (D.C. Mun. App. 1944, 35 A. 2d 185).

An order quashing a warrant of arrest in a disorderly house case was appealable. *Id.*

Granting or refusing a continuance is usually discretionary and not subject to review on appeal except when it is shown to have been an abuse of discretion. *Potomac Small Loan Co.* v. *Myles* (D.C. Mun. App. 1943, 34 A. 2d 609).

An appeal cannot be heard while motion for new trial is pending, since judgment at that time has not become final. *Hamilton* v. *United States* (1944, 140 F. 2d 679, 78 U.S. App. D.C. 316).

The jurisdiction of the Municipal Court of Appeals for the District of Columbia is limited to a review of final orders or judgments and interlocutory orders whereby possession of property is changed or affected. *Atlas Van Lines* v. *Austin* (D.C. Mun. App. 1945, 44 A. 2d 696). See, also, *Crowder* v. *Lackey* (D.C. Mun. App. 1945, 44 A. 2d 223); *Lee* v. *Zentz* (D.C. Mun. App. 1946, 44 A. 2d 872).

An order of the Municipal Court for the District of Columbia, overruling defendant's motion to quash service, was an interlocutory order which did not change or affect possession of property, and order was not appealable to such court. *Atlas Van Lines* v. *Austin* (D.C. Mun. App. 1945, 44 A. 2d 696).

An express desire of both parties for a decision on merits would not confer jurisdiction on the Municipal Court of Appeals for the District of Columbia of special appeals from interlocutory orders. *Id.*

Orders granting motion to amend complaint to include claim for overdue rent, overruling motion for summary judgment, granting motion to dismiss counterclaim without prejudice to right to file separate suit, and denying leave to amend counterclaim, were not "final orders" or "interlocutory orders affecting possession of property" from which appeal would lie to Municipal Court of Appeals. *Crowder* v. *Lackey* (D.C. Mun. App. 1945, 44 A. 2d 223).

An order granting a motion for new trial was not a "final order" and hence not appealable. *United Retail Cleaners and Tailors Ass'n of D.C.* v. *Denahan* (D.C. Mun. App. 1945, 44 A. 2d 69).

The "finality" of an order, necessary to jurisdiction of the Municipal Court of Appeals depends not upon its name, its propriety, or its normal function, but upon whether it disposes of the whole case on its merits so that the court has nothing to do but to execute the judgment or decree rendered. *Lee* v. *Zentz* (D.C. Mun. App. 1946, 44 A. 2d 872).

An order vacating a judgment, which left the case undecided with the right in plaintiff to proceed to trial and judgment, was "interlocutory" and not "final," and was

not appealable to the Municipal Court of Appeals. *Id.*

Where plaintiff permitted time to lapse for taking appeal from order dismissing complaint before filing motion to amend complaint, plaintiff could not appeal from order denying motion to amend complaint, especially where it did not appear that there had been any abuse of discretion in refusing leave to amend. *Mitchell* v. *David* (D.C. Mun. App. 1946, 49 A. 2d 84).

A "final order" within this section is one that disposes of the whole case on its merits so that court has nothing to do but execute judgment or decree already rendered. *Whitman* v. *Noel* (D.C. Mun. App. 1947, 53 A. 2d 280).

Order denying defendant's motion for summary judgment on ground that it was apparent on face of claim that it was barred by statute of limitations was not an appealable "final order." *Id.*

An order denying a motion for rehearing of order denying motion to vacate judgment was not appealable. *Brooks* v. *Trigg* (D.C. Mun. App. 1947, 51 A. 2d 302).

District of Columbia Municipal Court's order overruling motion to dismiss or to remand action to District Court of United States for District of Columbia was not "final order" and hence was not appealable to Municipal Court of Appeals for District of Columbia. *Kaplowitz Bros.* v. *Kahan* (D.C. Mun. App. 1948, 59 A. 2d 795).

An order of Municipal Court vacating default judgment which had been entered "paid and satisfied" after execution through garnishment proceedings was appealable. *Campbell* v. *Campbell* (D.C. Mun. App. 1948, 58 A. 2d 825).

Record did not indicate that plaintiff was compelled to take a voluntary nonsuit because his request for a continuance and motion to dismiss without prejudice was denied so as to permit review of trial court's order on appeal since plaintiff could have submitted to the court's ruling and proceeded to trial and in case of an adverse judgment could have appealed. *Halpern* v. *Gunn* (D.C. Mun. App. 1948, 57 A. 2d 741).

Where in an interpleader action, judgment was rendered on the counterclaim in favor of the plaintiff, such judgment is not a final and appealable one because it did not decide all issues between the parties since the main action remained pending and unheard. *Weiss* v. *Young* (D.C. Mun. App. 1949, 64 A. 2d 309).

Where a motion to set aside a judgment was not filed within the time limited by the court's rule, the court was without jurisdiction to grant such relief. *Mike's Mfg. Company* v. *Zimzoris* (D.C. Mun. App. 1949, 66 A. 2d 414).

Where defendant moved to set aside a judgment on the ground that, through inadvertence, defendant's counsel failed to appear to defend and defendant had a good defense, the granting or denial of the motion rested in the sound discretion of the trial court. *Madden* v. *Horigan* (D.C. Mun. App. 1949, 66 A. 2d 525).

Where a judgment previously entered by defendant is reversed without further order, the mandate to that effect does not preclude any other affirmative action unless specifically so directed by the appellate court. The lower court is free to make any other order or direction in further progress of the case not inconsistent with the appellate decision. *Pyramid National Van Lines, Inc.* v. *Goetze* (D.C. Mun. App. 1949, 66 A. 2d 693).

Generally, an order denying a motion for rehearing, a motion for new trial or other like order is not an appealable order. However, where it is obvious that the appeal was intended to be from the order granting judgment, and appellee concedes that, because the motion for rehearing extended the time for appealing, the notice was timely filed even as to that order; the notice may be treated as an appeal from the judgment. *Diatz* v. *Washington Technical School* (D.C. Mun. App. 1950, 73 A. 2d 227, rehearing denied 73 A. 2d 718).

Trial court had power to vacate judgment where, in execution or judgment, the marshal had taken funds from the garnishee and was prepared to deliver them to the plaintiff since vacating such judgment prevented delivery subject to future order of the court. *Bridgett* v. *Perpetual Building Association* (D.C. Mun. App. 1950, 75 A. 2d 780).

It was beyond the power of the trial court to set aside the judgment where the motion to vacate came more than three months after the entry of the judgment and hence was too late. *Breckenridge* v. *Mebane* and *Calvert Fire Insurance Company* v. *Mebane* (D.C. Mun. App. 1950, 75 A. 2d 441).

The imperative condition of equitable intervention in setting aside a judgment is that the party applying for it shall make it clearly apparent that he had a good defense to the action which, by fraud or accident, he was prevented from making, and also that there was neither fault nor negligence on his part. *Thomas* v. *Marvins Credit, Inc.* (D.C. Mun. App. 1950, 76 A. 2d 773).

A default judgment by the court upon an amended complaint not served upon the defendant, though erroneous, is not void. *Id.*

Motion for summary judgment cannot be granted if the record discloses the existence of a genuine and material factual issue. *Rosenberg* v. *Ichcovitz* (D.C. Mun. App. 1950, 72 A. 2d 466).

Allowance or refusal of a motion to set aside a default is within the sound discretion of trial court. *Huff* v. *Kraft* (D.C. Mun. App. 1949, 63 A. 2d 667).

Mere denial of a preliminary injunction is not a final order and does not dispose of a case on its merits unless the order possesses sufficient attributes of finality or is in a form of an interlocutory order from which appeal lies. *Levy* v. *Arsenault* (D.C. Mun. App. 1949, 63 A. 2d 671).

It is clear that orders staying proceedings are not appealable. However, the reviewability of a final judgment or order is not affected by any consideration of form and a holding by a court that it is without jurisdiction to try a case is obviously final in its effect. *Mindell* v. *Glenn* (D.C. Mun. App. 1949, 65 A. 2d 340, affirmed 74 A. 2d 835).

Party aggrieved

For purpose of this section providing that any party aggrieved by any final order or judgment of Juvenile Court of District of Columbia may appeal therefrom, government is a "party aggrieved" by order dismissing case. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

In proceeding by mother to have daughter committed to psychiatric school on ground that daughter was habitually beyond mother's control, daughter was the real party in interest and "party aggrieved" by order of commitment within this section providing that any "party aggrieved" by final order of Juvenile Court may appeal therefrom to the Municipal Court of Appeals. *In re Sippy* (D.C. Mun. App. 1953, 97 A. 2d 455).

Where landlord sued for possession of office occupied by tenant, and tenant opposed the action but sought no affirmative relief, tenant was not an "aggrieved party" so as to be entitled to appeal from denial of his motion to dismiss notwithstanding court in dismissing without prejudice did not sustain all of tenant's contentions. *Koehne* v. *Harvey* (D.C. Mun. App. 1944, 39 A. 2d 871).

The successful party below cannot appeal. *Id.*

Appellant cannot question a ruling made by trial court favorable to him. *Glassman* v. *Graver* (D.C. Mun. App. 1948, 56 A. 2d 160).

Persons entitled to appeal

Government could appeal, as of right, from order, entered without authority, vacating judgment of conviction. *District of Columbia* v. *M. F. Bosley* (D.C. Mun. App. 1961, 173 A. 2d 218).

In landlord's actions against tenant for possession of rented building, subtenant, who was not a party, was not represented by amicus curiae and could not appeal from judgment for landlord to complain that parties failed to carry out stipulation with amicus curiae respecting trial. *Klein* v. *Liss* (D.C. Mun. App. 1945, 43 A. 2d 757).

An amicus curiae cannot take over management or control of a case, and cannot except to rulings of court or take an appeal. *Id.*

An amicus curiae must take case as he finds it, with issues made by the principal parties, and cannot raise new issues not made by parties litigant. *Givens* v. *Goldstein* (D.C. Mun. App. 1947, 52 A. 2d 725).

The general rule is that a person in a representative capacity, when prosecuting or defending an appeal, should be properly described in that capacity, but such rule is subject to the limitation that a designation is sufficient where the records show the representative capacity of

the party, even if he is not so designated. *Niosi* v. *Aiello* (D.C. Mun. App. 1949, 69 A. 2d 57).

Postponement of time

A motion to vacate judgment postponed running of time for appeal until final action on the motion. *Ray* v. *Bruce* (D.C. Mun. App. 1943, 31 A. 2d 693).

Presumption

In absence of congressional regulation of relations between laundries and their customers in District of Columbia, Municipal Court of Appeals would not assume right to prescribe terms upon which they may contract, since determination of public policy is primarily a legislative matter. *Manhattan Co.* v. *Goldberg* (D.C. Mun. App. 1944, 38 A. 2d 172).

In considering correctness of verdict for buyer who sued for seller's breach of warranty, appellate court must assume the truth of buyer's testimony regarding alleged statement by seller's representative. *Mars* v. *Herman* (D.C. Mun. App. 1944, 37 A. 2d 351).

On appeal from judgment for plaintiff, evidence was accepted in light most favorable to plaintiff. *Shapiro* v. *Vautier* (D.C. Mun. App. 1944, 36 A. 2d 349).

In determining whether wife was entitled to payment under a separation agreement, appellate court would assume that trial court, in determining amount to award as alimony and counsel fees, was influenced by the surrounding circumstances presented by the pleadings and evidence. *Cooper* v. *Cooper* (D.C. Mun. App. 1944, 35 A. 2d 921).

Error will not be presumed on appeal and must be shown affirmatively by party asserting it. *Barrett* v. *Adkins Furniture Co.* (D.C. Mun. App. 1945, 43 A. 2d 44).

The Municipal Court of Appeals takes judicial notice that many hundreds of petitions for adjustment of rent have been filed with and decided by Administrator under §§ 45–1601 to 45–1611. *Gould* v. *Delsnider* (D.C. Mun. App. 1945, 42 A. 2d 140).

Discrepancies in plaintiff's testimony affected only weight of evidence, and reviewing court must assume that trial judge gave it such consideration as it deserved. *Heindrich* v. *Dimas-Aruti* (D.C. Mun. App. 1945, 42 A. 2d 138).

Judicial notice may not be extended to supply element of specific intent of depriving automobile owner of his property rights in mental processes of 3½-year-old child who entered unlocked automobile and caused it to start down hill. *Unkelsbee* v. *Homestead Fire Ins. Co. of Baltimore* (D.C. Mun. App. 1945, 41 A. 2d 168).

On plaintiff's appeal from trial court's decision on findings for defendant made by court sua sponte, plaintiff's evidence must be taken as true. *Merriam* v. *Sugrue* (D.C. Mun. App. 1945, 41 A. 2d 166).

Where trial court's charge was not included in record, Municipal Court of Appeals was required to assume that issues were properly submitted to jury. *Davis* v. *Bruno* (D.C. Mun. App. 1948, 57 A. 2d 828).

If a party has it within his power to produce witnesses whose testimony would elucidate transaction, the fact that he does not do it creates the presumption that the testimony, if produced, would be unfavorable. But failure to produce such evidence can always be explained. *Woolard* v. *District of Columbia* (D.C. Mun. App. 1949, 62 A. 2d 640).

There is a strong presumption in the constitutionality of a statute, but where Supreme Court has spoken and found a statute unconstitutional, the presumption should be to the contrary. *Henderson* v. *E Street Theatre Corporation* (D.C. Mun. App. 1949, 63 A. 2d 649).

Procedure

Judgment of corporation court of Virginia, based upon a judgment of the municipal court of the District, is not open to collateral attack, the court having jurisdiction. *Edward Thompson Co.* v. *Thomas* (1931, 49 F. 2d 500, 60 App. D.C. 118).

By the 1921 act, appeals from the municipal court to the Supreme Court were abolished and the authority to issue statutory writ of certiorari should be denied when writ of error is provided. *United States ex rel. Eure* v. *Borden* (1936, 80 F. 2d 527, 65 App. D.C. 84).

Trial court had the right to waive the presumption against the testimony of defendant, an interested party, and in its discretion to conclude that the presumption outweighed the evidentiary value of the testimony. *Koehne* v. *Price* (D.C. Mun. App. 1949, 68 A. 2d 806).

If the bailee fails to explain the damage, it leaves the trier of the facts free to draw an inference unfavorable to him upon the bailor's establishing the unexplained failure to deliver the goods safely. *Columbia Operating Corp.* v. *Kettler* (D.C. Mun. App. 1949, 67 A. 2d 267).

When a statutory presumption is met by some credible evidence, it becomes like an inference and when more than a single inference may be drawn from the evidence, then a question of fact is presented for jury determination. *Bill's Auto Rental, Inc.* v. *Bonded Taxi Company* (D.C. Mun. App. 1950, 72 A. 2d 254).

Purpose

In paternity suit, trial judge did not err in explaining to jurors the history and purpose of the act under which the proceedings were brought. *Ford* v. *District of Columbia* (D.C. Mun. App. 1954, 102 A. 2d 838).

Questions not raised below

In action between brokers for division of commission for sale of realty, contention urged by defendant for first time on appeal that plaintiff did not allege and prove that he was a duly licensed broker or salesman and that such failure was jurisdictional as relating to plaintiff's want of capacity to sue was unavailing for failure to raise contention in trial court. *McDevett* v. *Waple & James* (D.C. Mun. App. 1943, 34 A. 2d 39).

Counsel after gambling on jury's verdict and losing may not use motion for new trial as vehicle for asserting objections retroactively or for grounding an appeal on theory not presented during trial. *District Hauling & Construction Co.* v. *Argerakis* (D.C. Mun. App. 1943, 34 A. 2d 31).

Where defendant in automobile collision case made no motion for an instructed verdict and did not object to charge, questions as to sufficiency of evidence to support verdict and as to whether case was submitted on an erroneous theory of damages raised for first time in motion for new trial, could not be considered on appeal. *Id.*

Point which was not raised by the parties would not be considered on appeal. *Bedrosian* v. *Wong Kok Chung* (D.C. Mun. App. 1943, 33 A. 2d 811).

Questions neither raised nor considered in trial court and not presented or argued on appeal would not be passed on. *Kincade* v. *Wah* (D.C. Mun. App. 1944, 38 A. 2d 112).

The Municipal Court of Appeals cannot order reopening of case for consideration of point not made at trial in court below. *Group Health Ass'n* v. *Shepherd* (D.C. Mun. App. 1944, 37 A. 2d 749).

Where tenant holding over after expiration of lease did not challenge purchaser's title at trial of suit to recover possession of dwelling for personal use by purchaser as a residence nor object to plaintiff's testimony that she had purchased the dwelling or to various exhibits offered in support of such statements, tenant could not urge for the first time on appeal that plaintiff's deed should have been produced to prove ownership and that title of her grantor should have been established. *Miller* v. *Prophet* (D.C. Mun. App. 1944, 37 A. 2d 450).

A judgment should not be reversed and a new trial ordered to permit unsuccessful party to object to evidence received without objection at first trial or to try case upon some new and different theory. *Id.*

Objection, made for first time on appeal, that trial judge erred in causing or permitting trial to continue on without a recess past the dinner hour, was too late. *Shapiro* v. *Vautier* (D.C. Mun. App. 1944, 36 A. 2d 349).

Municipal Court of Appeals was not required to pass upon the validity of an interpretative order of the Administrator under the Emergency Rent Act, § 45–1601, et seq., where neither tenant nor landlord had sought a court review of such order. *Hall* v. *Henry J. Robb, Inc.* (D.C. Mun. App. 1944, 34 A. 2d 863).

The Municipal Court of Appeals for the District of Columbia must limit review to appealable orders or judgments though no objection is made. *Atlas Van Lines* v. *Austin* (D.C. Mun. App. 1945, 44 A. 2d 696).

Where appellant acquiesced in ruling respecting interrogatories, appellant could not thereafter complain that

there was an inconsistency because of jury's answer to an interrogatory which was mere surplusage. *Henderson* v. *Allison* (D.C. Mun. App. 1945, 44 A. 2d 220).

An objection to form of verdict which was not presented in trial court could not be advanced in appellate court. *Id.*

Where litigant acquiesced in charge when it was given, correctness of charge could not be questioned for first time on appeal. *Watwood* v. *Potomac Chemical Co.* (D.C. Mun. App. 1945, 42 A. 728).

Where plaintiff's counterclaim in amount of $3,000 was beyond jurisdiction of small claims branch of municipal court, Municipal Court of Appeals took cognizance of absence of jurisdiction even though question had not been raised before it or in the trial court and reversed case with instructions to vacate judgment and strike the counterclaim. *1425 F St. Corp.* v. *Jardin* (D.C. Mun. App. 1947, 53 A. 2d 278).

Where defendants did not allege contributory negligence and did not request trial court to instruct jury on that subject, assignment that trial court erred in refusing to sustain contention of defendants that evidence conclusively showed that any damage suffered by plaintiffs was due entirely to negligence of plaintiff came too late. *Gittleson* v. *Robinson* (D.C. Mun. App. 1948, 61 A. 2d 635).

An assignment of error in refusing to allow plaintiff to amend complaint cannot be considered, where record shows neither a request by plaintiff to amend nor denial by court of such request. *Higgins* v. *Dail* (D.C. Mun. App. 1948, 61 A. 2d 38).

Where defendant made no request for instructions and, in response to trial judge's inquiry upon completion of charge, did not object to those given, she could not complain on appeal of the instructions given. *Snyder* v. *Thorniley* (D.C. Mun. App. 1948, 62 A. 2d 316).

Where appellant made no request in the trial court for leave to amend, it cannot be said that the trial court was in error in not granting that which was not asked. *Watwood* v. *Credit Bureau, Inc.* (D.C. Mun. App. 1949, 68 A. 2d 905).

Counsel at jury trials must make their objections known while there is still opportunity for the trial judge to correct any apparent error. *Brown* v. *Haas* (D.C. Mun. App. 1950, 72 A. 2d 39).

Matters not raised and passed upon in the trial court afford no basis for review on appeal. *Brooks* v. *Jensen* (D.C. Mun. App. 1950, 73 A. 2d 32).

Where the record nowhere shows that the point was made before or at the time of trial, but seems to have been first advanced in the motion for new trial, it cannot be considered on appeal. *Glennon* v. *Butler* (D.C. Mun. App. 1949, 66 A. 2d 519).

Where appellant's answer did not raise an issue and no evidence in respect thereof is offered at the trial, such issue could not be raised upon appeal. *Dawson* v. *Fox* (D.C. Mun. App. 1949, 64 A. 2d 162).

The rule that points not raised in a trial court will not be considered on appeal is subject to the equally well recognized rule that if error vital to a defendant has been committed, it may be noted and corrected on appeal, notwithstanding the absence of objection and exception in the trial court. *Varrella* v. *United States* (D.C. Mun. App. 1949, 64 A. 2d 310).

It is fundamental that appellate courts sit to correct errors of trial courts, and that, save in exceptional cases, questions not presented to the trial court will not be considered on appeal. *Germaine* v. *Cramer* (D.C. Mun. App. 1949, 65 A. 2d 573).

Counsel cannot be permitted to make the motion for new trial a vehicle for asserting objections retroactively, or for grounding an appeal on a theory never presented during the trial. *Id.*

Where the defense of the statute of limitations was not made at the trial and appeared to have been raised for the first time in the motion for new trial, such defense was asserted too late. *Turner* v. *Bowman* (D.C. Mun. App. 1949, 68 A. 2d 231).

Questions of fact

Only in exceptional cases will questions of negligence, contributory negligence and proximate cause pass from the realm of fact to one of law. Unless the evidence is so clear and undisputed that fair-minded men can draw only one conclusion, the questions are factual and not legal. *Lewis* v. *Shiffers* (D.C. Mun. App. 1949, 67 A. 2d 269).

In action for breach of contract for conveyance of realty, questions of good faith and collusive intent are questions of fact requiring submission to the jury. *Buchanan* v. *Farmer* (D.C. Mun. App. 1948, 62 A. 2d 367).

If a conflict appears as to a material fact, the summary procedures does not apply unless the evidence on one or the other hand is too incredible to be accepted by reasonable minds or is without legal probative force even if true. *Messall* v. *Efron* (D.C. Mun. App. 1950, 72 A. 2d 694).

Factual issues are not to be tried or resolved by summary judgment procedure. Only the existence of a genuine and material factual issue is to be determined and once it is determined that there is such an issue, summary judgment may not be granted. *Id.*

Where broker contended that he secured suitable accommodations and seller arbitrarily refused to accept such accommodations a question of fact was presented. *Murphy* v. *O'Donnell* (D.C. Mun. App. 1949, 63 A. 2d 340).

Record

Where there was nothing in record on appeal by motorist from order of the Board of Commissioners of the District of Columbia sustaining order suspending motor vehicle operator's permit of motorist, to support motorist's contention that prior to his election to forfeit collateral posted by him when he was charged with backing without caution and with being involved in an accident involving a pedestrian, there was a mutual understanding between him and office of Corporation Counsel that charge of an accident involving a pedestrian would be withdrawn, Municipal Court of Appeals for the District of Columbia could not consider that contention on appeal. *Lambert* v. *Board of Commissioners of District of Columbia* (D.C. Mun. App. 1955, 116 A. 2d 926).

Where affidavits submitted to motions judge presented issue of fact as to defendant's availability for service of process and as to plaintiff's diligence in effecting such service, appellate court could not, in absence of record of oral testimony produced at trial on merits, hold that there had been an abuse of discretion in trial court's failure to sustain defenses, that claim was barred by limitations or by failure to prosecute, when such defenses were raised by motion to dismiss and at trial on merits. *Slater* v. *Cannon* (D.C. Mun. App. 1952, 93 A. 2d 92).

The reviewing court could not consider plaintiff's objections or particulars of objections to statement of proceedings and evidence or objections to substituted statement of proceedings and evidence, since they had no place in record and court was required to base its decision upon statement of proceedings and evidence as approved by trial judge. *District Hauling & Construction Co.* v. *Argerakis* (D.C. Mun. App. 1943, 34 A. 2d 31).

On review of ruling on motion for instructed verdict, court will not consider questions of mere weight or credibility of evidence, but will decide only its sufficiency to make a case for jury. *Yellow Cab Co. of D.C.* v. *Griffith* (D.C. Mun. App. 1945, 40 A. 2d 340).

Where, at time statement of evidence was prepared and approved, there was before trial court only specific assignment of error relating to admission of evidence, but thereafter supplemental statement of errors was filed claiming that verdict was contrary to the evidence and contrary to the law, appellate court would confine review to the specific error asserted in admission of evidence. *Lee* v. *United States* (D.C. Mun. App. 1945, 40 A. 2d 250).

Record failed to sustain defendants' contention that they were denied the privilege of argument of the case on the merits. *Zis* v. *Herman* (D.C. Mun. App. 1944, 39 A. 2d 65).

Where judgment, under rule that record imports absolute verity, would not have been disturbed upon showing made if attacked directly, judgment could not be disturbed on collateral attack predicated on errors in record. *Scholl* v. *Tibbs* (D.C. Mun. App. 1944, 36 A. 2d 352).

Appellate court could not hold as matter of law that trial court's refusal to compel streetcar company to produce motorman's report of accident in action against company for injuries sustained by passenger was not

prejudicial to passenger, where contents of report were not disclosed. *Wolff* v. *Capital Transit Co.* (D.C. Mun. App. 1944, 35 A. 2d 454).

Where statement of proceedings and evidence did not set out substance of plaintiff's opening statement but on argument on appeal counsel had stenographic transcript thereof at counsel table and at instance of court filed it with clerk, it was properly before court for consideration. *Horne* v. *Ostmann* (D.C. Mun. App. 1944, 35 A. 2d 174).

In detinue in 1943 for household goods conditionally sold in 1934, where defendant pleaded limitations and discharge in bankruptcy in 1941, but record did not show terms of contract, price of goods, payments made, or dates when defendant abandoned part of goods, record was so inadequate that court could not say there was error in judgment for plaintiff, and hence judgment must be affirmed. *Barrett* v. *Adkins Furniture Co.* (D.C. Mun. App. 1945, 43 A. 2d 44).

Appellate court may not reweigh conflicting evidence or override findings, except where it clearly appears they are manifestly wrong. *Pegues* v. *Wray* (D.C. Mun. App. 1945, 41 A. 2d 299).

Municipal Court of Appeals must accept record as it comes to court and cannot attempt to exercise functions of trial judge or reconstruct happenings at trial. *Levy* v. *Bryce* (D.C. Mun. App. 1946, 46 A. 2d 765).

The Municipal Court of Appeals could not consider as part of the record a birth certificate which was attached to defendant's brief on appeal, but was not in evidence in trial court. *Gray* v. *Droze* (D.C. Mun. App. 1947, 55 A. 2d 340).

Where trial judge rendered no formal opinion upon motion of defendant for jury trial but in a later case, when the same question was before the same judge, he rendered an exhaustive opinion, in which he recited his course of action in the first case, the Court of Appeals could not consider the opinion as part of the record in the first case but could consider it as a statement of the court's understanding of the law upon the point. *Kass* v. *Baskin* (1948, 164 F. 2d 513, 82 U.S. App. D.C. 385).

In determining meaning and effect of municipal court's finding that plaintiff failed to prove amount of damages to which he was entitled, but might supply sufficient evidence to substantiate his claim on new trial, appellate court is confined to record on appeal from subsequent order denying plaintiff's motion to reopen and retry case after dismissal thereof without prejudice. *Wade* v. *Union Storage & Transfer Co.* (D.C. Mun. App. 1948, 58 A. 2d 493).

Copies of a contract and a release appearing apparently as exhibits to a pleading, and copies of the contract and of a chattel mortgage attached to brief, could not be considered by reviewing court where it did not appear in the record that such papers were received in evidence. *Fabrizio* v. *Anderson* (D.C. Mun. App. 1948, 62 A. 2d 314).

Where a note appended to the statement of proceedings and evidence by trial court was in substance nothing more than a note addressed to appellate court reciting and interpreting some, but not necessarily all, of the reasoning process of the trial court, it is not a part of the record in the case below nor a part of the statement of the proceedings and evidence. Such a note has no place in the record on appeal and thus will be disregarded. *Martin* v. *Schlein* (D.C. Mun. App. 1950, 71 A. 2d 614).

Where assignment of error relates to the trial court's statement in the course of the trial that the interpretation of the contract would be left to the jury, court cannot say that this was error when the record does not make plain what the court meant by this ruling. Since the record does not contain the charge to the jury, it is impossible to tell whether the question was left to the jury, or, if so, in what manner this was done. *Ellis* v. *Morgan* (D.C. Mun. App. 1949, 65 A. 2d 797).

Where the record does not contain a transcript of testimony or a statement of proceedings in evidence or an agreed statement on appeal, appeal must be dismissed since an appeal must be decided on the record and not on the briefs. *Jaffe* v. *Sterrett Operating Services, Inc.* (D.C. Mun. App. 1950, 76 A. 2d 780).

Remand

The remand for further proceedings is always made when the record does not enable the reviewing court to determine the rights for the parties. *Price* v. *Daime* (D.C. Mun. App. 1950, 71 A. 2d 608).

Where a judgment previously entered for a defendant is reversed without further order, the mandate to that effect does not preclude any other affirmative action unless specifically directed by the Appellate Court. *Id.*

Remarks of court

Where claimant assigns as error, alleged statements made by trial court which he believed reflected on him as a lawyer, but which were made out of the presence of the jury and could not have affected the jury, it was harmless; moreover, since the case properly terminated in a directed verdict, it is doubly clear that even if the remarks were erroneous they were not prejudicial. *Glover* v. *Jewish War Veterans of United States* (D.C. Mun. App. 1949, 68 A. 2d 233).

Remittitur

Urging an appeal that appellate court should reinstate the first verdict and order such remittitur as it deemed proper to remove the excess of the verdict is without merit. In federal jurisdictions, the practice seems to be limited to contract cases and the like where the excess amount of the verdict can be fairly well determined. No case in the federal jurisdiction has been called to court's attention where an appellate court undertook to cure by remittitur an excessive verdict rendered in a court action for unliquidated damages. *Munsey* v. *Safeway Stores* (D.C. Mun. App. 1949, 65 A. 2d 598).

Reversal

Where overtaking streetcar struck automobile which had been stopped because way was obstructed by motorist making left turn, in action against streetcar company for damage to the overtaken automobile finding that streetcar was not negligently operated was plainly wrong, requiring reversal of judgment. *MacDonald, to Use of Emmco Ins. Co.* v. *Capital Transit Co.* (D.C. Mun. App. 1943, 31 A. 2d 862).

Where under evidence nominal damages only could be allowed, failure to award such damages was no ground for reversal. *Lee* v. *Dunbar* (D.C. Mun. App. 1944, 37 A. 2d 178).

A reversal benefits only those who have appealed. *Gibson* v. *Industrial Bank of Washington* (D.C. Mun. App. 1944, 36 A. 2d 62).

Statement of proceedings and evidence is not necessary on appeal where a question of law arises upon the face of the record, but where parties are properly before the court, pleadings state a case, and judgment conforms to pleadings, matters which arise during progress of trial cannot be reviewed unless record includes such portion of the evidence and proceedings as must be considered in determining whether trial court's rulings were correct. *Moncure* v. *Curry* (D.C. Mun. App. 1945, 42 A. 2d 143).

Exclusion of testimony of a witness who did not hear the entire conversation was reversible error, where it appeared that such testimony, according to the proffer of proof went to the heart of the controversy and the witness should have been permitted to testify as to how much of the conversation he heard. *Fowel* v. *Wood* (D.C. Mun. App. 1949, 62 A. 2d 636).

Question of whether accident was proximately caused by negligence of appellee's driver, and of appellee's contributory negligence, was sufficiently in issue and directed verdict may not be granted in a case of this nature unless reasonable men could arrive at but one verdict. *Wohlstetter* v. *Capital Transit Co.* (D.C. Mun. App. 1949, 62 A. 2d 797).

Ordinarily appellate court must accept as correct the statement properly settled and approved by a trial judge. Appeals court cannot undertake to settle disputes between court and counsel as to what happened in court below. However, where there are inadequacies and inconsistencies plainly apparent in the transcript and where the judge himself acknowledged on the record that he has deleted substantial portions of defendant's evidence on the merits of the case from the narrative statement, the defendant is entitled to a reversal. *Smith* v. *District of Columbia* (D.C. Mun. App. 1950, 71 A. 2d 766).

The Court of Appeals is reluctant to overrule a decision of a Trial Court resting in the field of discretion but where it interferes with a trial on the merits, slight abuse of discretion in refusing to set aside a default judgment is sufficient to justify a reversal of the order. *Manos* v. *Fickenscher* (D.C. Mun. App. 1949, 62 A. 2d 791).

It was reversible error to exclude entries made in the accounts receivable ledger regarding credit transactions of a client to prove that such client was operating as a partnership since such ledger sheet was admissible under the Federal Shop Book Rule as a record made in the regular course of business. *Orndorff* v. *Cohen* (D.C. Mun. App. 1949, 62 A. 2d 794).

Right to counsel

Where prosecution involves a matter of serious moral turpitude but there is no appeal as a matter of right to Municipal Court of Appeals because penalty imposed is less than $50, indigent defendant is entitled to aid of counsel in preparing application for leave to appeal. *Wildeblood* v. *United States* (1959, 273 F. 2d 73, 106 U.S. App. D.C. 338).

—— Nonsuit

Under rule 37(a) of the Municipal Court, plaintiffs have lost their right to a nonsuit or voluntary dismissal after defendant's answer has been filed, since beyond that point an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. *Mercer* v. *Equitable Life Insurance Society* (D.C. Mun. App. 1949, 65 A. 2d 207).

Scope of review

It is not function of Municipal Court of Appeals for the District of Columbia to determine whether finding of trial court on an issue of fact is right or to justify the finding. *T. L. Ashley* v. *M. M. Ashley* (D.C. Mun. App. 1962, 179 A. 2d 905).

Whether husband was father of child born to his wife after they had been separated and lived apart for several years was an issue depending essentially on credibility to be accorded to parties and was a matter entirely within province of trial court. *Id.*

In action to recover balance due under rent assignment contract, where issue was whether defendant or corporation of which he was an officer was liable, and evidence was such that either one of the two different conclusions might reasonably have been drawn from it, Municipal Court of Appeals did not have appellate jurisdiction to substitute its own findings and to reverse judgment for defendant. *Nolan* v. *Werth* (1944, 142 F. 2d 9, 79 U.S. App. D.C. 33).

Where evidence is such that either one of two different conclusions might reasonably be drawn from it, the decision is for the trial court and its judgment must stand, and appellate court may not reweigh the evidence or override the findings, except where it clearly appears that they are manifestly wrong. *Id.*

Board of Examiners and Registrars of Architects was not bound to accept registrant's testimony that he did not know his Maryland registration had been revoked when he gave negative response to question as to whether any of his registration certificates had ever been revoked; and, on record presented, Board could reasonably find that his response had been false. *Stone* v. *Board of Examiners and Registrars of Architects* (D.C. Mun. App. 1956, 126 A. 2d 157).

The Municipal Court of Appeals cannot read out of an appeal case extensive testimony offered by plaintiff or assume that only defendant's evidence is worthy of belief. *Keefe* v. *Moskin Stores* (D.C. Mun. App. 1953, 95 A. 2d 336).

The District of Columbia Municipal Court of Appeals cannot pass on credibility of witnesses nor weigh their testimony. *Gensberg* v. *Kritt* (D.C. Mun. App. 1951, 83 A. 2d 588).

Tenants' surrender of possession constituted a voluntary compliance with the judgment for landlord in landlord and tenant proceeding, rendering case moot and leaving no question for determination on appeal. *Baugh* v. *Young* (D.C. Mun. App. 1944, 39 A. 2d 478).

The Municipal Court of Appeals cannot weigh evidence or pass upon the credibility of witnesses or override trial court findings which are supported by substantial evidence. *Zis* v. *Herman* (D.C. Mun. App. 1944, 39 A. 2d 65). See, also, *Rossiter* v. *National Sav. & Trust Co.* (D.C. Mun. App. 1946, 46 A. 2d 540).

Where evidence is such that either one of two different conclusions might reasonably have been drawn from it, the decision is for the Municipal Court, and the Municipal Court of Appeals cannot reweigh the evidence or override findings of municipal Court unless manifestly wrong. *Weimann* v. *Sheppard* (D.C. Mun. App. 1944, 37 A. 2d 847).

In broker's action for commissions, where the evidence was conflicting and would support a judgment for either party, the Municipal Court of Appeals could not override decision of Municipal Court who saw and heard the witnesses, although more witnesses testified for defendants than for plaintiff. *Id.*

The Municipal Court of Appeals for the District of Columbia cannot act as triers of fact, but must leave to the trial court questions of weight of evidence and credibility of witnesses. *Yellow Cab Co. of District of Columbia, Inc.* v. *Sutton* (D.C. Mun. App. 1944, 37 A. 2d 655).

An appellate court may not reweigh the evidence or override the trial court's findings except where it clearly appears they are manifestly wrong. *Id.*

Municipal Court of Appeals, on reviewing a case, does not try the facts and will not choose among uncertain and conflicting inferences or direct contradictions in the evidence. *Meade* v. *Kane Transfer Co.* (D.C. Mun. App. 1944, 36 A. 2d 567.)

A judgment as result of an erroneous exercise of power is reversible only by an appellate court, while a judgment as result of usurpation of power may be declared a nullity collaterally. *Scholl* v. *Tibbs* (D.C. Mun. App. 1944, 36 A. 2d 352).

Where separate actions by depositor's widow and brother against bank were consolidated for trial, on brother's appeal from judgment for bank, merely on basis of such consolidation, Municipal Court of Appeals could not review judgment for widow against bank from which bank did not appeal. *Gibson* v. *Industrial Bank of Washington* (D.C. Mun. App. 1944, 36 A. 2d 62).

In determining whether there was probable cause justifying issuance of a warrant of arrest in a disorderly house case, reviewing court was not called upon to determine whether the offense charged had in fact been committed but was concerned only with question whether the affiant had reasonable ground at the time of the affidavit and issuance of the warrant for belief that the law was being violated. *United States* v. *Basiliko* (D.C. Mun. App. 1944, 35 A. 2d 185).

The District of Columbia Municipal Court of Appeals cannot reweigh evidence to resolve doubts arising from question of credibility of witnesses. *Perlman* v. *Chal-Bro., Inc.* (D.C. Mun. App. 1945, 43 A. 2d 755).

Where evidence was such that in statutory proceeding for trial of right of property either one of two different conclusions might reasonably be drawn therefrom, trial court's judgment could not be disturbed by Municipal Court of Appeals. *Id.*

On appeal from order committing infant to National Training School for Boys until 21 years of age, the issue was whether there was sufficient evidence to support a finding that the boy's welfare or the safety and protection of the public required removal from the home of his parents. *In re Kroll* (D.C. Mun. App. 1945, 43 A. 2d 706).

The Municipal Court of Appeals cannot reweigh evidence or override findings. *Lindquist* v. *Steele* (D.C. Mun. App. 1945, 42 A. 2d 925).

Municipal Court of Appeals cannot weigh the evidence, and in jury cases is limited in its review to matters of law. *Watwood* v. *Potomac Chemical Co.* (D.C. Mun. App. 1945, 42 A. 2d 728).

The decision of Municipal Court on conflicting evidence cannot be disturbed. *Imhoff* v. *Walker* (D.C. Mun. App. 1947, 51 A. 2d 309).

On appeal from municipal court's order denying plaintiffs' motion to reopen and retry case after dismissal thereof without prejudice pursuant to finding that plaintiffs failed to prove amount of damages to which they were entitled, but might supply sufficient evidence to substantiate their claim on new trial, appellate court need

not determine whether record discloses adequate evidence of damages. *Wade* v. *Union Storage & Transfer Co.* (D.C. Mun. App. 1948, 58 A. 2d 493).

Defendant's oral statement of intention to appeal in open court within time limited by Municipal Court Rule 27(b) for filing notice of intention to appeal would not be construed as notice of intention to appeal from sentences imposed on pleas of guilty in addition to sentences imposed on pleas of not guilty. *Slaughter* v. *District of Columbia* (D.C. Mun. App. 1948, 58 A. 2d 309).

Qualification of an expert is primarily for trial court and will not ordinarily be reviewed on appeal, but where facts are not in dispute, a reviewable question of law is presented. *Fraser* v. *Crounse* (D.C. Mun. App. 1948, 56 A. 2d 54).

From a study of the record, appellate court was satisfied it had no right to say that the judgment below was plainly wrong, for it was obvious that evidence supported such judgment. Since this is the standard fixed by the statute creating the court, rule must be followed and appellate court had no right to reweigh evidence or to override findings of the trial court. *Watwood* v. *Bradford* (D.C. Mun. App. 1950, 72 A. 2d 41).

Appellate court unable to say as matter of law that trial court, which tried the case without a jury, was plainly wrong in holding that the accident was caused by the negligence of defendant or his employee and that plaintiff was not guilty of contributory negligence. While court might have reached a contrary conclusion had it been the triers of the facts, appellate court could not say that the conclusion of the trial court was not supported by substantial evidence. *Columbia Operating Corp.* v. *Kettler* (D.C. Mun. App. 1949, 67 A. 2d 267).

An argument that a verdict is not supported by the evidence raises no question for an appellate court when it brings up for review no ruling by the trial court. As defendants did not object to the case going to the jury or to the instructions under which it was submitted, they cannot now assert that there was no case for the jury's consideration or that the jury should have been instructed otherwise. *Johnson* v. *Kupper* (D.C. Mun. App. 1949, 67 A. 2d 265).

One cannot take his chance on a favorable verdict, reserving a right to impeach it if it happens to go the other way. Where the point now made was raised in the motion for a new trial, such motion cannot be used as a vehicle for asserting objections retroactively or for grounding an appeal on a theory not advanced at trial. *Id.*

Appellant's criticism of the method of computing interest adopted by the judge is unfounded, where such method was more favorable to appellant than the method for which his counsel contends. *Sloan* v. *Sloan* (D.C. Mun. App. 1949, 66 A. 2d 799).

Review by this court is limited to final orders or judgments and interlocutory orders whereby the possession of property is changed or affected, and a stay order was not final because it did not determine the merits of the controversy. *Bradley* v. *Triplex Shoe Company* (D.C. Mun. App. 1949, 66 A. 2d 208).

The rule is well established that where no controversy remains except as to costs, an appellate court will not pass upon the merits. *Holmes* v. *Floyd E. Davis Company* (D.C. Mun. App. 1949, 66 A. 2d 212).

If counsel had other questions he wished to ask witnesses, or another line of inquiry he wished to pursue, he should have indicated to the trial court the nature of the questions or inquiry in order that the court make a specific ruling. In the absence of such ruling, there is no showing of prejudicial error. *Munsey* v. *Safeway Stores* (D.C. Mun. App. 1949, 65 A. 2d 598).

On the merits there was ample evidence to support the general finding of the trial court and therefore trial court was correct in making no ruling as to the applicability of the principle of res ipsa loquitur. *Endy* v. *Baltimore and Ohio Railroad Company* (D.C. Mun. App. 1950, 73 A. 2d 514).

The rule is that the inquirying party is concluded by the witness' answer when cross-examination relates to a matter collateral to the issue, and he may not later rebut it for purposes of impeachment. The test of whether or not a matter of fact inquired of in cross-examination is collateral is: Would the cross-examining party be entitled to prove it as a part of his case? If so, it is not collateral, otherwise it is. *Kelly* v. *United States* (D.C. Mun. App. 1950, 73 A. 2d 232).

Trial Court's finding of fact is conclusive on this appeal in view of conflicting evidence, but it will not be conclusive in the new trial which will be necessary because of an error as to a matter of law. *Keith* v. *Berry* (D.C. Mun. App. 1949, 64 A. 2d 300).

Where no showing of fraud, duress, or mistake is made at the trial, courts have no right to relieve parties to contracts merely because certain provisions may operate disadvantageously to them. *Simms* v. *Bovee* (D.C. Mun. App. 1949, 68 A. 2d 800).

Where the parties are properly before the court, and pleadings state a cause of action, and the trial court's judgment conforms to the pleadings, it must be assumed, in the absence of a statement of proceedings and evidence, that the evidence presented was sufficient to support the verdict and judgment. *Wilkins* v. *Woodruff* (D.C. Mun. App. 1950, 74 A. 2d 59).

The finality of an order depends not upon its name, its propriety or its normal function, but upon whether it disposes of the whole case on its merits so that nothing remains to be done except execution of a judgment or decree. *Levy* v. *Arsenault* (D.C. Mun. App. 1949, 63 A. 2d 671).

Appellate court has no power to weigh the evidence and therefore cannot consider that the verdict was contrary to the evidence or weight of the evidence. *Hooper* v. *Smith* (D.C. Mun. App. 1950, 72 A. 2d 466).

Action on a discretionary matter, such as motion for continuance as a result of illness, is reversible where the error in its exercise is plainly shown, and worked material hardship and injustice. *Etty* v. *Middleton* (D.C. Mun. App. 1948, 62 A. 2d 371).

Where purchaser sought no judgment against the third party defendant and broker, the broker could not appeal from the judgment against the seller. Therefore on appeal from the judgment of the seller against the broker, the court has no authority to review the judgment of the purchaser against the seller from which no appeal was taken. *Murphy* v. *O'Donnell* (D.C. Mun. App. 1949, 63 A. 2d 340).

Jurisdiction of the subject matter may neither be assumed by a court nor conferred upon it by consent or silence, and objection thereto may be raised at any stage of the proceedings or upon appeal sua sponte. *Henderson* v. *E Street Theatre Corporation* (D.C. Mun. App. 1949, 63 A. 2d 649).

Small claims court appeals

Review of a judgment of the Small Court Branch of the Municipal Court for the District of Columbia may be had only by the allowance by the Municipal Court of Appeals of an application for appeal. *Marvins Credit, Inc.* v. *General Motors Corp.* (D.C. Mun. App. 1956, 119 A. 2d 447).

Statement of proceedings and evidence

The reviewing court cannot decide disagreements between trial court and counsel as to occurrences at trial, but must generally accept as correct the statement of proceedings and evidence, properly settled and approved by trial judge. *District Hauling & Construction Co.* v. *Argerakis* (D.C. Mun. App. 1943, 34 A. 2d 31).

An appeal from conviction was not dismissible because notice of appeal was prematurely filed before motion for new trial was disposed of, where the motion was thereafter overruled and appellant filed a statement of errors claimed which assigned as one error the denial of the motion. *Hamilton* v. *United States* (1944, 140 F. 2d 679, 78 U.S. App. D.C. 316).

When statement of proceedings and evidence is submitted to trial court, the court must approve statement if accurate or, if not, must assist in making it accurately reflect the trial proceedings, and should not approve an incomplete or inaccurate statement. *Barrett* v. *Adkins Furniture Co.* (D.C. Mun. App. 1945, 43 A. 2d 44).

Appellate court could not pass on alleged error of trial court in holding that evidence did not establish the authority of an agent in absence of a statement of proceedings and evidence. *Moncure* v. *Curry* (D.C. Mun. App. 1945, 42 A. 2d 143).

District Court of Appeals cannot decide cases on basis of disputed facts as they appear in briefs of the parties

but must be governed by recitals in statement of proceedings and evidence approved by trial court. *King* v. *McKnight* (D.C. Mun. App. 1948, 61 A. 2d 714).

Where appellant apparently had a stenographic report made of evidence at trial in municipal court but did not bring it before reviewing court as permitted by rules, reviewing court was required to rely on statement of proceedings and evidence certified by trial judge. *De Bobula* v. *Winston* (D.C. Mun. App. 1948, 57 A. 2d 742).

Where the record is not a stenographic transcript of testimony but is a narrative statement of proceedings and evidence approved by the trial court, appellate court and the parties are bound by that statement. Counsel has no right and ought not to attempt to supplement or contradict the record by statements in a brief. *Bovello* v. *Falvey Granite Co.* (D.C. Mun. App. 1950, 71 A. 2d 536).

The contention that the trial court erred in not granting new trial on account of newly discovered evidence is without foundation where the only reference to such evidence is in the statement made in the motion for new trial. This is not sufficient to justify trial court in granting new trial and certainly does not warrant appellate court in so holding. *Turner* v. *Bowman* (D.C. Mun. App. 1949, 68 A. 2d 231).

A transcript of the proceedings below or a statement of proceedings and evidence are not required where an error of law is shown to exist upon the face of the record. *Mindell* v. *Glenn* (D.C. Mun. App. 1949, 65 A. 2d 340, affirmed 74 A. 2d 835).

Facts agreed to by the petitioner's counsel, which did not appear in the examiner's statement of evidence or any other evidentiary form in the record and bearing no approval or certification of the rent administrator, are not part of the record and cannot be considered on appeal. *Bailey* v. *Maple* (D.C. Mun. App. 1949, 63 A. 2d 333).

Sufficiency of evidence

Conclusion of trial judge sitting without jury that considertaion for note was discharge of a valid debt owed by maker's brother and not duress and fear was neither plainly wrong nor without evidence to support it. *J. K. Morgan* v. *G. Gilmer* (D.C. App. 1964, 200 A. 2d 83).

Evidence was sufficient to sustain revocation of real estate broker's license for 90 days for substantial misrepresentation for failing within a reasonable time to account for or to remit money, valuable documents, or other property coming into his possession which belonged to others, and for fraudulent and dishonest dealing. *Eiland* v. *Ahearn et al., etc.* (D.C. Mun. App. 1959, 153 A. 2d 312).

Summary judgment

In an action for malicious prosecution, even if supporting affidavits are true and complete statements relating to defendant's connection with the criminal proceeding, it may be that plaintiff has no cause of action, but on motion for summary judgment, court cannot indulge in such an assumption. Moreover, a party cannot be compelled to try his case on affidavits without the benefit of cross-examinations. *Milstead* v. *W. P. Ballard* and *Company, Inc.* (D.C. Mun. App. 1950, 76 A. 2d 589).

Supersedes bond

In action to recover rented premises for breach of condition, failure of tenant to furnish a supersedeas bond did not waive the right of appeal. *Quick* v. *Paregol* (D.C. Mun. App. 1948, 61 A. 2d 407).

Suspension of sentence, appeal after

Defendant convicted of indecent assault had a right of appeal notwithstanding that imposition of sentence was suspended and that defendant was required to give his personal recognizance or bond not to repeat the offense. *Thomas* v. *United States* (D.C. Mun. App. 1957, 129 A. 2d 852).

Defendant who was convicted of indecent assault and whose sentence was suspended with requirement that defendant give his personal recognizance or bond not to repeat the offense could appeal as a matter of right rather than by application for appeal, notwithstanding this section providing that where penalty imposed is less than $50 review shall be by application. *Id.*

Third party practice

Where third party defendants were not served with notices of the motion for summary judgment, such a defendant was deprived of no rights by such failure to serve notice and cannot complain; and court properly exercised its discretion in passing on the motion. *Schwartz* v. *Sandidge* (D.C. Mun. App. 1949, 63 A. 2d 869).

Time for appeal

The time in which to appeal from an order of the Juvenile Court commences to run anew each time the court exercises its continuing jurisdiction and renders what is up to that point, barring the granting of a new petition by an interested party, a final order. *In the Matter of Cecelia Lem* (D.C. Mun. App. 1960, 164 A. 2d 345).

All that is required on an appeal from a Juvenile Court order is that the party aggrieved appeal within the time allowed from an order which purports to be final. *Id.*

Where a mother's motion for rehearing in regard to custody of her child presented new material for the court's consideration which had not been before it previously, the court properly exercised its continuing jurisdiction, and mere fact that the court refused to amend a previous order did not mean that the time to appeal commenced to run from the date of the previous order, but rather the time in which the appeal commenced to run was from the date of denial of the mother's motion for rehearing. *Id.*

The time for appeal commenced to run from denial of defendants' motion for rehearing of their motion to vacate a judgment taken against them without service of process or appearance by them, and the filing of a motion to reconsider denial of the motion for rehearing did not stop the running of such time. *De Foe* v. *National Capital Bank of Washington* (D.C. Mun. App. 1952, 90 A. 2d 242).

An order denying motion to set aside judgment was not appealable where the motion was filed more than two months after the judgment and the appeal was taken more than four months after the judgment. *Union Provision & Distributing Corp.* v. *Thomas J. Fisher & Co.* (D.C. Mun. App. 1946, 49 A. 2d 85).

The reviewing court cannot extend time for appeal from Municipal Court beyond 10 days after judgment. *Brooks* v. *Trigg* (D.C. Mun. App. 1947, 51 A. 2d 302).

Where appeal on face of record appeared to be too late but trial court certified a supplemental record showing that on appellant's motion to correct the record by having it show that judgment purporting to be entered on certain date was not in fact entered until a subsequent date, trial court found that date of entry of judgment was within 10 days of filing of notice of appeal, appeal would not be dismissed. *Corbett* v. *Urciolo* (D.C. Mun. App. 1947, 54 A. 2d 577).

The time for filing notice of appeal is jurisdictional and cannot be extended by trial or appellate court. *Id.*

A motion, filed long after expiration of time for appeal from judgment, to strike or vacate judgment, must be considered as unseasonably filed and treated as collateral attack on judgment. *Wade* v. *Union Storage & Transfer Co.* (D.C. Mun. App. 1948, 58 A. 2d 493). See, also, *Slaughter* v. *District of Columbia* (D.C. Mun. App. 1948, 58 A. 2d 309, 60 A. 2d 700, remanded on other grounds 172 F. 2d 281, 84 U.S. App. D.C. 232, certiorari denied 70 S. Ct. 135, 338 U.S. 874, 94 L. Ed. 115, rehearing denied 70 S. Ct. 245, 338 U.S. 901, 94 L. Ed. 200).

Where defendant failed to file written notice of appeal within time limited therefor by Municipal Court Rule 27(b) but did within such period give oral notice of intention to appeal in open court, the oral notice would be held to be a substantial compliance with such rule, so that defendant's right of appeal from conviction on charges to which he had pleaded not guilty, was not lost. *Slaughter* v. *District of Columbia* (D.C. Mun. App. 1948, 58 A. 2d 309, 60 A. 2d 700, remanded on other grounds 172 F. 2d 281, 84 U.S. App. D.C. 232, certiorari denied 70 S. Ct. 135, 338 U.S. 874, 94 L. Ed. 115, rehearing denied 70 S. Ct. 245, 338 U.S. 901, 94 L. Ed. 200).

Unassigned errors

A point not made in defendant's motion for new trial or assigned as error on appeal presented nothing for review. *Sherman* v. *United States* (D.C. Mun. App. 1944, 36 A. 2d 556).

Waiver of errors

Any error in refusing to grant defendant's motion for a directed verdict at close of Government's case was waived when defendant proceeded to offer evidence in his behalf. *Boyer* v. *United States* (D.C. Mun. App. 1945, 40 A. 2d 247, reversed on other grounds, 150 F. 2d 595, 80 U.S. App. D.C. 202, 166 A.L.R. 209).

The rule in class B actions requires that any person desiring a jury trial shall file an answer accompanied by a jury demand, and where appellant filed neither an answer nor a demand for jury trial, such right was waived. *Clark* v. *General Electric Credit Corp.* (D.C. Mun. App. 1950, 72 A. 2d 43).

Where motion was made at close of plaintiff's evidence for a directed verdict and, upon its denial, defendants proceeded to present evidence on their behalf, they thereby waived benefit of their motion. Since the motion was not renewed at the close of all the evidence there is no basis for this claim of error. *Brooks* v. *Jensen* (D.C. Mun. App. 1950, 73 A. 2d 32).

Where the explanation of plaintiff's counsel was that he forgot to strike two names from the jury panel and after the trial court refused to remove these two jurors on the ground that the objection came too late, and opposing counsel offered to consent to the removal of the two jurors and try the case with a jury of ten, which was refused, the objection, even if valid, came too late. *Glover* v. *Jewish War Veterans of United States* (D.C. Mun. App. 1949, 68 A. 2d 233).

When the motion to dismiss was heard and appellant argued the merits of the motion and did not object to proceeding with the hearing because of the pendency of another motion to set aside the default, such conduct constituted a consent to the hearing of the motion to dismiss and a waiver of the right to insist that the motion to set aside the default be disposed of first. *Raimonde* v. *Purcell* (D.C. Mun. App. 1949, 68 A. 2d 678).

All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice. *Gross* v. *Utilities Engineering Institute* (D.C. Mun. App. 1950, 75 A. 2d 363).

Withholding entry pending appeal

To avoid the labor and expense of filing application for allowance of an appeal in all of several cases, which were controlled by one common question of law, resort could be had to the practice of filing application for appeal in one case, and withholding entry of final judgment in the others upon stipulation that action therein abide the results of the single appeal. *Yeager* v. *District of Columbia* (D.C. Mun. App. 1943, 33 A. 2d 629).

Witness, competency

The question as to competency of a child as a witness is one primarily for trial judge, whose decision will not be disturbed on appeal unless shown to be clearly erroneous. *Posey* v. *United States* (D.C. Mun. App. 1945, 41 A. 2d 300).

The testimony of an infant may be excluded in toto on grounds of incompetency, but once he is allowed to testify, the uncertainty of his evidence goes only to its weight and does not disqualify such testimony. *Fowel* v. *Wood* (D.C. Mun. App. 1949, 62 A. 2d 636).

Writ of mandamus

The traditional use of the writ of mandamus in aid of appellate jurisdiction both at common law and in the federal courts has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so. Where, if an order is not promptly and effectively rescinded, petitioner may lose his security and suffer irreparable damage, the situation justifies a writ of mandamus requiring trial court to vacate its order setting aside a judgment. *Mike's Mfg. Company* v. *Zimzoris* (D.C. Mun. App. 1949, 66 A. 2d 414).

—— Prohibition

Though the act creating the Municipal Court of Appeals does not expressly give the court power to issue a writ of prohibition or any of the extraordinary writs, since the court is expressly authorized to hear and determine appeals and to regulate all matters relating to such appeals, it has implied an inherent power to issue extraordinary writs in aid of its appellate jurisdiction and such a writ may issue even though no appeal has been noted or is pending. *Mike's Mfg. Company* v. *Zimzoris* (D.C. Mun. App. 1949, 66 A. 2d 414).

II. Under Present Law

Abuse of discretion

Granting motion to set aside default judgment should not be disturbed on appeal unless there is abuse of discretion. *Meadis* v. *Atlantic Construction & Supply Co.* (D.C. App. 1965, 212 A. 2d 613).

Order vacating default judgment entered over five months earlier, under rule authorizing relief from judgment for "any other reason justifying relief from the operation of the judgment," was not abuse of discretion, in view of circumstances involving defendant's failure to receive any notice of suit against it filed after death of its registered agent and its unawareness of such action until after judgment by default had been entered and attachment of its bank account completed. *Id.*

In general

It was congressional intent that District of Columbia Court of Appeals be permitted to weigh importance of question presented before deciding whether to hear case in which penalty imposed was less than $50, and that court is not required to provide transcript for assistance of applicant or his counsel in preparing leave to appeal in such case unless it can fairly be said that transcript is necessary in order to decide whether an important and significant question is presented. *Hollingsworth* v. *United States* (1966, 360 F. 2d 842, 124 U.S. App. D.C. 27).

Appeal in forma pauperis

Leave to appeal in forma pauperis in federal case may not be denied until indigent appellant has had effective assistance of counsel in search for nonfrivolous issue, and adequate representation entails active advocacy in adversary proceeding, and not mere impartial evaluation and advice to court as amicus curiae. *Tate* v. *United States* (1966, 359 F. 2d 245, 123 U.S. App. D.C. 261).

District of Columbia Court of Appeals' permitting appointed counsel who had not represented first indigent defendant at trial of prosecution by United States to withdraw and its revoking leave to appeal in forma pauperis on basis of conclusory statements in counsel's report to effect that no nonfrivolous issue existed was improper. *Id.*

District of Columbia Court of Appeals' revocation of leave to appeal in forma pauperis previously granted second indigent defendant prosecuted by United States and its permitting appointed counsel to withdraw upon receipt of appointed counsel's unsubstantiated report that issue of voluntariness of defendant's guilty pleas had been adversely determined at trial was improper. *Id.*

Appealable orders

Defendant charged in separate informations in the Criminal Division of the District of Columbia Court of General Sessions and convicted of 13 offenses arising out of high speed automobile chase and sentenced to 90 days in jail for the continuous offense of unreasonable speed and $25 or 10 days for each of the other offenses, an aggregate of $300 or 120 days, could appeal from the convictions as a matter of right. *H. O'Bryant* v. *District of Columbia* (D.C. App. 1966, 223 A. 2d 799).

The right to appeal from the Criminal Division of the District of Columbia Court of General Sessions should not depend on inconsequential matters. *Id.*

When several offenses, closely related in both nature and time, are prosecuted in one trial, whether they are charged in separate informations or as separate counts in one information, the total of the fines imposed is the amount which determines the right of appeal from Criminal Division of District of Columbia Court of General Sessions and if the total is $50 or more a single appeal from the several convictions may be taken as a matter of right. *Id.*

One member of a three-judge appellate court noted importance of issues raised as to whether alternative sentence of fine or imprisonment was invalid discrimination between those who are able to pay and those who are not, whether this question was mooted by payment of fine and whether this question could be properly considered by Court of Appeals though it was not raised before District of Columbia Court of Appeals justified

allowance of appeal. *Stone* v. *District of Columbia* (1965, 350 F. 2d 728, 121 U.S. App. D.C. 350).

Where defendant who had been granted leave to appeal in forma pauperis did not have benefit of transcript of trial proceedings on appeal, and where his appointed counsel filed brief report concluding that there had been no denial of fair and impartial trial to the defendant, which contained no analysis of any points that might be raised on appeal, revocation of leave to appeal was improper and defendant was entitled to appointment of new counsel and preparation of transcript of trial proceedings at government expense. *Bond* v. *United States* (1966, 360 F. 2d 504, 123 U.S. App. D.C. 370).

Review by District of Columbia Court of Appeals is limited to appeals from final orders and judgments. *Mid City Theatre Corp.* v. *A. Bethea* (D.C. App. 1965, 210 A. 2d 10).

Judgment which reflected jury verdict in favor of theater patron on question raised by theater's affirmative defense of release did not have requisite characteristics of finality to bring it within scope of reviewing authority of District of Columbia Court of Appeals. *Id.*

Although order denying application to vacate default judgment is final and appealable, order vacating default judgment is not final and therefore not appealable. *Meadis* v. *Atlantic Construction & Supply Co.* (D.C. App. 1965, 212 A. 2d 613).

Appeal from order vacating default judgment would be dismissed, as involving nonfinal and nonappealable order. *Id.*

Order granting motion to strike from complaint all allegations of fraud, misrepresentation, and illegal conversion and to strike the claim for punitive damages did not dispose of case on the merits and was not appealable. *E. S. Moss* v. *W. S. Pratt Scientific Brake Service, Inc.* (D.C. App. 1965, 206 A. 2d 403).

Order granting motion for definite statement of allegations of fraud, misrepresentation, illegal conversion, and related elements involving punitive damages was not "final" and thus was not appealable. *Id.*

Finality of order for appeal purposes depends not upon its name, propriety, or normal function but upon whether it disposes of whole case on its merits. *Id.*

Review by Court of Appeals, with certain exceptions, is limited by statute to appeals from final orders and judgments. *Royal Credit Co., Inc.* v. *D. Mas Marques* (D.C. App. 1966, 222 A. 2d 70).

Under federal rule, by which Court of Appeals is guided in interpreting rules of the trial court, an order denying an application to vacate a judgment is final and appealable, and conversely, an order vacating a judgment is not final and therefore not appealable. *Id.*

An order setting aside entry of judgment was not final and hence was not appealable. *Id.*

Order granting leave to another claimant to intervene as party defendant in action by alleged widow to recover death benefits payable under group life policy was not a "final order" and was not appealable. *C. M. McBryde* v. *Metropolitan Life Insurance Co. and L. McBryde* (D.C. App. 1966, 221 A. 2d 718).

Whether an order is "final" and thus appealable depends on whether it disposes of the whole case on its merits so that court has nothing remaining to do but execute judgment or decree already rendered. *Id.*

Order which permits intervention of a person whose claim is basically similar to that of appellant does not dispose of the pending suit on its merits and therefore is not "final" and is not appealable. *Id.*

Indigent defendant

Requirement that indigent defendant appealing to District of Columbia Court of Appeals from conviction in U.S. Branch of Court of General Sessions must be provided transcript does not apply to cases in which penalty imposed is less than $50. *Hollingsworth* v. *United States* (1966, 360 F. 2d 842, 124 U.S. App. D.C. 27).

Questions not raised below

There might have been merit in defendant's contention that alternative sentence of twenty-five dollar fine or 15 days in jail was not "less than $50", within meaning of Code, and that he should have had an appeal as of right to District of Columbia Court of Appeals, but such claim was not properly before United States Court of Appeals for District of Columbia Circuit where defendant, challenging denial of discretionary appeal, had not raised issue in court below. *Hollingsworth* v. *United States* (1966, 360 F. 2d 842, 124 U.S. App. D.C. 27).

Transcript of trial

Where trial of first indigent defendant who was prosecuted by United States in District of Columbia Court of General Sessions was recorded by court reporter and defendant was represented on appeal by court-appointed attorney who had not represented him at trial, it was error not to have ordered transcript of trial prepared to enable defendant's attorney to prepare appeal. *Tate* v. *United States* (1966, 359 F. 2d 245, 123 U.S. App. D.C. 261).

Where counsel on appeal is not same as trial counsel, complete transcript is necessary and where counsel on appeal represented appellant at trial, transcript relevant to points of error assigned is minimal requirement. *Id.*

Withdrawal of counsel

No counsel appointed for appellants should be permitted to withdraw from appeal to District of Columbia Court of Appeals unless he has satisfied court that after thorough investigation of facts of case and research of all legal issues involved, he has discovered no nonfrivolous issue on which appeal might be argued. *Tate* v. *United States* (1966, 359 F. 2d 245, 123 U.S. App. D.C. 261).

§ 11–742. Administrative orders and decisions

(a) In addition to other jurisdiction conferred upon it by law, the District of Columbia Court of Appeals has exclusive jurisdiction to review the following orders and decisions of administrative agencies of the District:

(1) decisions of the Board of Pharmacy refusing to renew a license to practice pharmacy or refusing to renew a permit to lead in poisons for use in the arts or as insecticides pursuant to section 2–606;

(2) decisions of the Board of Examiners in Veterinary Medicine revoking or suspending a license to practice veterinary medicine or a branch thereof pursuant to section 2–810;

(3) orders of the Commissioners of the District of Columbia or their agent or decisions of the Commissioners denying, revoking, or suspending a motor-vehicle operator's permit pursuant to section 40–302;

(4) decisions of the Board of Examiners and Registrars of Architects annulling or revoking a certificate to practice architecture pursuant to section 2–1028;

(5) orders of the Commissioners of the District of Columbia denying, revoking, or suspending a license for a private employment agency pursuant to section 47–2101;

(6) decisions of the Commission on Licensure to Practice the Healing Art in the District of Columbia denying a license or a registration to practice the healing art pursuant to section 2–129;

(7) decisions of the Nurses' Examining Board denying registration or reregistration of a nurse or school of nursing pursuant to section 2–406;

(8) decisions of the Board of Barber Examiners revoking or refusing to issue, renew, or restore a certificate of registration as a registered barber or barber apprentice pursuant to section 2–1110;

(9) final decisions of the Real Estate Commission of the District of Columbia denying an application for license or suspending or revoking a

license pursuant to sections 45–1403 to 45–1418; and

(10) final orders of the Public Service Commission of the District of Columbia under the provisions of the District of Columbia Securities Act.

(b) A party aggrieved by an order or decision specified by subsection (a) of this section may obtain a review thereof in the District of Columbia Court of Appeals.

(c) Upon the filing of a written petition for review praying that an order or decision specified by this section be set aside, the District of Columbia Court of Appeals has jurisdiction of the proceeding. (Dec. 23, 1963, 77 Stat. 485, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; Aug. 30, 1964, 78 Stat. 633, Pub. L. 88–503, § 17.)

REFERENCES IN TEXT

The District of Columbia Securities Act is set out in title 2, chapter 24.

AMENDMENT

1964—Section 17 of act Aug. 30, 1964, amended the section by striking out "and" at the end of paragraph 8; changing the period at the end of paragraph 9 to a semicolon and inserting "and" and adding paragraph 10 thereto.

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–771a, 11–772 (Apr. 1, 1942, ch. 207, § 7, 56 Stat. 195; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 6, 76 Stat. 1171, 1172; July 8, 1963, Pub. L. 88–60, §§ 1, 6, 77 Stat. 77, 78).

Section is derived from subsec. (e), and the first sentence and part of the fifth sentence of subsec. (f), of section 11–772 of D.C. Code, 1961 ed.

Section 11–771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

Changes are made in phraseology.

In addition to the jurisdiction conferred by these provisions, the District of Columbia Court of Appeals has jurisdiction to review orders of the Rent Control Administrator for the District. See section 45–1609 of the D.C. Code, 1961 ed.

For remainder of section 11–772 of D.C. Code, 1961 ed., see tables.

NOTES TO DECISIONS UNDER PRIOR LAW

Evidence

Evidence sustained finding of real estate commission, which revoked broker's real estate license, that broker in violation of statute made a substantial misrepresentation, and engaged in conduct which constituted fraudulent and dishonest dealing. *P. R. Kelley* v. *Real Estate Commission of the District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 415).

Appellant had burden of proving that judgment was plainly wrong or without evidence to support it. *G. W. Knight et ano.* v. *E. Sarbov etc., et al.* (D.C. Mun. App. 1961, 174 A. 2d 194).

Misrepresentation

Record on review by Municipal Court of Appeals sustained decision of Real Estate Commission suspending petitioner's license as a real estate broker on the grounds that she had made a substantial misrepresentation and had demonstrated such unworthiness to act as broker as to endanger interests of the public. *D. B. Quander* v. *The Real Estate Commissioners of the District of Columbia* (D.C. Mun. App. 1962, 179 A. 2d 386).

In reviewing ruling of Real Estate Commisson suspending broker's license, Municipal Court of Appeals was bound to credit testimony adverse to license holder. *Id.*

[See also, Notes To Decisions under § 11–741]

SUBCHAPTER IV.—MISCELLANEOUS PROVISIONS

§ 11–761. Contempt powers

The District of Columbia Court of Appeals, or a judge thereof, may punish for disobedience of an order, or for contempt committed in the presence of the court, by a fine not exceeding $50 or imprisonment not exceeding 30 days. (Dec. 23, 1963, 77 Stat. 486, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–771a, 11–774 (Apr. 1, 1942, ch. 207, § 9, 56 Stat. 196; Oct. 23, 1962, Pub. L. 87–873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88–60, § 6, 77 Stat. 78).

Section is derived from subsec. (b) of section 11–744 of the D.C. Code, 1961 ed. For remainder of section 11–774, see tables.

Section 11–771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

Changes are made in phraseology.

§ 11–762. Oaths, affirmations and acknowledgments

Each judge, the clerk, and each deputy clerk of the court may administer oaths and affirmations and take acknowledgments. (Dec. 23, 1963, 77 Stat. 486, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–771 (Apr. 1, 1942, ch. 207, § 6, 56 Stat. 194; July 28, 1949, ch. 369, § 3, 63 Stat. 483; Oct. 25, 1949, ch. 706, § 2, 63 Stat. 887; July 11, 1955, ch. 302, § 1, 69 Stat. 290; July 18, 1958, Pub. L. 85–539, § 1, 72 Stat. 398).

Section is derived in toto from last paragraph of section 11–771 of D.C. Code, 1961 ed. Most of the provisions of that section are carried into this chapter. For complete distribution of that section in this revised part, see tables.

Chapter 9.—DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS

SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

Sec.
11–901. Continuation of court; court of record; divisions; seal.
11–902. Composition; appointment, qualifications, tenure, salaries, and oath of judges; removal.
11–903. Administration by chief judges; discharge of duties.
11–904. Designation and assignment of judges; sessions.
11–905. Absence, disability, or disqualification of chief judge.
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11–907. Meetings and reports.
11–908. Clerks for judges; compensation.

SUBCHAPTER II.—COURT OFFICERS AND EMPLOYEES

11–931. Clerk; compensation; general duties.
11–932. Deputy clerks and other employees; compensation; supervision; process; powers.
11–933. Probation officer; compensation, powers and duties.
11–934. Assistant probation officers and other employees; compensation; supervision.
11–935. Reporters' fees for transcripts.

SUBCHAPTER III.—JURISDICTION

11–961. Civil jurisdiction.
11–962. Transfer of civil actions to Court of General Sessions.
11–963. Criminal jurisdiction; commitment.

SUBCHAPTER IV.—MISCELLANEOUS PROVISIONS

Sec.
11–981. Power of judges to issue warrants returnable to Criminal Division; record.
11–982. Compelling attendance of witnesses; contempt powers; subpoenas.
11–983. Oaths, affirmations and acknowledgments.
11–984. Receipt and care of deposits for costs, and fees; payment of fines, costs, etc., to clerk; deposit; accounting.
11–985. Audit of accounts.

SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

§ 11–901. Continuation of court; court of record; divisions; seal

(a) The District of Columbia Court of General Sessions shall continue as a court of record in the District. The court shall consist of a civil division and a criminal division.

(b) The court shall have a seal. (Dec. 23, 1963, 77 Stat. 487, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751, 11–751a, 11–752, 11–755 (Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 25, 1949, ch. 706, §1, 63 Stat 887; Apr. 11, 1956, ch. 204, § 103(a), 70 Stat. 112; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Aug. 24, 1932, Pub. L. 87–596, § 1(a), 76 Stat. 398; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates section 11–751, the second paragraph of section 11–752, and part of the first sentence of subsec. (a) of section 11–755 of D.C. Code, 1961 ed. For remainder of sections 11–752 and 11–755, see tables.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1963, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Section 11–751 of D.C. Code, 1961 ed., provided: "The Police Court of the District of Columbia and the Municipal Court of the District of Columbia, be, and they are hereby, consolidated into a single court to be known as 'The Municipal Court for the District of Columbia'" This language is omitted as executed and obsolete, and in its place subsec. (a) of this section merely continues the court (now the Court of General Sessions) so created in the consolidation of the two former courts.

The terms "civil division" and "criminal division" are substituted for reference in the first sentence of section 11–755(a) of D.C. Code, 1961 ed., to "criminal" and "civil branches", to conform with designations used elsewhere in that same section. See, also, the preliminary rule preceding Section I of Part I of the Civil Rules, and Rule 1 of the Criminal Rules of the Court. The Civil Division, in addition to its regular civil branch, has a Small Claims and Conciliation Branch, a Domestic Relations Branch, and, although apparently not designated by statute, a Landlord and Tenant Branch. See other provisions in this Part, and Part I, Sections II—IV, of the above-cited Court rules.

Changes are made in phraseology.

CROSS REFERENCES

Accounts audited, see § 11–985.

Attachment proceedings, see § 16–533.

Challenged ballots, appeal from decision of Board of Elections, see § 1–1109.

Claim against attached property, see §§ 15–522—15–524.

Costs, see §§ 15–711, 15–712.

Domestic Relations Branch, see § 11–1101 et seq.

Forcible entry and detainer, see §§ 11–735 to 11–739.

Interest, see § 15–131.

Judgments and executions, see § 15–131.

Registration of voters, appeal from decision of Board of Elections, see § 1–1107.

Replevin actions, see § 16–3731 et seq.

Trial of right to attached property, see § 15–521.

NOTES TO DECISIONS UNDER PRIOR LAW

Court of record

The Municipal Court of the District of Columbia created by Congress under this chapter is a court of record and, within the limits of its civil jurisdiction which is far in excess of that of the old municipal court, has equitable jurisdiction. *Paley* v. *Solomon* (D.C.D.C. 1945, 59 F. Supp. 887).

Municipal Court is a court of record and its judgments have full effect (except as liens on real estate) without docketing in District Court. The express power of a court of record to enforce its judgment by proper process should not be abridged by courts in absence of express or implied statutory authority. *Halperin* v. *Cohen* (D.C. Mun. App. 1949, 67 A. 2d 295).

§ 11–902. Composition; appointment, qualifications, tenure, salaries, and oath of judges; removal

(a) The District of Columbia Court of General Sessions shall consist of a chief judge and twenty associate judges appointed by the President of the United States, by and with the advice and consent of the Senate.

(b) A person may not be appointed as a judge of the court unless he:

(1) is a bona fide resident of the area consisting of the District of Columbia, Montgomery and Prince Georges Counties in Maryland, Arlington and Fairfax Counties in Virginia, and the city of Alexandria, Virginia, and has maintained an actual place of abode in the area for at least five years prior to his appointment; and

(2) has been a member of the bar of the District of Columbia for a period of at least five years, and, for a period of at least five consecutive years immediately prior to his appointment, either has been actively engaged in the practice of law or has been employed as an attorney in the District in the government of the United States or in the government of the District of Columbia.

(c) Each judge shall be appointed or reappointed for a term of ten years each, which terms shalls be staggered as heretofore provided for; and he shall continue in office until the appointment and qualification of his successor.

(d) The chief judge shall receive an annual salary of $24,000, and each associate judge shall receive an annual salary of $23,500.

(e) Each judge, when appointed, shall take the oath prescribed for judges of courts of the United States.

(f) A judge may be removed only in the manner and for the causes provided for the removal of Federal judges. (Dec. 23, 1963, 77 Stat. 487, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; Aug. 14, 1964, 78 Stat. 431, Pub. L. 88–246, title III, § 306(i)(3); Sept. 21, 1966, 80 Stat. 825, Pub. L. 89–598, § 1.)

AMENDMENTS

1966—Act Sept. 21, 1966, substituted "twenty" for "fifteen" in subsec. (a).

1964—Section 306(i)(3) of act Aug. 14, 1964, amended subsection (d) by striking out $18,000 and inserting $24,000 and by striking out $17,500 and inserting $23,500.

EFFECTIVE DATE OF ACT AUG. 14, 1964

See note to section 1–204a.

GROUP INSURANCE PROVISIONS OF ACT AUG. 14, 1964

See note to section 1–204a.

RETROACTIVE SALARY PROVISIONS OF ACT AUG. 14, 1964

See note to section 1–204a.

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–752, 11–753 (Apr. 1, 1942, ch. 207, §§ 1, 2, 56 Stat. 190, 191; July 28, 1949, ch. 369, § 2, 63 Stat. 482; Oct. 25, 1949, ch. 706, §§ 1–3, 63 Stat. 887; July 11, 1955, ch. 302, § 2, 69 Stat. 290; Apr. 11, 1956, ch. 204, § 103(a), 70 Stat. 112; Aug. 24, 1962, Pub. L. 87–596, § 1(a), 76 Stat. 398; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section consolidates the first paragraph of section 11–752 and section 11–753 of D.C. Code, 1961 ed. Remainder of section 11–752 is carried into section 11–901 of this title.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The words in section 11–753 of D.C. Code, 1961 ed., "or who shall have been a judge of one of the courts of the District of Columbia * * *: *Provided, however,* That not more than two nonresident persons may be appointed and serve as judges of the said Municipal Court at any one time", which followed the residence requirement, constituted a temporary provision, and are omitted from this section as obsolete.

Section 1 of act Apr. 1, 1942, ch. 207, 56 Stat. 190, contained a third paragraph which was not set out in section 11–751 or 11–752 of D.C. Code, 1961 ed. (to which the other provisions of that section were classified), because of later enactments increasing the number of judges on the Municipal Court (now, Court of General Sessions), and in the case of the act of Oct. 25, 1949, ch. 706, § 1, cited above, providing that appointments and reappointments with respect to the additional judges authorized by that act (3 more than the original 10) should be for terms of 10 years each. However, section 1 of the 1942 act (and section 2 thereof, which is carried into this section), in providing for the appointment of the original 10 judges, did set the pattern for staggered terms. The third paragraph of section 1 provided that the terms of the original 10 judges should be in accordance with the following schedule: the first 2 appointments, 10 years; the second 2 appointments, 6 years. It further provided that the judges of the Police Court and of the first Municipal Court (which that act merged to establish the second Municipal Court) holding office on the effective date of that act (judges of the Police Court held office for 6 years, and judges of the first Municipal Court held office for 4 years) should, however, serve as judges of the second Municipal Court until the expiration of their respective commissions and until their successors were appointed and qualified. Section 2 of the 1942 act provided that subsequent appointments and reappointments to the second Municipal Court should be for terms of 10 years each, and, as stated, section 1 of the act of Oct. 25, 1949, ch. 706, in increasing the number of judges from 10 to 13, provided that appointments and reappointments with respect to the 3 additional judges should be for 10 years each. Section 103(a) of act Apr. 11, 1956, ch. 204, cited above, amended the 1949 act to increase the total number from 13 to 16, without further reference to tenure. Because of the lapse of time since the original enactments, and the completion of the original staggered terms, the provisions in subsec. (c) of this section are substituted for all prior provisions that related to tenure.

Changes are made in phraseology and arrangement.

§ 11–903. Administration by chief judge; discharge of duties

The chief judge of the District of Columbia Court of General Sessions shall administer generally and superintend the business of the court. He shall give his attention to the discharge of the duties especially pertaining to his office and to the performance of such additional judicial work as he is able to perform. (Dec. 23, 1963, 77 Stat. 487, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–754 (Apr. 1, 1942, ch. 207, § 3, 56 Stat. 191; Oct. 23, 1962, Pub. L. 87–783, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Section is derived from the third sentence of subsec. (a) and all of subsec. (b) of section 11–754 of D.C. Code, 1951 ed. For remainder of section 11–754, see tables.

Changes are made in phraseology and arrangement.

CROSS REFERENCE

Recall of retired judges to service, see § 11–1701.

NOTES TO DECISIONS UNDER PRIOR LAW

Evidence

Statements, made by defendant at coroner's inquest after warning that any statements made could be used against him in any subsequent proceeding, were properly used at subsequent trial for impeachment purposes. *Neely* v. *United States* (1944, 144 F. 2d 519, 79 U.S. App. D.C. 177, certiorari denied 65 S. Ct. 83, 323 U.S. 754, 89 L. Ed. 604).

Fees of witnesses and jurors

When witnesses and jurors are summoned by a lawful officer they are compelled to obey the writ and are entitled to their fees, advanced by the coroner, even though the inquest was unlawful. *Levy Court* v. *Woodward* (1864, 69 U.S. 501, 2 Wall. 501, 17 L. Ed. 851).

Judge pro tem

Judge pro tem was not disqualified from passing sentence because regular judge returned between time of trial and date set for sentencing. *Shore* v. *Splain* (1919, 258 F. 150, 49 App. D.C. 6).

Power to take testimony

A coroner may take testimony of probable defendants if it is given voluntarily after advice as to their rights and, in so doing, coroner does not act as a prosecuting officer, but sits in a quasi-judicial capacity. *Neely* v. *United States* (1944, 144 F. 2d 519, 79 U.S. App. D.C. 177, certiorari denied 65 S. Ct. 83, 323 U.S. 754, 89 L. Ed. 604).

Reduction of sentence

Municipal Court of District of Columbia had power to reduce sentences during term at which they were imposed. *Peden* v. *Fleming* (1946, 153 F. 2d 800, 81 U.S. App. D.C. 2).

Where Municipal Court of District of Columbia imposing sentence in August, 1942, directed that its term then current be kept open, the court could not extend the August, 1942, term until September 3, 1943, and could not at that time reduce sentences imposed more than a year before. *Id.*

Where order of probation was void because entered after defendant had been committed, release of defendant under the probation order was premature and it was duty of court to cause him to be recommitted, and the void probation order did not amount to an unconditional reduction of sentence. *Id.*

§ 11–904. Designation and assignment of judges; sessions

(a) The chief judge of the District of Columbia Court of General Sessions shall, from time to time and for such periods as he determines designate the judges to preside in and attend the divisions and several branches and sessions of the court. He may:

(1) except as provided by sections 11–1103 and 11–1303, determine the number and fix the time of the various sessions of the court; and

(2) arrange the business of the court, and divide it and assign it among the judges.

Each associate judge shall attend and serve at the division, branch, or sessions of the court to which he is assigned.

(b) When the chief judge of the District of Columbia Court of Appeals finds it in the public interest to do so, he may designate and assign a judge of that court to act temporarily as a judge of the Court of General Sessions. (Dec. 23, 1963, 77 Stat. 487, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 754, 11–771, 11–771a (Apr. 1, 1942, ch. 207, §§ 3, 6, 56 Stat. 191, 194; July 28, 1949, ch. 369, § 3, 63 Stat. 483; Oct. 25, 1949, ch. 706, § 2, 63 Stat. 887; July 11, 1955, ch. 302, § 1, 69 Stat. 290; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 6, 76 Stat. 1171, 1172; July 8, 1963, Pub. L. 88–60, §§ 1, 6, 77 Stat. 77, 78).

Section consolidates the first two sentences of subsec. (a) of section 11–754 the first sentence of the second paragraph of subsec. (c) of section 11–754, and the seventh sentence of the sixth paragraph of section 11–771 of D.C. Code, 1961 ed. For remainder of sections 11–754 and 11–771, see tables.

Sections 11–751a and 11–771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, are also cited as sources of this section, as (1) section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions; and (2) section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

Changes are made in phraseology and arrangement.

§ 11–905. Absence, disability, or disqualification of chief judge

When the chief judge of the District of Columbia Court of General Sessions is absent, disabled, or disqualified, his duties shall devolve upon and be performed by the associate judges of the Court according to the order of seniority of their commissions. (Dec. 23, 1963, 77 Stat. 488, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–754 (Apr. 1, 1942, ch. 207, § 3, 56 Stat. 191; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section is derived, with changes in phraseology, from the fourth paragraph of subsec. (c) of section 11–754 of the D.C. Code, 1961 ed. For remainder of section 11–754, see tables.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

§ 11–906. Vacations for judges

Each judge of the District of Columbia Court of General Sessions is entitled to vacation, not to exceed thirty-six court days in a calendar year, to be taken at times determined by the chief judge. (Dec. 23, 1963, 77 Stat. 488, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–754 (Apr. 1, 1942, ch. 207, § 3, 56 Stat. 191; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section is derived, with changes in phraseology, from the fifth paragraph of subsec. (c) of section 11–754 of D.C. Code, 1961 ed. For remainder of section 11–754, see tables.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

§ 11–907. Meetings and reports

(a) The judges of the District of Columbia Court of General Sessions shall meet together at least once each month for the consideration of those matters pertaining to the administration of justice in the court which may be brought before them. The chief judge shall fix the times for the meetings.

(b) Each associate judge shall submit to the chief judge a monthly written report, in a form prescribed by the chief judge, of the duties performed by him, specifying:

(1) the number of days attendance in court of the judge during the month covered;

(2) the branch courts upon which he attended;

(3) the number of hours per day of his attendance; and

(4) such other data as the chief judge requires.

(c) The chief judge shall submit to the Attorney General of the United States and to the Commissioners of the District of Columbia a quarterly written report of the business of the court and of the duties performed by each judge of the court during the preceding three months. A copy of the report shall be filed in the office of the clerk of the court and shall be available and subject to public inspection during business hours. (Dec. 23, 1963, 77 Stat. 488, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–754 (Apr. 1, 1942, ch. 207, § 3, 56 Stat. 191; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section is derived from the first paragraph, the second sentence of the second paragraph, and the fourth paragraph of section 11–754(c) of the D.C. Code, 1961 ed. For remainder of section 11–754, see tables.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology and arrangement.

§ 11–908. Clerks for judges; compensation

Each judge of the District of Columbia Court of General Sessions may appoint and remove a personal clerk and shall fix his compensation in accordance with section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]. (Dec. 23, 1963, 77 Stat. 480, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

CODIFICATION

The reference in this section to "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters" was substituted for "the Classification Act of 1949, as amended]", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–754 (Apr. 2, 1942, ch. 207, § 3, 56 Stat. 191; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section is derived from that part of the seventh paragraph of subsec. (c) of section 11–754 of D.C. Code, 1961 ed., that was not carried into section 11–932 of this revision. For remainder of section 11–754, see tables.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

SUBCHAPTER II.—COURT OFFICERS AND EMPLOYEES

§ 11–931. Clerk; compensation; general duties

(a) The District of Columbia Court of General Sessions may appoint and remove a clerk, and shall fix his compensation in accordance with section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters].

(b) In addition to performing any other duties prescribed by law, rules of court, or order of the chief judge, the clerk of the Court of General Sessions shall keep such dockets and records and perform such other duties as the court prescribes. (Dec. 23, 1963, 77 Stat. 488, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

CODIFICATION

In subsec. (a) the reference "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632 Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–713, 11–714, 11–751a, 11–754 (Mar. 3, 1901, ch. 854, § 38, 31 Stat. 1195; Feb. 17, 1909, ch. 134, 35 Stat. 625; Apr. 1, 1942, ch. 207, § 3, 56 Stat. 191; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section consolidates section 11–713 and section 11–714 with the sixth paragraph of subsec. (c) of section 11–754 of D.C. Code, 1961 ed.

Section 11–751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia (the second Municipal Court formed from the 1942 merger of courts referred to below) to the District of Columbia Court of General Sessions.

Sections 11–713 and 11–714 of D.C. Code, 1961 ed., related to the clerk of the first Municipal Court prior to its merger, in 1942, with the Police Court to form the second Municipal Court. Section 11–713 provided that the clerk should keep a docket and described in detail the entries to be made in the docket (which, considering the jurisdiction of the first Municipal Court, related only to civil causes). The Court of General Sessions (successor to the second Municipal Court) has a civil division and a criminal division, and the civil division has several branches. Further, section 11–1122 requires that a separate docket be kept for the Domestic Relations Branch of the civil division. The sixth paragraph of subsec. (c) of section 11–754 of D.C. Code, 1961 ed., provided that the clerk should "have and exercise the powers and authority heretofore had or exercised by the clerk of the Police Court of the District of Columbia and the clerk of the Municipal Court of the District of Columbia" (the first Municipal Court), but it made no reference to "duties" as distinguished from "power" or "authority". It would seem that the duties of the clerk, with respect to the keeping of dockets and records and to other matters not covered by law, are now prescribed by the court (except in the case of the Domestic Relations Branch, which, as stated, is required by law to keep a separate docket). See the Civil Rules of the court, rules 77 and 78, and the Criminal Rules thereof, rule 4. Therefore, subsec. (b) of this section provides merely that, in addition to performing any other duties prescribed by law, rules of court, or order of the chief judge, the clerk of the court shall keep such docket and records and perform such other duties as may be prescribed by the court.

The provision in the sixth paragraph of section 11–754(c) of D.C. Code, 1961 ed., that the clerk of the Municipal Court (established by the merger of the two former courts) should have and exercise the powers and authority theretofore had or exercised by the clerks of the two former courts is omitted as unnecessary.

The last paragraph of section 11–713 of D.C. Code, 1961 ed., provided as follows: "And it shall be his duty to furnish a copy of any judgment rendered by him when required by either party to the action. If he shall omit to keep such docket or be guilty of any other negligence or omission whereby the plaintiff, having obtained a judgment before him, shall lose his debt, the clerk shall pay and satisfy to the plaintiff the debt, interest, and costs so lost, to be recovered in an action of debt against said clerk and his surety or sureties, with any additional interest that may have accrued". These provisions are omitted. As originally enacted in 1901, they related to justices of the peace. The act of Feb. 17, 1909, ch. 134, 35 Stat. 625, in redesignating the justice of the peace courts as the Municipal Court, made provision for the appointment of a clerk and provided that he should "keep a docket similar to the one heretofore provided for justices of the peace", but there is nothing therein to indicate that the duties, responsibilities, and liabilities prescribed in the quoted paragraph were transferred to the clerk. In any event, the first sentence of the paragraph relates to a matter which could, and, if necessary, should, be covered by court rule. As for the second sentence, it is believed to be obsolete. Like its predecessor (the second Municipal Court), the Court of General Sessions, as contradistinguished from the former justice of the peace court, is a court of record.

For remainder of section 11–754 of D.C. Code, 1961 ed., see tables.

§ 11–932. Deputy clerks and other employees; compensation; supervision; process; powers

(a) Subject to the approval of the chief judge, the clerk of the District of Columbia Court of General Sessions may appoint and remove such deputy clerks and other employees of the court as he deems necessary. The chief judge shall fix the compensation of the personnel so appointed in accordance with section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters].

(b) The deputies and employees appointed under subsection (a) of this section shall be under the supervision and direction of the clerk.

(c) In all civil actions in the Court of General Sessions, process shall be signed by the clerk or deputy clerks in the name of the court. The deputy clerks may sign the name of the clerk to any official act required by law or by practice of the court to be performed by the clerk. In such case, the signature shall be: "———— ————,

Clerk, by ———————— ————————, Deputy Clerk". (Dec. 23, 1963, 77 Stat. 489, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

CODIFICATION

In subsec. (a) the reference "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–711, 11–151a, 11–754 (Feb. 17, 1909, ch. 134, 35 Stat. 625; Apr. 1, 1942, ch. 207, § 3, 56 Stat. 191, Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; Oct. 23, 1962; Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section consolidates section 11–711 of D.C. Code, 1961 ed., which related to the clerk and "assistant clerk" of the first Municipal Court (merged in 1942 with the former Police Court to form the second Municipal Court), with part of the seventh paragraph of subsec. (c) of section 11–754 thereof. For remainder of section 11–754, see tables.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Muncipal Court for the District of Columbia, which was formed from the 1942 merger referred to above, to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Issuance of warrants

No authority to issue a warrant of arrest was conferred upon the clerk and deputy clerk of the police court of the District of Columbia. The section merely provided that they should have power to administer oaths and affirmations. *Zerega* v. *United States* (1929, 32 F. 2d 963, 59 App. D.C. 67).

Stamped signature

In landlord's action for possession of realty, where chief deputy clerk personally placed a facsimile of her signature on the summons by means of a stamp, the summons was valid since it was "signed" within this section. *McGrady* v. *Munsey Trust Co.* (D.C. Mun. App. 1943, 32 A. 2d 106).

§ 11–933. Probation officer; compensation, powers and duties

The District of Columbia Court of General Sessions may appoint and remove a probation officer of the court, and shall fix his compensation in accordance with section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters].

The probation officer shall exercise such powers and perform such duties as may be prescribed by law. (Dec. 23, 1963, 77 Stat. 489, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

CODIFICATION

The reference in this section to "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–754 (Apr. 1, 1942, ch. 207, § 3, 56 Stat. 191; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section is derived from the eighth paragraph of subsec. (c) of section 11–754 of D.C. Code, 1961 ed. For remainder of section 11–754, see tables.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The provision of the eighth paragraph of subsec. (c) of section 11–754 of D.C. Code, 1961 ed., that the probation officer shall "have and exercise the powers and authority heretofore had or exercised by the probation officer of the Police Court of the District of Columbia" is omitted as unnecessary. The powers and duties of probation officers are set out in general terms in section 24–102 of D.C. Code, 1961 ed. In place of the omitted provision, the second paragraph of this section provides that the probation officer shall exercise such powers and perform such duties as may be prescribed by law.

Changes are made in phraseology.

§ 11–934. Assistant probation officers and other employees; compensation; supervision

Subject to the approval of the chief judge, the probation officer of the District of Columbia Court of General Sessions may appoint and remove such assistant probation officers and other employees of the probation office as he deems necessary. The chief judge shall fix the compensation of the personnel so appointed in accordance with section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters].

The probation officer shall supervise and direct the assistants and employees so appointed. (Dec. 23, 1963, 77 Stat. 489, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

CODIFICATION

The reference in this section to "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–754 (Apr. 1, 1942, ch. 207, § 3, 56 Stat. 191; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section is derived from the ninth paragraph of subsec. (c) of section 11–754 of D.C. Code, 1961 ed. For remainder of section 11–754, see tables.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

The final (tenth) paragraph of subsec. (c) of section 11–754 of D.C. Code, 1961 ed., provided: "All officials and employees of the Police Court of the District of

Columbia and of the Municipal Court of the District of Columbia holding office on the effective date of this subchapter [which merged the Police Court and the former Municipal Court to form the second Municipal Court] shall continue in office unless and until they are removed therefrom; and all appropriations for the said Police Court or the said Municipal Court shall be available for the payment of the salaries and expenses of The Municipal Court for the District of Columbia as hereby established". This paragraph is omitted as obsolete. Further, a separate section in the bill to enact this Part provides for continuance in office of present incumbents for the balance of their terms unless or until removed.

§ 11–935. Reporters' fees for transcripts

In addition to their annual salaries, official reporters for the District of Columbia Court of General Sessions may charge and collect from parties, including the United States and the District of Columbia, who request transcripts of the original records of proceedings, only such fees as may be prescribed from time to time by the court. The official reporters shall furnish all supplies at their own expense. The court shall prescribe such rules, practice, and procedure pertaining to fees for transcripts as it deems necessary, conforming as nearly as practicable to the rules, practice, and procedure established for the United States District Court for the District of Columbia. A fee may not be charged or taxed for a copy of a transcript delivered to a judge at his request or for copies of a transcript delivered to the clerk of the court for the records of the court. Except as to transcripts that are to be paid for by the United States or the District of Columbia, the reporters may require a party requesting a transcript to prepay the estimated fee therefor in advance of delivery of the transcript. (Dec. 23, 1963, 77 Stat. 489, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–754b (July 18, 1947, ch. 267, 61 Stat. 381; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171).

Section is derived from section 11–754b of D.C. Code, 1961 ed.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District Court of General Sessions.

Changes are made in phraseology.

NOTES TO DECISIONS

Charge against the United States

United States may be charged for transcripts in cases prosecuted by it in District of Columbia Court of General Sessions. *Tate* v. *United States* (1966, 359 F. 2d 245, 123 U.S. App. D.C. 261).

SUBCHAPTER III.—JURISDICTION

§ 11–961. Civil jurisdiction

(a) In addition to other jurisdiction conferred upon it by law, the District of Columbia Court of General Sessions has exclusive jurisdiction of civil actions, including civil actions against executors, administrators and others fiduciaries, in which the claimed value of personal property or the debt or damages claimed does not exceed the sum of $10,000, exclusive of interest and costs, as well as of all crossclaims and counterclaims interposed in all actions over which it has jurisdiction, regardless of the amount involved.

It does not have jurisdiction of:

(1) cases involving title to real property, except as provided in section 11–1141;

(2) actions against judges of the Court of General Sessions or other officers for official misconduct; or

(3) counterclaims, crossclaims, or any other claims whether or not arising out of the same transaction or occurrence and interposed in actions over which the United States District Court for the District of Columbia has jurisdiction.

(b) Within the limits of its jurisdiction provided by subsection (a) of this section, the Court of General Sessions has jurisdiction of cases of trespass upon or injury to real property. If the defendant, in such a case, files with the court an affidavit that he claims title to the property, setting forth the nature of his title, the court may not take further cognizance of the case.

(c) The Court of General Sessions has jurisdiction over all civil cases properly pending in the Municipal Court for the District of Columbia on January 1, 1963. (Dec. 23, 1963, 77 Stat. 489, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–704, 11–751a, 11–755, 11–755 note (Mar. 3, 1901, ch. 854, §§ 9, 10, 31 Stat. 1191; Feb. 17, 1901, ch. 134, 35 Stat. 623; Mar. 3, 1921, ch. 125, § 1, 41 Stat. 1310; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates that part of subsec. (a) of section 11–755 of D.C. Code, 1961 ed., relating, as amended by the act of Oct. 23, 1962, to civil jurisdiction of the District of Columbia Court of General Sessions, with section 704 of the Code, which related to civil jurisdiction of the first Municipal Court (before that court was merged with the Police Court by the act of Apr. 1, 1942, to form the second Municipal Court), and with acts Mar. 3, 1901, ch. 854, § 9, 31 Stat. 1191; Feb. 7, 1909, ch. 134, 35 Stat. 623; Mar. 3, 1921, ch. 125, § 1, 41 Stat. 1310, which were set out as a note under section 11–755 of D.C. Code, 1961 ed., and with (the 1901 and 1921 acts) collectively also related to civil jurisdiction of the first Municipal Court.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia, which was the court formed from the 1942 merger mentioned above, to the District of Columbia Court of General Sessions.

After its amendment by the act of Oct. 23, 1962, subsec. (a) of section 11–755 of D.C. Code, 1961 ed., in addition to providing for the jurisdiction carried into subsec. (a) and the limitation carried into subsec. (a)(3) of this section, provided that the Court of General Sessions and the judges thereof shall "have and exercise the same powers and jurisdiction as were heretofore had or exercised by the Municipal Court for the District of Columbia or the judges thereof". This provision is omitted as no longer necessary inasmuch as provisions of law prescribing civil jurisdiction of the first Municipal Court, that were not covered or superseded by the provisions of section 11–755 (prior to the 1962 amendment or by other provisions of the act of April 1, 1942, relating to jurisdiction of the second Municipal Court, have been revised to relate to the Court of General Sessions or the judges thereof and are carried into this revision.

In addition to the provisions carried into subsec. (a)(1)(2) of this section (limiting the jurisdiction), acts Mar. 3, 1901, ch. 854, § 9, 31 Stat. 1191; Feb. 7, 1909, ch. 134, 35 Stat. 623; Mar. 3, 1921, ch. 125, § 1, 41 Stat. 1310 (D.C Code, 1961 ed., § 11–755 note), which related to the first

Municipal Court, provided that it have exclusive jurisdiction in civil cases in which the claimed value of personal property or the debt or damages claimed, exclusive of interest and costs, did not exceed $1,000, as follows: in all civil cases in which the amount claimed to be due for debt or damages arose out of contracts, express or implied, or damages for wrongs or injuries to persons or property, including all proceedings by attachment or in replevin, and in cases for the recovery of damages for assault and battery, slander, libel, malicious prosecution, and breach of promise to marry. These provisions are omitted as superseded and covered by the broader provisions of section 11–755(a) of D.C. Code, 1961 ed., relating to the Court of General Sessions, that are carried into subsec. (a) of this revised section.

Subsec. (b) of this section is derived from section 11–704 of D.C. Code, 1961 ed., which related to the first Municipal Court. It is carried into this section on the authority of section 11–755(a) of D.C. Code, 1961 ed., under which, prior to the amendment thereof by the act of Oct. 23, 1962, the Municipal Court for the District of Columbia assumed the jurisdiction of the two former courts (Police Court and first Municipal Court), and, after the 1962 amendment, the Court of General Sessions assumed, as stated above, the jurisdiction of the Municipal Court for the District of Columbia. As herein set out, subsec. (b) relates to the Court of General Sessions.

Changes are made in phraseology.

For remainder of section 11–755 of D.C. Code, 1961 ed., see tables.

NOTES TO DECISIONS

I. Under Prior Law

Action to possess realty

The action of trespass to realty contemplated by this section is one for damages, and it was not applicable to give Municipal Court for District of Columbia jurisdiction of action to obtain possession of realty. *Thurston* v. *Anderson* (D.C. Mun. App. 1945, 40 A. 2d 342).

The District of Columbia Municipal Court has jurisdiction to try actions involving possession of realty. *Service Parking Corp.* v. *Trans-Lux Radio City Corp.* (D.C. Mun. App. 1946, 47 A. 2d 400, modified on other grounds, 54 A. 2d 144).

Accounting

In suit for an accounting where the claim was to recover $1,000 held in trust, the Municipal Court for District of Columbia had jurisdiction of the action and possessed the necessary equitable powers to give complete relief. *Shulman* v. *Shulman* (D.C. Mun. App. 1952, 86 A. 2d 527).

Administrators, actions against

Municipal court does not have jurisdiction over suits against an administrator for the debt of the decedent, for judgment for full amount of debt. *Sanford* v. *Sanford* (1943, 286 F. 777, 52 App. D.C. 315).

Under this section, Municipal Court for District of Columbia had jurisdiction to entertain suit against administrator for unpaid balance of note executed by deceased. *Mazo* v. *Ed. L. Stock, Inc.* (D.C. Mun. App. 1943, 31 A. 2d 660).

Affirmative defenses

The defense of the statute of frauds is an affirmative defense and must be pleaded. *Saunders System Washington Co.* v. *Kuffner* (D.C. Mun. App. 1950, 75 A. 2d 136).

Amount claimed

The United States District Court for the District of Columbia had no jurisdiction over a discharged employee's claim against employer that he was discharged in violation of collective bargaining agreement where amount in controversy was less than $3,000, as smaller claims were within exclusive jurdisction of Municipal Court for the District of Columbia. *United Electrical, Radio and Machine Workers of America, etc.* v. *General Electric Co.* (1955, 231 F. 2d 259, 77 U.S. App. D.C. 306, certiorari denied 77 S. Ct. 95, 352 U.S. 872, 1 L. Ed. 2d 76).

Where, in last full year of discharged employee's employment, most of his time was spent on union work for which he was not paid by company, and his earnings from company were only $618.51, and his company earnings would not have been larger in future, and $6,000 life insurance contract which he had taken through company could be continued by him after termination of employment through private contract with insurer, such discharged employee's claim against company for alleged wrongful discharge was not within jurisdiction of United States District Court for District of Columbia. *Id.*

In action to enjoin union from expelling member, where member who was employed in a union shop and might be discharged by his employer for nonmembership in union, was earning $137.25 per week, and had life expectancy of about 30 years, and his expulsion from union would carry Communist stigma, value of matter in controversy was in excess of $3,000 exclusive of interest and costs, and case was within jurisdiction of District Court. *Friedman* v. *International Association of Machinists* (1955, 220 F. 808, 95 U.S. App. D.C. 128, certiorari denied 76 S. Ct. 51, 350 U.S. 824, 100 L. Ed. 736).

Municipal Court of the District of Columbia does not have exclusive jurisdiction over civil actions in which the claimed value of personal property involved or damages claimed exceed the sum of $3,000, exclusive of interest and costs. *Id.*

In determining if value of matter in controversy in a case is sufficient for jurisdictional requirements of federal court, absolute certainty as to value is not essential and present probability that damages will exceed the sum is enough. *Id.*

The actual damages recoverable being for a sum within the exclusive jurisdiction of the municipal court, the District Court had no jurisdiction, and a mere ad damnum clause did not confer it. *Minick* v. *Associates Inv. Co.* (1940, 110 F. 2d 267, 71 App. D.C. 367).

Suit for $1,000 as damages for negligence was in exclusive jurisdiction of municipal court and as writ of error was available the judgment could not be reviewed by certiorari to the District Court. *United States ex rel. Eure* v. *Borden* (1936, 80 F. 2d 527, 65 App. D.C. 84).

Municipal court acted within its jurisdiction when it entered judgment for landlord and could enter judgment on tenant's undertaking to secure a stay of execution on a review of a judgment by writ of error even though judgment was for more than $1,000. *Bailey* v. *Allen E. Walker, Inc.* (1925, 2 F. 2d 123, 55 App. D.C. 74).

District Court for District of Columbia did not have jurisdiction of action to have trust impressed on funds amounting to $1,980 or, in alternative, for money judgment, regardless of whether complaint would have formerly been denoted a suit at law or a bill in equity, in view of this section giving Municipal Court exclusive jurisdiction of "civil actions" involving "personal property" having value less than $3,000. *Klepinger* v. *Rhodes* (1944, 140 F. 2d 697, 78 U.S. App. D.C. 340, certiorari denied 64 S. Ct. 1047, 322 U.S. 734, 88 L. Ed. 1568).

Suits in which the alleged value of personal property or debt or damages claimed does not exceed $3,000 are in exclusive jurisdiction of Municipal Court for the District of Columbia. *Rowe* v. *Nolan Finance Co.* (1944, 142 F. 2d 93, 79 U.S. App. D.C. 35).

The District Court had jurisdiction of action by administrator for balance due on compensation award to plaintiff's decedent although amount owing at time of decedent's death was lass than $3,000. *Turner* v. *Christian Heurich Brewing Co.* (1948, 169 F. 2d 681, 83 U.S. App. D.C. 333).

Where proprietor of restaurant operated in California under a trade name had expended over $200,000 in advertising during a 12 year period and he claimed that he had built up trade name until it had a nationwide or even international reputation, and primary relief sought by proprietor was a permanent injunction against use of trade name by defendant, which operated restaurant in District of Columbia under same name, value of right sought to be protected against interference exceeded $3,000 and Municipal Court for District of Columbia did not have jurisdiction of action. *Sheherazade, Inc.* v. *Mardikian* (D.C. Mun. App. 1958, 143 A. 2d 512).

Where landlord's complaint was in three counts, the first claiming rent at $3,000, the second claiming damages for waste of $780, and third making same claim for waste against third party, and when question of jurisdiction was raised landlord dismissed with prejudice the second and third counts, and trial proceeded on first count alone trial court was not without jurisdiction on theory that

action claimed an amount in excess of $3,000. *Beck* v. *Troiano* (D.C. Mun. App. 1958, 138 A. 2d 492).

Where plaintiff filed four counts charging assault and battery and slander and each count claimed damages of $3,000, Municipal Court for District of Columbia, whose pecuniary jurisdiction is $3,000, was without jurisdiction, as against contention that each claim must be considered as separate claim and that municipal court had jurisdiction so long as none of the single claims has sought more than the $3,000. *Reaves* v. *Yale Transit Corp.* (D.C. Mun. App. 1957, 128 A. 2d 792).

Where statute limits jurisdiction of trial court to amount claimed, jurisdiction of court to entertain action is determined by amount and nature of relief claimed in complaint and where plaintiff sought rescission of contract as distinguised from action for damages upon a rescission, and for relief beyond court's statutory jurisdictional maximum, the court lacked jurisdiction of the action. *Hirshon* v. *Whelan etc.* (D.C. Mun. App. 1955, 113 A. 2d 484).

If matter in controversy in a case exceeds the value of $3,000, exclusive of interest and costs, the jurisdictional requirements of the Judicial Code and the District of Columbia Code are satisfied insofar as the amount involved is concerned. *Id.*

In some classes of cases, such as suits for rent overcharges and actions transferred by the District Court, the jurisdiction of the Municipal Court is unlimited as to amount. However, its jurisdiction in tort and contract cases is limited to $3,000. It is entirely clear that this limitation applies not only to the original claim but also to counterclaims and cross claims. *Hillyard* v. *Kline* (D.C. Mun. App. 1949, 64 A. 2d 759).

The trial court is one of limited jurisdiction and the pleadings in that court should show that the matter involved is within its jurisdiction. Where there was no claim of value stated in the petition below, but where it was agreed that when the case was tried, the goods involved had then been converted into cash exceeding the jurisdictional limits, the court was without jurisdiction. *Bowles* v. *Stonebraker* (D.C. Mun. App. 1949, 65 A. 2d 575).

When a third party makes claim to goods seized under an attachment on a judgment, the amount involved is not the amount of the judgment but the value of the property claimed. *Id.*

Where husband and wife in a single action each sought damages in amount of $3,000 for personal injuries, suit was within jurisdiction of Municipal Court, since each of claims was within $3,000 limit of court's jurisdiction. *Taylor* v. *Yellow Cab Co. of D.C.* (D.C. Mun. App. 1947, 53 A. 2d 691).

Attachment

Under provisions of former § 11–703 [set out as a note under this section] regarding attachment and garnishment and giving the municipal court exclusive jurisdiction over various classes of actions, including proceedings by attachment that involve $1,000 or less, in action for $490.10 and interest on foreign judgment against nonresident, municipal court had jurisdiction to issue writs of attachment and notices of garnishment before judgment directed to executor of estate in which the nonresident claimed on interest and to bank in which estate funds had been deposited. *Frank* v. *Malone* (1942, 126 F. 2d 651, 75 U.S. App. D.C. 296).

Civil rights

Civil Rights Act did not confer jurisdiction upon U.S. courts in general but so far as actions for penalties, it gave jurisdiction specifically to the territorial, district or circuit courts, and the Municipal Court is not one of these courts and has no such jurisdiction. *Henderson* v. *E Street Theatre Corporation* (D.C. Mun. App. 1948, 63 A. 2d 649).

Conferring of jurisdiction

Although jurisdictional issue was not raised, jurisdiction of subject matter could not be assumed by court nor conferred upon it by consent or silence of parties. *J. F. Paton and M. S. Paton* v. *District of Columbia* (D.C. Mun. App. 1962, 180 A. 2d 844).

Jurisdictional issue may be raised sua sponte by reviewing court. *Id.*

Where main purpose of an action is to obtain injunctive relief from future acts, jurisdiction cannot be conferred on Municipal Court for the District of Columbia by alleging that damages already sustained do not exceed $3,000. *Sheherazade, Inc.* v. *Mardikian* (D.C. Mun. App. 1958, 143 A. 2d 512).

Jurisdiction of a subject matter may neither be assumed by a court nor conferred upon it by consent or silence, and objection to court's jurisdiction may be raised at any stage of the proceedings or upon appeal sua sponte. *Henderson* v. *E Street Theatre Corporation* (D.C. Mun. App. 1948, 63 A. 2d 649).

Continuance

Where accused was represented by counsel of his own choice at time of arraignment and such counsel was with accused on date case was originally set for trial, but case was continued at request of accused and there was no evidence of further action by such counsel or explanation of his absence on trial date or showing that accused on day of trial made any effort to locate such counsel, there was no abuse of discretion in refusing a continuance or in proceeding to trial with assigned counsel. *Slaughter* v. *United States* (D.C. Mun. App. 1948, 60 A. 2d 700).

Denial of continuance requested by accused because of the absence of witnesses was not improper in absence of showing of expected testimony or probability that absent witnesses would be available if case were continued or showing of probability that absence of witnesses substantially affected result of trial or that result would have been different if they had been located and produced. *Id.*

Where the trial court had said a doctor's certificate would be required before the case could be continued because of appellant's illness and appellant was produced in court for the trial which continued without further objection, the question of granting the continuance was in the judicial discretion of the trial court. *Campbell* v. *United States* (D.C. Mun. App. 1949, 65 A. 2d 191).

Under the circumstances of the case, the question whether to grant a further continuance was a matter of discretion with the trial judge. The refusal thereof affords no basis for inquiry by an appellate court. *Glenn* v. *Mindell* (D.C. Mun. App. 1950, 74 A. 2d 835).

Where illness of defendant prevented trial, motion for continuance rests in sound discretion of the Trial Court and is not subject to reversal unless discretion is abused or not in accordance with fixed legal principles. *Etty* v. *Middleton* (D.C. Mun. App. 1948, 62 A. 2d 371).

The granting or refusal of a continuance by the trial court is not reviewable except for abuse of discretion. *Hillyard* v. *Smither & Mayton, Inc.* (D.C. Mun. App. 1950, 76 A. 2d 166).

Directed verdict

Directed verdict in favor of the District was proper where there was no evidence showing that defendant's automobile ran through a depression and collided with plaintiff's automobile in road maintained by the District. *Bale* v. *District of Columbia* (D.C. Mun. App. 1949, 62 A. 2d 551).

Discovery

Where case originates in the Municipal Court of the District of Columbia and proceeds to judgment in that forum, which judgment is subsequently transcripted to the District Court for lien purposes or to extend the statutory period of limitations, the better practice would be to utilize the methods of discovery provided by the rules of the Municipal Court. *Paley* v. *Solomon* (D.C.D.C. 1945, 59 F. Supp. 887).

Discretion of court

Whether a defense shall stand or be set aside rests in the sound discretion of the trial court and where before denying the motion to vacate, the trial court heard all testimony to determine whether appellant had a meritorious defense and was convinced that no such defense existed, discretion was not abused. *Schoon* v. *Marvins Credit, Inc.* (D.C. Mun. App. 1949, 65 A. 2d 212).

Dismissal

Where, on the second call of the calendar after plaintiff failed to appear, defendant moved that the action be dismissed with prejudice, and the court granted this motion.

argument that rule permits only dismissal without prejudice is unfounded. The rule limits the authority of the clerk to a dismissal but imposes no express restriction on action by the court. Unless expressly restricted by statute or rule, a court has inherent power to dismiss an action for want of prosecution. *Jarcy* v. *Griffith* (D.C. Mun. App. 1949, 65 A. 2d 919).

Where a complaint for libel did not set forth the alleged defamatory matter verbatim, dismissal of the complaint was plainly correct. *Watwood* v. *Credit Bureau, Inc.* (D.C. Mun. App. 1949, 68 A. 2d 905).

Docketing of judgment

After rendition of judgment by the municipal court, the judgment creditor may file in the clerk's office of the Supreme Court a certified copy of the judgment, and, when so docketed, the judgment shall have the same force and effect as if it had been a judgment of the Supreme Court of the District. *Brown* v. *Allan E. Walker & Co.* (1928, 26 F. 2d 545, 58 App. D.C. 173).

Under this chapter, the mere docketing of a judgment of the Municipal Court of the District of Columbia in the District Court makes the judgment of the Municipal Court a judgment of the District Court for all purposes as if it had originally been obtained there, but the judgment does not lose its character as a judgment of the inferior court although it also becomes a judgment of the District Court. *Paley* v. *Solomon* (D.C.D.C. 1945, 59 F. Supp. 887).

Where judgment obtained in the Municipal Court of the District of Columbia was docketed in the District Court, giving the District Court concurrent jurisdiction with the Municipal Court, and there was no reason why proceedings supplemental to execution could not be taken in the Municipal Court, the District Court would, under the doctrine of forum non conveniens, refuse to exercise its jurisdiction of the proceeding. *Id.*

Municipal Court is not divested of jurisdiction where it entertains supplemental proceedings in aid of execution of its judgment subsequent to the docketing of the judgment in the District Court, since there is no statute to the effect that Municipal Court loses jurisdiction upon the docketing of its judgment in District Court. *Halperin* v. *Cohen* (D.C. Mun. App. 1949, 67 A. 2d 295).

Ejectment

Municipal court had jurisdiction of ejectment action brought by owner of land against occupant who was in possession without right after lawful entry where such occupant did not challenge owner's title. *Shapiro* v. *Christopher* (1952, 195 F. 2d 785, 90 U.S. App. D.C. 114).

Plaintiff's title is not "in issue", in ejectment cases, when it is expressly conceded or not denied, and in such cases municipal court has jurisdiction; but whenever it becomes apparent in action of ejectment in municipal court that plaintiff's title must be tried and determined, that court should take no further cognizance of cause, but should stop short. *Id.*

The purpose of ejectment, at common law, was primarily to determine question of right to possession, and secondarily question of title, if that question were raised so as to make right to possession depend upon it; and its function in the District of Columbia is the same since the repeal of the mandatory requirement that title be an issue. *Id.*

Equitable powers

Municipal Court for District of Columbia, under its equity powers, lacked jurisdiction to entertain cause of action by property owners to cancel special assessment by District for certain paving improvements to sidewalks and alley. *J. F. Paton and M. S. Paton* v. *District of Columbia* (D.C. Mun. App. 1962, 180 A. 2d 844).

Municipal Court of District of Columbia has such equitable power as may be necessary to fully and completely exercise its exclusive jurisdiction of civil action in which claimed value of personal property or debt or damages claimed does not exceed $3,000. *Id.*

As an incident to its exclusive jurisdiction of civil actions in which claimed value of personal property or debt or damages claimed does not exceed $3,000, the Municipal Court has such equitable powers as may be necessary to fully and completely exercise such jurisdiction, but its equity powers are incidental and limited and are not primary or general; and such court lacked jurisdiction to entertain complaint for injunction against assertion of lien on plaintiff's property for unpaid water bill and to restrain defendants' from delivering tax deed for property. *Friedman* v. *District of Columbia et al.* (D.C. Mun. App. 1959, 155 A. 2d 521).

The Municipal Court for the District of Columbia has exclusive jurisdiction of any action involving personal property of a claimed value not exceeding $3,000 and of any action wherein recovery is sought for death or damages not exceeding $3,000, and as an incident to its exclusive jurisdiction, Municipal Court has such equitable power as may be necessary to fully and completely exercise its jurisdiction. *Sheherazade, Inc.* v. *Mardikian* (D.C. Mun. App. 1958, 143 A. 2d 512).

Municipal Court for District of Columbia has equitable as well as legal powers, but its jurisdiction in any civil action is limited by statutory jurisdictional amount. *Hirshon* v. *Whelan etc.* (D.C. Mun. App. 1955, 113 A. 2d 484, affirmed 232 F. 2d 339).

The Municipal Court for District of Columbia has exclusive jurisdiction of civil actions, legal or equitable involving personal property of a value of less than $3,000. *Shulman* v. *Shulman* (D.C. Mun. App. 1952, 86 A. 2d 527).

Even in the exercise of its equitable power, the Municipal Court for the District of Columbia had no right to entertain a collateral attack on foreign judgment or to award judgment debtor a retrial of his case. *Suydam* v. *Ameli* (D.C. Mun. App. 1946, 46 A. 2d 763).

Principles that equitable defense may be interposed in all actions at law, that mutual debts and claims under contract between parties to common-law action may be set off against each other and that where claim of setoff is made, judgment must be rendered for balance found due whether to plaintiff or defendant with costs, apply to landlord and tenant actions in Municipal Court in District of Columbia. *Mitchell* v. *David* (D.C. Mun. App. 1947, 51 A. 2d 375).

The remedy in equity for breach of a partnership agreement is not exclusive, and there may be at law a recovery for such breach. It is only when the controversy involves an investigation and audit of accounts that resort must be had to equity. *Boyle* v. *Smith* (D.C. Mun. App. 1949, 64 A. 2d 428).

Execution

Generally, in the absence of statute to the contrary, execution should issue from the court rendering the judgment, rather than from the superior court to which the judgment has been transcripted. *Paley* v. *Solomon* (D.C.D.C. 1945, 59 F. Supp. 887).

Forcible entry and detainer

Forcible entry and detainer is not a substitute for trespass, and the actions are not the same. *Thurston* v. *Anderson* (D.C. Mun. App. 1945, 40 A. 2d 342).

Identity of claim

If two separate and distinct primary rights should be invaded by one and the same wrong or if a single primary right should be invaded by two distinct and separate legal wrongs, two causes of actions would result, and unless the "evidence necessary to prove one cause of action would establish the other" there is no identity of causes of action. *Astor Pictures Corp.* v. *Shull* (D.C. Mun. App. 1949, 64 A. 2d 160).

Implied contracts

Municipal court of District of Columbia had jurisdiction of a claim for debt arising out of an "implied" contract, not exceeding $300. *District of Columbia* v. *Thompson* (1930, 50 S. Ct. 172, 281 U.S. 25, 74 L. Ed. 677).

Interest

When interest is allowed on tort claims as part of compensatory and punitive damages, such interest and damages must be included in deciding whether case is within $3,000 jurisdictional limit of Municipal Court of District of Columbia. *Riss & Co., Inc.* v. *Feldman* (D.C. Mun. App. 1951, 79 A. 2d 566).

Jurisdiction—Generally

Where the parties both claim title to the real estate, which is the subject of the possessory action, it is clear that the trial court has no power to decide the question of ownership. *Everett* v. *Miller* (D.C. Mun. App. 1949, 67 A. 2d 399).

In a class B action involving less than $500, Municipal Court rules apply, and trial court erred in ruling that defendant waived jurisdiction by failing to raise it by motion since rules do not preclude raising any defense available; further jurisdiction over subject matter may never be conferred by consent and may even be questioned for first time on appeal. *Duvall* v. *Southern Municipal Corp.* (D.C. Mun. App. 1949, 63 A. 2d 336).

Where, in an ordinary action for personal damages, the proof establishes that the title to realty is really in issue, the case no longer involves personal property, debt or damage, so as to come within court's expanded jurisdiction. *Id.*

So long as a wife's action for divorce or separate maintenance was pending in District Court, the Municipal Court ought not to entertain a proceeding between the parties involving any of the issues in the District Court proceeding. *Keleher* v. *Keleher* (D.C. Mun. App. 1948, 62 A. 2d 638).

Jurisdiction of the subject matter may neither be assumed by a court nor conferred upon it by consent or silence, and it may be raised at any stage of the proceedings or upon appeal sua sponte. *Henderson* v. *E Street Theatre Corporation* (D.C. Mun. App. 1949, 63 A. 2d 649).

Where in a motion for summary judgment, supporting affidavits show plainly that the issue between the parties was whether defendant had good title to real estate, the court is without jurisdiction since court would have had to determine the state of the title. *Cohen* v. *Brandt* (D.C. Mun. App. 1949, 63 A. 2d. 853).

—— After appeal

When the mandate of an appellate court is filed in the lower court, that court reacquires the jurisdiction which is lost by the taking of the appeal. *Pyramid National Van Lines, Inc.* v. *Goetze* (D.C. Mun. App. 1949, 66 A. 2d 693).

Law of the case

Instructions approved by appellate court became "law of the case", and failure to give them upon retrial was error unless they were given in substance in general charge. *Frazer* v. *Crounse* (D.C. Mun App. 1948, 56 A. 2d 54).

Leases

Rights and obligations between cooperatively owned corporation and member-tenant under proprietary lease on which member-tenant has defaulted can be determined in a summary landlord and tenant proceeding in municipal court and need not be litigated in federal District Court. *Valois, Inc.* v. *Thorne* (D.C. Mun. App. 1952, 86 A. 2d 530).

A judgment of District of Columbia Municipal Court, awarding lessors possession of leased building for nonpayment of $520 representing two months' rent, less $55 per month exceeding rent ceiling, for two apartments therein, was erroneous as granting reformation of ten year lease in amount and to extent exceeding court's jurisdictional limitation of $3,000. *Psarakis* v. *Dukane, Inc.* (D.C. Mun. App. 1951, 84 A. 2d 543).

Motion for new trial

Trial judge may on his own motion require more detailed affidavits or testimony for and against motion for new trial, but failure to do so does not necessarily constitute abuse of discretion. *Peay* v. *Parks* (D.C. Mun. App. 1945, 42 A. 2d 250).

One seeking a new trial must present substantial reasons for believing that an injustice has been done or that for some other good reason the circumstances entitle him to a second day in court, and it is not enough merely to suggest vague grounds for new trial. *Id.*

Where defendant moved for a new trial or for judgment notwithstanding verdict, trial court must act upon each and granting of motion for judgment is not ground for summarily denying motion for new trial. The court must indicate its reasons therefor. *Crusade* v. *Capital Transit Co.* (D.C. Mun. App. 1949, 63 A. 2d 878).

Negligence Causing Death Act

The Municipal Court for the District of Columbia does not have jurisdiction of an action under the Negligence Causing Death Act, though recovery sought is limited to $3,000, the maximum jurisdictional amount of an action in the Municipal Court, since the United States Court of Appeals is the only court to which appeals may be taken in such an action, and therefore the trial of such an action must be had exclusively in the United States District Court. *Eatmon* v. *Driggers* (D.C. Mun. App. 1956, 125 A. 2d 847).

Pleadings

Where buyer's complaint, whereby buyer sought damages for fraudulent representations in an amount within Municipal Court's jurisdiction, was ambiguous in that it did not clearly disclose whether rescission was sought or damages after rescission, and seller did not raise jurisdictional question in Municipal Court and Municipal Court considered only the damage claim, the action was within Municipal Court's jurdisdiction, notwithstanding that the amount involved in a rescission action would have been in excess of jurisdictional amount. *Whelan, etc.* v. *Hirshon* (1956, 232 F. 2d 339, 98 U.S. App. D.C. 82).

An assertion in pleadings that plaintiff received tax deed from commissioner does not place title in issue and where intervenor did not plead irregularity in tax deed, he did not waive right to raise the question of the jurisdiction of the Municipal Court over the controversy. *Duvall* v. *Southern Municipal Corp.* (D.C. Mun. App. 1949, 63 A. 2d 336).

Where subject matter of the present suit was returned after suit was filed, but prior to the filing of the answer, evidence warranted the invocation of the rule providing that when issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised by the pleadings, and failure to amend does not affect the result of these issues. *Orrison* v. *Ferrante* (D.C. Mun. App. 1950, 72 A. 2d 771).

Probation

The Municipal Court of the District of Columbia may in its discretion order restitution or reparation as a condition of probation. *Basile* v. *United States* (D.C. Mun. App. 1944, 38 A. 2d 620).

Where record was devoid of anything indicating that there was newly discovered evidence or that claimed newly discovered evidence met any of the familiar tests which would entitle defeated litigant to a new trial, refusal of motion for new trial on the ground of newly discovered evidence was not an abuse of discretion. *Levy* v. *Bryce* (D.C. Mun. App. 1946, 46 A. 2d 765).

Purpose

The real purpose of this section providing that where a judgment of the Municipal Court of the District of Columbia is docketed in the District Court it becomes a judgment of the District Court, was to provide for a lien on real estate and to extend the period of limitation. *Paley* v. *Solomon* (D.C.D.C. 1945, 59 F. Supp. 887).

Reformation or rescission

The Municipal Court for the District of Columbia would be without jurisdiction to try issues appropriate to suit for reformation or rescission of instrument or for specific performance, unless such issues were presented by way of defense to action within the court's jurisdiction. *Howenstein Realty Corporation* v. *Richardson* (1943, 135 F. 2d 803, 77 U.S. App. D.C. 299).

Municipal court of the District of Columbia did not lack jurisdiction to entertain action by buyers against seller to rescind contract for purchase of speedboat for $1,000. *Robinson* v. *Carter et al.* (D.C. Mun. App. 1950, 77 A. 2d 174).

Remedy as legal or equitable

The term "personal property," within this section giving Municipal Court for District of Columbia jurisdiction of civil actions involving personal property having value less than $3,000, covers choses in action whether they are legal or equitable, and the words "civil actions" are generally held to cover both actions at law and actions in equity. *Klepinger* v. *Rhodes* (1944, 140 F. 2d 697, 78 U.S. App. D.C. 340, certiorari denied 64 S. Ct. 1047, 322 U.S. 734, 88 L. Ed. 1568).

The jurisdiction of the Municipal Court for the District of Columbia embraces equitable as well as legal actions. *Ridgley* v. *United States* (D.C. Mun. App. 1945, 45 A. 2d 475).

Rents

Claims of son against sister involving rents from deceased father's property were within jurisdiction of municipal court. *Shields* v. *Shields* (1939, 101 F. 2d 255, 69 App. D.C. 331).

Representation by counsel

Where accused made no protest or objection with respect to appointment of counsel but conferred with such counsel for some fifteen minutes prior to trial, and no request was made for further period of consultation or for continuance, accused could not complain that he was deprived of effective assistance of counsel because of short time that elapsed between appointment of counsel and time of trial, particularly where accused was free on bond for four months between time of arraignment and time of trial, during which period he and counsel of his choice had ample opportunity to prepare defense. *Slaughter* v. *United States* (D.C. Mun. App. 1948, 60 A. 2d 700).

Where defendant had been granted four additional days in which to procure his own counsel and the trial court finally appointed an attorney with the defendant expressing no dissatisfaction, conferred with him for fifteen minutes prior to the trial and did not ask for a longer period, the defendant was not deprived of counsel of his own choice at the trial of his case. *Id.*

Res Judicata

Where insured brought personal injury suit in United States District Court for the District of Columbia for damages in excess of $3,000, and insurer, which had paid less than $3,000 in property damages, could not present its claim in District Court because of jurisdictional limitations and it consented to stay of proceedings in Municipal Court on its claim against same defendant, District Court judgment adverse to insured was not determinative of insurer's rights as subrogee under its policy and judgment was not res judicata of pending suit in Municipal Court. *Emmco Insurance Co.* v. *M. E. Brown* (D.C. Mun. App. 1962, 178 A. 2d 429).

Where, even assuming jurisdiction in Municipal Court, the responsibility of the husband to pay rent for wife's separate apartment has been fully presented to and decided by the District Court, and the doctrine of res judicata precluded relitigation of that issue in the Municipal Court. *Keleher* v. *Keleher* (D.C. Mun. App. 1948, 62 A. 2d 638).

Review

Reviewing court may affirm proper dismissal of case on appeal for different reasons from those adopted by trial court. *J. F. Paton and M. S. Paton* v. *District of Columbia* (D.C. Mun. App. 1962, 180 A. 2d 844).

Where the court below accepted the record made by the municipal court as against an affidavit by party that there was clerical error, on appeal the ruling will not be disturbed. *Dreslin* v. *Phillips* (1922, 279 F. 303, 51 App. D.C. 324).

Notwithstanding general rule that question first raised on motion for rehearing on appeal will not be considered, jurisdictional questions first raised at such time will be considered. *Hirshon* v. *Whelan, etc.* (D.C. Mun. App. 1955, 113 A. 2d 484).

Revival of judgment

The District Court of the United States for the District of Columbia may revive judgment filed by scire facias. *Green* v. *Mann* (1902, 19 App. D.C. 243).

Right of suit

To acquire the right of suit, the plaintiff must be a direct, as distinguished from a mere incidental beneficiary because an incidental beneficiary acquires by virtue of the promise no right against the promisor or the promisee *Schwartz* v. *Brown* (D.C. Mun. App. 1949, 64 A. 2d 298).

Right to jury trial

In the Landlord and Tenant Branch of the Municipal Court, parties are not entitled as a matter of right to separate jury trials on what used to be called pleas and abatements and it lies within the sound discretion of the trial court to decide whether such separate jury trials shall be had. *Rubenstein* v. *Swagart* (D.C. Mun. App. 1950, 72 A. 2d 690).

—— Nonsuit

Under rule 37(a) of the Municipal Court, plaintiffs have lost their right to a nonsuit or voluntary dismissal after defendant's answer has been filed, since beyond that point an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. *Mercer* v. *Equitable Life Insurance Society* (D.C. Mun. App. 1949, 65 A. 2d 207).

Separate maintenance

Municipal court has no power to compel a husband to provide funds for his wife's separate maintenance. Accordingly, judgment obtained by physician for professional services rendered to wife against husband must be dismissed. *Irwin* v. *Hawfield* (D.C. Mun. App. 1948, 62 A. 2d 926).

Wife's claim against husband for amount of rent due was in substance an action to compel the husband to provide funds for her separate maintenance over which the Municipal Court had no jursidiction since such relief is specifically given to the District Court. *Keleher* v. *Keleher* (D.C. Mun. App. 1948, 62 A. 2d 638).

Splitting of claim

When plaintiff, who had been employed by defendant for a term of five years, was told to look for other employment before expiration of such term and defendant ceased paying him, his right of action was one for damages for breach of contract and not for wages, and he was required to recover all present and prospective damages in one suit and could not split his cause of action and sue separately as installments came due. *Keller* v. *Marvin's Credit, Inc., etc.* (D.C. Mun. App. 1959, 147 A. 2d 872).

Where plaintiff brought two separate actions, consolidated for trial, to collect commissions allegedly due from separate sales under contract whereby defendant was to pay plaintiff 5 percent commission on all sales to federal government agencies, and aggregate sum claimed exceeded maximum jurisdiction of municipal court, there was but one cause of action, and plaintiff could not, by splitting his cause of action, vest that court with jurisdiction. *Le John Mfg. Co.* v. *Webb* (D.C. Mun. App. 1952, 91 A. 2d 332).

A single or entire claim or demand cannot be split up and divided into separate claims and separate suits maintained for the various parts thereof. But the rule does not require that two distinct causes of actions, either of which would by itself authorize independent relief, must be presented in a single suit though they exist at the same time and might be considered together. *Astor Pictures Corp.* v. *Shull* (D.C. Mun. App. 1949, 64 A. 2d 160).

Statutory penalty

Civil Rights Act did not confer jurisdiction upon United States courts in general but in respect of actions for penalties, the act gave jurisdiction specifically to the territorial, district or circuit courts. The Municipal Court is not one of these courts and has no such jurisdiction. *Henderson* v. *E Street Theatre Corporation* (D.C. Mun. App. 1949, 63 A. 2d 649).

Stay of proceedings

The Municipal Court has power, under proper circumstances, to stay its own proceedings pending determination of an action in the District Court. *Bradley* v. *Triplex Shoe Company* (D.C. Mun. App. 1949, 66A. 2d 208).

Stockholder's suit

Under § 29–240 authorizing stockholder dissenting from corporation's decision to dispose of all assets to bring suit in District Court of United States for the District of Columbia, against corporation for fair value of shares, dissenting stockholder could not bring suit in Municipal Court for the District of Columbia, Civil Division, on theory that Municipal Court Act or Business Corporation Act of 1954 gave right to Municipal Court to assume jurisdiction, even though value of dissenting stockholders' shares was less than $3,000. *Davis* v. *Universal Corporation* (D.C. Mun. App. 1957, 133 A. 2d 479).

The Municipal Court is a statutory court of limited jurisdiction, and its jurisdiction is not to be extended by inference or implication unless necessary to carry out the plain intention of Congress. *Id.*

Subpoena duces tecum

There is no rule in the trial court with respect to the issuance of subpoena duces tecum in criminal cases, but the practice there appears to require the approval of the court for the issuance of such a subpoena. In view of the federal rules and the trial court's own rule in civil cases, it would have been better policy to issue the subpoena and rule on the admissibility of the evidence when offered, but we find no prejudicial error in the court's refusal of such requests. *Kelly* v. *United States* (D.C. Mun. App. 1950, 73 A. 2d 232).

Where appellant was convicted for violation of Code § 22–2701, it was not error for the court to refuse to issue a compulsory process for obtaining witnesses, since the rule is well established that a party is not entitled of right to a subpoena duces tecum in any form, at any time and under any circumstances and a subpoena duces tecum too indefinite in terms, too broad in scope, or untimely requested may properly be denied. *Id.*

Title to realty

As used in former § 11–703 [set out as a note under this section] denying municipal court jurisdiction in "cases involving title to real estate", quoted expression is identical in meaning with phrase "cases where title to real estate is in issue". *Shapiro* v. *Christopher* (1952, 195 F. 2d 785, 90 U.S. App. D.C. 114).

It is obvious that Congress intended to exclude from the jurisdiction of the municipal court only cases where there is a necessary and direct issue as to the title to real estate, and the court properly assumed jurisdiction of an action to recover the balance of money received on a foreclosure sale. *Schwartz* v. *Murphy* (1940, 112 F. 2d 24, 72 App. D.C. 103).

Former § 11–703 [set out as a note under this section] expressly excludes from the jurisdiction of the municipal court actions involving title to real estate. *Johnson* v. *Simmons* (1923, 290 F. 331, 53 App. D.C. 356).

Retrial of title to real estate. *Gray* v. *Ward* (1916, 45 App. D.C. 498).

Where action by administrator of decedent's estate sought in part to require trustees under deed of trust on certain real estate to release such deed and to compel the cancellation of notes secured thereby, action necessarily and directly put title to real estate in issue and hence Municipal Court for the District of Columbia, Civil Division, did not have jurisdiction. *Barbour as administrator etc.* v. *Baltz, etc.* (D.C. Mun. App. 1958, 146 A. 2d 905).

Section 11–738, prescribing procedure to be followed when title is put in issue by defendant in summary proceeding for possession of real property and requiring that the litigant must file written plea setting forth nature of title claimed, accompanied by an undertaking, are mandatory, and question of title can enter case only by special plea of defendant and if not perfected in accordance with statutory requirements, court is without authority to dismiss for lack of jurisdiction, but must proceed to hear case of possession. *Sayles* v. *Eden* (D.C. Mun. App. 1958, 144 A. 2d 895).

Municipal court should not reject jurisdiction unless and until it is made to appear that the title to land is necessarily directly in issue between the parties. *Mindell* v. *Glenn* (D.C. Mun. App. 1949, 65 A. 2d 340, affirmed 74 A. 2d 835).

Where plaintiff's purchase included real property at a sale under a deed of trust made by defendant to secure a debt, suit for possession must not be confused with other categories of actions in which it is claimed that title to real property is involved. *Id.*

Where, in an ordinary action for personal damages, the proof establishes that the title to realty is really in issue, the case no longer involves personal property, debt or damage, so as to come within court's expanded jurisdiction. *Duvall* v. *Southern Municipal Corp.* (D.C. Mun. App. 1949, 63 A. 2d 336).

United States, actions by

The Municipal Court of District of Columbia does not have jurisdiction of suits brought by the United States. *United States* v. *Sheriff Motor Co.* (D.C.D.C. 1943, 63 F. Supp. 685).

The Municipal Court for the District of Columbia had jurisdiction of action brought by the United States to recover $269.03 for rent. *Ridgley* v. *United States* (D.C. Mun. App. 1945, 45 A. 2d 475).

The United States was not precluded from bringing dispossessory proceedings against tenant in the Municipal Court for the District of Columbia, over objection of tenant that the United States District Court for the District of Columbia had exclusive jurisdiction. *Wittek* v. *United States* (171 F. 2d 8, 83 U.S. App. D.C. 377, reversed on other grounds 69 S. Ct. 1108, 337 U.S. 346, 93 L. Ed. 1406).

Writs

Execution of writ of restitution issued by Municipal Court for the District of Columbia was strictly a governmental function. *O'Neill Wilson* v. *Bittinger et al.* (1958, 262 F. 2d 714, 104 U.S. App. D.C. 403).

II. Under Present Law

Extent of jurisdiction

Incidental to its exclusive but limited civil jurisdiction, District of Columbia Court of General Sessions has such equitable powers as may be necessary to fully and completely exercise its jurisdiction, but such powers are incidental and limited and not primary or general. *D. D. Brewer, Director, etc.* v. *M. Simmons and H. Simmons, Jr.* (D.C. App. 1964, 205 A. 2d 60).

Title to realty

Court of General Sessions lacks jurisdiction to try cases involving title to realty, but this rule bars from litigation only those actions where title is necessarily and directly in issue and not where title is only incidentally involved. *G. Mahoney* v. *M. V. Campbell* (D.C. App. 1965, 209 A. 2d 791).

Court of General Sessions must decide extent to which title to realty is in issue by hearing evidence, and a mere claim or denial of title ordinarily is not enough to prevent trial of case on ground that Court of General Sessions lacks jurisdiction to try cases involving title to realty. *Id.*

No necessary and direct issue of title to deceased former owner's realty was involved in action by decedent's alleged daughter against decedent's sister to recover possession of the realty after decedent's death, and Landlord and Tenant Branch of Court of General Sessions had jurisdiction to hear the case, in view of federal District Court's judgment establishing daughter as sole heir and next of kin of decedent. *Id.*

Even if title could have been made issue in action by alleged daughter of deceased former property owner to recover possession of the property from decedent's sister, mere assertion in sister's answer and at trial that daughter was not established owner of the premises was not sufficient to prevent Landlord and Tenant Branch of Court of General Sessions from deciding issue of possession. *Id.*

Pendency of appeal from federal District Court judgment establishing alleged daughter to be sole heir and next of kin of deceased former property owner did not prevent Landlord and Tenant Branch of Court of General Sessions from recognizing the judgment as establishing daughter's title to the property, which decedent's sister had occupied following decedent's death. *Id.*

§ 11–962. Transfer of civil actions to Court of General Sessions

In a civil action commenced in the United States District Court for the District of Columbia, other than an action for equitable relief, where it appears to the satisfaction of the court at or subsequent to any pretrial hearing but prior to trial thereof that the action will not justify a judgment in excess of $10,000, the court may certify the action to the District of Columbia Court of General Sessions for trial. The pleadings in the action, together with a copy of the docket entries and copies of any orders entered therein, and the deposit for costs, shall be sent to the clerk of the Court of General Sessions. Promptly thereafter, the Court of General Sessions shall call the case for trial. The Court of General Sessions shall thereafter treat the case as though

it had been filed originally in that court, except that the jurisdiction of the court shall extend to the amount claimed in the action, even though it exceed the sum of $10,000. (Dec. 23, 1963, 77 Stat. 490, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–756 (Apr. 1, 1942, ch. 207, § 5, 56 Stat. 193; June 29, 1953, ch. 195, § 410, 67 Stat. 108; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87–873, § 3, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 3, 77 Stat. 78).

Section is derived from subsec. (a) of section 11–756 of D.C. Code, 1961 ed. For remainder of section 11–756, see tables.

Changes are made in phraseology.

CROSS REFERENCES

Deposits for jury trials, see § 15–713.
Nonresident witnesses, see § 14–104.

NOTES TO DECISIONS

I. UNDER PRIOR LAW

Abuse of discretion

Discretion is an area, not a line or a point; and scope of review of order of District Court transferring cause to Municipal Court when District Court is satisfied that action will not justify judgment in excess of $3,000 is necessarily very limited; and issue for reviewing court is not whether District Court wisely exercised its discretion but whether, in transferring case to Municipal Court, it acted arbitrarily and thus abused its discretion *Gray et ano.* v. *Evening Star Newspaper Co. et al.* (1960, 277 F. 2d 91, 107 U.S. App. D.C. 292).

Determination of judge of Federal District Court for the District of Columbia in entering order certifying action to Municipal Court on ground judgment in excess of $3,000 would not be justified is an exercise of discretion which will not normally be disturbed on appeal unless arbitrary, but such discretion becomes arbitrary if it has been exercised for an erroneous reason. *Davis* v. *Peerless Inc. Co. et al.* (1958, 255 F. 2d 534, 103 U.S. App. D.C. 125).

District Court did not abuse its discretion in certifying personal injury suit to Municipal Court for District of Columbia for trial on ground that defense counsel in transferred cases frequently argue that the damages in excess of $3,000 should not be awarded and point to District Court's order as indicating that such was already established opinion of district judge, since plaintiff would be entitled to receive instruction that jury should disregard any such argument and might award damages in such amount as it should find plaintiff was entitled to receive up to the amount claimed in the action. *Melton* v. *Capital Transit Company* (1958, 253 F. 2d 42, 102 U.S. App. D.C. 306).

In action to recover $50,000 on account of personal injuries sustained as a result of alleged negligence of defendants, District Judge did not abuse his discretion in certifying case, to Municipal Court for District of Columbia for trial, on ground that it appeared to him that action would not justify a judgment in excess of $3,000. *Barnard* v. *Schneider & District of Columbia* (1957, 243 F. 2d 258, 100 U.S. App. D.C. 152).

Affirmative defenses

Contributory negligence is an affirmative defense and must be pleaded and proved by defendant. *Gittleson* v. *Robinson* (D.C. Mun. App. 1948, 61 A. 2d 635).

The defense of the statute of frauds is an affirmative defense and must be pleaded. *Saunders System Washington Co.* v. *Kuffner* (D.C. Mun. App. 1950, 75 A. 2d 136).

Amendment of pleadings

Where broker sought to recover commissions from another broker and owner of realty under claim that they had authorized him to obtain a purchaser for realty and that he had done so, but at trial plaintiff advanced evidence in support of that claim and in support of inconsistent claim that he was engaged only by the other broker to assist in selling realty with agreement that commission should be shared, court properly permitted plaintiff to amend bill of particulars after verdict on second claim in order to conform to the evidence. *Davis* v. *Bruno* (D.C. Mun. App. 1948, 57 A. 2d 828).

In landlords' action for possession of realty on ground of default in payment of rent, wherein tenant moved to dismiss complaint because of failure to show whether notice to quit had been given or had been waived in writing, and it was admitted that tenant held possession under written lease which waived notice to quit in event of default in payment of rent, trial court properly permitted landlords to amend complaint by inserting a check mark on printed form indicating that notice to quit had been waived. *Barnes* v. *Conner* (D.C. Mun. App. 1945, 44 A. 2d 925).

The trial court has wide discretion in the allowance of amendments of pleadings both before and during trial. *Peake* v. *Ramsey* (D.C. Mun. App. 1945, 43 A. 2d 763).

Attachment

Where debtor was served with notice to appear in suit by creditor for balance due for merchandise sold, but failed to appear, and after default judgment was entered, an attachment entered on judgment was returned unsatisfied, and debtor was served personally with subpoena, but failed to appear for oral examination, municipal court should have granted creditor's request to issue an attachment so that debtor might be brought before court. *Hill v. McWilliams* (D.C. Mun. App. 1952, 89 A. 2d 383).

Certification "prior to trial"

Action which had been originated in district court was certified to municipal court "prior to trial" within removal statute even though parties had already appeared before district court judge for trial and even though plaintiff had already made his opening statement when defendant moved for certification to municipal court. *R. H. Stringfellow, Administrator etc.* v. *D. Broders* (D.C. Mun. App. 1962, 181 A. 2d 340).

Conditions on dismissal

Rule 37 providing that after service of answer an action shall not be dismissed at plaintiff's instance save on order of the court and on such terms as the court deems proper, does not make it mandatory on the trial judge to assess counsel fees as a condition to dismissal without prejudice. *Adams* v. *Davis* (D.C. Mun. App. 1946, 47 A. 2d 792).

Where plaintiffs did not know seriousness of injuries for which recovery was sought until shortly before trial in municipal court because physician who had treated injuries could not previously be located because he was in the navy, plaintiffs' motion to dismiss the action without prejudice was granted without requiring plaintiffs to pay defendants' counsel fees as a condition of the dismissal. *Id.*

Consent to jurisdiction

Where main purpose of an action is to obtain injunctive relief from future acts, jurisdiction cannot be conferred on Municipal Court for the District of Columbia by alleging that damages already sustained do not exceed $3,000. *Sheherazade, Inc.* v. *Mardikian* (D.C. Mun. App. 1958, 143 A. 2d 512).

The Municipal Court of Appeals has no jurisdiction to entertain an appeal from an order or judgment that is not final, and consent of the parties cannot enlarge its jurisdiction. *Moyer* v. *Moyer* (D.C. Mun. App. 1957, 134 A. 2d 649).

Consolidation

Under court rule regarding consolidation and joinder, consolidation of two or more informations for trial is conditioned on possibility of joinder of the offenses and of the defendants in a single information, and joinder is permitted only if defendants are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. *District of Columbia* v. *Hunt* (1947, 163 F. 2d 833, 82 U.S. App. D.C. 159).

Contempt

Where an attorney for accused during trial publishes a document containing highly derogatory assertions regarding trial judge's alleged relations to trial and his alleged conduct of the trial and which is in effect a public pro-

fession of contempt for the judge's character, attorney should ask to be excused from trial. *Laughlin* v. *Eicher* (1944, 145 F. 2d 700, 79 U.S. App. D.C. 266, certiorari denied 65 S. Ct. 1403, 325 U.S. 866, 89 L. Ed. 1985).

Where during trial and in open court attorney accused trial judge of gross and habitual misconduct in the trial, the attorney's conduct was contempt in court's presence and justified order dismissing attorney from the trial. *Id.*

A defendant may be adjudged in contempt for failure to pay permanent alimony awarded in a final judgment for absolute divorce. *Tilghman* v. *Tilghman* (D.C.D.C. 1944, 57 F. Supp. 417).

A court, once having acquired jurisdiction over person of defendant, is empowered to enter a contempt order, notwithstanding defendant's absence from jurisdiction, provided he received notice of the motion. *Id.*

To call another a liar in the presence of the court and while the court is in session amounts to contempt of court. An attorney, as an officer of the court, must behave with propriety in the courtroom. *In re Chaifetz* (D.C. Mun. App. 1949, 68 A. 2d 228).

Due process of law in the prosecution of contempt, except where committed in open court, requires that the accused be advised of the charges and have a reasonable opportunity to meet them by way of defense or explanation. *Id.*

Where contempt would be civil in nature, the rule is that action on such a matter is not reversible unless an abuse of discretion is made to appear. *Daime* v. *Price* (D.C. Mun. App. 1950, 71 A. 2d 611).

Continuance

When a witness not under subpoena fails to make his promised appearance, the granting of a continuance rests in the discretion of the trial court. *Union Storage & Transfer Co.* v. *Lamphere* (D.C. Mun. App. 1944, 40 A. 2d 258).

Costs

Rule 68(a) of municipal court permitting trial judge to make order respecting outside stenographers concerning furnishing of copies of transcript and compensation to be paid therefor is not mandatory. *Walsh* v. *Schafer* (D.C. Mun. App. 1948, 61 A. 2d 716).

Where trial was half over and court requested defendant to furnish court with transcript of record up to that point with result that reporter's bill was $150 instead of lower cost at defendant's request was not called, refusal of court to make order fixing lower costs at defendant's request was not an abuse of discretion. *Id.*

Where it was held that party attempting to appeal had no right to do so and judgment was affirmed, cost of stenographic record included in record on appeal could not be taxed against appellant by Municipal Court of Appeals but could only be taxed by trial court. *Klein* v. *Liss* (D.C. Mun. App. 1945, 43 A. 2d 757).

Counterclaims

Whether claim asserted in District of Columbia Municipal Court action actually constituted compulsory counterclaim to suit in District Court of United States for District of Columbia was question for District Court, since such question involved interpretation of District Court's own rules. *Kaplowitz Bros.* v. *Kahan* (D.C. Mun. App. 1948, 59 A. 2d 795).

Defendant's argument that, under rules of the Municipal Court, his claim constituted a compulsory counterclaim which would be waived if not pleaded in the Municipal Court action, is unfounded since the Municipal Court could not change or enlarge its jurisdiction by a rule. *Hillyard* v. *Kline* (D.C. Mun. App. 1949, 64 A. 2d 759).

It is clear that in an action for earned freight charges a counterclaim for cargo damages is a compulsory counterclaim under court rules. *Pyramid National Van Lines, Inc.* v. *Goetz* (D.C. Mun. App. 1949, 66 A. 2d 693).

Court of record

Municipal Court of District of Columbia is a court of record, which has equitable jurisdiction, rule making power, and its actions are subject to review by Municipal Court of Appeals. *Encyclopedia Britannica, Inc.* v. *Jones* (D.C.D.C. 1951, 101 F. Supp. 521).

Defendant's statement before sentence

Where accused, conducting his own defense, testified fully and argued his position exhaustively, he was not deprived of any substantial right by failure to afford him the opportunity to make a statement before sentence was pronounced as accorded him by Rule 12(a) of the Criminal Division of the Municipal Court. *Savage* v. *District of Columbia* (D.C. Mun. App. 1947, 54 A. 2d 562, affirmed 169 F. 2d 889, 83 U.S. App. D.C. 401, certiorari denied 69 S. Ct. 654, 336 U.S. 924, 93 L. Ed. 1086, rehearing denied 69 S. Ct. 810, 336 U.S. 947, 93 L. Ed. 1103).

Depositions

Municipal court has no general authority to award counsel fees or traveling expenses incurred by counsel to attend taking of deposition in another city on notice of opposing party, in absence of specific statutory authority or court rule having statutory force and effect. *Krupsaw* v. *W. T. Cowan, Inc.* (D.C. Mun. App. 1948, 61 A. 2d 624).

Where counsel served notice that deposition would be taken in another city and on assurance that witness would attend failed to serve subpoena but witness, because of emergency surgical operation, was unable to attend and would not have done so even under subpoena, opposite party was not entitled under municipal court rule to attorney's fees and expenses for attendance at time and place stated in notice. *Id.*

Directed verdict

The practice of submitting cases to the jury and reserving determination of questions of law raised on motion for a directed verdict, so that if the Municipal Court of Appeals disagrees with the trial court's ruling on motion for directed verdict, the jury's verdict can be reinstated without necessity for a new trial, is commendable. *Resnick* v. *Wolfe & Cohen* (D.C. Mun. App. 1946, 49 A. 2d 809).

Question of whether accident was proximately caused by negligence of appellee's driver and question of appellee's contributory negligence, was sufficiently in issue and directed verdict may not be granted in a case of this nature unless reasonable men could arrive at but one verdict. *Wohlstetter* v. *Capital Transit Co.* (D.C. Mun. App. 1948, 62 A. 2d 797).

Discretion of court

Under this section authorizing District Court to transfer action to Municipal Court if satisfied that action will not justify judgment in excess of $3,000 broad discretion is vested in District Court. *Gray et ano.* v. *Evening Star Newspaper Co. et al.* (1960, 277 F. 2d 91, 107 U.S. App. D.C. 292).

Under this section authorizing District Court to transfer action to Municipal Court if satisfied that action will not justify judgment in excess of $3,000, District Court should, in deciding whether to retain case or transfer it to Municipal Court, act on basis of data presented under Rules by the parties prior to trial, including the pretrial hearing; but comparative evaluation of conflicting evidence is not part of function of the court at that stage of litigation, and it would have been error for District Judge to weigh reports of medical examinations made on behalf of parties to personal injury action in deciding whether to transfer case. *Id.*

Creditor's motion to rehear a claim of exemption in garnishment suit granted by default was within discretion of the court which could prescribe such terms as were just. *Marvins Credit, Inc.* v. *Westinghouse Electric Supply Inc., et al.* (D.C. Mun. App. 1957, 130 A. 2d 777).

Dismissal

Under circumstances, order dismissing action for want of prosecution and refusing to set aside dismissal were not erroneous or abuse of discretion. *Holland* v. *Capital Transit Co.* (D.C. Mun. App. 1955, 114 A. 2d 426).

Where plaintiff had been told in open court that she was expected to proceed with her case on certain date and that there would be no further continuances, dismissal on that date could properly be made without there having been telephone notice on day preceding trial day as provided for by Municipal Court Rule. *Id.*

A motion to dismiss concedes all facts well pleaded and if the complaint states a cause of action, however loosely drawn it may be, it is not subject to dismissal. Such

motion may only be granted when it appears certain that the plaintiff would not be entitled to relief under any state of facts which could be proved in support of the claim. *Mancuso* v. *Santucci* (D.C. Mun. App. 1949, 69 A. 2d 274).

The municipal court, after hearing evidence and taking case under advisement, was authorized to make finding for either plaintiffs or defendant, had discretion to reopen case for purpose of taking further testimony respecting plaintiffs' damages, and could have suggested to plaintiffs advisability of taking voluntary nonsuit, but was not authorized to order dismissal of case without prejudice, in absence of plaintiffs' consent. *Wade* v. *Union Storage & Transfer Co.* (D.C. Mun. App. 1943, 58 A. 2d 493).

Dismissal of cause without prejudice on ground that plaintiff has shown no right to relief after he has completed presentation of his evidence has effect of involuntary nonsuit, but such dismissal after completion of evidence on both sides and submission of case for decision is not authorized by municipal court rules. *Id.*

Municipal Court Rule 37, providing that an action shall not be dismissed at plaintiff's insistence save on order of court, was not applicable in suit by landlord to recover leased premises, and municipal court was governed by general practice which existed prior to adoption of municipal court rules, and which permitted plaintiff to dismiss his action at any time prior to verdict, since Rule 10 of the Landlord and Tenant Branch which makes applicable to that branch of the court certain general civil rules, does not include the Municipal Court Rule 37 dealing with voluntary dismissal by plaintiff. *Schwaner* v. *George* (D.C. Mun. App. 1948, 56 A. 2d 161).

Defendant's motion to dismiss action could not properly be passed upon until evidence had been heard, where motion was based on an assumption of a disputed fact. *Tate* v. *Brawner* (D.C. Mun. App. 1948, 58 A. 2d 307).

Under rule providing that any dismissal other than dismissal for lack of jurisdiction operates as adjudication on merits unless dismissal order otherwise specifies, dismissal is adjudication on merits and raises bar of res judicata against further actions on the same subject matter, and such defense of res judicata is good not only as to every claim which was actually offered in support of the first action but also as to every ground of recovery which might have been presented. *Mitchell* v. *David* (D.C. Mun. App. 1947, 52 A. 2d 125).

Disregard of process, rules or orders

A court will not condone a willful or negligent disregard of court process, rules or orders. *Manos* v. *Fichenscher* (D.C. Mun. App. 1948, 62 A. 2d 791).

Duty of court

A party to a cause of action is entitled to have his theory submitted to jury when supported by evidence and pleadings, and the court has duty to submit all such issues, both affirmative and negative. *Fraser* v. *Crounse* (D.C. Mun. App. 1945, 45 A. 2d 757).

In a case tried by the court without a jury, the court has the duty to rule upon requested and pertinent questions of law. *Eggleton* v. *Vaughn* (D.C. Mun. App. 1946, 45 A. 2d 362).

The trial court not only has the power but also the duty to set aside a verdict which is grossly and capriciously excessive. Failure to do so will constitute reversible error. *Munsey* v. *Safeway Stores* (D.C. Mun. App. 1949, 65 A. 2d 598).

Effect of rules

Under this section authorizing Municipal Court of District of Columbia to make rules of practice, pleading, and procedure, court rules have the force of law. *District of Columbia* v. *Hunt* (1947, 163 F. 2d 833, 82 U.S. App. D.C. 159).

Enrollment of attorneys

The rule of the Municipal Court of the District of Columbia requiring that attorneys, before practicing, enroll, take a common oath, sign a roll and pay a small sum, was a reasonable requirement of procedure for efficient administration of justice. *Austin* v. *The Municipal Court, District of Columbia* (1956, 235 F. 2d 836, 98 U.S. App. D.C. 339, certiorari denied 77 S. Ct. 682. 352 U.S. 923, 1 L. Ed. 720).

Equitable jurisdiction

Municipal Court of District of Columbia has equitable jurisdiction. *Encyclopaedia Britannica, Inc.* v. *Jones et al.* (D.C.D.C. 1951, 101 F. Supp. 521).

Under § 11–756 authorizing District Court to certify case to Municipal Court if, in any action, other than an action for equitable relief, it shall appear to satisfaction of court that action will not justify judgment in excess of $3,000, only actions in which a money judgment is sought and type of case over which Municipal Court has jurisdiction, are referred to, and District Court did not have authority to certify case to Municipal Court where only relief sought was an injunction. *Geesling et ano.* v. *Fletcher* (D.C. Mun. App. 1959, 154 A. 2d 347).

Examination and cross-examination

Where trial court erroneously ruled that defendant was bound by testimony of plaintiff when plaintiff was called for cross-examination by defendant, but before conclusion of trial announced that it would not treat testimony of witness as binding, defendant could not be deemed prejudiced thereby. *Walsh* v. *Schafer* (D.C. Mun. App. 1948, 61 A. 2d 716).

Under court rule providing that party may call, interrogate and impeach adverse party in all respects as if he had been called by adverse party, defendant was not bound by testimony of plaintiff when plaintiff was called for cross-examination by defendant. *Id.*

Excessive verdict

In action for malicious prosecution, which action had been certified by United States District Court to Municipal Court for the District of Columbia because District Court judge felt verdict exceeding $1,000 was not justified, and wherein jury had no evidence as to defendant's financial worth, verdict of $5,000 compensatory damages and $2,500 punitive damges was, under evidence, excessive. *Levine* v. *Mills* (D.C. Mun. App. 1955, 114 A. 2d 546).

Federal laws

28 U.S.C. § 632 providing that the failure of a defendant in a criminal case to testify shall not create any presumption against him applies to prosecution in the Municipal Court for the District of Columbia since there is no local statute on the subject. *Brooks* v. *District of Columbia* (D.C. Mun. App. 1946, 48 A. 2d 339).

Federal Rules of Civil Procedure

The Federal Rules of Civil Procedure, 28 U.S.C. App., do not control the practice in the Municipal Court of the District of Columbia, and, although this section authorized that court to prescribe court rules, the existing rules prevail until adoption of new rules. *Yellow Cab Co. of D.C.* v. *Rogers* (D.C. Mun. App. 1943, 34 A. 2d 36).

The Federal Rules of Civil Procedure, U.S. Code, title 28, Appendix, do not control practice in the Municipal Court for the District of Columbia. *Werth* v. *Nolan* (D.C. Mun. App. 1943, 32 A. 2d 386, reversed on other grounds 142 F. 2d 9, 79 U.S. App. D.C. 33).

The Federal Rules of Civil Procedure, 28 U.S.C. App., are inapplicable to Municipal Court for District of Columbia. *Taylor* v. *United Broadcasting Co.* (D.C. Mun. App. 1948, 61 A. 2d 480).

Rules of United States District Court for District of Columbia do not govern practice of Municipal Courts for District of Columbia. *Coates* v. *Ellis* (D.C. Mun. App. 1948, 61 A. 2d 28).

Findings

Under Municipal Court rule providing for the entry of judgment on the fifth day after verdict or finding by the court and that if a motion for new trial or for judgment notwithstanding the verdict has been filed forthwith upon the ruling of the court on such motion, "finding" means a general finding or decision of the court which ripens into a judgment on the fifth day in the absence of the filing of a motion. *Rice* v. *Simmons* (D.C. Mun. App. 1947, 53 A. 2d 587).

Municipal Court Rule 37(b) authorizing defendant to move for dismissal of action on ground that plaintiff has shown no right to relief on facts and law after plaintiff completes presentation of his evidence, does not give such court power to make fact findings at conclusion of plaintiff's case, but such findings should await conclusion

of entire evidence. *Taylor* v. *United Broadcasting Co.* (D.C. Mun. App. 1948, 61 A. 2d 480).

Instructions

Instruction that verdict might be for nothing was not prejudicial notwithstanding small admitted item of property damage, where in same sentence judge told jury that they might award more than the $10,000 statutory limitation, and trial judge offered to amend his charge and plaintiff's attorney asked him not to. *J. B. Wisdom* v. *V. M. Armstrong* (D.C. App. 1963, 196 A. 2d 88).

Municipal court, on trial of case certified from district court, properly instructed jury that because of such certification $3,000 limit normally applicable to verdict was not applicable and properly refused to allow counsel for defendants to explain that case was certified because of district judge's opinion that case would not justify judgment in excess of $3,000. *The Evening Star Newspaper Co.* v. *R. H. Gray and C. H. Gray* (D.C. Mun. App. 1962, 179 A. 2d 377).

If jury is correctly instructed as to measure of damages, mention of the ad damnum as a limitation on recovery is not improper. *Id.*

Where defendant's counsel twice objected to prosecutor's statement in presence of jury that defendant had not testified and was directed by court to proceed, prosecutor's statement was improper and was not cured by instruction after argument that defendant's failure to take the stand should not be taken against him and that jury should not speculate as to reason for such failure. *Brooks* v. *District of Columbia* (D.C. Mun. App. 1946, 48 A. 2d 339).

The trial court does not have duty to recast a misleading instruction requested by accused in a criminal case. *Davenport* v. *United States* (D.C. Mun. App. 1948, 56 A. 2d 851).

Police officers who, though privately employed, are engaged in keeping law and order in a public place, are neither informers nor detectives engaged in the business of spying for hire and are not the type of witnesses whose testimony the court must instruct shall be received with caution. *Davenport* v. *District of Columbia* (D.C. Mun. App. 1949, 65 A. 2d 209, appeal denied 180 F. 2d 909, 85 U.S. App. D.C. 430).

Joinder of claims

Parties asserting claims arising out of the same transaction or occurrence may join claims in one action under Municipal Court rule. *National City Development Co.* v. *McFerran* (D.C. Mun. App. 1947, 55 A. 2d 342).

Judgment notwithstanding verdict

Under rule 46(b) of the Municipal Court, a motion for judgment notwithstanding verdict cannot be granted unless as a matter of law the opponent of the movant failed to make a case and therefore a verdict in movant's favor should have been directed. *McSweeney* v. *Wilson* (D.C. Mun. App. 1946, 48 A. 2d 469).

Granting of new trial is addressed to sound discretion of trial judge. *Krupsaw* v. *W. T. Cowan, Inc.* (D.C. Mun. App. 1948, 61 A. 2d 624).

Under Municipal Court rule 46(b), a motion for judgment notwithstanding verdict can be entertained only where party making it has at trial moved for a directed verdict. *Snyder* v. *Thorniley* (D.C. Mun. App. 1948, 62 A. 2d 316).

Judgments of Municipal Court

Judgments of the Municipal Court of the District of Columbia should and must be enforced in that court. *Encyclopaedia Britannica* v. *Jones* (D.C.D.C. 1951, 101 F. Supp. 521).

Jurisdiction

Where proprietor of restaurant operated in California under a trade name had expended over $200,000 in advertising during a 12 year period and he claimed that he had built up trade name until it had a nationwide or even international reputation, and primary relief sought by proprietor was a permanent injunction against use of trade name by defendant, which operated restaurant in District of Columbia under same name, value of right sought to be protected against interference exceeded $3,000 and Municipal Court for District of Columbia did not have jurisdiction of action. *Sheherazade, Inc.* v. *Mardikian* (D.C. Mun. App. 1958, 143 A. 2d 512).

Municipal court of the District of Columbia did not lack jurisdiction to entertain action by buyers against seller to rescind contract for purchase of speedboat for $1,000. *Robinson* v. *Carter et al.* (D.C. Mun. App. 1950, 77 A. 2d 174).

Law governing

Where there was a conflict between Landlord and Tenant Rule 6 and § 11–737 dealing with costs in a summary proceeding, § 11–737 would prevail. *Schwaner* v. *George* (D.C. Mun. App. 1948, 56 A. 2d 161).

Law of the case

Where on appeal in an action for abuse of civil process, summary judgment was granted in favor of the defendant, and the action originally filed in the District Court was transferred to the Municipal Court, this jurisdiction requires a final judgment to sustain the application of the rule of the law of the case. The procedural rights and duties of the litigant are governed by the municipal court rules from the time of filing of the case in that court. *Davis* v. *Boyle Brothers* (D.C. Mun. App. 1950, 73 A. 2d 517).

Limitations

The fact that in a class B action in the Municipal Court the defendant was not called upon to file an answer or other pleading did not dispense with necessity of timely calling to the attention of trial court that plaintiff's claim was barred by limitations. *Atchison & Keller* v. *Taylor* (D.C. Mun. App. 1947, 51 A. 2d 297).

Minute entries

Under rule 48 of Municipal Court stating that action by the court shall be evidenced by a minute entry, the entry is not a condition of the effectiveness of the court's action. *Conrad* v. *Medina* (D.C. Mun. App. 1946, 47 A. 2d 562).

New trial

The municipal court's finding, at completion of both parties' evidence, that plaintiff failed to prove amount of damages to which he was entitled, but might supply sufficient evidence to substantiate his claim on new trial, and that, consequently, action was dismissed without prejudice, did not order new trial, especially as such order would have been improper at that stage of case. *Wade* v. *Union Storage & Transfer Co.* (D.C. Mun. App. 1948, 58 A. 2d 493).

Non-jury actions, motions

A motion by defendant for directed verdict at conclusion of plaintiff's case in action tried by court without jury is improper, but proper procedure is to move for finding for defendant, and law questions to be decided at conclusion of all evidence should be raised by request for rulings of law, not by motion for directed verdict. *Taylor* v. *United Broadcasting Co.* (D.C. Mun. App. 1948, 61 A. 2d 480).

Notice of entry

Rule 66(e) of the Municipal Court providing for notice immediately upon the entry of an order or judgment signed or decided out of the presence of parties or their counsel was not applicable where the judgment was pronounced in the presence of the parties and their counsel. *Conrad* v. *Medina* (D.C. Mun. App. 1946, 47 A. 2d 562).

—— Hearing

Notice by defendant to plaintiff's counsel of the taking of plaintiff's deposition by oral examination was sufficient without resort to a subpoena to secure plaintiff's attendance at deposition hearing, since notice to attorney was notice to plaintiff. *Parker* v. *Hot Shoppes* (D.C. Mun. App. 1946, 49 A. 2d 657).

Orders appealable

Trial by District Court was a claimed right, rather than an ingredient of cause of action, and District Court's order certifying personal injury case to Municipal Court for District of Columbia for trial, on ground that action would not justify judgment in excess of $3,000 was final and appealable. *Barnard* v. *Schneider & District of Columbia* (1957, 243 F. 2d 258, 100 U.S. App. D.C. 152).

In suit for balance due on note wherein defendant filed a counterclaim for malicious prosecution, order dismissing counterclaim without express determination that there

was no just reason for delay and without express direction for entry of judgment was not a final appealable order. *Wood* v. *G.S.A. Region 3 Employees F.C.U.* (D.C. Mun. App. 1958, 138 A. 2d 491).

Subject to certain exceptions, jurisdiction of Municipal Court of Appeals for the District of Columbia is limited to review of final orders and judgments. *Id.*

Permissive joinder of parties

Where subsection (b) of this section directed Municipal Court to prescribe rules conforming as nearly as might be practicable to Federal Rules of Civil Procedure, following 28 U.S.C. § 723, proviso not appearing in Rule 20(a) following 28 U.S.C. § 723c, but inserted in Municipal Court Rule 20(a) relating to permissive joinder of parties, to effect that total amount claimed must not exceed court's jurisdiction, was invalid as constituting an attempt to limit court's jurisdiction. *Taylor* v. *Yellow Cab Co. of D.C.* (D.C. Mun. App. 1947, 53 A. 2d 691).

Pleadings

The primary purpose of rule of municipal court of the District of Columbia providing that no formal pleadings shall be required, even for initiation of Class B cases, is to assure people of small means ignorant of complexities of pleading and practice, often unrepresented by counsel, their day in court and that fair hearing on merits which in our system of jurisprudence is regarded as fundamental. *Shields* v. *Hawkins* (1942, 125 F. 2d 204, 75 U.S. App. D.C. 172).

After delay of more than a month during which defendant did not demand trial by jury, such demand filed six days, and notice to opposing litigant given two days before time set for trial on the non-jury docket was properly denied. *Kennedy* v. *David* (1940, 109 F. 2d 676, 71 App. D.C. 340).

Probate court

Probate court's jurisdiction over proof of wills is exclusive. *Gracie* v. *American Sec. & Trust Co.* (1922, 277 F. 543, 51 App. D.C. 141).

Questions for court

The trial judge could not consider weight or credibility of evidence and render judgment for defendant after plaintiff rested his case, without requiring defendants to introduce their evidence, as there was then no fact question before judge, but only law question of legal sufficiency of plaintiff's case. *Taylor* v. *United Broadcasting Co.* (D.C. Mun. App. 1948, 61 A. 2d 480).

Real party in interest

Where leases were assigned to manager of building as landlord under express instructions of owners of building, in light of this section giving landlord right to sue for possession and in light of holding that manager was real landlord, manager was "real party in interest" within meaning of rule 17a restricting right to maintain suit to real party in interest. *Koehne* v. *Harvey* (D.C. Mun. App. 1946, 45 A. 2d 780).

Rehearing on exemption claim

Where creditor attached wages of judgment debtor and during pendency of judgment debtor's claim for exemption which was subsequently established by default, creditor through fraud obtained possession of attached wages from employer, court could properly refuse to entertain creditor's motion for rehearing on exemption claim until creditor had restored money to employer. *Marvins Credit, Inc.* v. *Westinghouse Electric Supply Inc. et al.* (D.C. Mun. App. 1957, 130 A. 2d 777).

Remand

District of Columbia Municipal Court cannot remand cases to District Court of United States for District of Columbia even though it might seem in the interests of justice so to do. *Kaplowitz Bros.* v. *Kahan* (D.C. Mun. App. 1948, 59 A. 2d 795).

Reopening case

In action by mother against purchaser of rooming house and rooming house business owned by her daughters to recover value of goods and services claimed by purchaser to have been included in sales price, where court found upon ample evidence that purchaser had agreed to buy disputed items but that no sales price had been agreed upon, court could properly reopen case of its own motion after both sides had rested and case had been taken under advisement to admit evidence as to value of goods notwithstanding mother's case had been based on theory of account stated. *Walsh* v. *Schafer* (D.C. Mun. App. 1948, 61 A. 2d 716).

Motion to reopen case to receive testimony of additional witnesses is addressed to sound discretion of trial judge. *Krupsaw* v. *W. T. Cowan, Inc.* (D.C. Mun. App. 1948, 61 A. 2d 624).

Report of proceedings

Where trial court refused to order official reporter and requested that stenographer employed by appellant write up testimony for court at conclusion of two different sessions of trial practice, though not to be approved, could not be deemed reversible error since appellee was not a party to court's action and was not to be prejudiced thereby. *Walsh* v. *Schafer* (D.C. Mun. App. 1948, 61 A. 2d 716).

Where outcome of case was not affected by refusal of trial judge to order proceedings reported by one of court's official reporters when requested to do so by defendants, and defendants were not harmed by judge's action except to extent that amount they paid to private reporter was greater than that which an official reporter would have charged, defendants had no ground to complain, since such expenditures were not taxable as costs. *Premier Poultry Co.* v. *Wm. Bornstein & Son* (D.C. Mun. App. 1948, 61 A. 2d 632).

Where trial court refused to provide an official stenographer at government's expense to report argument on motion for new trial, court did not abuse discretion where it appeared that the motion was one with which the judge was already familiar and where the proceedings consisted only of legal argument usually unnecessary to report *Campbell* v. *United States* (D.C. Mun. App. 1949, 65 A. 2d 191).

Review

Questions raised on appeal in action for wrongful arrest and imprisonment as to insufficiency of the evidence, denial of certain instructions, restriction of cross-examination, refusing to permit rebuttal testimony, and in permitting an increase in number of jury challenges, would not be decided where record was incomplete due to absence of a stenographic transcript of the proceedings. *Brown* v. *Plant et al.* (D.C. Mun. App. 1960, 157 A. 2d 289).

In order for an appellate court to pass upon alleged errors of law, a proper record must be presented, and this responsibility cannot be shifted to either the trial court or an appellate court. *Id.*

Equitable defense not urged in the trial court by bill or motion cannot be availed of on appeal. *Saks* v. *B. H. Stinemetz & Son Co.* (1924, 293 F. 1005, 54 App. D.C. 38).

Rules of court

Where rules gave defendant right to prepare and serve another subpoena, his failure to act precluded him from claiming that he was denied compulsory process when marshal failed to serve subpoena prepared and signed by court at defendant's request. *J. E. Blair* v. *District of Columbia and United States* (D.C. App. 1964, 200 A. 2d 93).

Although this section authorized Municipal Court for District of Columbia to prescribe court rules, existing rules would prevail until adoption of new rules. *Werth* v. *Nolan* (D.C. Mun. App. 1943, 32 A. 2d 386, reversed on other grounds 142 F. 2d 9, 79 U.S. App. D.C. 33).

In construing Municipal Court Rule based on Federal Rule of Civil Procedure, 28 U.S.C. App., Municipal Court of Appeals must give due and careful consideration to federal cases, but must keep clearly in mind different practices in two jurisdictions and avoid such construction of rule as to produce too great departure from established traditions and practice peculiar to Municipal Court. *Taylor* v. *United Broadcasting Co.* (D.C. Mun. App. 1948, 61 A. 2d 480).

Where in a suit for possession of real estate, the tenants desired to contest service of process and filed a motion to quash service and demanded jury trial on factual issues raised by such motion and another jury trial on the merits of the case if the issues of the motion were lost, trial judge correctly ruled that it is in the discretion of

the court to order that jury trials upon the motion be deferred until the trial on the merits. *Rubenstein* v. *Swagart* (D.C. Mun. App. 1950, 72 A. 2d 690).

It is the policy of the court to give defendant an opportunity to present his case, and the court is prone to adopt a liberal attitude in dealing with default judgment when satisfied of the good faith of the applicant. Such relief is remedial and should be liberally construed. *Manos* v. *Fickenscher* (D.C. Mun. App. 1949, 62 A. 2d 791).

Statement of claim

If a party is in doubt as to how evidence will develop, he may under rule of Municipal Court set forth two or more statements of his claim alternatively or hypothetically, either in one count or separate counts. *Etty* v. *Federal Consulting Service* (D.C. Mun. App. 1948, 59 A. 2d 692).

Stay of proceedings

Where first party sued second party for personal injuries in District Court, and after filing of that complaint, but before service of process, second party filed independent action against first party in Municipal Court for property damages sustained in same collision, Municipal Court had power to stay proceedings until claims of both parties had finally been determined in District Court though it had no right to dismiss second action even if without prejudice. *Coates* v. *Ellis* (D.C. Mun. App. 1948, 61 A. 2d 28).

Summary judgment

In action for injuries resulting from an assault allegedly resulting from negligence of the defendant who brought in general liability insurer as a third-party defendant wherein the insurer's motion for a summary judgment in its favor on the third-party complaint was granted because act was not within the coverage of the policy, summary judgment was not binding on the plaintiff and hence it did not establish nonliability by the insurer to pay any judgment plaintiff might eventually recover. *Donaldson* v. *Home Indemnity Co.* (D.C. Mun. App. 1960, 165 A. 2d 492).

The Municipal Court Rule relating to summary judgment is substantially the same as Rule 56, 28 U.S.C. App., which has been construed as authorizing summary judgment only where the moving party is entitled to judgment as a matter of law, where it is quite clear what the truth is and no genuine issue remains for trial. *McConchie* v. *Realty Associates* (D.C. Mun. App. 1947, 54 A. 2d 862).

In motion for summary judgment, it is not enough for an affiant to state that he has personal knowledge of the facts but he must state facts in detail showing that he has personal knowledge. The burden of establishing the non-existence of any genuine issue is upon the moving party. *Schwartz* v. *Sandidge* (D.C. Mun. App. 1949, 63 A. 2d 869).

Third party practice

Where third party defendants were not served with notices of the motion for summary judgment, such a defendant was deprived of no rights by such failure to serve notice and cannot complain; and court properly exercised its discretion in passing on the motion. *Schwartz* v. *Sandidge* (D.C. Mun. App. 1949, 63 A. 2d 869).

Under rules governing third party practice, the broker and third party defendant had the right to assert defenses to the purchaser's claim against the seller. *Murphy* v. *O'Donnell* (D.C. Mun. App. 1949, 63 A. 2d 340).

Vacating default

Allowance or refusal of a motion to set aside a default is within the discretion of the Trial Court but such discretion implies conscientious judgment which takes into account the law, the particular circumstances and competing considerations. *Manos* v. *Fickenscher* (D.C. Mun. App. 1949, 62 A. 2d 791).

There is nothing in the record indicating lack of good faith, or a showing of willful disregard or contempt of the process. Although appellant was served only five days before return date, he acted with reasonable diligence after realizing his default and was in court less than twenty days after he was served with a prima facie defense. Reversal of a default judgment was justified. *Id.*

Vacating default

Where judgment by default was entered against defendant for failure to answer, and, on defendant's motion, court vacated judgment on ground that it was erroneously entered but denied defendant's request to vacate default, it was not error for court to take ex parte proof for purpose of assessment of damages without notifying defendant. *R. L. Ramey* v. *N. T. Hewitt* (D.C. App. 1963, 188 A. 2d 350).

Variance

Under rules of municipal court, a variance between pleading and proof is "material" where it is of a character to take the adversary by surprise and mislead him in the prosecution of his cause of action or defense. *Etty* v. *Federal Consulting Service* (D.C. Mun. App. 1948, 59 A. 2d 682).

There was no "fatal variance" between complaint alleging that defendant wrongfully withheld from plaintiff a sum of money representing a portion of funds which came into defendant's hands for distribution to plaintiff, and proof tending to show that defendant engaged plaintiff to assist defendant in making a sale of steel and agreed to pay plaintiff a sum equal to one-half of commission received by defendant, that through plaintiff's efforts the sale was made, and that defendant received her commission but refused to pay plaintiff the full sum agreed on. *Id.*

Waiver of jurisdiction

The Rules of the Municipal Court for the District of Columbia, and the Federal Rules of Civil Procedure, 28 U.S.C. App., sharply limit acts which constitute a waiver of lack of jurisdiction over the person. *Atlas Van Lines* v. *Austin* (D.C. Mun. App. 1945, 44 A. 2d 696).

II. Under Present Law

Argument of counsel

Argument by plaintiff's counsel, in action certified by federal district court, that judge would tell jury that it was serious case and case in which jury was not limited to jurisdictional amount of court, was improper, but error was not so substantial as to require new trial although court failed to give its promised corrective instruction, jury having returned verdict for less than jurisdictional amount. *D. A. Borger et al.* v. *H. W. Conner and M. J. S. Conner* (D.C. App. 1965, 210 A. 2d 546).

§ 11–963. Criminal jurisdiction; commitment

(a) Except as otherwise expressly provided by this section or other law, the District of Columbia Court of General Sessions has original jurisdiction, concurrently with the United States District Court for the District of Columbia, of:

(1) offenses committed in the District for which the punishment is by fine only or by imprisonment for one year or less; and

(2) offenses against municipal ordinances or regulations in force in the District.

(b) The Court of General Sessions does not have jurisdiction of the offenses of libel, conspiracy, or violation of the postal or pension laws of the United States.

(c) In all cases, whether cognizable in the Court of General Sessions or in the District Court, the Court of General Sessions has jurisdiction to make preliminary examination and commit offenders or grant bail in bailable cases, either for trial or for further examination.

(d) The Court of General Sessions has jurisdiction of all criminal cases properly pending in the Municipal Court for the District of Columbia on January 1, 1963. (Dec. 23, 1963, 77 Stat. 490, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–755, 11–755a, 23–103, 24–401 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3,

1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, §§ 43, 934, 31 Stat. 1196, 1341; June 30, 1902, ch. 1329, 32 Stat. 537; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1943, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates section 11–755a of D.C. Code, 1961 ed., which related to criminal jurisdiction of the Municipal Court for the District of Columbia (now District of Columbia Court of General Sessions), successor to the former Police Court and former Municipal Court of the District of Columbia; that part of subsec. (a) of section 11–755 of the Code which, as amended in 1962, vested in District of Columbia Court of General Sessions the criminal jurisdiction that had been vested in the said Municipal Court for the District of Columbia; section 751a of the Code, which changed the name of the court to the District of Columbia Court of General Sessions and provided for substitution of the latter reference for references in other laws to the Municipal Court; and sections 23–103 and 24–401 of the Code.

In subsec. (a), words "Except as otherwise expressly provided by this section or other law" are substituted for the phrase in section 11–755a of the D.C. Code, 1961 ed., "except where otherwise expressly herein provided", for the purpose of clarity. Subsec. (b) of this section states certain exceptions (also taken from section 11–755a) to the jurisdiction conferred in subsec. (a). See, also, section 11–551 et seq. of this revised title relating to jurisdiction of the Juvenile Court.

Section 11–755a of D.C. Code, 1961 ed., as affected by section 11–751a of the Code, conferred jurisdiction on the Court of General Sessions (with the exceptions stated in subsection (b) of this revised section), concurrently with the District Court, of all crimes and offenses committed in the District "not capital or otherwise infamous and not punishable by imprisonment in the penitentiary". Yet section 23–103 of the 1961 ed., and the fourth and fifth sentences of section 24–401 thereof, which were derived from the same act (Mar. 3, 1901, ch. 854, § 934, 31 Stat. 1341), while not couched in jurisdictional language, provided, as affected by section 11–751a of the Code, that when the punishment for an offense might be for more than one year the prosecution "shall" be in the District Court, and that when the maximum punishment was a fine only or imprisonment for one year or less the prosecution "may" be in the Court of General Sessions. This was actually a limitation on the jurisdiction of the Court of General Sessions, and subsec. (a)(1) of this section is taken from the provisions of those sections, rather than from those of section 11–755a quoted above.

The first three sentences of section 24–401 of D.C. Code, 1961 ed., provided as follows: "When any person shall be sentenced to imprisonment for a term not exceeding six months the court may direct that such imprisonment shall be either in the workhouse or in the jail. When any person is sentenced for a term longer than six months and not longer than one year such imprisonment shall be in the jail, and where the sentence is imprisonment for more than one year it shall be in the penitentiary. Cumulative sentences aggregating more than one year shall be deemed one sentence for the purposes of the foregoing provision". These provisions are omitted as superseded by later law. See D.C. Code, 1961 ed., § 24–425. See, also, section 4082 et seq. of Title 18, United States Code.

Changes are made in phraseology and arrangement.

For remainder of section 11–755 of D.C. Code, 1961 ed., see tables.

Cross References

Abandonment of prosecution and discharge of bail, see § 23–104.

Appeals, see § 17–101 et seq.

Arrest under Uniform Act on Fresh Pursuit, commitment on discharge, see §§ 23–501, 23–502.

Bail forfeiture as a lien, see § 15–102.

Bail in habeas corpus proceedings, see § 16–1906.

Bail of fugitives from justice, forfeiture, see §§ 23–404, 23–405.

Cash bail and forfeiture thereof, see § 23–106.

Designation of officer to take bonds and collateral, see § 23–610.

Fugitives from justice, arrest, commitment, bail, discharge, see §23–401 et seq.

Issuance of search warrant, see § 23–301.

Probation system, see § 24–101 et seq.

Professional bondsmen, rules and regulations, see § 23–601 et seq.

NOTES TO DECISIONS

I. Under Prior Law

In general

Lower court was invested by Congress with original jurisdiction "of all offenses against municipal ordinances and regulations in force in the District." *Tipp* v. *District of Columbia* (1939, 102 F. 2d 264, 69 App. D.C. 400).

Change of name as affecting jurisdiction

Neither act changing name of Municipal Court for District of Columbia to District of Columbia Court of General Sessions and increasing its civil jurisdiction nor later act substantially reenacting prior act created new court and neither affected jurisdiction of existing court as to charges against defendant of reckless driving, leaving after colliding and operation of motor vehicle after revocation of permit. *J. R. Taylor* v. *District of Columbia* (D.C. App. 1964, 197 A. 2d 442).

Entry of dwelling

The trial of information charging accused with violation of 22–3102 prohibiting unlawfully entering and unlawfully declining to leave a dwelling house in District of Columbia would not present question of fact "involving title to real property" so as to deprive police court of District of Columbia of jurisdiction of the prosecution. *Fletcher* v. *McMahon* (1941, 121 F. 2d 729, 73 App. D.C. 263, certiorari denied 62 S. Ct. 131, 314 U.S. 662, 86 L. Ed. 531).

Housebreaking

Although the police court and the juvenile court of the District had no trial jurisdiction whatever of a charge of housebreaking, the police court had power to examine and commit or hold to bail for trial or further examination all persons, and the juvenile court all minors under 17 years of age, charged with such offense. *Peak* v. *Reed* (1928, 24 F. 2d 619, 58 App. D.C. 44).

Limitation of jurisdiction

Police court had no jurisdiction over crimes punishable by death or by imprisonment in the penitentiary. *Peak* v. *Reed* (1928, 24 F. 2d 619, 58 App. D.C. 44).

Police court could try criminal cases upon information but it had no jurisdiction of capital or otherwise infamous crimes and could, but it could not sentence to a penitentiary. Direct that a convicted person sentenced to a term of imprisonment not exceeding six months be confined in either the workhouse or jail, but it will not be presumed that appellant will be imprisoned at hard labor. *Cleveland* v. *Mattingly* (1923, 287 F. 948, 52 App. D.C. 374, certiorari denied 43 S. Ct. 521, 262 U.S. 744, 67 L. Ed. 1211).

Police court could, in default of payment of fine, commit to jail for period not exceeding one year. *Palmer* v. *Lenovitz* (1910, 35 App. D.C. 303). See, also, *Dodd* v. *Peak* (1931, 47 F. 2d 430, 60 App. D.C. 68).

Sale of liquor

Prosecution for first offense under National Prohibition Act may be in the police court by way of information. *Cleveland* v. *Mattingly* (1923, 287 F. 948, 52 App. D.C. 374, certiorari denied 43 S. Ct. 521, 262 U.S. 744, 67 L. Ed. 1211).

Jurisdiction was exclusively in the police court, for the violation of act of Congress of March 3, 1893 (27 Stat. 563) which regulated the sale of liquors, and the then Supreme Court of the District of Columbia had no jurisdiction. *Gassenheimer* v. *District of Columbia* (1895, 6 App. D.C. 108).

II. Under Present Law

Pretrial Motion

That pretrial motion for dismissal of indictment or, in the alternative, for preliminary hearing was filed in criminal proceeding itself, rather than as a separate habeas corpus proceeding, did not preclude relief. *E. H. Holmes* v. *United States* (1966, 370 F. 2d 209 — U.S. App. D.C. —).

Jurisdiction

The jurisdiction of court of general sessions extends to all misdemeanors, that is, to all crimes where the maximum length of incarceration is one year, regardless of whether or not a fine is simultaneously imposed. *D. Feeley, A. Uhrie, B. Dunlap* v. *District of Columbia* (D.C. App. 1966, 220 A. 2d 325).

Criminal Division of District of Columbia Court of General Sessions had jurisdiction to try protest demonstrators for disorderly conduct under statute providing that whoever, with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby, congregates with others on a public street and refuses to move on when ordered by police shall be fined not more than $250 or imprisoned not more than 90 days, or both. *G. E. Jalbert et al.* v. *District of Columbia* (D.C. App. 1966, 221 A. 2d 94).

Although defendant had been bound over for grand jury so as to vest jurisdiction in district court, once dismissal of complaint was effected and prosecution terminated in district court, government was at liberty to proceed by information in either district court or court of general sessions, which have concurrent misdemeanor jurisdiction. *United States* v. *D. A. Kennedy* (D.C. App. 1966, 220 A. 2d 322).

Limitation of jurisdiction

Where statute gave Court of General Sessions jurisdiction to try all offenses committed in the District of Columbia for which punishment is by imprisonment for one year or less, Court of General Sessions had jurisdiction to try offense of petit larceny, for which maximum imprisonment was one year, notwithstanding fact that defendant, as second offender, was subject to a possible additional penalty over and above the basic one-year maximum. *E. P. Lawrence* v. *United States* (D.C. App. 1966, 224 A. 2d 306).

Authority of trial court to try an offense is founded not upon the penalty imposed after conviction, but upon penalty prescribed by statute for that particular offense. *Id.*

Notice of prosecution as second offender

Where defendant was not given timely notice that he would be prosecuted as a second offender and sentenced in accordance with the penalties of recidivist statute, he was subject only to the one-year maximum penalty that could be imposed upon a first offender, and additional six months' sentence on the petit larceny charge had to be set aside. *E. P. Lawrence* v. *United States* (D.C. App. 1966, 224 A. 2d 306).

SUBCHAPTER IV.—MISCELLANEOUS PROVISIONS

§ 11–981. Power of judges to issue warrants returnable to Criminal Division; record

Each judge of the District of Columbia Court of General Sessions may, at any time, including Sundays and legal holidays, on complaint under oath or actual view, issue warrants returnable to the criminal division of the court against persons accused of crimes and offenses committed in the District of Columbia. In every such case, he shall make a record of his proceedings in a book to be kept for that purpose. The warrants shall be issued free of charge. (Dec. 23, 1963, 77 Stat. 480, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–705, 11–751a, 11–755 (Apr. 21, 1906, ch. 1646, 34 Stat. 126; Feb. 17, 1909, ch. 134, 35 Stat. 623; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates section 11–705 of D.C. Code, 1961 ed., which, as originally enacted, related to the judges of the first Municipal Court and provided that the warrants referred to should be returnable to the Police Court, with that part of subsec. (a) of section 11–755 thereof, which, prior to amendment thereof by the act of Oct. 23, 1962, provided, in connection with the merger, by the act of Apr. 1, 1942, of the first Municipal Court and the Police Court, to form the second Municipal Court, provided that the judges of the court thus formed should have and exercise the same powers theretofore had or exercised by the judges of the two former courts, and which, after the 1962 amendment, provided that the judges of the District of Columbia Court of General Sessions should have and exercise the same powers and jurisdiction theretofore had or exercised by the judges of the Municipal Court formed from the 1942 merger.

In view of the 1942 merger referred to above, section 11–705 had been reworded in the 1961 edition of the Code to provide for return of the warrants to the criminal division of the Municipal Court, which had criminal jurisdiction comparable with that of the former Police Court.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, referred to above, is also shown as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Like its predecessor (the Municipal Court), the District of Columbia Court of General Sessions, in addition to its special branches, has a civil division and a criminal division.

Changes are made in phraseology.

§ 11–982. Compelling attendance of witnesses; contempt powers; subpoenas

(a) The District of Columbia Court of General Sessions may compel the attendance of witnesses by attachment, and, in any civil or criminal case or proceeding in the court, the judge may punish for disobedience of an order, or for contempt committed in the presence of the court, by a fine not exceeding $50 or imprisonment not exceeding 30 days.

(b) At the request of any party subpoenas for attendance at a hearing or trial in the District of Columbia Court of General Sessions shall be issued by the clerk of the court. A subpoena may be served at any place within the District of Columbia, or at any place without the District of Columbia that is within 25 miles of the place of the hearing or trial specified in the subpoena. The form, issuance and manner of service of a subpoena shall be as otherwise prescribed by Rule 45 of the Federal Rules of Civil Procedure. (Dec. 23, 1963, 77 Stat. 491, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–756 (Apr. 1, 1942, ch. 207, § 5, 56 Stat. 193; June 29, 1953, ch. 159, § 410, 67 Stat. 180; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87–873, § 4, 76 Stat. 1172; July 8, 1963, Pub. L. 88–60, § 4, 77 Stat. 78).

Section is derived from subsec. (c) of section 11–756 of D.C. Code, 1951 ed. For remainder of section 11–756, see tables.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Contempt

Trial court did not abuse discretion in imposing fine on attorney, despite his apology, for absenting himself from matter assigned and ready for trial. *In re J. G. Saul* (D.C. Mun. App. 1961, 171 A. 2d 751).

Third-party actions

Rule pertaining to service of process in third-party actions constituted a specially provided exception to District of Columbia jurisdictional statute, and therefore service of process on a third-party defendant at a place in Maryland within the prescribed 100-mile limitation was valid. *C. W. Broden et ano.* v. *C. W. Bowles* v. *N. D. Daumit* (1964, 35 F.R.D. 13).

§ 11–983. Oaths, affirmations, and acknowledgments

Each judge of the District of Columbia Court of General Sessions may administer oaths and affirmations and take acknowledgments. The clerk of the court and his deputies may administer oaths and affirmations and take acknowledgments in all cases pending in the court or about to be filed therein. (Dec. 23, 1963, 77 Stat. 491, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–712, 11–712 note, 11–751a, 11–754, 11–754a, 11–755 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar 3, 1901, ch. 854, §§ 49, 54, 31 Stat. 1198; Feb. 17, 1909, ch. 134, 35 Stat. 625; Apr. 1, 1942, ch. 207, §§ 3, 4, 56 Stat. 191, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–66, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from the following provisions of D.C. Code, 1961 ed.: Section 11–712, which empowered the clerk and assistant clerk of the former municipal court (before that court's consolidation with the police court in 1942, to form the Municipal Court for the District of Columbia, as provided in section 11–751 of such Code) to administer oaths in all cases pending in that court, or about to be filed therein; acts June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, § 54, 31 Stat. 1198, set out as a note under said section 11–712 of the Code, and empowering the clerk and deputy clerks of the former police court to administer oaths and affirmations; that part of the sixth paragraph of subsec. (c) of section 11–754 which, in connection with the Municipal Court for the District of Columbia formed out of the consolidation in 1942 of the former municipal court and the police court, provided that the clerk of the court so formed should have and exercise the same powers and authority had or exercised by the clerks of the two former courts; section 11–754a which, as originally enacted, empowered the judges of the former police court to administer oaths to public officers and take acknowledgments of deeds; and that part of subsec. (a) of section 11–755 which, as amended by the act of Oct. 23, 1962, provided that the judges of the District Court of General Sessions should have and exercise the same powers as were theretofore had or exercised by the judges of the Municipal Court for the District of Columbia (prior to the 1962 amendment), the section conferred upon the judges of the Municipal Court for the District of Columbia the same powers theretofore had or exercised by the judges of the former municipal court and the former police court.

Section 11–751a of D.C. Code, 1961 ed., is also shown as one of the sources of this section, as section 11–751a changed the name of the court to the District of Columbia Court of General Sessions.

Section 11–754a of D.C. Code, 1961 ed., when originally enacted, empowered the former Police Court judges to administer oaths and affirmations to "public officers" only. However, act Feb. 17, 1909, ch. 134, 35 Stat. 623 (624), which related to the first Municipal Court, empowered the judges of that court to administer oaths generally, without restriction, and this provision was not repealed upon the merger of the two courts in 1942, and, as stated above, section 11–755(a) of D.C. Code, 1961 ed., prior to its amendment in 1962, extended the powers of the judges of the two former courts to the judges of the Municipal Court formed from the 1942 merger. Therefore, in the consolidated provisions as herein set out, the restriction of the administration of oaths and affirmations, by the judges, to public officers only, is omitted.

While the sixth paragraph of section 11–754(c), D.C. Code, 1961 ed., extended only the powers of the respective clerks of the former Police Court and the former Municipal Court to the clerk of the Municipal Court formed from the 1942 merger, and made no reference to deputy clerks in connection therewith, a consideration of the provisions relating to the merger of the two former courts, as a whole, suggests that the legislative intent was likewise to extend, to the deputy clerks of the successor Municipal Court, whatever powers the deputy or assistant clerks of the two former courts had by statute. Further, according to information received, it is current practice for the judges, clerks, and deputy clerks of the present court to administer oaths and affirmations and to take acknowledgments. Therefore, this section so provides.

§ 11–984. Receipt and care of deposits for costs, and fees; payment of fines, costs, etc., to clerk; deposit; accounting

(a) The clerk of the District of Columbia Court of General Sessions shall receive and care for all deposits for costs made and fees exacted under the rules governing the fee charges in the civil division of the court, and shall make a weekly deposit with the Board of Commissioners or its authorized representative of all fees earned during the preceding week. The money so collected shall be covered into the Treasury to the credit of the District of Columbia.

(b) The clerk shall return to parties making the deposits specified by subsection (a) of this section any part of a deposit that remains in his hands over and above the earned fees in completed cases, and shall render an itemized statement to the Board of Commissioners or its authorized representative of every fee earned, on forms and in the manner prescribed by the Board or its authorized representative. Any part of a deposit remaining in the clerk's hands for a period of three years, for which claim has not been made by the party entitled to receive it, shall revert to the District of Columbia, and shall be paid forthwith by the clerk to the Board or its authorized representative as part of the revenues of the District.

(c) Fines, penalties, costs, and forfeitures imposed or taxed in the criminal division of the Court of General Sessions shall be paid to the clerk, either with or without process or on process ordered by the court. On the first secular day of each week, the clerk shall deposit with the Board of Commissioners or its authorized representative the total amount thereof collected by him during the week next preceding the date of the deposit, to be covered into the Treasury to the credit of the District of Columbia. The clerk shall render an itemized statement of each deposit upon forms and in the manner prescribed by the Board or its authorized representative.

(d) Moneys collected in the criminal division of the Court of General Sessions remaining in the hands of the clerk for a period of two years or more, for which claim has not been made by the parties entitled thereto, shall revert to the District of Columbia, and shall be paid by the clerk to the Board of Commissioners or its authorized representative, to be covered into the Treasury to the credit of the District of Columbia. (Dec. 23, 1963, 77 Stat. 491, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Further, the provisions, as herein revised, give effect to section 11–751a of D.C. Code, 1961 ed., which, as stated above, changed the name of the court to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

For remainder of sections 11–754 and 11–755 of D.C. Code, 1961 ed., see tables.

Based on D.C. Code, 1961 ed., §§ 11–710, 11–710a, 11–710c, 11–751a (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, §§ 6, 58, 31 Stat. 1191, 1199; Feb. 17, 1909, ch. 134, 35 Stat. 624; May 18,

1910, ch. 248, 36 Stat. 404; Sept. 1, 1916, ch. 433, § 12, 39 Stat. 718; Feb. 22, 1921, ch. 70, § 7, 41 Stat. 1144; Apr. 1, 1942, ch. 207, § 1, 56 Stat. 190; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section consolidates, with changes in phraseology, sections 11–710a and 11–710c of D.C. Code, 1961 ed., which related to payment, deposit, and accounting for fines, penalties, costs, and forfeitures imposed or taxed in criminal cases by the former Police Court (that is, until the merger act of Apr. 1, 1942, the provisions of those two sections related to that court), and section 11–710, which related to receipt, custody, deposit, and accounting for fees and costs paid into the Municipal Court in civil cases prior to the consolidation of the two courts into a single Municipal Court.

Section 11–751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

As set out herein, the provisions relate to the Court of General Sessions, which, under section 11–755 of D.C. Code, 1961 ed., as amended by section 2 of the act of Oct. 23, 1962, assumed the jurisdiction and powers of the Municipal Court for the District of Columbia. Prior to the 1962 amendment, the same section, enacted in 1942, had provided for the assumption, by the Municipal Court for the District of Columbia, of the jurisdiction and powers of the two courts merged by the 1942 act; that is, the Police Court and the first Municipal Court. The Court of General Sessions has several branches, including a civil division and a criminal division.

Sections 11–710, 11–710a and 11–710c of D.C. Code, 1961 ed., provided that the moneys be deposited by the clerk with the collector of taxes, and that (in the case of sections 11–710 and 11–710c) the itemized statements to accompany the deposits be upon such forms and in such manner as prescribed by the auditor of the District. However, a number of changes in the administration of the District of Columbia have since taken place. Presidential Reorganization Plan No. 5 of 1952 abolished a number of offices, including the Office of the Auditor and the Office of the Collector of Taxes, and transferred the functions thereof, and in each case the functions of officers, employees, and subordinate agencies, to the Board of Commissioners of the District of Columbia. The Plan authorized the Commissioners to delegate any of the functions so transferred to any member of the Board or to any other officer, employee, or agency of the Government of the District of Columbia, except the courts thereof. The Board's Reorganization Order No. 1, dated July 1, 1952, continued the functions, powers, etc., until otherwise ordered, in the officer, agency, or employee by whom or which they were being performed and exercised at the time of the taking effect of the Plan. The Board's Reorganization Order No. 3, dated Aug. 28, 1952, established a Department of General Administration with a Director at its head, and, along with other offices and functions, transferred to that Department the Office of the Auditor and the Office of the Collector of Taxes and the respective functions of each. The Board's Reorganization Order No. 19, dated Nov. 10, 1952, established in the Department of General Administration an Internal Audit Office and transferred to it some of the personnel under the existing Auditor, and their functions. The Board's Reorganization Order No. 20, also dated Nov. 10, 1952, established in the Department of General Administration a Finance Office with a Finance Officer at its head, and created therein several boards and offices, including the Office of Collector of Taxes and an Accounting Office. It transferred to the Finance Office nearly all the functions of the former Office of the Collector of Taxes, and, as amended by the Board's Reorganization Order No. 25, dated Dec. 30, 1952, apparently all the functions of divisions, positions, etc. (including the Accounting Division) under the responsibility of the then existing Auditor that were not transferred to the Internal Audit Office by the Board's Reorganization Order No. 19. Reorganization Order No. 20 abolished the Office of Auditor and the former Office of the Collector of Taxes.

Reorganization Order No. 121, 57–3276, dated Dec. 12, 1957, as amended, superseded said Reorganization Order No. 20, as amended, but continued within the Department of General Administration the Finance Office, headed by the Finance Officer.

In accordance with the reorganizational changes described above, it would seem that the duties prescribed in sections 11–710 and 11–710c of D.C. Code, 1961 ed., with respect to the auditor, are now performed by the Finance Office, Department of General Administration, and that the reference in each of those two sections, as well as in section 11–710a of D.C. Code, 1961 ed., to the collector of taxes, is also obsolete. Under Part IV of the above-mentioned Reorganization Order No. 121, the functions of the Finance Office are divided among the Office of the Finance Officer, the Property Tax Division, the Revenue Division, the Treasury Division, the Enforcement Division, the Accounting Division, and the Processing Division.

However, the above offices were established by orders of the Board of Commissioners, and they may be changed at any time. Under Presidential Reorganization Plan No. 5, referred to above, the ultimate responsibility for the delegated functions is in the Board of Commissioners. Therefore, references in sections 11–710, 11–710a and 11–710c of D.C. Code, 1961 ed., to the auditor and/or the collector of taxes are, in this section, changed to "Board of Commissioners [or "Board"] or its authorized representative".

Section 11–710a of D.C. Code, 1961 ed., provided that the moneys paid over by the clerk of the municipal court (formerly, the reference was to the police court) be paid by the collector of taxes "for each fiscal year into the Treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the Treasury of the United States and the revenues of the District of Columbia". Pursuant to sections 47–126 and 47–130a of the D.C. Code, 1961 ed., subsec. (d) of this section, as revised, provides that the moneys shall be paid to the Board of Commissioners, or its authorized representative, to be covered into the Treasury to the credit of the District of Columbia.

CROSS REFERENCE

Disposition of fees, see § 47–126.

§ 11–985. Audit of accounts

The Board of Commissioners of the District of Columbia, or its authorized representative, shall audit the accounts of the clerk of the District of Columbia Court of General Sessions at the end of every quarter, and in the performance of this duty shall have access to all books, papers, and records of the court. (Dec. 23, 1963, 77 Stat. 492, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–710b, 11–751a (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, § 59, 31 Stat. 1199; Apr. 1, 1942, ch. 207, § 1, 56 Stat. 190; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

The provisions of section 11–710b of D.C. Code, 1961 ed., related to the Police Court until, by the act of Apr. 1, 1942, that court was merged with the first Municipal Court to form the second Municipal Court, after which they related to the Municipal Court. In this section, they are made applicable to the Court of General Sessions, to which the name of the Municipal Court was changed by the act of Oct. 23, 1962, § 1 (section 11–751a of D.C. Code, 1961 ed., also cited, because of the change in name, as one of the sources of this section).

In this section, "Board of Commissioners of the District of Columbia, or its authorized representative," is substituted for "auditor", and words "and to make prompt report thereof in writing to the commissioners of the District of Columbia" are omitted as no longer necessary to retain in view of this substitution. See revision note under section 11–984 herein.

Changes are made in phraseology.

Chapter 11.—DOMESTIC RELATIONS BRANCH OF COURT OF GENERAL SESSIONS

SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

Sec.
11–1101. Continuation of Branch.
11–1102. Judges; assignment.
11–1103. Sessions.

SUBCHAPTER II.—OFFICERS AND EMPLOYEES

11–1121. Clerk and other personnel.
11–1122. Duties of clerk regarding docket.

SUBCHAPTER III.—JURISDICTION

11–1141. Exclusive jurisdiction.

SUBCHAPTER IV.—MISCELLANEOUS PROVISIONS

11–1161. Powers of Branch.

SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

§ 11–1101. Continuation of Branch

The Domestic Relations Branch of the District of Columbia Court of General Sessions shall continue as a branch in the civil division of the court. (Dec. 23, 1963, 77 Stat. 492, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–755, 11–758 (Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; Apr. 11, 1956, ch. 204, § 101, 70 Stat. 111; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates section 11–758 of D.C. Code, 1961 ed., which established (in 1956) the Domestic Relations Branch in the Municipal Court for the District of Columbia, with that part of the first sentence of subsec. (a) of section 11–755 of the Code, which, as amended by the act of Oct. 23, 1962, also provided that the Court (referred to therein by its new name of District of Columbia Court of General Sessions) should have a Domestic Relations Branch. For remainder of section 11–755, see tables.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The section, as revised, continues the Domestic Relations Branch of the Court of General Sessions, and provides that it shall constitute a branch in the civil division of that court. See revision note under section 11–901.

§ 11–1102. Judges; assignment

The Domestic Relations Branch of the District of Columbia Court of General Sessions shall consist of three judges of the court, who shall serve in that branch during their tenures of office, but if the chief judge of the court finds the work of the Domestic Relations Branch will not be adversely affected thereby, he may assign any judge of the Domestic Relations Branch to perform the duties of any other judge of the court. The chief judge of the court may assign any other judge of the court to serve temporarily in the Domestic Relations Branch if he finds the work of the Domestic Relations Branch requires the assignment. (Dec. 23, 1963, 77 Stat. 492, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–760 (Apr. 11, 1956, ch. 204, § 103(b), 70 Stat. 112; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

At the beginning, the words "The Domestic Relations Branch of the District of Columbia Court of General Sessions shall consist of three judges of the Court, who shall serve in that branch during their tenures in office" are substituted for "The judges appointed to the additional positions authorized by the amendments to section 11–752 shall during their tenures of office serve as judges of the Domestic Relations Branch" for the purpose of clarification. Section 103(a) of the above-cited act of Apr. 11, 1956, amended section 11–752 of D.C. Code, 1961 ed., to increase the number of judges of the Municipal Court (now, the Court of General Sessions) from 13 to 16, and the above-cited 103(b) of that act, from which this section is derived, provided that the judges appointed to the additional positions so provided for should, during their tenures of office, serve as judges of the Domestic Relations Branch. See section 11–902 herein and revision note thereunder.

§ 11–1103. Sessions

The Domestic Relations Branch, with at least one judge in attendance, shall be open for the transaction of business every day of the year except Saturday afternoons, Sundays, and legal holidays, and, if deemed necessary, may also hold night sessions. (Dec. 23, 1963, 77 Stat. 492, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–768 (Apr. 11, 1956, ch. 204, § 112, 70 Stat. 113).

SUBCHAPTER II.—OFFICERS AND EMPLOYEES

§ 11–1121. Clerk and other personnel

The judges of the Domestic Relations Branch, with the approval of the chief judge of the District of Columbia Court of General Sessions, may appoint and remove a clerk and such other personnel as may be necessary for the operation of the Branch. (Dec. 23, 1963, 77 Stat. 493, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–761 (Apr. 11, 1956, ch. 204, §104, 70 Stat. 112; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Minor changes are made in phraseology.

§ 11–1122. Duties of clerk regarding docket

The clerk serving in the Domestic Relations Branch of the District of Columbia Court of General Sessions shall keep a separate docket for the Branch, in which he shall record the steps taken at each stage of actions or proceedings instituted or conducted in the Branch. (Dec. 23, 1963, 77 Stat. 493, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–764 (Apr. 11, 1956, ch. 204, § 108, 70 Stat. 113; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the

Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

SUBCHAPTER III.—JURISDICTION

§ 11–1141. Exclusive jurisdiction

(a) The Domestic Relations Branch of the District of Columbia Court of General Sessions and each judge sitting therein has exclusive jurisdiction of:

(1) actions for divorce from the bond of marriage and legal separation from bed and board, including proceedings incidental thereto for alimony, pendente lite and permanent, and for support and custody of minor children;

(2) applications for revocation of divorce from bed and board;

(3) civil actions to enforce support of minor children;

(4) civil actions to enforce support of wife;

(5) actions seeking custody of minor children;

(6) actions to declare marriages void;

(7) actions to declare marriages valid;

(8) actions for annulments of marriage;

(9) determinations and adjudications of property rights, both real and personal, in any action hereinabove referred to in this section, irrespective of any jurisdictional limitation imposed on the Court of General Sessions;

(10) proceedings in adoption; and

(11) proceedings under the Uniform Reciprocal Enforcement of Support Act, chapter 3 of Title 30.

(b) This chapter does not affect or diminish the jurisdiction of the Juvenile Court of the District of Columbia, or of any judge presiding therein. (Dec. 23, 1963, 77 Stat. 493, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

JURISDICTION IN CERTAIN DOMESTIC RELATIONS MATTERS

Section 16 of act Dec. 23, 1963, provided as follows:

"Chapter 11 of Title 11 of the District of Columbia Code, as set out in section 1 of this Act [Titles 11 to 17], does not divest the United States District Court for the District of Columbia of jurisdiction and power to consider, and to enter and enforce judgments, orders, and decrees in any action, application or proceeding, as described in section 11–1141 of the Code, filed in the District Court prior to the effective date of section 105 of the act of April 11, 1956 (ch. 204, 70 Stat. 112), to the same extent as if chapter 11 had not been enacted."

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–762, 11–769 (Apr. 11, 1956, ch. 204, §§ 105, 113, 70 Stat. 112, 113; Sept. 9, 1959, Pub. L. 86–241, 73 Stat. 473; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section consolidates sections 11–762 and 11–769 of D.C. Code, 1961 ed.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Section 11–762 of D.C. Code, 1961 ed., contained an additional paragraph which provided as follows: "Nothing in this chapter [that is, in the act of Apr. 11, 1956, cited above, which established the Domestic Relations Branch of the Municipal Court and vested in it certain jurisdiction which previously had been exercised by the United States District Court for the District of Columbia] shall be construed to divest the United States District Court for the District of Columbia of jurisdiction and power to consider, and to enter and enforce judgments, orders, and decrees in any such action, application or proceeding filed in such court prior to the effective date of this section to the same extent as if this chapter had not been enacted". That paragraph is transitory and is omitted from this revised section as inappropriate in a code of general and permanent law, but the jurisdiction and power of the District Court so preserved is continued in a separate section of the present bill. The words "effective date of this section", as used in the omitted paragraph, referred to the effective date of section 105 of the act of Apr. 11, 1956, from which section 11–762 of D.C. Code, 1961 ed., was derived. Under section 115 of that act, section 105 thereof was made effective 30 days after the appointment and qualification of the three additional judges for the Municipal Court authorized by section 103(a) thereof. Section 103(a) had, by amending act Oct. 25, 1949, ch. 706, § 1, 63 Stat. 887 (D.C. Code, 1961 ed., § 11–752), increased the number of judges of the Court from 13 to 16, and section 103(b) thereof (D.C. Code, 1951 ed., § 11–760) provided for service of the three additional judges, appointed under the amendment, in the Domestic Relations Branch of the Court. See sections 11–902 and 11–1102 in this revision, and revision notes thereunder.

Item (11), relating to proceedings under the Uniform Reciprocal Enforcement of Support Act, is new to this section, but does not state new law. That act was adopted for the District of Columbia by act July 10, 1957, Pub. L. 85–94, 71 Stat. 285, and the Domestic Relations Branch of the Municipal Court (now, the Court of General Sessions) has jurisdiction of proceedings thereunder. Heretofore classified to section 11–1601 et seq. of D.C. Code, 1961 ed., it will be reclassified as chapter 3 of Title 30 thereof.

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS

I. UNDER PRIOR LAW

Adjudication of property rights

Where substantial sums earned by minor wife were allegedly turned over by her to husband and were deposited in joint account, and husband withdrew balance and deposited it in new joint account in names of himself and his mother, and wife filed suit in United States District Court for the District of Columbia to recover funds, and husband brought divorce suit in Domestic Relations Branch of District of Columbia Court of General Sessions, latter court had exclusive jurisdiction, and action in former court would be transferred to latter court for adjudication of property rights. *C. Mohler Williams* v. *R. P. Williams, et al.* (1965, 346 F. 2d 808, 120 U.S. App. D.C. 327).

Section 16–409 giving Domestic Relations Branch of Municipal Court, on grant of an absolute divorce, power to award property held by parties jointly or by entireties to one or the other of the parties, or to apportion it, was not applicable to wife's claim against her husband for individual property. *Posnick* v. *Posnick* (D.C. Mun. App. 1960, 160 A. 2d 804).

Under amendment to this section of Domestic Relations Branch Act giving Domestic Relations Branch of Municipal Court jurisdiction over determinations and adjudications of property rights, both real and personal, in any divorce action irrespective of any jurisdictional limitation imposed on the Municipal Court, Domestic Relations Branch of Municipal Court has authority, on granting a limited divorce, to award, or partition the property, real or personal, held by the parties jointly or by entirety, in the same manner in which it may act on granting an absolute divorce. *Id.*

Under amendment to this section of Domestic Relations Branch Act, giving Domestic Relations Branch of Municipal Court jurisdiction over determinations and adjudications of property rights, both real and personal, in any divorce action irrespective of any jurisdictional limitation imposed on the Municipal Court, the Domestic Relations Branch has jurisdiction in a divorce action to adjudicate all property disputes between the parties. *Id.*

Authority to partition real property

District court, refusing a divorce, has no power or authority to partition or award to one spouse real property which is titled by the entireties. *Hogan* v. *Hogan* (1957, 250 F. 2d 412, 102 U.S. App. D.C. 87).

Burden of proof in custody proceedings

In proceeding for custody of child who had been adopted by natural mother's sister and brother-in-law and who after death of sister and brother-in-law had been living with surviving subsequent wife of brother-in-law, evidence that subsequent wife was unfit person and had not properly cared for child was admissible; nevertheless the natural mother had no burden to prove this; to impose such a burden on mother improperly transferred nature of hearing into adversary proceeding rather than a proceeding where best interests of child were paramount. *Cooley* v. *Washington* (D.C. Mun. App. 1957, 136 A. 2d 583).

Counsel fees

In proceeding under Uniform Reciprocal Enforcement of Support Act by a wife, a resident of Maryland, for an order to require husband, a resident of District of Columbia, to support children, the Domestic Relations Branch of the Municipal Court for the District of Columbia had the power to award a counsel fee to the wife's court-appointed attorney. *Britt* v. *Britt* (D.C. Mun. App. 1959, 153 A. 2d 644).

Custody of minors

The United States District Court holding Probate Court has jurisdiction to grant custody of minors in guardianship cases. *Johnson* v. *Austin* (D.C. Mun. App. 1960, 162 A. 2d 495).

Jurisdiction over guardianship matters is given to United States District Court holding Probate Court, while Domestic Relations jurisdiction is vested in Domestic Relations Branch of the Municipal Court. *Id.*

The Domestic Relations Branch of the Municipal Court of District of Columbia is bound by but does not have jurisdiction to specifically enforce custody orders of the United States District Court holding Probate Court. *Id.*

Equity powers

Domestic Relations Branch of Municipal Court is not vested with general equity powers under this section vesting it with exclusive jurisdiction over actions for divorce, and civil actions to enforce support of minor children, and court has no power to modify a private support agreement entered into by parties before their absolute divorce in Alabama except that court can, after proper hearing, entertain wife's request for increased support for children, but only for such increase during their minority. *Blumenthal* v. *Blumenthal* (D.C. Mun. App. 1960, 161 A. 2d 137).

Increased support

Where divorced wife in the Domestic Relations Branch of Municipal Court sought an increase in support for the children of the parties over the amount agreed upon in agreement between the parties prior to their absolute divorce, notwithstanding the domestic branch was without jurisdiction to enforce the agreement, it should have granted a hearing on the wife's request for increased support for the children. *Blumenthal* v. *Blumenthal* (D.C. Mun. App. 1959, 155 A. 2d 525).

Jurisdiction

Statute providing that Domestic Relations Branch of Municipal Court of District of Columbia and each judge sitting therein shall have exclusive jurisdiction over civil actions to enforce support of minor "children" includes all children, legitimate and illegitimate. *C. Johnson* v. *E. Johnson et al.* (1963, 324 F. 2d 884, 117 U.S. App. D.C. 6).

Where natural father acknowledges paternity, illegitimate children are entitled to civil remedies for support available in Domestic Relations Branch of Court of General Sessions, though they retain all remedies presently available to them in Juvenile Court. *Id.*

"Children," within statute providing that Domestic Relations Branch of Municipal Court shall have exclusive jurisdiction over actions to enforce support of minor children, includes illegitimate children and Domestic Relations Branch had jurisdiction of action to enforce order directing him to support minor children born out of wedlock, where natural father had acknowledged paternity. *C. Johnson* v. *E. Johnson et al.* (D.C. Mun. App. 1962, 183 A. 2d 916).

Statute creating Domestic Relations Branch and providing that the United States District Court for the District of Columbia would not be deprived of jurisdiction to enforce judgments and orders in pending actions requires that new cases are to go before new court, and cases filed with the United States District Court before cutoff date were to remain and be decided there. *M. R. Hatton* v. *L. D. Hatton* (D.C. Mun. App. 1961, 171 A. 2d 256).

Wife who had been awarded divorce decree in United States District Court for District of Columbia, before enactment of statute creating Domestic Relations Branch, could not bring subsequent action against husband in the Domestic Relations Branch for separate maintenance and support of children. *Id.*

Exclusive jurisdiction of suit against divorced husband to enforce support for wife and minor son was in Domestic Relations Branch of Municipal Court, rather than District Court. *S. S. Wagner* v. *C. A. Wagner* (1961, 293 F. 2d 533, 110 U.S. App. D.C. 345).

For purposes of jurisdiction in suits to enforce support, divorced wife is deemed to be a wife. *Id.*

District Court should not have dismissed complaint to enforce support for divorced wife and minor son, but should have transferred the case to the Municipal Court for trial. *Id.*

At least in transition period following transfer of jurisdiction from one court to another, a court should not dismiss suit which can properly be transferred. *Id.*

The Domestic Relations Branch of the Municipal Court for the District of Columbia, rather than the Civil Division, had jurisdiction of action by wife for support arrearages for herself and son under written separation agreement. *J. Gaissert* v. *C. Gaissert* (D.C. Mun. App. 1961, 174 A. 2d 195).

Domestic Relations Branch of Municipal Court of District of Columbia had exclusive jurisdiction and equitable power to adjudicate divorced wife's claim for enforcement of separation agreement provision relating to benefits for children, as support or claims against husband's property, even though action was instituted before enactment of statute clarifying jurisdiction. *V. S. David* v. *L. S. Blumenthal* (1961, 292 F. 2d 765, 110 U.S. App. D.C. 272).

Counterclaim of divorced wife seeking money judgment against divorced husband in Domestic Relations Branch of the Municipal Court for the District of Columbia for arrears in payments due from husband under foreign divorce decree for support of children was a "civil action to enforce support of minor children" within this section providing that Domestic Relations Branch shall have exclusive jurisdiction over all "civil actions to enforce support of minor children." *Thomason* v. *Thomason* (1959, 274 F. 2d 89, 107 U.S. App. D.C. 27).

United States District Court for the District of Columbia does not have jurisdiction of a divorce action although it involves real property rights. *Harris* v. *Harris, Sr.* (1959, 272 F. 2d 511, 106 U.S. App. D.C. 282).

Property conveyed to spouses by entireties can be ordered partitioned or sold, or disputes can otherwise be adjudicated, by District Court for District of Columbia in cases where limited divorce decree is in existence; and, likewise, property held by entireties can be awarded in part, or in its totality, to one tenant, depending upon facts, evidence, etc., in case; and District Court has such power of partition or award even though divorce was granted by Municipal Court. *Hipp.* v. *Hipp* (D.C.D.C. 1960, 191 F. Supp. 299).

In action by divorced father for custody of minor children, wherein children's maternal grandmother who had custody of the children counterclaimed to recover the amount alleged to be owing by father under separation agreement for support of children which had been adopted by Nevada court which granted the divorce decree, the counterclaim was properly denied on ground that the Domestic Relations Branch of the Municipal Court lacked jurisdiction to award judgment on payments due under decree of a foreign court. *Hitchcock* v. *Thomason* (D.C. Mun. App. 1959, 148 A. 2d 458).

This section vesting the Domestic Relations Branch with exclusive jurisdiction over actions for divorce, etc., and vesting it with so much of the power as is now vested in the United States District Court for the District whether in law or in equity as is necessary to effectuate the purposes of "this chapter" does not vest in such branch any power to modify or enforce a private agreement between divorced spouses for support of the children, since such power could be exercised only if the court had been granted generally equity power and it was obvious that Congress had granted no such power. *Blumenthal* v. *Blumenthal* (D.C. Mun. App. 1959, 155 A. 525).

Purpose

One of the purposes of this section providing that Domestic Relations Branch of the Municipal Court for the District of Columbia shall have exclusive jurisdiction over all civil actions to enforce support of minor children is to provide for support of minor children who are involved in divorce proceedings. *Thomason* v. *Thomason* (1958, 274 F. 2d 89, 107 U.S. App. D.C. 27).

Welfare of child

Where natural mother's sister and brother-in-law adopted child, the sister died and the brother-in-law died survived by his subsequent wife who disclosed no real intent to maintain child, the natural mother and subsequent wife were strangers who had no legal vested right to custody of child; the controlling consideration was welfare of child. *Cooley* v. *Washington* (D.C. Mun. App. 1957, 136 A. 2d 583).

In child custody proceeding before Domestic Relations Branch of District of Columbia Municipal Court, whether controversy arises between parents, parents and strangers, or between strangers, probable welfare of child is controlling consideration and all questions of superior rights are entirely subordinated. *Id.*

Wife's petition for support

Even though the United States District Court had dismissed, with prejudice, wife's complaint against husband for maintenance of children, for the stated reason that wife had moved to Maryland and had denied the husband his right of visitation, the Domestic Relations Branch of the Municipal Court for the District of Columbia could entertain wife's petition, under the Uniform Reciprocal Enforcement of Support Act, for an order to require husband, a resident of District of Columbia, to support children, and could grant such an order where wife no longer had any reservations concerning the husband's visiting the children. *Britt* v. *Britt* (D.C. Mun. App. 1959, 153 A. 2d 644).

Where no divorce, absolute or limited, is granted, court has no power or authority to partition or award to one spouse real or personal property held by the entireties, and 1959 statute which gave Domestic Relations Branch authority in divorce actions to adjudicate all property disputes did not authorize partition when no divorce was granted. *C. H. Ridgely* v. *R. M. Ridgely* (D.C. App. 1963, 188 A. 2d 296).

II. Under Present Law

Estoppel

Divorced wife suing husband for arrears in support payments was not estopped from denying that she was married to man with whom she was having intimate relations. *R. Rodenburg* v. *M. Rodenburg* (D.C. App. 1965, 213 A. 2d 510).

Evidence

The evidence, in divorced wife's action to collect arrears in support payments ordered by Florida divorce decree, was insufficient to raise jury question as to wife's remarriage. *R. Rodenburg* v. *M. Rodenburg* (D.C. App. 1965, 213 A. 2d 510).

Jurisdiction

Under statute giving domestic relations branch of Court of General Sessions exclusive jurisdiction over civil actions to enforce support of wife, the domestic relations branch had jurisdiction of wife's action to collect arrears in support payments due from husband under Florida divorce decree. *R. Rodenburg* v. *M. Rodenburg* (D.C. App. 1965, 213 A. 2d 510).

Jury trial

Divorced husband sued by wife for arrears in support payments ordered by Florida divorce decree had right to demand jury trial on issue of wife's remarriage. *R. Rodenburg* v. *M. Rodenburg* (D.C. App. 1965, 213 A. 2d 510).

Powers

Domestic relations branch of District of Columbia Court of General Sessions has general equitable power to deal with problems of adoption, support, custody and property rights of minor children and possesses all legal and equitable powers necessary to effectuate these purposes. *D. D. Brewer, Director, etc.* v. *M. Simmons and H. Simmons, Jr.* (D.C. App. 1964, 205 A. 2d 60).

SUBCHAPTER IV.—MISCELLANEOUS PROVISIONS

§ 11–1161. Powers of Branch

The Domestic Relations Branch of the District of Columbia Court of General Sessions has all of the legal and equitable powers necessary to effectuate the purposes of this chapter, chapters 3 and 9 of Title 16, chapters 1 and 3 of Title 30, and section 32–786, including but not limited to, the power to:

(1) issue restraining orders and injunctions, writs of habeas corpus and ne exeat, and all other writs, orders, and decrees; and

(2) enforce and execute its judgments, orders, and decrees.

(Dec. 23, 1963, 77 Stat. 493, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–763 (Apr. 11, 1956, ch. 204, § 106, 70 Stat. 112; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section is derived from all of section 11–763 of D.C. Code, 1961 ed., except the second sentence of subsec. (b) thereof. That sentence, which related to the legal status of judgments of the Domestic Relations Branch of the Municipal Court (now, the Court of General Sessions), is set out elsewhere in this revised part. See tables.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The provisions of section 11–763 of D.C. Code, 1961 ed., that are rewritten and carried into this section, read as follows:

"(a) The Domestic Relations Branch is hereby vested with so much of the power as is now vested in the United States District Court for the District of Columbia, whether in law or in equity, as is necessary to effectuate the purposes of this chapter [actually, subchapter IIA of chapter 7 of the Code], including but not limited to, the power to issue restraining orders, injunctions, writs of habeas corpus, and ne exeat, and all other writs, orders, and decrees.

"(b) The Domestic Relations Branch shall have the same power to enforce and execute judgments, orders and decrees entered by it as is now vested in the United States District Court for the District of Columbia.".

In this section, the provisions are rewritten to eliminate the references to the District Court as superfluous, and, for the purpose of clarification, to insert references to the particular provisions with which the Domestic Relations Branch is concerned, and which had been affected or amended by other provisions of the 1956 act creating the Branch. In this connection, a reference to chapters 1 and 3 of Title 30 is also inserted. Chapter 1 of that title relates to marriages, but, considering section 11–1141 of this revised part, it apparently contains some provisions, such as provisions relating to annulment, which would come within the jurisdiction of the Domestic Relations Branch of the Court of General Sessions. Chapter 3 of that title contains, or will contain, the Uniform Reciprocal Enforcement of Support Act, which

was adopted for the District of Columbia in 1957 (see revision note under section 11–1141 of this revised part). Heretofore, it has been classified to section 11–1601 et seq. of D.C. Code, 1961 ed., but it will be reclassified as chapter 3 of Title 30 thereof.

Changes are made in phraseology.

NOTES TO DECISIONS

I. Under Prior Law

Counsel fees

In proceeding under Uniform Reciprocal Enforcement of Support Act by a wife, a resident of Maryland, for an order to require husband, a resident of District of Columbia, to support children, the Domestic Relations Branch of the Municipal Court for the District of Columbia had the power to award a counsel fee to the wife's court-appointed attorney. *Britt* v. *Britt* (D.C. Mun. App. 1959, 153 A. 2d 644).

Equity powers

Domestic Relations Branch of Municipal Court is not vested with general equity powers under section 11–762 vesting it with exclusive jurisdiction over actions for divorce, and civil actions to enforce support of minor children, and court has no power to modify a private support agreement entered into by parties before their absolute divorce in Alabama except that court can, after proper hearing, entertain wife's request for increased support for children, but only for such increase during their minority. *Blumenthal* v. *Blumenthal* (D.C. Mun. App. 1960, 161 A. 2d 137).

Increased support

Where divorced wife in the Domestic Relations Branch of Municipal Court sought an increase in support for the children of the parties over the amount agreed upon in agreement between the parties prior to their absolute divorce, notwithstanding the domestic branch was without jurisdiction to enforce the agreement, it should have granted a hearing on the wife's request for increased support for the children. *Blumenthal* v. *Blumenthal* (D.C. Mun. App. 1959, 155 A. 2d 525).

Jurisdiction

The Domestic Relations Branch of the Municipal Court of the District of Columbia is bound by but does not have jurisdiction to specifically enforce custody orders of the United States District Court holding Probate Court. *Johnson* v. *Austin, Guardian etc.* (D.C. Mun. App. 1960, 162 A. 2d 495).

Section 11–762 vesting the Domestic Relations Branch with exclusive jurisdiction over actions for divorce, etc., and vesting it with so much of the power as is now vested in the United States District Court for the District whether in law or in equity as is necessary to effectuate the purposes of "this chapter" does not vest in such branch any power to modify or enforce a private agreement between divorced spouses for support of the children, since such power could be exercised only if the court had been granted generally equity power and it was obvious that Congress had granted no such power. *Blumenthal* v. *Blumenthal* (D.C. Mun. App. 1959, 155 A. 2d 525).

Wife's petition for support

Even though the United States District Court had dismissed, with prejudice, wife's complaint against husband for maintenance of children, for the stated reason that wife had moved to Maryland and had denied the husband his right of visitation, the Domestic Relations Branch of the Municipal Court for the District of Columbia could entertain wife's petition, under the Uniform Reciprocal Enforcement of Support Act, for an order to require husband, a resident of District of Columbia, to support children, and could grant such an order where wife no longer had any reservations concerning the husband's visiting the children. *Britt* v. *Britt* (D.C. Mun. App. 1959, 153 A. 2d 644).

II. Under Present Law

Powers

Domestic relations branch of District of Columbia Court of General Sessions has general equitable power to deal with problems of adoption, support, custody and property rights of minor children and possesses all legal and equitable powers necessary to effectuate these purposes. *D. D. Brewer, Director, etc.* v. *M. Simmons and H. Simmons, Jr.* (D.C. App. 1964, 205 A. 2d 60).

Chapter 13.—SMALL CLAIMS AND CONCILIATION BRANCH OF COURT OF GENERAL SESSIONS

SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

Sec.
11–1301. Continuation of Branch.
11–1302. Service of Court of General Sessions judges; rotation.
11–1303. Sessions.

SUBCHAPTER II.—OFFICERS AND EMPLOYEES

11–1321. Clerk.
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11–1323. Records and reports.

SUBCHAPTER III.—JURISDICTION

11–1341. Exclusive jurisdiction of small claims; limitations.
11–1342. Settlement disputes by arbitration and conciliation.
11–1343. Certification of cases by Court of General Sessions judges; recreation.

SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

§ 11–1301. Continuation of Branch

The Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions shall continue as a branch in the civil division of the court. (Dec. 23, 1963, 77 Stat. 494, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–755, 11–756, 11–801 (Mar. 5, 1938, ch. 43, § 1, 52 Stat. 103; Apr. 1, 1942, ch. 207, §§ 1, 4, 5, 56 Stat. 190, 192, 193; June 29, 1953, ch. 159, § 410, 67 Stat. 108; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates section 11–801 of D.C. Code, 1961 ed., which in 1938 established the Small Claims and Conciliation Branch in the Municipal Court prior to the merger, by the act of Apr. 1, 1942, of that court with the Police Court to form the Municipal Court for the District of Columbia, with the final phrase of subsec. (b) of section 11–756 of the Code, the effect of which was to continue that branch within the second Municipal Court thus formed, and with part of the first sentence of subsec. (a) of section 11–755 of the Code, which, as amended by the act of Oct. 23, 1962, also provided that the Court (referred to therein by its new name of District of Columbia Court of General Sessions) should have a Small Claims and Conciliation Branch. For remainder of sections 11–755 and 11–756, see tables.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The section, as revised, continues the Small Claims and Conciliation Branch of the Court of General Sessions, and provides that it shall constitute a branch in the civil division of that court. See revision note under section 11–901.

NOTES TO DECISIONS UNDER PRIOR LAW

Purpose

In creating the small claims branch of the trial court, Congress did not intend to deprive litigants of their lawful claims or defenses, or to substitute the abstract conception of justice of an individual judge for recognized rules of substantive law. *Universal Jewelry Company, Inc.* v. *McIver* (D.C. Mun. App. 1949, 68 A. 2d 226).

The principal purpose of legislation establishing Small Claims Branch of Municipal Court for the District of Columbia was to provide informality and the kind of friendly atmosphere not found in ordinary procedure, and to accomplish this purpose conciliation procedure was prescribed in every case. *Potomac Small Loan Co.* v. *Myles* (D.C. Mun. App. 1934, 34 A. 2d 609).

The purpose of legislation establishing small claims court was to secure prompt and inexpensive adjudication of small claims free from technicalities of procedural law, and Congress did not intend to deprive litigants of their lawful claims or defenses, or to substitute the abstract conception of justice of an individual judge for recognized rules of substantive law. *Interstate Bankers Corporation* v. *Kennedy* (D.C. Mun. App. 1943, 33 A. 2d 165).

§ 11–1302. Service of Court of General Sessions judges; rotation

One or more judges of the District of Columbia Court of General Sessions shall serve in the Small Claims and Conciliation Branch for such periods and in such order of rotation as the chief judge of the court determines. (Dec. 23, 1963, 77 Stat. 494, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–755, 11–756, 11–803 (Mar. 5, 1938, ch. 43, § 3, 52 Stat. 103; Apr. 1, 1942, ch. 207, §§ 4, 5, 56 Stat. 190, 192, 193; June 29, 1953, ch. 159, § 410, 67 Stat. 108; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from section 11–803 of D.C. Code, 1961 ed. Sections 11–751a, 11–755 and 11–756 of the Code are also cited as sources of this section for the reasons stated in revision note under section 11–1301. For remainder of sections 11–755 and 11–756, see tables.

The section, as revised, relates to the Small Claims and Conciliation Branch of the Court of General Sessions.

With respect to who may determine how many judges shall serve in the Branch, the periods of service, and the order of rotation, "chief judge of the court" is substituted for "judges of the court" to conform with section 11–904 herein (D.C. Code, 1961 ed., § 11–754) under which the chief judge has the duty of assigning judges to the divisions and several branches of the court.

Minor changes are made in phraseology.

§ 11–1303. Sessions

The Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions, with a judge in attendance, shall be open for the transaction of business on every day of the year except Saturday afternoons, Sundays, and legal holidays, and shall also hold at least one night session during each week. (Dec. 23, 1963, 77 Stat. 494, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–755, 11–756, 11–816 (Mar. 5, 1938, ch. 43, § 16, 52 Stat. 106; Apr. 1, 1942, ch. 207, §§ 4, 5, 56 Stat. 192, 193; June 29, 1953, ch. 159, § 410, 67 Stat. 108; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from section 11–816 of D.C. Code, 1961 ed. Sections 11–751a, 11–755 and 11–756 of the Code are also cited as sources of this section for the reasons stated in revision note under section 11–1301. For remainder of sections 11–755 and 11–756, see tables.

The section, as revised, relates to the Small Claims and Conciliation Branch of the Court of General Sessions.

Minor changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Discretion

Where it was custom of court to call daily calendar and dispose of uncontested, ex parte, and preliminary matters before hearing of trials, dismissal of case during preliminary call for want of prosecution when counsel asked for 20 minutes time to prepare for trial was an abuse of discretion. *Hollywood Credit Clothing Co., Inc.*, v. *Hamdon* (D.C. Mun. App. 1951, 79 A. 2d 163).

SUBCHAPTER II.—OFFICERS AND EMPLOYEES

§ 11–1321. Clerk

The District of Columbia Court of General Sessions may assign a deputy clerk or other assistant to the clerk of the court to serve as clerk of the Small Claims and Conciliation Branch. (Dec. 23, 1963, 77 Stat. 494, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–755, 11–756, 11–802 (Mar. 5, 1938, ch. 43, § 2, 52 Stat., 103; Apr. 1, 1942, ch. 207, §§ 1, 4, 5, 56 Stat. 190, 192, 193; June 29, 1953, ch. 159, § 410, 67 Stat. 108; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from section 11–802 of D.C. Code, 1961 ed. Sections 11–751a, 11–755 and 11–756 of the Code are also cited as sources of this section for the reasons stated in revision note under section 11–1301. For remainder of sections 11–755 and 11–756, see tables.

The section, as revised, relates to the Small Claims and Conciliation Branch of the Court of General Sessions.

The language of this section is new, but the provisions were implicit in clause (c) in section 11–802 of D.C. Code, 1961 ed., which was a section containing definitions of terms used in chapter 8 (§11–801 et seq.) of Title 11 of D.C. Code, 1961 ed., in which provisions relating to the Small Claims and Conciliation Branch of the Municipal Court (now, Court of General Sessions) were set out. Clause (c) defined "Clerk" as meaning "the clerk or any assistant clerk of said municipal court assigned to said branch".

The remaining provisions of section 11–802 of D.C. Code, 1961 ed., which defined "Branch", "Judge" and "Court", are omitted, as all provisions of chapter 8 of Title 11 of the Code, to which the definitions related, that are carried into this revised part, are rewritten to render the retention of the definitions unnecessary.

§ 11–1322. Separate docket; entries

The clerk of the Small Claims and Conciliation Branch shall keep a separate docket for the Branch, in which he shall record every proceeding and ruling had in each case. (Dec. 23, 1963, 77 Stat. 494, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–755, 11–756, 11–806 (Mar. 5, 1938, ch. 43, § 6, 52 Stat. 105; Apr. 1, 1942, ch. 207, §§ 4, 5, 56 Stat. 192, 193; June 29, 1953, ch. 159, § 410, 67 Stat. 108; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Secton is derived from section 11–806 of D.C. Code, 1961 ed. Sections 11–751a, 11–755 and 11–756 of the Code are also cited as sources of this section for the reasons stated in revision note under section 11–1301. For remainder of sections 11–755 and 11–756, see tables.

The section, as revised, relates to the Small Claims and Conciliation Branch of the Court of Gneral Sessions.

Changes are made in phraseology.

§ 11–1323. Records and reports

The clerk of the Small Claims and Conciliation Branch shall maintain a daily record of all transactions had therein and shall prepare and transmit to the Attorney General of the United States a monthly report in detail showing the number and nature of all such transactions. (Dec. 23, 1963, 77 Stat. 494, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–755, 11–756, 11–813 (Mar. 5, 1938, ch. 43, § 13, 52 Stat. 106; Apr. 1, 1942, ch. 207, §§ 4, 5, 56 Stat. 192; June 29, 1953, ch. 159, § 410, 67 Stat. 108; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from section 11–813 of D.C. Code, 1961 ed. Sections 11–751a, 11–755 and 11–756 of the Code are also cited as sources of this section for the reasons stated in revision note under section 11–1301. For remainder of sections 11–755 and 11–756, see tables.

The section, as revised, relates to the Small Claims and Conciliation Branch of the Court of General Sessions.

Minor changes are made in phraseology.

SUBCHAPTER III.—JURISDICTION

§ 11–1341. Exclusive jurisdiction of small claims; limitations

The Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions has exclusive jurisdiction over all cases within the jurisdiction of the court in which the amount of the plaintiff's claim or the claimed value of personal property in controversy does not exceed $150 exclusive of interest, attorney fees, protest fees, and costs. This jurisdiction does not include actions for recovery of the possession of real estate, whether or not such actions include a claim for arrears of rent, or personalty, or both arrears of rent and personalty. (Dec. 23, 1963, 77 Stat. 495, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–755, 11–756, 11–804 (Mar. 5, 1938, ch. 43, § 4, 52 Stat. 103; Apr. 1, 1942, ch. 207, §§ 4, 5, 56 Stat. 192, 193; June 29, 1953, ch. 159, § 410, 67 Stat. 108; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Sept. 6, 1961, Pub. L. 87–203, § 1, 75 Stat. 471; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from subsec. (a) of section 11–804 of D.C. Code, 1961 ed. Sections 11–751a, 11–755 and 11–756 of the Code are also cited as sources of this section for the reasons stated in revision note under section 11–1301. For remainder of sections 11–755, 11–756 and 11–804, see tables.

The section, as revised, relates to the Small Claims and Conciliation Branch of the Court of General Sessions.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Amount of claim as controlling

The amount of plaintiff's claim and not amount of his possible or even probable ultimate recovery determines forum within the Municipal Court in which a plaintiff's action is to be lodged. *Goldberg* v. *Roumel* (D.C. Mun. App. 1945, 40 A. 2d 253).

Defenses

An improvident or extravagant purchase may not be rescinded simply because it is contrary to the dictates of good judgment and a court has no basis for relieving one party from contract provisions to which he has agreed, merely because they operate disadvantageously as to him. *Universal Jewelry Company, Inc.* v. *McIver* (D.C. Mun. App. 1949, 68 A. 2d 226).

Discretion

Where it was custom of court to call daily calendar and dispose of uncontested, ex parte, and preliminary matters before hearing of trials, dismissal of case during preliminary call for want of prosecution when counsel asked for 20 minutes time to prepare for trial was an abuse of discretion. *Hollywood Credit Clothing Co., Inc.* v. *Hamdon* (D.C. Mun. App. 1951, 79 A 2d 163).

Emergency Price Control Act

The small claims branch of the Municipal Court for the District of Columbia had jurisdiction to entertain action by customer to recover $50 for alleged violation of price regulation promulgated under the Price Control Act, 50 U.S.C. App. § 925 (e). *Hall* v. *Chaltis* (D.C. Mun. App. 1943, 31 A. 2d 699).

Jurisdiction

In an action brought to recover a balance on a sale of a pair of shoes for $15.00, the court not only had jurisdiction, but had exclusive jurisdiction and it was error to hold otherwise. *Universal Jewelry Company, Inc.* v. *McIver* (D.C. Mun. App. 1949, 68 A. 2d 226).

§ 11–1342. Settlement of disputes by arbitration and conciliation

In order to effect the speedy settlement of controversies, and with the consent of all parties thereto, the Small Claims and Conciliation Branch may settle cases, irrespective of the amount involved, by the methods of arbitration and conciliation. The judges of the Branch may also act as referees or arbitrators, either alone or in conjunction with other persons, pursuant to rule 53 of the Federal Rules of Civil Procedure, or under Title 9, United States Code, or otherwise. A judge, officer, or employee of the District of Columbia Court of General Sessions may not accept any fee or compensation in addition to his salary for services performed pursuant to this section. (Dec. 23, 1963, 77 Stat. 495, Pub. L. 88–241 § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–755, 11–756, 11–804 (Mar. 5, 1938, ch. 43, § 4, 52 Stat. 103; Apr. 1, 1942, ch. 207, §§ 4, 5, 56 Stat. 192, 193; June 29, 1953, ch. 159, § 410, 67 Stat. 108; July 26, 1956, ch. 744, §1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from subsec. (b) of section 11–804 of D.C. Code, 1961 ed. Sections 11–751a, 11–755 and 11–756 of the Code are also cited as sources of this section for the reasons stated in revision note under section 11–1301. For remainder of sections 11–755, 11–756 and 11–804, see tables.

The section, as revised, relates to the Small Claims and Conciliation Branch of the Court of General Sessions.

Reference to sections 16–1701 to 16–1719 of D.C. Code, 1961 ed., is changed to "rule 53 of the Federal Rules of Civil Procedure", as that rule superseded the Code sections cited.

Reference to the "United States Arbitration Act of February 12, 1925 (U.S.C., 1934 ed., Title 9, sections 1 to 15)", is replaced in this revised section by "Title 9, United States Code". Title 9 of the United States Code, which relates solely to arbitration, and which originally represented a classification of the cited 1925 act, was enacted into law by act July 30, 1947, ch. 392, § 1, 61 Stat. 669, and section 2 of the 1947 act repealed the 1925 act. See Title 9 in the United States Code.

Changes are made in phraseology.

§ 11–1343. Certification of cases by Court of General Sessions judges; recertification

When the interests of justice seem to require, and all parties consent thereto, a judge of the District of Columbia Court of General Sessions may certify a case to the Small Claims and Conciliation Branch for conciliation, or to endeavor to obtain a complete or partial agreed statement of facts or stipulation, which will simplify and expedite the ultimate trial of the case. With the consent of all parties the trial of the case may be completed in the Branch, or in the absence of their consent shall be recertified to another judge of the court for trial. (Dec. 23, 1963, 77 Stat. 495, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–755, 11–756, 11–810 (Mar. 5, 1938, ch. 43, § 10, 52 Stat. 106; Apr. 1, 1942, ch. 207, §§ 4, 5, 56 Stat. 192, 193; June 29, 1953, ch. 159, § 410, 67 Stat. 108; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from section 11–810 of D.C. Code, 1961 ed. Sections 11–751a, 11–755 and 11–756 of the Code are also cited, as sources of this section for the reasons stated in revision note under section 11–1301. For remainder of sections 11–755 and 11–756, see tables.

The section, as revised, relates to the Small Claims and Conciliation Branch of the Court of General Sessions.

Minor changes are made in phraseology.

Chapter 15.—JUVENILE COURT OF THE DISTRICT OF COLUMBIA

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SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

§ 11–1501. Continuation of Court; court of record; seal

(a) The Juvenile Court of the District of Columbia shall continue as a court of record in the District.

(b) The court shall have a seal. (Dec. 23, 1963, 77 Stat. 496, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REFERENCE TO JUDGE OF JUVENILE COURT IN OTHER LAWS

Section 17(c) of act Dec. 23, 1963, provided as follows: "Whenever in any law of the United States reference is made to the judge of the juvenile court of the District of Columbia the reference shall be construed to mean any judge of the court."

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–901, 11–904 (Mar. 19, 1906, ch. 960, §§ 1, 3, 34 Stat. 73; June 1, 1938, ch. 309, 52 Stat. 596).

Section consolidates section 11–901 of D.C. Code, 1961 ed., and that part of section 11–904 thereof which provided that the Juvenile Court should be a court of record and should have a seal.

This section, as revised, continues the Juvenile Court established by section 11–901 of D.C. Code, 1961 ed.

The remainder of section 11–904 is carried into § 11–1582.

NOTES TO DECISIONS UNDER PRIOR LAW

Constitutionality

Provision in Juvenile Court Act, this subchapter, that where child charged with felony is 16 years of age or older, judge may, after investigation, waive jurisdiction and order such child held for trial under regular procedure is not void for lack of standards. *Briggs* v. *United States of America* (1955, 226 F. 2d 350, 96 U.S. App. D.C. 392).

The social considerations underlying this subchapter and the informality of procedure permitted under it are not incompatible with according to one accused of crime the rights guaranteed him by the Constitution. *Evans* v. *Rives* (1942, 126 F. 2d 633, 75 U.S. App. D.C. 242).

Construction with other laws

Drug Users' Act providing for commitment of all narcotics addicts to institutions for treatment, except persons charged with a criminal offense, does not impliedly repeal Juvenile Court Act, this subchapter, insofar as jurisdiction over juveniles who are addicted to narcotics is concerned. *In re Rene Whisaker* (D.C.D.C. 1955, 134 F. Supp. 864).

Drug Users' Act not criminal statute

Drug Users' Act is not a criminal statute and when it places a juvenile under jurisdiction of Juvenile Court in an institution for treatment, it does no more than change custody of juvenile under commitment and does not impair Juvenile Court jurisdiction. *In re Rene Whisaker* (D.C.D.C. 1955, 134 F. Supp. 864).

Due process

Where proceedings wherein juvenile was found to have participated in law violations while on probation from Juvenile Court, were in compliance with statutory requirements, there was no denial of due process of law. *White* v. *Reid* (D.C.D.C. 1954, 125 F. Supp. 647).

Juveniles

The intention of Congress was to include juveniles within the operation of the Drug Users' Act. *In re Rene Whisaker* (D.C.D.C. 1955, 134 F. Supp. 864).

Under Drug Users' Act, court had authority to examine juvenile for purpose of determining whether she should be committed for treatment as a narcotics user, even though juvenile had been previously committed to the Department of Public Welfare by the Juvenile Court. *Id.*

Nature of proceedings

A proceeding in the Juvenile Court is not a criminal proceeding. *In re Rene Whisaker* (D.C.D.C. 1955, 134 F. Supp. 864).

Proceedings under oath

In proceeding by mother to have daughter committed to psychiatric school on ground that daughter was habitually beyond mother's control, daughter had right to insist that facts be presented by witnesses who were under oath in view of fact that daughter's liberty was involved. *In re Sippy* (D.C. Mun. App. 1953, 97 A. 2d 455).

§ 11–1502. Appointment, qualifications, tenure, salaries, and oath of judges

(a) The Juvenile Court shall consist of a chief judge and two associate judges learned in the law and appointed by the President of the United States by and with the advice and consent of the Senate.

(b) A person may not be appointed as judge of the court, unless:

(1) he has been a member of the bar of the District of Columbia for a period of five years preceding his appointment;

(2) during a period of ten years immediately preceding his appointment, he has been a resident of the District of Columbia or of the metropolitan area of the District for at least five years, of which not less than three years shall immediately precede his appointment; and

(3) he has a broad knowledge of social problems and procedures and an understanding of child psychology.

For the purpose of this subsection, the term "metropolitan area of the District" means Montgomery and Prince Georges Counties in Maryland, and Arlington and Fairfax Counties and the cities of Alexandria and Falls Church in Virginia.

(c) Each judge appointed after March 9, 1962, shall serve for a term of ten years or until his successor is appointed and qualifies.

(d) The salary of the chief judge shall be equal to the salary of the chief judge of the District of Columbia Court of General Sessions, and the salary of each associate judge shall be equal to the salary of an associate judge of that court.

(e) Each judge, before entering upon the duties of his office, shall take the oath prescribed for judges of courts of the United States. (Dec. 23, 1963, 77 Stat. 496, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–920 (Mar. 19, 1906, ch. 960, § 19, 34 Stat. 77; June 1, 1938, ch. 309, 52 Stat. 596 (601); July 11, 1955, ch. 302, § 4, 69 Stat. 290, Mar. 9, 1962, Pub. L. 87–413, § 1, 76 Stat. 21; Aug. 24, 1962, Pub. L. 87–596, § 2(b), 76 Stat. 398).

Section is derived from all of section 11–920 of D.C. Code, 1961 ed., except the first and second sentences of subsec. (c) thereof. Those sentences are carried into section 11–1503 herein.

Changes are made in phraseology and arrangement.

§ 11–1503. Administration of court; absence, disability, disqualification, or death of judges

(a) The chief judge of the Juvenile Court shall be responsible for the administration of the court. During the temporary absence or disability of the chief judge, the associate judge of the court designated by the chief judge or acting chief judge of the United States District Court for the District of Columbia shall be responsible for the administration of the court.

(b) Except as provided by subsection (a) of this section, when a judge of the Juvenile Court dies, or is absent, ill, or disabled to serve in any case, the chief judge or acting chief judge of the United States District Court for the District of Columbia shall designate one of the judges of the District of Columbia Court of General Sessions to serve as a judge of the Juvenile Court until the vacancy is filled or until the removal of such disability, and the return of the regular judge of that court. (Dec. 23, 1963, 77 Stat. 496, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–920, 11–921 (Mar. 19, 1906, ch. 960, §§ 19, 20, 34 Stat. 77; June 1, 1938, ch. 309, 52 Stat. 596 (601); July 11, 1955, ch. 302, § 4, 69 Stat. 290; Mar. 9, 1962, Pub. L. 87–413, §§ 1, 3(a), 76 Stat. 21, 22; Aug. 24, 1962, Pub. L. 87–596, § 2(b), 76 Stat. 398; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section consolidates the first and second sentences of subsec. (c) of section 11–920 of D.C. Code, 1961 ed., with section 11–921 of the Code. Remainder of section 11–920 is carried into section 11–1502 herein.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions. See subsec. (b) of this revised section.

The exception clause is inserted at the beginning of subsec. (b) for the purpose of clarification.

Changes are made in phraseology.

§ 11–1504. Terms

The Juvenile Court shall hold a term on the first Monday of every month and continue the term from day to day as long as may be necessary for the transaction of its business. (Dec. 23, 1963, 77 Stat. 497, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–905 (Mar. 19, 1906, ch. 960, § 4, 34 Stat. 73; June 1, 1938, ch. 309, 52 Stat. 596).

Minor changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Decisions under former law

Court may extend term. *Young* v. *Hesse* (1929, 30 F. 2d 896, 58 App. D.C. 362).

SUBCHAPTER II.—COURT OFFICERS AND EMPLOYEES

§ 11–1521. Clerk; compensation, bond, oath, and duties

(a) The Juvenile Court shall appoint from the eligible list of the Civil Service Commission, a clerk of the court, and shall fix his compensation in accordance with section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters].

(b) The clerk shall give bond, with surety, and take the oath of office prescribed by law for clerks of the United States district courts.

(c) The clerk shall:

(1) keep accurate and complete accounts of moneys collected from persons under the supervision of the probation department, give receipts therefor, and make reports thereon as the chief judge directs; and

(2) perform other duties and keep other records as prescribed by the chief judge.

(Dec. 23, 1963, 77 Stat. 497, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

CODIFICATION

In subsec. (a) the reference "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government empolyees and related matters]" was substituted for "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

REVISION NOTES

Based on D.C. Code. 1961 ed., §§ 11–922, 11–925 (Mar. 19, 1906, ch. 960, §§ 21, 24, 34 Stat. 77, 78; June 1, 1938, ch. 309, 52 Stat. 596 (602); Mar. 9, 1962, Pub. L. 87–413, §§ 3(c), 4, 76 Stat. 22; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972).

Section consolidates that part of section 11–922 of D.C. Code, 1961 ed., relating to appointment and compensation of the clerk of the Juvenile Court, with that part of section 11–925 of the Code relating to bond and oath of the clerk and his general duties. For remainder of sections 11–922 and 11–925, see tables.

Changes are made in phraseology.

§ 11–1522. Administration of oaths by clerk

The clerk of the Juvenile Court may administer oaths and affirmations. (Dec. 23, 1963, 77 Stat. 497, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–925 (Mar. 19, 1906, ch. 960, § 24, 34 Stat. 78; June 1, 1938, ch. 309, 52 Stat. 596 (602)).

Section is derived from that part of section 11–925 of D.C. Code, 1951 ed., which authorized the clerk of the Juvenile Court to administer oaths and affirmations.

Changes are made in phraseology.

§ 11–1523. Director of Social Work; compensation; qualifications; duties

(a) The Juvenile Court shall appoint, from the eligible list of the Civil Service Commission, a Director of Social Work, and shall fix his compensation in accordance with section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]. The Director must have the qualifications prescribed by the Civil Service Commission pursuant to section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters].

(b) Under the administrative direction of the chief judge, the Director of Social Work shall:

(1) have charge of all the social work of the court; and

(2) in association with other social agencies of the District of Columbia, study sources and causes of delinquency and assist in developing and correlating community-wide plans for the prevention and treatment of delinquency.

(Dec. 23, 1963, 77 Stat. 497, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

CODIFICATION

In subsec. (a) the references to "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5508 and 7154, of title 5, U.S. Code [relating to the the classification of government employees and related matters]" were substituted for "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949. 63 State. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–922, 11–923 (Mar. 19, 1906, ch. 960, §§ 21, 22, 34 Stat. 77; June 1, 1938, ch. 309, 52 Stat. 596 (602); Mar. 9, 1962, Pub. L. 87–413, §§ 3 (c) and (b), 76 Stat. 22; Oct. 28, 1949, ch. 782, title XI, § 1106 (a), 63 Stat. 972).

Section consolidates part of section 11–922 of D.C. Code, 1961 ed., with section 11–923 thereof. For remainder of section 11–922, see tables.

Changes are made in phraseology.

CROSS REFERENCES

Advances to chief probation officer of juvenile court, see § 47–116.

Probation department, see § 24–101 et seq.

§ 11–1524. Supervisor of Probation and other probation officers; compensation; qualifications; duties of Probation Department and officers

(a) The Juvenile Court shall appoint, from eligible lists of the Civil Service Commission, a Supervisor of Probation and such other probation officers as it deems necessary, and shall fix their compensation in accordance with section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]. The Supervisor of Probation and probation officers must have the qualifications prescribed by the Civil Service Commission pursuant to section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters].

(b) Under the direction of the Director of Social Work, the Supervisor of Probation shall organize, direct, and develop the work of the Probation Department of the court.

(c) The Probation Department shall:

(1) make such investigations as the court directs;

(2) keep written records of investigations and submit them to a judge of the court or deal with them as he directs;

(3) use all suitable methods to aid persons on probation and bring about improvement in their conduct and condition; and

(4) keep informed concerning the conduct and condition of each person under its supervision and report thereon to the court as it directs, and the Department shall keep full records of its work.

(d) For the purposes of this chapter, probation officers have the powers of police officers, and have such duties, as may be assigned to them in the course of performing the functions of the Probation Department. (Dec. 23, 1963, 77 Stat. 497, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

CODIFICATION

In subsec. (a) the references to "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]" were substituted for "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is no wocovered by the provision of title 5, U.S.C., cited.

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–922, 11–924 (Mar. 19, 1906, ch. 960, §§ 21, 23, 34 Stat. 77, 78; June 1, 1938, ch. 309, 52 Stat. 596 (602); Mar. 9, 1962, Pub. L. 87–413, § 4,

76, Stat. 22; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972).

Section consolidates part of section 11–922 of D.C. Code, 1961 ed., with section 11–924 thereof. For remainder of section 11–922, see tables.

Changes are made in phraseology.

§ 11–1525. Other court employees

The Juvenile Court shall appoint, from eligible lists of the Civil Service Commission, such other employes of the court as it deems necessary, and shall fix their compensation in accordance with section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]. Employees appointed pursuant to this section must have the qualifications prescribed by the Civil Service Commission pursuant to section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]. (Dec. 23, 1963, 77 Stat. 498, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

CODIFICATION

The references in this section to "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]" were substituted for "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–922 (Mar. 19, 1906, ch. 960, § 21, 34 Stat. 77; June 1, 1938, ch. 309, 52 Stat. 596 (602); Mar. 9, 1962, Pub. L. 87–413, § 4, 76 Stat. 22; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972).

Section is derived from part of section 11–922 of D.C. Code, 1961 ed.

The provision for appointment of a deputy clerk is omitted as unnecessary and covered by the general provisions carried into this section.

Changes are made in phraseology.

For remainder of section 11–922 of D.C. Code, 1961 ed., see tables.

§ 11–1526. Rules governing conduct of personnel

The Juvenile Court may issue all necessary orders and writs in aid of its jurisdiction as prescribed by law, and may adopt and publish rules governing its procedure and the conduct of its officers and employees. The rules shall be enforced and construed beneficially for the remedial purposes of this chapter and chapter 23 of Title 16. (Dec. 23, 1963, 77 Stat. 498, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–930 (Mar. 19, 1906, ch. 960, § 29, as added June 1, 1938, ch. 309, 52 Stat. 596 (603)).

Section is derived from that part of section 11–930 of D.C. Code, 1961 ed., following the semicolon therein, which related to the formulation of rules, by the Juvenile Court for the conduct of its officers and employees.

Changes are made in phraseology.

For remainder of section 11–930 of D.C. Code, 1961 ed., see tables.

SUBCHAPTER III.—JURISDICTION

§ 11–1551. Jurisdiction of children and minors; retention

(a) Except as herein otherwise provided, the Juvenile Court has original and exclusive jurisdiction of all cases and in proceedings:

(1) concerning a child as defined by section 16–2301:

(A) who has violated a law, or has violated an ordinance or regulation of the District of Columbia;

(B) who is habitually beyond the control of his parent, guardian, or custodian;

(C) who is habitually truant from school or home;

(D) who habitually so deports himself as to injure or endanger himself or the morals or safety of himself or others;

(E) who is abandoned by his parent, guardian, or custodian;

(F) who is homeless or without adequate parental support or care, or whose parents, guardian, or custodian neglects or refuses to provide support and care necessary for his health or welfare;

(G) whose parent, guardian, or custodian neglects or refuses to provide or avail himself of the special care made necessary by his mental condition;

(H) who associates with vagrants, or vicious or immoral persons;

(I) who engages in an occupation, or is in a situation, dangerous to life or limb or injurious to the health or morals of himself or others;

(2) subject to applicable statutes of limitation, concerning a minor 18 years of age or older who is charged with:

(A) having violated any law; or

(B) having violated any ordinance or regulation of the District of Columbia—

prior to his having become 18 years of age; and

(3) to determine the custody or guardianship of the person of a child coming within the provisions of this section and subchapter I of chapter 23 of Title 16; but the provisions of this clause do not deprive other courts of the right to determine the custody of children upon writs of habeas corpus, or when the custody is incidental to the determination of causes pending therein.

(b) When jurisdiction is obtained by the Juvenile Court in the case of a child under 18 years of age at the time of the offense, the child shall continue under the jurisdiction of the court until he becomes 21 years of age unless the court discharges him prior thereto. This subsection does not affect the jurisdiction of other courts over offenses committed by the child after he reaches the age of 18 years. (Dec. 23, 1963, 77 Stat. 498, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–906, 11–907 (Mar 19, 1906, ch. 960, §§ 5, 6, 34 Stat. 73; June 1, 1938, ch. 309, 52 Stat. 596; July 2, 1940, ch. 525, 54 Stat. 735).

Section consolidates parts of sections 11–906 and 11–907 of D.C. Code, 1961 ed.

Section 11–906 of D.C. Code, 1961 ed., provided that chapter 9 of Title 11 thereof (which was the chapter dealing with the Juvenile Court) should apply to any person under the age of 18 years who committed any of the acts, or was in any of the conditions or circumstances enumerated in that section, and then, among other definitions, defined "child", as used in that chapter, as meaning a person under the age of 18 years. Section 11–907 of the Code then merely provided in par. (a) of subsec. 1 thereof that the Juvenile Court had original and exclusive jurisdiction of all cases and in proceedings "Concerning any child coming within the terms and provisions of this chapter". Inasmuch as the enumeration in section 11–906 stated the conditions and circumstances under which the court has jurisdiction, the provisions of the two sections, as consolidated in subsec. (a) of this section, are set out in jurisdictional language only, and thus state in one place the jurisdiction of the Court over the matters described.

In clause (2) of subsec. (a), words "minor 18 years of age or older" are substituted for "person under 21 years of age" for the purpose of clarification.

In subsec. (b), words "at the time of the offense" are inserted, on recommendation of the Judge of the Juvenile Court, after "under 18 years of age", to make it clearer that any person who came under the court's jurisdiction could be continued under that jurisdiction until his 21st birthday.

Subsec. (c) of section 11–907 of D.C. Code, 1961 ed., which vested in the Juvenile Court jurisdiction of proceedings to determine the paternity of children born out of wedlock and to provide for the support of such children, and which provided for jury trial in the proceedings or the waiver thereof, is omitted as superseded and covered by sections 11–951 et seq. of D.C. Code, 1961 ed. For provisions of those sections, as carried into other sections herein, and for remainder of sections 11–906 and 11–907, see tables.

Changes are made in phraseology.

CROSS REFERENCES

Commitments as feeble-minded person, see § 21–1114.

Designation of officers to take bonds and collateral, see § 23–610.

Enforcement of laws for compulsory school attendance, see § 31–213.

Enforcement of laws governing professional bondsmen, see § 23–612.

Jurisdiction of prosecutions for nonsupport of wife and minor children, see § 22–903.

NOTES TO DECISIONS

I. UNDER PRIOR LAW

Applicability of Federal Rules

The Federal Rules of Criminal Procedure, U.S. Code, title 18, Appendix, do not apply to proceedings in the Juvenile Court of the District of Columbia. *United States* v. *White* (D.C.D.C. 1957, 153 F. Supp. 809).

Arraignment without unnecessary delay

Defendant who was 17 years of age at time of his arrest for murder and who was under jurisdiction of the Juvenile Court of the District of Columbia was not entitled to be taken before a committing magistrate without unnecessary delay. *United States* v. *White* (D.C.D.C. 1957, 153 F. Supp. 809).

Confessions

Statements elicited from 16-year-old minor by police while minor was subject to the jurisdiction of juvenile court were inadmissible in subsequent criminal prosecution. M. A. Kent, Jr. v. United States (1966, 86 S. Ct. 1045, 383 U.S. 541, 16 L. Ed. 2d 84).

Use of word "charged" in Juvenile Court Act providing for Juvenile Court's exclusive jurisdiction in cases concerning any person under 21 years charged with having violated any law prior to having become 18 does not preclude application of principle rendering inadmissible, in event of subseqeunt waiver of Juvenile Court's jurisdiction and criminal trial in District Court, statements from minor in police custody while subject to Juvenile Court jurisdiction where statement is elicited by police before charge is formally filed. *Harrison* v. *United States* (1965, 359 F. 2d 214, 123 U.S. App. D.C. 230).

It was reversible error to admit confession which defendant made when questioned and confronted by police a few days after he turned 18 but before the Juvenile Court waived jurisdiction over the offense committed prior to defendant's 18th birthday. *Id.*

Damaging admissions by juvenile while in police custody and before juvenile court's waiver of exclusive jurisdiction should be excluded from evidence in criminal proceeding. *W. L. Harling* v. *United States* (1961, 295 F. 2d 161, 111 U.S. App. D.C. 174).

Construction

Petition alleging that child had been using narcotics and associating with narcotic addict was sufficient to give juvenile court jurisdiction over child. *In the matter of R. A. Nichols* (D.C. Mun. App. 1962, 179 A. 2d 915).

The section making it an offense to willfully cause, encourage or contribute to any condition which would bring a child within provisions of this subchapter relating to Juvenile Court and this section making this subchapter applicable to children engaged in described conduct or way of life must be read together. *Slaughter* v. *District of Columbia* (D.C. Mun. App. 1957, 134 A. 2d 338).

—— With other laws

Drug Users' Act providing for commitment of all narcotics addicts to institutions for treatment, except persons charged with a criminal offense, does not impliedly repeal Juvenile Court Act, this subchapter, insofar as jurisdiction over juveniles who are addicted to narcotics is concerned. *In re Rene Whisaker* (D.C.D.C. 1955, 134 F. Supp. 864).

Drug Users' Act is not a criminal statute and when it places a juvenile under jurisdiction of Juvenile Court in an instutition for treatment, it does no more than change custody of juvenile under commitment and does not impair Juvenile Court jurisdiction. *Id.*

Double jeopardy

Where purpose and effect of proceedings in juvenile court were to provide a prompt preliminary hearing in order to set a date for trial, if allegations of petitions were denied, or to continue case pending completion of full social study and recommendations for disposition of child, case had not reached stage at which juvenile's liberty had been placed in jeopardy by his acknowledgment that he held a toy gun during alleged robbery, and when trial judge subsequently waived jurisdiction to district court for trial, indictment was not subject to dismissal on ground of double jeopardy. *United States* v. *Dickerson* (1959, 271 F. 2d 487, 106 U.S. App. D.C. 221).

Evidence

Evidence sustained finding that five-year-old child and three-year-old child were without adequate parental care. *In re F. E. Mullen and M. A. Mullen* (D.C. Mun. App. 1958, 144 A. 2d 919).

In prosecution for causing, encouraging and contributing to delinquency of minor female, evidence warranted finding that defendant willfully contributed to female's delinquency by deliberately carrying on an illicit and immoral relationship with female, irrespective of her real age. *Slaughter* v. *District of Columbia* (D.C. Mun. App. 1957, 134 A. 2d 338).

Commitment of girl to psychiatric school on strength of alleged professional opinion of doctor, whom girl had no opportunity to cross-examine and whose professional status was not established in record, was error, especially in view of fact that mother's counsel was permitted to repeat what doctor had told him and urge acceptance of doctor's recommendation's. *In re Sippy* (D.C. Mun. App. 1953, 97 A. 2d 455).

In proceeding wherein parents are charged with inadequate care of minor, public policy and right of child require that if charge of neglect is true the child be removed from control of parents and purpose of proceeding is not punishment of parents but protection of the child, and if liberty can be said to be restrained that is only an incident of, not the purpose of, the removal. *Id.*

Evidence in juvenile court proceeding sustained finding of court's jurisdiction over infant who disclosed signs of narcotics use, and admitted narcotics use. *In the matter of R. A. Nichols* (D.C. Mun. App. 1962, 179 A. 2d 915).

Jurisdiction

Juvenile Court's exclusive jurisdiction of offense committed prior to offender's 18th birthday was not impaired by fact that prior to date of admissions offender turned 18, became subject to jurisdiction of Criminal Courts as to other offenses, and was committed to jail for traffic violations. *Harrison* v. *United States* (1965, 359 F. 2d 214, 123 U.S. App. D.C. 230).

Evidence in juvenile court proceeding sustained finding of court's jurisdiction over infant who disclosed signs of narcotics use, and admitted narcotics use. *In the matter of R. A. Nichols* (D.C. Mun. App. 1962, 179 A. 2d 915).

Alleged error in admission of physician's report stating that child was addicted to heroin was harmless, in juvenile court proceeding, in view of other evidence sufficient to support finding of jurisdiction over child. *Id.*

Nature of proceedings

Proceedings provided for by the Juvenile Court Act, this subchapter, are not criminal cases and the constitutional safeguards vouchsafed a juvenile in such proceedings are determined from the requirements of due process and fair treatment and not by the direct application of clauses of the Constitution which in terms apply to criminal cases and the Federal Rules of Criminal Procedure, 18 U.S.C. App., do not apply to such proceedings. *Pee* v. *United States* (1959, 274 F. 2d 556, 107 U.S. App. D.C. 47).

Proof of age

In prosecution for willfully causing, encouraging and contributing to delinquency of female under age 18, the age of the female could be proved by her testimony and it was not required that there be documentary evidence of her age. *Slaughter* v. *District of Columbia* (D.C. Mun. App. 1957, 134 A. 2d 338).

Protection from parental neglect

The law will protect the child from parental neglect even as against natural parent where necessary. *In re Custody of a Minor* (1958, 250 F. 2d 419, 102 U.S. App. D.C. 94).

A hearing in Juvenile Court to determine whether a child is delinquent is not criminal or penal in character, but adjudication on status of child in nature of guardianship imposed by state as parens patriae to provide child care and guidance normally furnished by child's natural parents. *Shioutakon* v. *District of Columbia* (D.C. Mun. App. 1955, 114 A. 2d 896).

In proceeding by mother to have daughter committed to psychiatric school on ground that daughter was habitually beyond mother's control, where daughter had retained counsel, permitting another attorney, who represented mother's intersts, to enter an appearance for daughter was prejudicial error, especially in view of fact that attorney representing mother was permitted to make hearsay statement concerning conversation with girl's personal physician, thereby divulging information of privileged nature. *In re Sippy* (D.C. Mun. App. 1953, 97 A. 2d 455).

Purpose

The purpose of the statutes relating to the Juvenile Court is to protect, so far as possible, the morals of minors. *Slaughter* v. *District of Columbia* (D.C. Mun. App. 1957, 134 A. 2d 338).

Right to counsel

A minor who in proceeding wherein his parents were charged with inadequate care of the minor was committed to board of public welfare was not entitled to habeas corpus on ground that he was not represented by counsel in such proceeding since the juvenile court process in effect makes Director of Social Work of juvenile court, who initiates the proceeding, the child's counsel. *In re Custody of a Minor* (1958, 250 F. 2d 419, 102 U.S. App. D.C. 94).

Juvenile Court is required to advise juvenile of right to counsel or to assure itself that such right has been intelligently waived. *Shioutakon* v. *District of Columbia* (1956, 236 F. 2d 666, 98 U.S. App. D.C. 371, 60 A.L.R. 2d 686).

The rights of a child, defined by statute as person under 18 years old, with respect to representation by counsel at delinquency hearing in Juvenile Court are not the same as those of any person, whether infant or adult, subjected to criminal prosecution. *Id.*

In proceeding by mother to have daughter committed to psychiatric school on ground that daughter was habitually beyond mother's control, testimony of Social Service Department employee concerning her ex parte report containing résumé of her conversations with girl's physician, which conversations included privileged matter in form of interpretation of doctor's prognosis and his recommendation that girl enroll in such school was hearsay and improperly admitted, and girl's statutory right of privilege was improperly invaded. *Id.*

Right to jury trial

A proceeding in which infant children were found to be without adequate parental care and were committed to Board of Public Welfare was a statutory proceeding to determine best interests of children and was not a criminal or common-law proceeding, and neither children nor their mother had a constitutional right to jury trial. *In re Lambert* (D.C. Mun. App. 1952, 86 A. 2d 411).

"Willful"

In prosecution for willfully causing, encouraging and contributing to delinquency of minor female the court properly charged that the word "willful" meant more than voluntary and implied an evil mind or intent. *Slaughter* v. *District of Columbia* (D.C. Mun. App. 1957. 134 A. 2d 338).

II. Under Present Law

Definitions

"Habitually" within juvenile statute in regard to child habitually beyond control does not possess a criminal connotation and does not necessarily mean entirely, totally, continuously, or exclusively, but suggests rather customary conduct, the result of frequent practice or habit acquired over a period of time. *In re J. G. Elmore* (D.C. App. 1966, 222 A. 2d 255).

Evidence

Evidence, including facts of truancy from school, absences from home, and late hours, together with alleged juvenile's own assessment of his past conduct in community which disclosed that his aberrations were steady, recurring and even compulsive, sustained finding that alleged juvenile was "habitually" beyond control within juvenile statute. *In re J. G. Elmore* (D.C. App. 1966, 222 A. 2d 255).

Appraisal of child's conduct over 35-day period covered by petition was an adequate length of time upon which to conclude that child was habitually beyond control within juvenile statute. *Id.*

§ 11–1552. Transfer from other courts

When during the pendency of a criminal or quasi-criminal charge against a person under 21 years of age, in another court, it is ascertained that the person was under the age of 18 years at the time of the alleged offense, the court shall forthwith transfer the case, together with all the papers, documents, and testimony connected therewith, to the Juvenile Court. The court making the transfer shall order the minor to be taken forthwith to the place of detention designated by the Juvenile Court or to that court itself, or release the minor to the custody of a suitable person to appear before the Juvenile Court at a time designated. The Juvenile Court shall thereupon proceed to hear and dispose of the case in the same manner as if it had been instituted in that court in the first instance. (Dec. 23, 1963, 77 Stat. 499, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–913 (Mar. 19, 1906, ch. 960, § 12, 34 Stat. 75; June 1, 1938, ch. 309, 52 Stat. 596 (599)).

Changes are made in phraseology.

§ 11–1553. Waiver of jurisdiction in case of felony and transfer of case

When a child 16 years of age or over is charged with an offense which if committed by a person 18 years of age or over is a felony, or when a child under 18 years of age is charged with an offense which if committed by a person 18 years of age or over is punishable by death or life imprisonment, a judge may, after full investigation, waive jurisdiction and order the child held for trial under the regular procedure of the court which would have jurisdiction of the offense if committed by a person 18 years of age or over; or the other court may exercise the powers conferred upon the Juvenile Court by this chapter and subchapter I of chapter 23 of Title 16 in conducting and disposing of such cases. (Dec. 23, 1963, 77 Stat. 499, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed.., §§ 11–906, 11–914 (Mar. 19, 1906, ch. 960, §§ 5, 13, 34 Stat. 73, 75; June 1, 1938, ch. 309, 52 Stat. 596 (599); May 15, 1947, ch. 56, 61 Stat. 92; Mar. 9, 1962, Pub. L. 87–413, § 3(d), 76 Stat. 22).

Section consolidates section 11–914 of D.C. Code, 1961 ed., with part of section 11–906 thereof. For remainder of section 11–906, see tables.

By substituting "person 18 years of age or over" for "adult", and "child under 18 years of age" for "child", it is not necessary to retain the definitions of "adult" and "child" which were contained in subsec. (b) of section 11–906 of D.C. Code, 1961 ed. See revision not under section 11–1551 herein.

Changes are made in phraseology.

NOTES TO DECISIONS

I. UNDER PRIOR LAW

Adults' rights compared

In case of adults, arraignment before a magistrate for determination of probable cause and advice to arrested person as to his rights are provided by law, and are regarded as fundamental. *M. A. Kent, Jr.* v. *United States* (1966, 86 S. Ct. 1045, 383 U.S. 541, 16 L. Ed. 2d 84).

Confessions prior to waiver

Use of word "charged" in Juvenile Court Act providing for Juvenile Court's exclusive jurisdiction in cases concerning any person under 21 years charged with having violated any law prior to having become 18 does not preclude application of principle rendering inadmissible, in event of subsequent waiver of Juvenile Court's jurisdiction and criminal trial in District Court, statements from minor in police custody while subject to Juvenile Court jurisdiction where statement is elicted by police before charge is formally filed. *Harrison* v. *United States* (1965, 359, F. 2d 214, 123 U.S. App. D.C. 230).

It was reversible error to admit a confession which defendant made when questioned and confronted by police a few days after he turned 18 but before the Juvenile Court waived jurisdiction over the offense committed prior to defendant's 18th birthday. *Id.*

Confessions and admissions made by juveniles to police and to robbery victim at police station were properly excluded on trial of juveniles following waiver of jurisdiction by juvenile court and transfer to district court for trial. *T. G. Edwards* v. *United States* (1964, 330 F. 2d 849, 117 U.S. App. D.C. 383).

Although confessions and admissions made by juveniles to police and to robbery victim at police station were properly excluded at trial of juveniles following waiver of jurisdiction by juvenile court, robbery victim was properly permitted to testify concerning facts of crime and to identify defendants in open court despite contention that victim would not have been able to identify juveniles in court room had he not earlier been allegedly advised by police that they had confessed and produced stolen property. *Id.*

Congressional objectives

Congressional objectives underlying nondisclosure provisions of Juvenile Court Act do not encompass such sheer physical facts as fingerprints which are a fundamental tool for identification of individual. *M. A. Kent, Jr.* v. *United States* (1965, 343 F. 2d 247, 119 U.S. App. D.C. 378, reversed on other grounds 86 S. Ct. 1045).

Constitutional rights

Failure of juvenile court to accord sixteen-year-old juvenile the precise course of action with respect to mental condition as requested by counsel, who asked that juvenile be hospitalized for protracted examination, did not deprive juvenile of constitutional right where court did afford counsel full opportunity for examination by his own experts and subsequently received a full report of examination prior to its decision to waive jurisdiction. *M. A. Kent, Jr.* v. *United States* (1965, 343 F. 2d 247, 119 U.S. App. D.C. 378, reversed on other grounds 86 S. Ct. 1045).

The fingerprinting of defendant under custody of juvenile court did not undermine constitutionality of approach embodied in Juvenile Court Act or violate any rights of individuals involved. *Id.*

Nondisclosure provision of Juvenile Court Act did not preclude use, in criminal prosecution of juvenile over whom juvenile court had waived jurisdiction, of fingerprints taken while he was in custody of the juvenile court. *Id.*

Constitutionality

Ordering juvenile to be held for trial under regular procedure in the District Court for the District of Columbia after juvenile court has conducted an inquiry does not offend the constitutional standard of fundamental fairness. *In the matter of M. A. Kent, Jr.* (D.C. Mun. App. 1962, 179 A. 2d 727).

Provision in Juvenile Court Act, this subchapter, that where child charged with felony is 16 years of age or older, judge may, after investigation, waive jurisdiction and order such child held for trial under regular procedure is not void for lack of standards. *Briggs* v. *United States of America* (1955, 226 F. 2d 350 96 U.S. App. D.C. 392).

Delay of proceedings

Proceedings against a child should not be delayed in order that it may become possible to try him as adults are tried. *Williams* v. *Huff* (1944, 142 F. 2d 91, 79 U.S. App. D.C. 31).

Discretion of court

Statute respecting right of District of Columbia Juvenile Court to waive jurisdiction gives court a substantial degree of discretion as to factual consideration to be considered, weight to be given to them, and conclusion reached, but this does not confer upon the Juvenile Court a license for arbitrary procedure. *M. A. Kent, Jr.* v. *United States* (1966, 86 S. Ct. 1045, 383 U.S. 541, 16 L. Ed. 2d 84).

The latitude accorded to District of Columbia Juvenile Court with respect to whether it should retain jurisdiction over child or waive it assumes procedural regularity sufficient in particular circumstances to satisfy basic requirements of due process and fairness, as well as compliance with the statutory requirement of a full investigation. *Id.*

District of Columbia statute contemplates that Juvenile Court should have considerable latitude within which to determine whether it should retain jurisdiction over a child or, subject to statutory delimitation, should waive jurisdiction. *Id.*

Discretion of district court

District court may not simply rely upon waiver of jurisdiction of juvenile court in denying motion to convene itself to hear case as a juvenile court, but must itself make a clear choice between procedure and processes which it will apply in cases of a juvenile. *M. A. Kent, Jr.* v. *United States* (1965, 343 F. 2d 247, 119 U.S. App. D.C. 378, reversed on other grounds 86 S. S. Ct. 1045).

It was within discretion of district court to deny motion to convene itself to hear case against juvenile, over which juvenile court had waived jurisdiction, as a juvenile court. *Id.*

Dismissal of indictment

Where 17-year-old defendant against whom four complaints had been filed in juvenile court charging him with three assaults with intent to commit robbery and one robbery, had used no weapon and there was no violence connected with the crimes, all of which occurred in a relatively short period of time, and there was nothing in defendant's background to indicate any proclivity towards antisocial behavior and he had no past criminal or juvenile record, indictment against defendant would be dismissed, the record expunged and district court would proceed in accordance with juvenile court procedural rules. *United States* v. *Anonymous* (D.C.D.C. 1959, 176 F. Supp. 325).

Double jeopardy

Where purpose and effect of proceedings in juvenile court were to provide a prompt preliminary hearing in order to set a date for trial, if allegations of petitions were denied, or to continue case pending completion of full social study and recommendations for disposition of child, case had not reached stage at which juvenile's liberty had been placed in jeopardy by his acknowledgement that he held a toy gun during alleged robbery, and when trial judge subsequently waived jurisdiction to district court for trial, indictment was not subject to dismissal on ground of double jeopardy. *United States* v. *Dickerson* (1959, 271 F. 2d 487, 106 U.S. App. D.C. 221).

Where minor defendant appeared in Juvenile Court and denied "being involved," and Juvenile Court waived jurisdiction to federal District Court, defendant was not placed in "jeopardy" in Juvenile Court and could be prosecuted in District Court for robbery. *Johnson* v. *United States* (1959, 269 F. 2d 769, 106 U.S. App. D.C. 102).

When respondent acknowledged his guilt and juvenile court found him within its jurisdiction as a delinquent child and continued case for social study and recommendations as to disposition, jeopardy attached, and respondent could not thereafter be prosecuted on same charge. *United States* v. *Dickerson* (D.C.D.C. 1958, 168 F. Supp. 899).

Due process

Alleged violations of procedural due process after waiver of jurisdiction by Juvenile Court Judge over juvenile defendant, assuming that defendant did not intelligently waive preliminary hearing, being without counsel, was cured by return of a valid indictment by the grand jury. *United States* v. *Stevenson* (D.C.D.C. 1959, 170 F. Supp. 315).

Full investigation

Procedure followed by juvenile court in waiving jurisdiction over juvenile in connection with some 14 charges after investigation was not violative of statute concerning waiver of jurisdiction of a juvenile. *In the matter of M. A. Kent, Jr.* (D.C. Mun. App. 1962, 179 A. 2d 727).

No formal hearing is required to be held before the juvenile court on question of waiver of jurisdiction to the District Court, and investigation called for by this section is an administrative process within the juvenile court and no particular standards are prescribed. *Wilhite* v. *United States* (1960, 281 F. 2d 642, 108 U.S. App. D.C. 279).

"Full investigation" which this section requires before juvenile court can waive jurisdiction to district court includes informal hearings to determine whether to waive jurisdiction and jeopardy does not attach at that point. *United States* v. *Dickerson* (1959, 271 F. 2d 487, 106 U.S. App. D.C. 221).

In proceeding on motion to dismiss indictment and to have court proceed in the same manner that juvenile court would have proceeded had it retained jurisdiction of 17-year-old defendant, against whom four complaints had been filed in juvenile court charging him with three assaults with intent to commit robbery and one robbery, records of juvenile court established a full investigation had been conducted prior to waiver of jurisdiction by juvenile court. *United States* v. *Anonymous* (D.C.D.C. 1959, 176 F. Supp. 325).

This section providing that if child 16 years of age or older is charged with offense, which would amount to a felony in case of an adult, or any child charged with offense which, if committed by adult, is punishable by death or life imprisonment, judge may, after full investigation, waive jurisdiction and order child held for trial under regular procedure of court which would have jurisdiction of such offense if committed by adult, does not require, as prerequisite to waiver, the Juvenile Court Judge personally make "full investigation" prescribed by this section, and the only requirement is that judge be fully advised of relevant facts, by such means as are available to him through various branches of the court, so that he may intelligently exercise his discretion. *United States* v. *Stevenson* (D.C.D.C. 1959, 170 F. Supp. 315).

This section relating to waiver by Juvenile Court Judge of jurisdiction over juvenile offender does not require that quasi-judicial or judicial hearing be conducted by judge before making the waiver, and the "full investigation" required by this section can be conducted by the judge on an ex parte basis. *Id.*

Habeas corpus

Habeas corpus would not lie, prior to indictment and trial, to raise collaterally question of whether, before waiving its jurisdiction over juvenile, juvenile court made the "full investigation" recited in its waiver, though motion in district court to dismiss indictment for want of full investigation by juvenile court could be made on sufficient allegations. *M. A. Kent, Jr.* v. *C. Reid, Superintendent etc., and District of Columbia* (1963, 316 F. 2d 331, 114 U.S. App. D.C. 330).

Hearing required

Under District of Columbia Juvenile Court Act allowing Juvenile Court to waive jurisdiction over juvenile after full investigation, as a condition to a valid waiver order, juvenile, charged with housebreaking, robbery and rape, was entitled to a hearing, including access by his counsel to the social records and probation or similar reports which presumably were considered by court, and to a statement of reasons for the Juvenile Court's decision. *M. A. Kent, Jr.* v. *United States* (1966, 86 S. Ct. 1045, 383 U.S. 541, 16 L. Ed. 2d 84).

An opportunity for a hearing, which may be informal must be given child by the District of Columbia Juvenile Court prior to entry of a waiver order, and child is entitled to counsel who is entitled to see child's social records, and while hearing need not conform to all the requirements of a criminal trial or even of the usual administrative hearing, it must measure up to the essentials of due process and fair treatment. *Id.*

Importance of waiver determination

The District of Columbia Juvenile Court's waiver of jurisdiction over 16-year-old defendant charged with housebreaking, robbery and rape was critically important action determining vitally important statutory rights of juvenile. *M. A. Kent, Jr.* v. *United States* (1966, 86 S. Ct. 1045, 383 U.S. 541, 16 L. Ed. 2d 84).

District of Columbia Juvenile Court Act did not permit Juvenile Court to waive jurisdiction over juvenile without hearing, without effective assistance of counsel, and without a statement of reasons for waiver and in total disregard of counsel's motion for hearing. *Id.*

Jurisdiction of Juvenile Court

Juvenile Court's exclusive jurisdiction of offense committed prior to offender's 18th birthday was not impaired by fact that prior to date of admissions offender turned 18, became subject to jurisdiction of Criminal Courts as to other offenses, and was committed to jail for traffic violations. *Harrison* v. *United States* (1965, 359 F. 2d 214, 123 U.S. App. D.C. 230).

Jurisdiction to test validity of waiver

The district court is the appropriate forum to test the validity of a waiver of jurisdiction by the juvenile court. *M. A. Kent, Jr.* v. *C. Reid, Superintendent etc., and District of Columbia* (1963, 316 F. 2d 331, 114 U.S. App. D.C. 330).

Juvenile Court proceedings

The consideration by United States District Court for the District of Columbia and the denial of a motion to dismiss indictment against minor on grounds of invalidity of waiver order of Juvenile Court did not cure the invalid proceedings before the Juvenile Court which had entered order of waiver of jurisdiction of defendant without hearing and without giving stated reasons. *M. A. Kent, Jr.* v. *United States* (1966, 86 S. Ct. 1045, 383 U.S. 541, 16 L. Ed. 2d 84).

Motive of court

Where there was more than adequate rational basis in records before Juvenile Court Judge when he waived jurisdiction over juvenile offender, it was immaterial that judge may have been motivated in whole or in part by a desire to relieve the Juvenile Court of a part of its burden. *United States* v. *Stevenson* (D.C.D.C. 1950, 170 F. Supp. 315).

Postconviction relief

That petitioner was not represented by nor informed of his right to counsel at time juvenile court waived jurisdiction over him did not entitle him to postconviction relief. *Mordecai* v. *United States* (D.C.D.C. 1966, 252 F. Supp. 694).

Presumption

Juvenile Court Judge would be presumed to have acted on records before him, when he waived jurisdiction over juvenile offender. *United States* v. *Stevenson* (D.C.D.C. 1959, 170 F. Supp. 315).

Reasons for waiver

The statement of reasons which District of Columbia Juvenile Court must give for its waiver of jurisdiction order need not be formal or necessarily include conventional findings of fact, but should be sufficient to demonstrate that the statutory requirement of full investigation has been met and that the question has received careful consideration of the Juvenile Court, and statement must set forth basis for order with sufficient specificity to permit meaningful review. *M. A. Kent, Jr.* v. *United States* (1966, 86 S. Ct. 1045, 383 U.S. 541, 16 L. Ed. 2d 84).

Review of waiver order

Order of Juvenile Court of the District of Columbia waiving its jurisdiction and transferring petition for trial in the United States District Court was reviewable on a motion to dismiss the indictment in the District Court. *M. A. Kent, Jr.* v. *United States* (1966, 86 S. Ct. 1045, 383 U.S. 541, 16 L. Ed. 2d 84).

Right to counsel

Juvenile offender had no right to be represented by an attorney when Juvenile Court Judge made investigation to determine whether to waive jurisdiction over the juvenile offender. *United States* v. *Stevenson* (D.C.D.C. 1959, 170 F. Supp. 315).

Role of counsel

The role of counsel in representing child in proceedings respecting waiver of District of Columbia Juvenile Court's jurisdiction is not limited to merely presenting to court anything on behalf of child which might help court in arriving at decision and if staff's submissions include materials which are susceptible to challenge or impeachment, it is precisely the role of counsel to denigrate such matter. *M. A. Kent, Jr.* v. *United States* (1966, 86 S. Ct. 1045, 383 U.S. 541, 16 L. Ed. 2d 84).

Routine waiver

District of Columbia Juvenile Court Act permitting waiver of Juvenile Court's jurisdiction over child did not authorize court, in total disregard of motion for hearing filed by counsel and without any hearing or statement or reasons, to decide that the 16-year-old minor should be taken from the receiving home for children and transferred to jail along with housebreaking, robbery and rape, be exposed to the possibility of a death sentence instead of treatment for a maximum, in the particular case, of five years, until he was 21. *M. A. Kent, Jr.* v. *United States* (1966, 86 S. Ct. 1045, 383 U.S. 541, 16 L. Ed. 2d 84).

The requirement of a full investigation by District of Columbia Juvenile Court before a waiver of jurisdiction prevents a routine waiver and requires a judgment in each case based on inquiry not only into the facts of the alleged offense but also into the question of whether the parens patriae plan of procedure is desirable and proper in particular case. *Id.*

Statute authorizing District of Columbia Juvenile Court to waive jurisdiction over child does not permit the Juvenile Court to determine in isolation and without participation or any representation of child the critically important question of whether child will be deprived of special protections and provisions of the Juvenile Court Act. *Id.*

Rule of procedure

The District of Columbia Juvenile Court Act confers on child a right to avail himself of that court's exclusive jurisdiction, and it is implicit in the scheme that noncriminal treatment is to be the rule and adult criminal treatment the exception which must be governed by the particular factors of individual cases. *M. A. Kent, Jr.* v. *United States* (1966, 86 S. Ct. 1045, 383 U.S. 541, 16 L. Ed. 2d 84).

Theory of Juvenile Court Act

Theory of District of Columbia Juvenile Court Act is rooted in social welfare philosophy rather than in the corpus juris. *M. A. Kent, Jr.* v. *United States* (1966, 86 S. Ct. 1045, 383 U.S. 541, 16 L. Ed. 2d 84).

The District of Columbia Juvenile Court is theoretically engaged in determining needs of child and of society rather than adjudicating criminal conduct, and the objectives are to provide measures of guidance and rehabilitation for the child and protection for society, not to fix criminal responsibility, guilt and punishment. *Id.*

Waiver as a determination of criminal responsibility

Juvenile court's waiver of jurisdiction over juvenile does not fix criminal responsibility but simply leaves that to the tribunal normally charged with doing so, the district court. *M. A. Kent, Jr.* v. *United States* (1965, 343 F. 2d 247, 119 U.S. App. D.C. 378, reversed on other grounds 86 S. Ct. 1045).

Waiver of jurisdiction

Where jurisdiction of a juvenile is waived for trial in the District Court for a felony, the District Court may redetermine the question whether a juvenile should be proceeded against as such or tried as an adult offender; in making this determination, the court must consider the individual case before it and not refuse to exercise its discretion because of a preconceived notion that the statute which gives it the right so to do is "foolish" or that the statutory discretion should never be exercised affirmatively when a person is charged with robbery and

rape. *Franklin, Price and Brooks* v. *United States* (1964, 330 F. 2d 205, 117 U.S. App. D.C. 331).

Rape case would not be remanded so that trial court could exercise its discretion on request that defendant be tried as a juvenile, where defendant did not make his request until after jeopardy in the criminal trial had attached through the impaneling of the jury. *Id.*

Notwithstanding no petition had been filed and no summons had been issued under juvenile court procedure, juvenile court could waive jurisdiction after full investigation, and District Court acquired jurisdiction over offender. *United States* v. *J. L. Green* (D.C.D.C. 1961, 200 F. Supp. 687).

Waiver certificate of juvenile court is presumed to be regular. *Id.*

Waiver of jurisdiction over juvenile offender by Juvenile Court Judge was amply supported, not only by summary of Director of Social Work, who reported to the judge, but also by underlying data prepared at time of juvenile offender's several appearances before Juvenile Court over period of more than two years. *United States* v. *Stevenson* (D.C.D.C. 1959, 170 F. Supp. 315).

Juvenile Court has authority to waive jurisdiction to District Court in certain cases, and it may exercise that authority either after a preliminary hearing, or after an ex parte investigation, but waiver of jurisdiction must take place before jeopardy attaches and may not occur after respondent has acknowledged his guilt and his plea has been accepted or after case has been tried or trial has been started in Juvenile Court. *United States* v. *Dickerson* (D.C.D.C. 1958, 166 F. Supp. 899).

II. Under Present Law

Assistance of counsel

Assistance of counsel in critically important determination of waiver of juvenile court jurisdiction is essential to proper administration of juvenile proceedings. *Black* v. *United States* (1965, 355 F. 2d 104, 122 U.S. App. D.C. 393).

Due process

Right of juvenile to be tried in a juvenile court is of statutory origin and is limited by express provision allowing discretionary waiver. *M. A. Kent, Jr.* v. *United States* (1965, 343 F. 2d 247, 119 U.S. App. D.C. 378, reversed on other grounds 86 S. Ct. 1045).

Constitutional safeguards vouchsafed a juvenile in juvenile court proceedings are determined from requirements of due process and fair treatment, and not by direct application of clauses of Constitution which in terms apply to criminal cases, and "due process" and "fair treatment", in this context means that a juvenile shall be dealt with in a reasonable and decent manner which gives due regard to his claims upon society as well as to society's claims upon him. *Id.*

Where juvenile was arrested in afternoon and while apparently remaining in custody of juvenile authorities was extensively questioned that day and the next by police without having been advised of his right to remain silent or to retain counsel who was in fact retained the next day by juvenile's mother, juvenile was not treated in so unfair a nature as to constitute a denial of his right to due process of law. *Id.*

Findings of fact

Findings are not necessary to support waiver of jurisdiction by District of Columbia Juvenile Court. *United States* v. *J. W. Caviness* (D.C.D.C. 1965, 239 F. Supp. 545).

Full investigation

In juvenile court waiver proceeding, counsel can assist in determination of waiver question by insisting that waiver be ordered only after full investigation, by guarding against action beyond court's discretionary authority, and by developing information relevant to waiver. *Id.*

It is unnecessary to appoint counsel in juvenile court waiver proceeding where judge retains jurisdiction as matter of course. *Id.*

Full investigation by judge, necessary in waiver of juvenile court jurisdiction proceedings, includes evaluation of juvenile and his record, made by judge with benefit of contribution of assistants with special background in social sciences. *Black* v. *United States* (1965, 355 F. 2d 104, 122 U.S. App. D.C. 393).

Juvenile Court, which held no hearing but which considered juvenile's social records disclosing an investigation into the facts of the occurrence, background, environment, history and prior criminal involvement of juvenile as well as an analysis and the recommendations by persons making reports, complied with statutory requirement of a "full investigation" prior to waiver of jurisdiction over juvenile. *United States* v. *J. W. Caviness* (D.C.D.C. 1965, 239 F. Supp. 545).

Assuming that absence of psychiatric report showed inadequate investigation by Juvenile Court regarding waiver of jurisdiction any alleged defect was cured by Juvenile Court's subsequent review of psychiatric report procured after waiver of jurisdiction and statement that there was no reason to modify Court's earlier action. *Id.*

Absence of published criteria or standards respecting District of Columbia Juvenile Court's waiver of jurisdiction over juvenile was not sufficient to justify a finding of arbitrariness or capriciousness by Juvenile Court in waiving jurisdiction. *Id.*

The Juvenile Court was not required to finally and definitively resolve issue of whether juvenile's mental condition justified the imposition of criminal responsibility upon him as a prerequisite to a valid waiver of jurisdiction. *Id.*

No showing was made which overcame the presumption of regularity and validity clothing opinion of District of Columbia Juvenile Court which had waived jurisdiction and such waiver was not arbitrary or capricious. *Id.*

Jurisdiction to test validity of waiver

The United States District Court for the District of Columbia is the proper forum to determine validity of waiver by the Juvenile Court. *United States* v. *J. W. Caviness* (D.C.D.C. 1965, 239 F. Supp. 545).

Review of social records by the District Court for the District of Columbia disclosed that Court should not convene as a Juvenile Court but that defendant, who was almost 18 years old and who was charged with the offense of assault with a dangerous weapon upon correctional officer, should be held for trial under regular procedures in District Court. *Id.*

If United States District Court for the District of Columbia finds that waiver by Juvenile Court was invalid, District Court may only convene as a Juvenile Court or order defendant for trial in the District Court, and if Court finds waiver to be valid it may likewise only convene as a Juvenile Court or order him for trial in District Court. *Id.*

Remand

On remand, after determination that juvenile court's waiver of jurisdiction was invalid, indictment must be dismissed if juvenile is not validly waved, and if there is waiver, district court should consider whether juvenile suffered any prejudice as result of invalid waiver and take all necessary steps to correct it. *Black* v. *United States* (1965, 355 F. 2d 104, 122 U.S. App. D.C. 393).

Waiver of jurisdiction

Question of waiver of jurisdiction was primarily and initially one for juvenile court to decide, and its failure to do so in valid manner was not harmless error, despite contention that distict court was authorized to exercise powers of juvenile court. *Black* v. *United States* (1965, 355 F. 2d 104, 122 U.S. App. D.C. 393).

Juvenile court's waiver of jurisdiction proceedings were invalid where juvenile was not advised of his right either to retained or appointed counsel under Juvenile Court Act and Legal Aid Act. *Id.*

§ 11–1554. Jurisdiction of persons 18 years of age or over

The Juvenile Court has original and exclusive jurisdiction to determine cases of persons 18 years of age or over charged with willfully contributing to, encouraging, or tending to cause by any act or omission, a condition which would bring a child under the age of 18 years within the provisions of section 11–1551. (Dec. 23, 1963, 77 Stat. 499, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–906, 11–907 (Mar. 19, 1906, ch. 960, §§ 5, 6, 34 Stat. 73; June 1, 1938, ch. 309, 52 Stat. 596; July 2, 1940, ch. 525, 54 Stat. 735; Jan. 11, 1951, ch. 1225, § 1, 64 Stat. 1240).

Section consolidates part of section 11–906 of D.C. Code, 1961 ed., with the first sentence of subsec. 2 of section 11–907 of the Code. For remainder of sections 11–906 and 11–907, see tables.

By substituting "persons 18 years of age or over" for "adults", and "child under the age of 18 years" for "child", it is unnecessary to retain the definitions of the terms "adult" and "child" which were contained in section 11–906(b) of D.C. Code, 1961 ed. See revision note under section 11–1551 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Bastardy

Juvenile court of District of Columbia has jurisdiction of bastardy proceedings. *Fillipone* v. *United States* (1925, 2 F. 2d 928, 55 App. D.C. 126).

In bastardy proceedings in juvenile court, failure to pay for support of child is not punishable with commitment to jail. *Peak* v. *Calhoun* (1934, 69 F. 2d 989, 63 App. D.C. 113).

The juvenile court, which has exclusive jurisdiction of action to determine parentage of illegitimate child and fix putative father's responsibility for child's support may not entertain complaint filed by mother over two years after child's birth. *Williams* v. *Amann* (D.C. Mun. App. 1943, 33 A. 2d 633).

Coercion of jury

In prosecution of defendant for being the father of an illegitimate child, where trial court, after submission of case to jury at 5:10 p.m., had the jury recalled to the courtroom at 7:20 p.m. and upon being informed it was doubtful as to whether jury might arrive at a verdict inquired as to whether there had been any change in the last hour, and upon receiving an affirmative reply stated he would like the jury to deliberate further to see if they could agree on a verdict, such conversation by trial judge did not constitute coercion of the jury. *Gibson* v. *District of Columbia* (D.C. Mun. App. 1956, 122 A. 2d 494).

Confessions

Admissibility of statements made by minors involved in Juvenile Court proceeding should not be governed by strict rules of criminal evidence relating to confessions but by rules essentially used in getting at truth in civil trials. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

In Juvenile Court proceeding, adjudication of status of minor should rest only upon competent and reliable evidence and when evidence of government consists largely of statements of the minor, court is duty bound thoroughly to investigate circumstances under which such statements were made. *Id.*

Constitutionality

Provision in Juvenile Court Act, this subchapter, that where child charged with felony is 16 years of age or older, judge may, after investigation, waive jurisdiction and order such child held for trial under regular procedure is not void for lack of standards. *Briggs* v. *United States of America* (1955, 226 F. 2d 350, 96 U.S. App. D.C. 392).

The constitutional safeguards peculiar to criminal proceedings do not apply in proceedings in the juvenile court. *In re Robert McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

Construction with other laws

Drug Users' Act providing for commitment of all narcotics addicts to institutions for treatment, except persons charged with a criminal offense, does not impliedly repeal Juvenile Court Act, this subchapter, insofar as jurisdiction over juveniles who are addicted to narcotics is concerned. *In re Rene Whisaker* (D.C.D.C. 1955, 134 F. Supp. 864).

Drug Users' Act is not a criminal statute and when it places a juvenile under jurisdiction of Juvenile Court in an institution for treatment, it does no more than change custody of juvenile under commitment and does not impair Juvenile Court jurisdiction. *Id.*

Contract regarding illegitimate child

An action by illegitimate child's mother against putative father for amount due under his contract to pay mother weekly sum for child's support in consideration of her agreement not to assert her statutory right of action for child's maintenance is not a "bastardy proceeding" within juvenile court's exclusive jurisdiction, but an action for damages from breach of promise made on good and valid "consideration" and hence within Municipal Court's jurisdiction. *Williams* v. *Amann* (D.C. Mun. App. 1943, 32 A. 2d 633).

Double jeopardy

When respondent acknowledged his guilt and juvenile court found him within its jurisdiction as a delinquent child and continued case for social study and recommendations as to disposition, jeopardy attached, and respondent could not thereafter be prosecuted on same charge. *United States* v. *Dickerson, Jr.* (D.C.D.C. 1958, 168 F. Supp. 899).

As constitutional guarantee against double jeopardy is applicable only in criminal prosecutions and does not operate in proceedings under Juvenile Court Act, this subchapter, it will not preclude rehearing in juvenile court, following dismissal of case and government's successful appeal. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

Historical

This subchapter was limited by the Compulsory Education Act of June 8, 1906, and the juvenile court's jurisdiction was limited to persons between the ages of 14 and 17 years. *Brown* v. *Sellers* (1923, 292 F. 655, 53 App. D.C. 378, certiorari denied 44 S. Ct. 7, 263 U.S. 702, 68 L. Ed. 514).

Infants

The terms of the statute are not limited in application to persons of any given class, but for the purpose of declaring that persons standing in loco parentis should be included within the provisions of the act. *Frizzell* v. *United States* (1925, 2 F. 2d 398, 55 App. D.C. 103).

Marriage of a female child, in itself, does not automatically terminate the control of delinquent or dependent children. *Richardson* v. *Browning* (1927, 18 F. 2d 1008, 57 App. D.C. 186).

The police court and the juvenile court had concurrent jurisdiction to examine, commit, or admit to bail, minors under 17 years, charged with felonies. *Peak* v. *Reed* (1928, 24 F. 2d 619, 58 App. D.C. 44).

Courts do not look with favor on the construction of a law, if not unavoidable, which declares children illegitimate. *Thomas* v. *Murphy* (1925, 107 F. 2d 268, 71 App. D.C. 69).

This section fully defines jurisdiction of the juvenile court for the District of Columbia, and such jurisdiction relates only to cases which involve children. *In re Wilson* (D.C.D.C. 1948, 79 F. Supp. 816).

Nature of proceedings

The fundamental philosophy of juvenile court laws is that a delinquent child should be considered and treated not as a criminal but as a person requiring care, education, and protection, and the primary function of juvenile courts, properly considered, is not conviction or punishment for crime but crime prevention and delinquency rehabilitation, and hence procedures before such courts may not become the basis for criminal records. *Thomas* v. *United States* (1941, 121 F. 2d 905, 74 App. D.C. 167).

A proceeding in the Juvenile Court is not a criminal proceeding *In re Rene Whisaker* (D.C.D.C. 1955, 134 F. Supp. 864).

The Juvenile Court Act, this subchapter, did not simply provide for same kind of trial as its criminal predecessor did, under a new label, but provided for new informal proceeding with rights and procedures of civil actions governing, and under it, innocence or guilt are not in issue but adjudication of child's status is, and protection and rehabilitation rather than retribution and punishment are not its purposes. *In re Robert McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

Nonsupport

Since the jurisdiction conferred upon the juvenile court for the District of Columbia relates only to cases involving children arising under this chapter, the juvenile court exceeded its jurisdiction in attempting to hold defendant for nonsupport of his wife only; the welfare of no children being involved. *In re Wilson* (D.C.D.C. 1948, 79 F. Supp. 816).

Powers

Juvenile court of the District has jurisdiction of an incorrigible girl, in proceedings to commit her to the National Training School. *Richardson* v. *Browning* (1927, 18 F. 2d 1008, 57 App. D.C. 186).

The court has inherent power to pass on a motion for new trial. *Young* v. *Hesse* (1929, 30 F. 2d 986, 58 App. D.C. 362).

This section providing that when there is proper original jurisdiction, the Juvenile Court shall have continuing jurisdiction over children committed by it during their minority, and that the court from time to time upon petition of interested persons may modify or revoke its orders at any time, was intended to give that court continuing jurisdiction in all child commitment cases in which the court had original jurisdiction. *In the Matter of Cecelia Lem* (D.C. Mun. App. 1960, 164 A. 2d 345).

Rehearing after dismissal

Rule that Juvenile Court Act, this subchapter, itself requires fair treatment is limited in scope to guarantee those rights or procedures which are so vital to fairness and so strongly implied by acts that they may be supplied by judicial decision and rule does not bar rehearing in juvenile court following dismissal of case and successful appeal by government. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

Separate proceeding

Where commitment in truancy case had been set aside and the case dismissed, jurisdiction of infant could not be based thereon in a separate proceeding against infant. *In re Kroll* (D.C. Mun. App. 1945, 43 A. 2d 706).

Waiver of jurisdiction

Juvenile Court has authority to waive jurisdiction to District Court in certain cases, and it may exercise that authority either after a preliminary hearing, or after an ex parte investigation, but waiver of jurisdiction must take place before jeopardy attaches and may not occur after respondent has acknowledged his guilt and his plea has been accepted or after case has been tried or trial has been started in Juvenile Court. *United States* v. *Dickerson, Jr.* (D.C.D.C. 1958, 168 F. Supp. 899).

§ 11–1555. Jurisdiction of paternity proceedings

The Juvenile Court has original and exclusive jurisdiction of proceedings to determine paternity of any child alleged to have been born out of wedlock and to provide for his support in the manner provided by subchapter II of chapter 23 of Title 16. (Dec. 23, 1963, 77 Stat. 499, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–951 (Jan. 11, 1951, ch. 1225, § 3, 64 Stat. 1240).

Section is derived from the first sentence of section 11–951 of D.C. Code, 1961 ed. For remainder of section 11–951, see tables.

Changes are made in phraseology.

§ 11–1556. Concurrent jurisdiction of desertion and nonsupport cases

The Juvenile Court has original jurisdiction, concurrently with the United States District Court for the District of Columbia, of all cases arising under sections 22–903 to 22–905, relating to desertion or nonsupport. (Dec. 23, 1963, 77 Stat. 500, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–907, 11–961 (Mar. 19, 1906, ch. 960, § 6, 34 Stat. 73; June 1, 1938, ch. 308, 52 Stat. 596; July 2, 1940, ch. 525, 54 Stat. 735; Jan. 11, 1951, ch. 1225, §§ 1, 13, 64 Stat. 1240, 1242).

Section consolidates the second sentence of subsec. 2 of section 11–907, and the first part of subsec. (a) of section 11–961, of D.C. Code, 1961 ed., both of which conferred jurisdiction on the Juvenile Court, concurrently with the District Court, of the desertion and nonsupport cases referred to. The same provisions are carried into section 11–523 herein. For remainder of sections 11–907 and 11–961, see tables.

The reference in section 11–907 of D.C. Code, 1961 ed., to sections "22–902 to 22–905" is changed to sections "22–903 to 22–905", on recommendation of the Judge of the Juvenile Court, and to conform with the legislative intent. See revision note under section 11–523 herein.

Changes are made in phraseology.

§ 11–1557. Construction of chapter with respect to other jurisdiction

This chapter does not limit the jurisdiction vested in the Juvenile Court:

(1) by section 31–213, with respect to cases arising under sections 31–201 to 31–212 relating to compulsory school attendance and work permits;

(2) by section 36–228, with respect to cases arising under sections 36–201 to 36–227, relating to child labor and work permits; or

(3) by any other provision of law.

(Dec. 23, 1963, 77 Stat. 500, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–907 (Mar. 19, 1906, ch. 960, § 6, 34 Stat. 73; June 1, 1938, ch. 309, 52 Stat. 596; July 2, 1940, ch. 525, 54 Stat. 735; Jan. 11, 1951, ch. 1225, § 1, 64 Stat. 1240).

Section is derived from the third (final) sentence of subsec. 2 of section 11–907 of D.C. Code, 1961 ed. For remainder of section 11–907, see tables.

For the purpose of clarification, words describing the subjects to which sections 31–201 to 31–212, and 36–201 to 36–227 (referred to in the text), relate, are inserted.

The provisions of section 11–907 of D.C. Code, 1961 ed., carried into this section, indicating that the jurisdiction of the Juvenile Court in cases arising under sections 31–201 to 31–213 of the Code, relating to compulsory school attendance and work permits, is concurrent with that of the District Court, are omitted. Section 31–213, conferring jurisdiction on the Court in such matters, and act July 2, 1940, ch. 525, 54 Stat. 735, inserting in section 11–907 the saving clause with respect to such jurisdiction, do not provide for concurrent jurisdiction of the District Court.

Words "or vested in the Juvenile Court by any other provision of law" are added at the end to make it clear that any other jurisdiction, that may be conferred on the Juvenile Court by laws not included in this chapter, is not limited by the provisions of this chapter.

Changes are made in phraseology.

SUBCHAPTER IV.—MISCELLANEOUS PROVISIONS

§ 11–1581. Contempt powers

The Juvenile Court may punish, as a contempt, a willful violation, neglect, or disobedience of its orders by a fine not exceeding $200 or imprisonment not exceeding six months, or by both. (Dec. 23, 1963, 77 Stat. 500, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–933 (Mar. 19, 1906, ch. 960, § 31, as added June 1, 1938, ch. 309, 52 Stat. 596 (603)).

Changes are made in phraseology.

§ 11–1582. Administration of oaths and affirmations

The judges or acting judges of the Juvenile Court may administer oaths and affirmations. (Dec. 23, 1963, 77 Stat. 500, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–904 (Mar. 19, 1906, ch. 960, § 3, 34 Stat. 73; June 1, 1938, ch. 309, 52 Stat. 596, Mar. 9, 1962, Pub. L. 87–413, § 3(b), 76 Stat. 22).

Section is derived from that part of section 11–904 of D.C. Code, 1961 ed., which empowered the judge or acting judge of the Juvenile Court to administer oaths and affirmations. For remainder of section 11–904, see tables.

Changes are made in phraseology.

§ 11–1583. Duties of Corporation Counsel

(a) The Corporation Counsel of the District of Columbia or any of his assistants shall:

(1) upon request, assist the Juvenile Court in hearings arising under section 11–1551;

(2) institute and prosecute proceedings and cases arising under section 11–1555 and subchapter II of chapter 23 of Title 16, relating to the establishment of paternity and provision for support of children born out of wedlock; and

(3) prosecute cases arising under sections 11–1554 and 11–1556 and the sections specified by section 11–1557, in which a person 18 years of age or over is charged with an offense.

(b) As used in this section, "Corporation Counsel" means the attorney for the District of Columbia, by whatever title the attorney may be known, designated by the Board of Commissioners of the District of Columbia to perform the functions prescribed for the Corporation Counsel in this section. (Dec. 23, 1963, 77 Stat. 500, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–906, 11–932, 11–951 (Mar. 19, 1906, ch. 960, § 5, 34 Stat. 73; June 1, 1938, ch. 309, 52 Stat. 596; Mar. 19, 1906, ch. 960, § 31, as added June 1, 1938, ch. 309, 52 Stat. 596 (603); Jan. 11, 1951, ch. 1225, § 3, 64 Stat. 1240), and on Pres. Reorg. Plan No. 5, eff. July 1, 1952, 66 Stat. 824; Reorg. Ord. No. 55–1029, June 6, 1955, as amended Reorg. Ords. Nos. 56–320, Feb. 10, 1956; 56–1776, Aug. 30, 1956; 56–2102, Oct. 18, 1956.

Section consolidates section 11–932 of D.C. Code, 1961 ed., with part of subsec. (b) of section 11–906, and part of the second sentence of section 11–951, of the Code. The same provision, and other provisions, of section 11–951 are also carried into chapter 23 of Title 16. For remainder of sections 11–906 and 11–951, see tables.

For the purpose of clarification, and on recommendation of the Judge of the Juvenile Court, words "arising under section 11–1551" are substituted for words in section 11–932 of D.C. Code, 1961 ed., "to determine delinquency, dependency, or neglect" in subsec. (a)(1) herein.

Also for the purpose of clarification, words "arising under sections 11–1554 and 11–1556 and the sections referred to in section 11–1557" are substituted for words in section 11–932 of D.C. Code, 1961 ed., "within the jurisdiction of the court".

Words "person 18 years of age or over" are substituted in subsec. (a)(3) for "adult" (as used in section 11–932 of D.C. Code, 1961 ed.), and therefore it is not necessary to retain the definition of "adult" which was contained in section 11–906 thereof.

Subsec. (b), which follows language recommended by the Corporation Counsel of the District, is new, and is inserted because of the reorganizational changes effected by Presidential Reorganization Plan No. 5, eff. July 1, 1952, 66 Stat. 824. That plan abolished a number of offices and agencies in the District, including the Office of the Corporation Counsel, transferred their function to the Board of Commissioners of the District of Columbia, and authorized the Board to create new offices and agencies and delegate functions thereto. The Board, after temporarily continuing, by Reorganization Order No. 1, July 1, 1952, the offices and agencies so abolished, including the former Office of the Corporation Counsel, established a new Office of the Corporation Counsel, and abolished the former office, by Reorganization Order No. 50, June 26, 1953, as amended, which was repealed and replaced by Reorganization Order No. 55–1029, June 6, 1955, as amended by the later reorganization orders cited in the first paragraph of this note. Reorganization Order No. 55–1029, as so amended, continued the Office of the Corporation Counsel established by Reorganization Order No. 50, as amended. Under those orders, the Board transferred to that office functions previously transferred to the Board by Presidential Reorganization Plan No. 5, referred to above. Although, technically, the ultimate responsibility to perform the functions transferred to the present Office of the Corporation Counsel is now in the Board of Commissioners, the District of Columbia, since it must, as pointed out in letter of June 25, 1959, receive from the Corporation Counsel, citing the case of Ex parte Garland (1866) 71 U.S. 333, 378, 18 L. Ed. 366, 370, "be represented by one who is legally authorized to perform the functions of an attorney at law, it necessarily follows that representation by any officer or agency is not lawful unless the representative be a member of the Bar of the United States District Court for the District of Columbia and authorized to practice law before the courts of the District of Columbia".

Changes are made in phraseology.

NOTES TO DECISIONS

I. UNDER PRIOR LAW

Evidence

Evidence supported finding that defendant was father of child born out of wedlock. *Stone* v. *District of Columbia* (D.C. Mun. App. 1956, 127 A. 2d 841).

In illegitimacy case in Juvenile Court of District of Columbia, reception in evidence of child's birth certificate containing statements as to name of father, offered for apparent purpose of impeaching complaining witness' testimony that defendant was father of child was not error where the certificate actually did not impeach complaining witness in view of such witness' explanation as to the making of the certificate. *Harrison* v. *District of Columbia* (D.C. Mun. App. 1953, 95 A. 2d 332).

Documents which purported to show that defendant was free of gonorrhea in February, or specifically on February 28, when the complaining witness said defendant infected her, were properly excluded, since in view of the rapidity of modern methods of treatment it cannot be said that the absence of infection on the later dates established that there was no infection on the earlier date. *Monday* v. *United States* (D.C. Mun. App. 1950, 76 A. 2d 68).

When affidavits are submitted which tend to prove that one or more persons other than appellant may have been the father of the child, they are inadmissible when they do not state when the alleged act occurred. Evidence of intercourse by the mother with men other than appellant would not affect the issue of paternity unless such acts occurred at a time when, in a course of nature, they could have resulted in conception of the child. *Dicks* v. *United States* (D.C. Mun. App. 1950, 72 A. 2d 34).

It was not prejudicial error to allow the prosecution to introduce evidence tending to show that defendant was guilty of the crime of seduction. In such a proceeding it should be expected that the government would have to prove its allegation by evidence of a general nature and these circumstances are admitted for their probative value. The limit and range of such evidence is largely within the discretion of the trial court. *Fuller* v. *United States* (D.C. Mun. App. 1949, 65 A. 2d 589).

Jurisdiction

Under former §§ 11–943 to 11–950, jurisdiction was conferred on the Juvenile Court if the child was born in the District, or was born outside and the mother is a legal resident of the District. *Dicks* v. *United States* (D.C. Mun. App. 1950, 72 A. 2d 34).

Bastardy proceedings are purely statutory and statute is plain and unambiguous on its face. Former §§ 11–493 to 11–950 clearly provided for jurisdiction under the circumstances outlined in this case, bestowing jurisdiction on the trial court where the complainant was delivered of her child in the District. *Fuller* v. *United States* (D.C. Mun. App. 1949, 65 A. 2d 589).

Motion for new trial

In proceeding to establish paternity and to provide for support of illegitimate child, wherein defendant's motion for new trial was based on affidavits that defendant was seen in other places than Brooklyn, New York, on the day of alleged act of intercourse and that defendant had left Washington with his mother on automobile trip on such day, denial of motion was not abuse of discretion under the circumstances. *Lovinggood* v. *District of Columbia* (D.C. Mun. App. 1957, 134 A. 2d 336).

Motion to set aside judgment

A motion by defendant to set aside judgment and withdraw plea of guilty entered in bastardy proceedings while he was not represented by counsel should have been granted where defendant testified that he had never received summons to appear, and following his arrest at 5:00 o'clock a.m. was confined without food and without communication until he was taken to court around 3:30 o'clock p.m. and that he was not aware of import of his actions. *Stallans* v. *District of Columbia* (D.C. Mun. App. 1957, 130 A. 2d 923).

Nature of proceedings

Bastardy proceedings are purely statutory and are quasi-criminal in nature but the proceedings are neither criminal nor punitive in nature and there is no judicial condemnation of the mother or the putative father and the court's interest is the support and care of the child and the action should be considered as basically a civil suit and the standards applicable to a civil trial usually apply. *District of Columbia* v. *Turner, Jr.* (D.C. Mun. App. 1959, 154 A. 2d 925).

Offer of settlement

Defendant's offer to pay in order to settle, prefaced by an absolute denial of liability, constituted true offer of compromise and was not admission of liability and hence, offer was inadmissible in illegitimacy proceeding in Juvenile Court of District of Columbia, notwithstanding that offer was made indirectly to complaining witness through medium of witness' brother. *Harrison* v. *District of Columbia* (D.C. Mun. App. 1953, 95 A. 2d 332).

Prejudicial error

In proceeding to establish paternity and to provide for support of illegitimate child, where defendant offered sales slip to show that defendant purchased suit in Washington on date of alleged act of intercourse in Brooklyn, New York, even if ruling that slip was inadmissible for lack of identification was erroneous, the error was not prejudicial inasmuch as other records of the store showing the alleged purchase were subsequently admitted. *Lovinggood* v. *District of Columbia* (D.C. Mun. App. 1957, 134 A. 2d 336).

Purpose

The object of former §§ 11–943 to 11–950 was not to punish the father for fornication but rather to provide support for the child and the moral obligation of the father to support his illegitimate child is thus converted into a legal obligation. There is no legal obstacle against enforcing that obligation against the father in the jurisdiction where he is found, if the statute so provides. *Dicks* v. *United States* (D.C. Mun. App. 1950, 72 A. 2d 34).

Review

The Municipal Court of Appeals is bound by rule that where there is substantial evidence to support a finding it has no right to reverse. *Stone* v. *District of Columbia* (D.C. Mun. App. 1956, 127 A. 2d 841).

Municipal Court of Appeals cannot decide appeals on basis of facts stated in brief unless such facts also appear in records brought up from trial court. *Id.*

It is not the function of the Municipal Court of Appeals, on appeal from Juvenile Court in proceeding involving paternity of an illegitimate child, to reweigh the evidence or test the credibility of witnesses. *Bragg* v. *District of Columbia* (D.C. Mun. App. 1953, 98 A. 2d 784).

Where on appeal in bastardy proceedings, testimony of complaining witness was that she learned of her pregnancy in the latter part of March, 1949 and had missed her menstrual period which was due March 14, 1949, and it was not disputed that the child was born on November 17, 1949—less than nine months thereafter—such testimony that she was pregnant in the latter part of March was admissible, since the witness was not venturing a medical opinion but was reporting an actuality. Courts may take judicial notice that the period of human gestation is about two hundred eighty days or nine calendar months. *Monday* v. *United States* (D.C. Mun. App. 1950, 76 A. 2d 68).

Where the record does not reveal what the judge told the jury, or what objections were made to the charge, appellate court cannot consider the objection, for it was given no basis on which to rule that the charge was erroneous or otherwise. *Fuller* v. *United States* (D.C. Mun. App. 1949, 65 A. 2d 589).

Right to counsel

Where defendant probably understood that he was charged with paternity of child born out of wedlock and that his acknowledgment of the charge would result in his being ordered to pay something for support of the child but it was not clear that defendant was informed or understood that such payments would have to be made for 16 years and that he could be sent to jail for a year whenever he defaulted in payment, defendant's guilty plea, entered when he was not represented by counsel, would be set aside and he would be permitted to plead not guilty. *Huffman* v. *District of Columbia* (D.C. Mun. App. 1957, 133 A. 2d 114).

Where defendant was without counsel only at his arraignment and preliminary hearing, and he pleaded not guilty and was represented by counsel at his trial, he was not deprived of any substantial rights, because the trial court refused to grant a second preliminary hearing because the defendant was not represented by counsel at the original hearing. *Ferguson* v. *District of Columbia* (D.C. Mun. App. 1957, 133 A. 2d 111).

Voir dire examination

Where defendant was charged with being father of an illegitimate child, action of the trial court in explaining the history and purpose of this subchapter to the jury on a voir dire examination was proper. *Ferguson* v. *District of Columbia* (D.C. Mun. App. 1957, 133 A. 2d 111).

Witnesses

In child support proceeding against putative father in which complaining witness, on direct examination, testified that defendant had made contributions of food and clothing to children within one year preceding institution of proceeding, but on cross-examination, complaining witness denied having made contradictory statements regarding such contributions at preliminary hearing before another judge, defendant's attorney was competent to testify as to what complaining witness had said at preliminary hearing without withdrawing from case. *Ford* v. *District of Columbia* (D.C. Mun. App. 1953, 96 A. 2d 277).

Where sister of the complaining witness was permitted to testify that complaining witness never mentioned going with any other men, it was hearsay, but the value of such testimony from defendant's viewpoint was merely negative in nature. In view of other stronger evidence in the case, its probative value was so slight that it could not have affected the verdict of the jury. *Monday* v. *United States* (D.C. Mun. App. 1950, 76 A. 2d 68).

It was error for the trial court to permit the complaining witness to testify that in February she contracted gonorrhea from the defendant since the witness had said that she had had no relations with any other man during the period involved, and moreover, the record does not show any objection to this testimony. *Id.*

II. Under Present Law

Assistance of corporation counsel

Under statute providing that corporation counsel of the District of Columbia, or any of his assistants shall, "upon request" assist a juvenile court in hearings arising under juvenile proceedings, the "request" need not be specifically made or in writing but may be implied from

failure of trial judge to timely notify corporation counsel that his assistance is not required in particular case. *In re Rice* (D.C. App. 1966, 217 A. 2d 597).

Where petition charging minor with rape was filed with approval of assistant corporation counsel, the case was prepared by him for trial, witnesses were summoned by him, and where, upon notice from court he appeared ready for hearing, trial judge had impliedly requested assistance of assistant corporation counsel who was entitled to continue praticipation in the case, and to deny him that was violative of proper judicial procedure. *Id.*

§ 11–1584. Assistance and co-operation of officers, departments, institutions, and others

Every officer and department of the District of Columbia is required to render all asssistance and co-operation within his or its jurisdictional power which may further the objects of this chapter and subchapter I of chapter 23 of Title 16. Institutions or agencies to which the Juvenile Court sends a child are required to give to the court or to any officer appointed by it such information or reports concerning the child as the court or officer requires. The court may seek the co-operation of societies or organizations having for their object the protection or aid of children. (Dec. 23, 1963, 77 Stat. 500, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–931 (Mar. 19, 1906, ch. 960, § 30, as added June 1, 1938, ch. 309, 52 Stat. 596 (603)).

Changes are made in phraseology.

§ 11–1585. Payment of fines, costs, etc., to clerk; deposit; accounting

Fines, penalties, costs, and forfeitures imposed or taxed by the Juvenile Court shall be paid to the clerk of courts, either with or without process, or on process ordered by the court. The clerk of the court shall, on the first secular day of each week, deposit with the Board of Commissioners or its authorized representative the total amount of all fines, penalties, costs, and forfeitures collected by him during the week next preceding the date of the deposit, to be covered into the Treasury to the credit of the District of Columbia. The clerk shall render an itemized statement of each deposit to the Board or its authorized representative. (Dec. 23, 1963, 77 Stat. 501, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–939 (Mar. 19, 1906, ch. 960, § 39, as added June 1, 1938, ch. 309, 52 Stat. 596 (604)).

Reference to the collector of taxes is changed to "Board of Commissioners or its authorized representative", and reference to the auditor of the District of Columbia is changed to "Board or its authorized representative", for the same reasons stated in revision note under section 11–983 herein.

Changes are made in phraseology.

§ 11–1586. Records; limited inspection; penalties for unlawful disclosure or use

(a) The Juvenile Court shall maintain records of all cases brought before the court pursuant to subchapter I of chapter 23 of Title 16. The records shall be withheld from indiscriminate public inspection but shall be open to inspection only by respondents, their parents or guardians and their duly authorized attorneys, and by the institution or agency to which the respondent under 18 years of age may have been committed pursuant to sections 16–2307 and 16–2308.

Pursuant to rule or special order of the court, other interested persons, institutions, and agencies may inspect the records. As used in this subsection, "records" includes:

(1) notices filed with the court by arresting officers pursuant to section 16–2306;

(2) the docket of the court and entries therein;

(3) the petitions, complaints, informations, motions, and other papers filed in a case;

(4) transcripts of testimony taken in a case tried by the Court;

(5) findings, verdicts, judgments, orders and decrees; and

(6) other writings filed in proceedings before the court, other than social records.

(b) The records or parts thereof made by officers of the court pursuant to sections 11–1525 and 16–2302, referred to in subsection (a) of this section as social records, shall be withheld from indiscriminate public inspection, except that they shall be made available by rule or special order of court to such persons, governmental and private agencies, and institutions as have a legitimate interest in the protection, welfare, treatment, and rehabilitation of the child under 18 years of age, and to any court before which the child may appear. The court may also provide by rule or a judge may provide by special order that any such person or agency may make or receive copies of the records or parts thereof. Persons, agencies, or institutions receiving records or information pursuant to this subsection may not publish or use them for any purpose other than that for which they were received.

(c) Whoever, except for the purposes permitted and in the manner provided by subsections (a) and (b) of this section, discloses, receives, or makes use of, or authorizes, knowingly permits, participates in, or acquiesces in, the use of information concerning a juvenile before the court, directly or indirectly derived from the records, papers, files, or communications of the court, or acquired in the course of official duties, upon conviction thereof, shall be guilty of a misdemeanor, and shall be fined not more than $100 or imprisoned not more than ninety days, or both.

(d) Prosecutions pursuant to subsection (c) of this section shall be brought in the name of the District of Columbia in the District of Columbia Court of General Sessions by the Corporation Counsel or any of his assistants. As used in this subsection, "Corporation Counsel" has the same meaning as that prescribed by section 11–1583(b).

(e) Except on order of the court, the records or proceedings in a case arising under subchapter II of chapter 23 of Title 16 may not be open to inspection by anyone other than the defendant or counsel of record. The court, upon proper showing, may authorize the clerk to furnish certified copies of the records or portions thereof to the defendant, the mother, or custodian of the child, a party in interest, or their duly authorized attorneys. The clerk may furnish certified copies of the records or portions thereof, upon request, to the United States attorney for the District of Columbia for use as evidence in

nonsupport proceedings as provided by sections 11–523, 11–1556, 16–2355, and 16–2381 and to the Director of Public Health as provided by section 16–2354(a). (Dec. 23, 1963, 77 Stat. 501, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–929, 11–965 (Mar. 19, 1906, ch. 960, § 28, as added June 1, 1938, ch. 309, 52 Stat. 596 (603); Jan. 11, 1951, ch. 1225, § 17, 64 Stat. 1243; June 12, 1952, ch. 417, § 3, 66 Stat. 134; Mar. 9, 1962, Pub. L. 87–413, § 3(f), 76 Stat. 22; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section consolidates sections 11–929 and 11–965 of D.C. Code, 1961 ed.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

In subsec. (d), the second sentence is added. See subsec. (b) of section 11–1583 herein, and revision note under section 11–1583.

In subsec. (e), which is from section 11–965 of D.C. Code, 1961 ed., "Director of Public Health" is substituted for "Bureau of Vital Statistics". See section 16–2341 and revision note thereunder.

Changes are made in phraseology.

NOTES TO DECISIONS

I. UNDER PRIOR LAW

District Court entitled to records

On waiver of jurisdiction to district court by juvenile court, district court is entitled to juvenile court records. *M. A. Kent, Jr.* v. *C. Reid, Superintendent etc., and District of Columbia* (1963, 316 F. 2d 331, 114 U.S. App. D.C. 330).

II. UNDER PRESENT LAW

Presumption of accuracy

There is no irrebuttable presumption of accuracy attached to District of Columbia Juvenile Court's staff reports. *M. A. Kent, Jr.* v. *United States* (1966, 86 S. Ct. 1045, 383 U.S. 541, 16 L. Ed. 2d 84).

Records, inspection of by attorney

Under express terms of statute pertaining to juvenile court records, attorneys may seek, as a right, all juvenile court legal records, and an attorney may inspect social records in limited circumstances for the protection, welfare, treatment, and rehabilitation of the child. *J. L. Watkins* v. *United States* (1964, 343 F. 2d 278, 119 U.S. App. D.C. 409).

If a child's attorney challenges waiver of jurisdiction by the juvenile court in a criminal proceeding, the need for confidentiality of any parts of the social record must be compelling in order to bar disclosure to his attorney. *Id.*

Attorney for 16-year-old defendant who was charged with housebreaking and larceny had a legitimate interest generally in seeing his client's juvenile court social records, but, record would be remanded for supplemental proceedings to determine extent to which the records might be disclosed pursuant to considerations of need to conceal identity of informants or interference with treatment and rehabilitation of the child, importance of the issue for which disclosure was sought to the welfare or freedom of child, and the relevance of the requested records to that issue. *Id.*

§ 11–1587. Audit of accounts

The Board of Commissioners of the District of Columbia, or its authorized representative, shall audit the accounts of the clerk of the Juvenile Court at the end of every quarter, and in the performance of this duty shall have free access to all books, papers, and records of the court. (Dec. 23, 1963, 77 Stat. 502, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–940 (Mar. 19, 1906, ch. 960, § 40, as added June 1, 1938, ch. 309, 52 Stat. 596 (605)).

The reference "Board of Commissioners of the District of Columbia, or its authorized representative," is substituted for "auditor of the District of Columbia", and words 'and to make prompt report thereof in writing to the commissioners of the District of Columbia" are omitted as no longer necessary to retain in view of the said substitution. See revision note under section 11–983 herein.

Changes are made in phraseology.

§ 11–1588. Court quarters

The Board of Commissioners of the District of Columbia shall provide suitable quarters for the hearing of cases by the Juvenile Court, and for the use of the judges and the probation department and employees of the court. (Dec. 23, 1963, 77 Stat. 502, Pub. L. 58–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–928 (Mar. 19, 1906, ch. 960, § 27, as added June 1, 1938, ch. 309, 52 Stat. 596 (603); Mar. 9, 1962, Pub. L. 87–413, § 3(b), 76 Stat. 22).

Changes are made in phraseology.

§ 11–1589. Quarterly reports

The chief judge or the acting chief judge of the Juvenile Court shall submit to the Attorney General of the United States and to the President of the Board of Commissioners of the District of Columbia a detailed quarterly report of the work of the court within thirty days of the end of the quarter, to include the number of juvenile and adult cases heard, the number of juvenile and adult cases calendered, the number of juvenile and adult complaints filed, the number of juvenile cases closed without court hearing, moneys collected for fines and support of legitimate and illegitimate family members, and such other information as may reflect the court's operation and volume of work. A copy of the report shall be kept in the office of the clerk of the court and be subject to public inspection during the regular business hours of the court. (Dec. 23, 1963, 77 Stat. 502, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–942–1 (Mar. 1906, ch. 960, § 45, as added Mar. 9, 1962, Pub. L. 87–413, § 5, 76 Stat. 22).

Minor changes are made in phraseology.

Chapter 17.—MISCELLANEOUS PROVISIONS RELATING TO COURTS AND JUDGES

Sec.
11–1701. Retirement, resignation, or non-reappointment of judges; recall.

§ 11–1701. Retirement, resignation, or non-reappointment of judges; recall

(a)(1) Any judge of the District of Columbia Court of General Sessions, any judge of the District of Columbia Court of Appeals (as established by this Act), or any judge of the Juvenile Court of the Dis-

trict of Columbia who is subject to this subsection shall hereafter be eligible to retire after having served as a judge of such court or courts for a period or periods aggregating ten years or more, whether continuously or not. Any judge who so retires shall receive annually in equal monthly installments, during the remainder of his life, a sum equal to such proportion of the salary received by such judge at the date of such retirement as the total of his aggregate years of service bears to the period of thirty years, the same to be paid in the same manner as the salary of such judge: *Provided,* That if any such judge shall retire after twenty or more years of service, other than for permanent disability, his retirement salary shall not commence until he shall have reached the age of fifty: *Provided further, however,* That if any such judge shall retire after less than twenty years of service, other than for permanent disability, his retirement salary shall not commence until he shall have reached the age of sixty-two, except that such judge may elect to receive a reduced retirement salary beginning at the age of fifty-five or at the date of his retirement if subsequent to that age, the reduction in retirement salary in such case to be one-half of 1 per centum for each month or fraction of a month the judge is under the age of sixty-two at the time of commencement of his reduced retirement salary. In no event shall the sum received by any judge as retirement salary under this subsection be in excess of 80 per centum of the salary of such judge at the date of such retirement. In computing the years of service under this section, service in either the Police Court of the District of Columbia or the Municipal Court of the District of Columbia, or the Juvenile Court of the District of Columbia, the District of Columbia Court of Appeals, or the District of Columbia Court of General Sessions, as heretofore constituted, shall be included whether or not such service be continuous. The terms "retire" and "retirement" as used in this section shall mean retirement, resignation, or failure of reappointment upon the expiration of the term of office of an incumbent.

(2) Any judge subject to this subsection may hereafter retire after having served five years or more and having become permanently disabled from performing his duties. Such judge may retire for disability by furnishing to the Commissioners of the District of Columbia a certificate of disability signed by a duly licensed physician and approved by the Surgeon General of the Public Health Service. A judge who retires for disability under this subsection shall receive annually in equal monthly installments, during the remainder of his life, a sum equal to such proportion of the salary received by such judge at the date of such retirement as the total of his aggregate years of service bears to the period of thirty years, the same to be paid in the same manner as the salary of such judge, except that in no event shall the sum received by any judge as retirement salary hereunder be in excess of 80 per centum of the salary of such judge at the date of such retirement for disability.

(3) Any judge receiving retirement salary under the provisions of this subsection or under the provisions of this section as it existed immediately prior to its amendment by the District of Columbia Judges Retirement Act of 1964 may perform such judicial duties as may be requested by the chief judge of the District of Columbia Court of General Sessions, or the chief judge of the District of Columbia Court of Appeals, or the chief judge of the Juvenile Court of the District of Columbia, in any of such courts, but in no event shall any such retired judge be permitted to render such service for a total of more than sixty court days in any calendar year after his retirement. Any such judge so receiving such retirement salary shall be entitled, for any period for which he performs full-time judicial duties under this paragraph, to receive the salary of the office in which he performs such duties, but there shall be deducted from such salary an amount equal to his retirement salary for such period. No deduction shall be withheld for health benefits, Federal employee's life insurance, or retirement purposes from any salary paid to any such judge while performing full-time judicial duties under this paragraph. The performance of such duties shall not operate to create an additional retirement, change a retirement, or create an annuity for or in any manner affect the annuity of any survivor.

(4) From and after the first day of the first pay period which begins on or after the effective date of the District of Columbia Judges Retirement Act of 1964, there shall be deducted and withheld from the basic salary of each judge subject to the provisions of this subsection an amount equal to 3½ per centum of such judge's basic salary. The amounts so deducted and withheld shall, in accordance with such procedures as may be prescribed by the Commissioners of the District of Columbia, be deposited in the District of Columbia Judicial Retirement and Survivors Annuity Fund established pursuant to paragraph (1) of subsection (d) of this section. Each judge subject to the provisions of this subsection shall be deemed to consent and agree to such deductions from basic salary and payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all regular service during the period covered by such payment, except the right to the benefits to which he shall be entitled under this subsection, notwithstanding any law, rule, or regulation affecting the individual's salary.

(5) Each judge subject to the provisions of this subsection shall deposit, with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum threafter, compounded on December 31 of each year, in the fund, a sum equal to 3½ per centum of his salary received for judicial service performed by him as a judge of any court referred to in paragraph (1) of subsection (a) prior to the date he became subject to the provisions of this subsection. Each judge may elect to make such deposits in installments during the continuance of his judicial service in such amounts as may be determined in each instance by the Commissioners of the District of Columbia. Notwithstanding the failure of any such judge to make such deposits, credit shall be allowed for the service rendered but the retirement pay of such judge shall be reduced by 10

per centum of such deposit remaining unpaid, unless such judge shall elect to eliminate the service involved for purposes of retirement salary computation.

(6) If any judge who is subject to the provisions of this subsection resigns from his judicial office otherwise than under the provisions of this subsection, all amounts deducted from his salary under paragraph (4) and deposited by him under paragraph (5), together with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum thereafter, compounded on December 31 of each year, to the date of his relinquishment of office, shall be returned to him. In any case in which any such judge, who has not elected to bring himself within the purview of subsection (b) of this section, dies while in regular active service, all amounts so deducted from his salary and deposited by him under this subsection remaining in the fund at the time of his death, together with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum thereafter, compounded on December 31 of each year, to the date of his death, shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving him in the order of precedence provided for in paragraph (7) of subsection (b). Such payments shall be a bar to recovery by any other person.

(7) All judges of the District of Columbia Court of General Sessions, the District of Columbia Court of Appeals, and the Juvenile Court of the District of Columbia shall be subject to the provisions of this subsection, except that any such judge who is serving as such on the effective date of the District of Columbia Judges Retirement Act of 1964 shall be subject to this subsection (except paragraph (3) of this subsection) only if, within one year following such date, such judge files with the Commissioners of the District of Columbia a written election to come within the purview of this subsection. Such election once made shall be irrevocable. If no election is made within such one-year period, such judge shall have his right to retirement salary and the amount thereof determined as though the District of Columbia Judges Retirement Act of 1964 had not been enacted.

(b) (1) Any judge of any of the courts referred to in paragraph (1) of subsection (a), whether or not subject to the provisions of subsection (a) of this section, or any judge retired under the provisions of this section as it existed prior to the enactment of the District of Columbia Judges Retirement Act of 1964, may, by written election filed with the Commissioners of the District of Columbia within six months after the date on which he takes office, or is reappointed to office (or within six months after the effective date of the District of Columbia Judges Retirement Act of 1964), bring himself within the purview of this subsection.

(2) There shall be deducted and withheld from the salary of each judge electing to bring himself within the purview of this subsection a sum equal to 3 per centum of such judge's salary, including salary paid after retirement under the provisions of this section. The amounts so deducted and withheld from the salary of each such judge shall, in accordance with such procedure as may be prescribed by the Commissioners of the District of Columbia, be deposited in the fund. Every judge who elects to bring himself within the purview of this subsection shall be deemed thereby to consent and agree to the deductions from his salary as provided in this subsection, and payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all judicial services rendered by such judge during the period covered by such payment, except the right to the benefits to which he or his survivors shall be entitled under the provisions of this subsection.

(3) Each judge who has elected to bring himself within the purview of this subsection shall deposit, with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum thereafter, compounded on December 31 of each year, to the credit of the fund, a sum equal to 3 per centum of his salary received for service as a judge of any of the courts referred to in paragraph (1) of subsection (a), including salary received after retirement, and of his basic salary, pay, or compensation for services as a Senator, Representative, Delegate, or Resident Commissioner in Congress and for any other civilian service within the purview of sections 8332 and 8333 of title 5, U.S. Code. Such interest shall not be required for any period during which the judge was separated from all such service and was not receiving retirement salary under this section. Each judge may elect to make such deposits in installments during the continuance of his judicial service in such amounts as may be determined in each instance by the Commissioners. Notwithstanding the failure of a judge to make such deposit, credit shall be allowed for the service rendered, but the annuity of the widow of such judge shall be reduced by an amount equal to 10 per centum of the amount of such deposit, computed as of the date of the death of such judge, unless such widow shall elect to eliminate such service entirely from credit under paragraph (13) of this subsection: *Provided,* That no deposit shall be required from a judge for any service rendered prior to August 1, 1920, or for any honorable service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States.

(4) If any judge who has elected to bring himself within the purview of this subsection resigns from office otherwise than under the provisions of this section, the amount credited to his individual account under this subsection, together with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum, thereafter, compounded on December 31 of each year, to the date of his relinquishment of office, shall be returned to him.

(5) In case any judge who has elected to bring himself within the purview of this subsection shall die while in regular active service or after having retired from such service under the provisions of this section, after having rendered at least five years of civilian service computed as prescribed in paragraph (13) of this subsection for the last five years of which the salary deductions provided for by para-

graph (2) of this subsection or the deposits required by paragraph (3) of this subsection have actually been made—

(A) If such judge is survived by a widow but not by a dependent child, there shall be paid to such widow an annuity beginning with the day of the death of the judge or following the widow's attainment of the age of fifty years, whichever is later, in an amount computed as provided in paragraph (12) of this subsection; or

(B) if such judge is survived by a widow and a dependent child or children, there shall be paid to such widow an immediate annuity in an amount computed as provided in paragraph (12) of this subsection and there shall also be paid to or on behalf of each such child an immediate annuity equal to one-half the amount of the annuity of such widow, but not to exceed $900 per year divided by the number of such children or $360 per year, whichever is lesser; or

(C) if such judge leaves no surviving widow or widower but leaves a surviving dependent child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to the amount of the annuity to which such widow would have been entitled under paragraph (A) of this subsection had she survived, but not to exceed $480 per year.

The annuity payable to a widow under this subsection shall be terminable upon her death or remarriage. The annuity payable to a child under this subsection shall be terminable upon (i) his attaining the age of eighteen years, (ii) his marriage, or (iii) his death, whichever first occurs, except that if such child is incapable of self-support by reason of mental or physical disability his annuity shall be terminable only upon death, marriage, or recovery from such disability after attaining the age of eighteen years. In case of the death of a widow of a judge leaving a dependent child or children of the judge surviving her the annuity of such child or children shall be recomputed and paid as provided in subparagraph (C) of this paragraph. In any case in which the annuity of a dependent child, under this subsection, is terminated, the annuities of any remaining dependent child or children, based upon the service of the same judge, shall be recomputed and paid as though the child whose annuity was so terminated had not survived such judge.

(6) As used in this subsection—

(A) The term "widow" means a surviving wife of an individual who either (i) shall have been married to such individual for at least two years immediately preceding his death or (ii) is the mother of issue by such marriage, and who has not remarried.

(B) The term "dependent child" means an unmarried child, including a dependent stepchild or an adopted child, who is under the age of eighteen years or who because of physical or mental disability is incapable of self-support.

Questions of dependency and disability arising under this subsection shall be determined by the Commissioners of the District of Columbia. The Commissioners may order or direct at any time such medical or other examinations as they shall deem necessary to determine the facts relative to the nature and degree of disability of any dependent child who is an annuitant or applicant for annuity under this subsection, and may suspend or deny any such annuity for failure to submit to any examination.

(7) In any case in which (A) a judge who has elected to bring himself within the purview of this subsection shall die (i) while in regular active service after having rendered five years of civilian service computed as prescribed in paragraph (13) of this subsection, or while receiving retirement salary under this section, but without a survivor or survivors entitled or who, upon attaining the age of fifty, will become entitled, to annuity benefits provided by paragraph (5) of this subsection, or (ii) while in regular active service but before having rendered five years of such civilian service or (B) the right of all persons entitled to an annuity under paragraph (5) of this subsection based on the service of such judge shall terminate before a valid claim therefor shall have been established, the total amount credited to an individual account of such judge under this section, with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum, thereafter, compounded on December 31 of each year, to the date of the death of such judge, shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date title to the payment arises, in the following order of precedence, and such payment shall be a bar to recovery by any other person:

First, to the beneficiary or beneficiaries whom the judge may have designated by a writing received by the Commissioners of the District of Columbia prior to his death;

Second, if there be no such beneficiary, to the widow of such judge;

Third, if none of the above, to the child or children of such judge and the descendants of any deceased children by representation;

Fourth, if none of the above, to the parents of such judge or the survivor of them;

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of such judge;

Sixth, if none of the above, to such other next of kin of such judge as may be determined by the Commissioners to be entitled under the laws of the domicile of such judge at the time of his death.

Determination as to the widow or child of a judge for the purposes of this subsection shall be made by the Commissioners without regard to the definition of these terms stated in paragraph (6) of this subsection.

(8) In any case in which the annuities of all persons entitled to annuity based upon the service of a judge shall terminate before the aggregate amount of annuity paid (together with any amounts received by the judge as retirement salary) equals the total amount credited to the individual account of such judge under this section, with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum thereafter, compounded on December 31 of each year, to the date of the death of such judge, the difference shall be paid, upon

establishment of a valid claim therefor, in the order of precedence prescribed in paragraph (7) of this subsection.

(9) Any accrued annuity remaining unpaid upon the termination (other than by reason of death) of the annuity of any person based upon the service of a judge shall be paid to such person. Any accrued annuity remaining unpaid upon the death of any person receiving an annuity based upon the service of a judge shall be paid, upon establishment of a valid claim therefor, in the following order of precedence:

First, to the duly appointed executor or administrator of the estate of such person;

Second, if there is no such executor or administrator, payment may be made, after the expiration of thirty days from the date of the death of such person, to such individual or individuals as may appear in the judgment of the Commissioners to be legally entitled thereto, and such payments shall be a bar to recovery by any other individual.

(10) Where any payment under this subsection is to be made to a minor or to a person mentally incompetent or under other legal disability adjudged by a court of competent jurisdiction, such payment may be made to the person who is constituted guardian or other fiduciary by the law of the jurisdiction wherein the claimant resides or is otherwise legally vested with the care of the claimant or his estate. Where no guardian or other fiduciary of the person under legal disability has been appointed under the laws of the jurisdiction wherein the claimant resides, the Commissioners shall determine the person who is otherwise legally vested with the care of the claimant or his estate.

(11) Annuities granted under the terms of this subsection shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month or or other period for which the annuity shall have accrued.

(12) The annuity of the widow of a judge who has elected to bring himself within the purview of this subsection shall be an amount equal to the sum of (A) 1¼ per centum of the average annual salary received by such judge for judicial service and any other prior allowable service during the last five years of such service prior to his death, or retirement from office under this section, multiplied by the sum of his years of judicial service, his years of prior allowable service as a Senator, Representative, Delegate, or Resident Commissioner in Congress, his years of prior allowable service performed as a member of the Armed Forces of the United States, and his years, not exceeding fifteen, of prior allowable service performed as an employee described in sections 2107 and 8331(1)(C) of title 5, U.S. Code, and (B) three-fourths of 1 per centum of such average annual salary multiplied by his years of any other prior allowable service, but such annuity shall not exceed 37½ per centum of such average annual salary and shall be further reduced in accordance with paragraph (3) of this subsection, if applicable.

(13) Subject to the provisions of paragraph (3) of this subsection, the years of service of a judge which are allowable as the basis for calculating the amount of the annuity of his widow shall include his years of service as a judge of one of the courts referred to in paragraph (1) of subsection (a) of this section (whether in regular active service or retired from such service under this section), his years of service as a Senator, Representative, Delegate, or Resident Commissioner in Congress, his years of active service as a member of the Armed Forces of the United States not exceeding five years in the aggregate and not including any such service for which credit is allowed for the purposes of retirement or retired pay under any other provision of law, and his years of any other civilian service within the purview of sections 8332 and 8333 of title 5, U.S. Code.

(14) Nothing contained in this subsection shall be construed to prevent a widow eligible therefor from simultaneously receiving an annuity under this subsection and any annuity to which she would otherwise be entitled under any other law without regard to this subsection, but in computing such other annuity, service used in the computation of her annuity under this subsection shall not be credited.

(c) Nothing contained in this section shall be construed to prevent a judge eligible therefor from simultaneously receiving his retirement salary under this section and any annuity to which he would otherwise be entitled under any other law without regard to this section, but in computing such annuity, service used in the computation of retirement salary under this section shall not be credited: *Provided, however,* That nothing contained in this section shall be construed to prevent a judge of any court referred to in paragraph (1) of subsection (a) who is serving on the effective date of the District of Columbia Judges Retirement Act of 1964, and who does not elect under paragraph (7) of subsection (a) to come within the purview of such subsection, from electing to waive the provisions of this section regarding retirement salary and crediting service hereunder in computing any annuity to which he would otherwise be entitled under any other law without regard to this section; nor shall anything contained in this section (except paragraph (7) of subsection (a) of this section) or in any other law be construed to require any such judge eligible therefor to elect to waive either the provisions of this section regarding retirement salary and annuities or the provisions of any other law relating to retirement salary or annuities prior to the date of his retirement.

(d)(1) There is hereby established in the Treasury of the United States a fund to be known as the District of Columbia Judicial Retirement and Survivors Annuity Fund', and such fund is hereby appropriated for the payment of retirement salaries, annuities, refunds, and allowances as provided in this section. If, at any time, the balance in such fund is not sufficient to pay current obligations arising pursuant to the provisions of this section, there is authorized to be appropriated to such fund, out of any moneys in the Treasury of the United States to the credit of the District of Columbia not otherwise appropriated, such amounts as may be neces-

sary to pay such current obligations. The Secretary of the Treasury shall prepare the estimates of the annual appropriations required to be made to such fund, and shall make actuarial valuations of such fund at intervals of five years, or more after if deemed necessary by the Secretary.

(2) The Secretary of the Treasury shall invest, from time to time, in interest-bearing securities of the United States or Federal farm loan bonds, any portions of such fund as in his judgment may not be immediately required for payments from the fund, and the income derived from such investments shall constitute a part of the fund.

(3) All amounts deposited by, or deducted and withheld from the salary of, any judge as provided under this section for credit to the fund shall, under such regulations as may be prescribed by the Commissioners of the District of Columbia, be credited to an individual account of such judge.

(4) None of the moneys mentioned in this section shall be assignable, either in law or in equity, or be subject to execution, levy, attachment, garnishment, or other legal process.

(5) Whenever used in this section, the term 'fund' shall mean the District of Columbia Judicial Retirement and Survivors Annuity Fund established under paragraph (1) of this subsection.

(e)(1) The retirement salary of any judge receiving such salary on the date of enactment of this subsection under the provisions of this section as it existed immediately prior to its amendment by the District of Columbia Judges Retirement Act of 1964 is hereby increased, in the case of any such judge who retired during calendar year 1956, by 11.1 per centum, and, in the case of any such judge who retired during calendar year 1960, by 6.1 per centum.

(2) The retirement salary of any judge, or the annuity of any person based upon the service of any such judge, who, on the effective date of any increase which hereafter becomes payable under the provisions of section 8340(b) of title 5, U.S. Code, is receiving such salary or annuity (i) under the provisions of this section, or (ii) under the provisions of this section as it existed prior to its amendment by the District of Columbia Judges Retirement Act of 1964, shall be increased on such effective date by a percentage equal to the percentage of such increase under section 8340 of title 5, U.S. Code. (Dec. 23, 1963, 77 Stat. 502, Pub. L. 88–241, § 3; Oct. 13, 1964, 78 Stat. 1055, Pub. L. 88–644, § 1; Sept. 19, 1966, 80 Stat. 810, Pub. L. 89–587, §§ 1(a), 2(a).)

REFERENCES IN TEXT

"As established by this Act" in subsection (a)(1) probably has reference to the Act of Apr. 1, 1942, 56 Stat. 190, ch. 207, which consolidated the former Police Court and Municipal Court and also established "The Municipal Court of Appeals for the District of Columbia." These courts are now known as the District of Columbia Court of General Sessions and the District of Columbia Court of Appeals, respectively.

The District of Columbia Judges Retirement Act of 1964, referred to in subsecs. (a)(3)(4)(7), (b)(1), (c), and (e)(1)(2), is act Oct. 13, 1964, Pub. L. 88–644, which amended this section.

CODIFICATION

In subsecs. (b)(3) and (b)(13), the references to "sections 8332 and 8333 of title 5, U.S. Code", were substituted for "section 3 of the Civil Service Retirement Act [5 U.S.C. former § 2253]"; in subsec. (b)(12), the reference to "sections 2107 and 8331(1)(c) of title 5, U.S. Code", was substituted for "section 1(c) of the Civil Service Retirement Act [5 U.S.C. former § 2251(c)]"; and, in subsec. (e)(2), references to "section 8340(b) of title 5, U.S. Code and section 8340 of title 5, U.S. Code" were substituted for "section 18(b) of the Civil Service Retirement Act, as amended [5 U.S.C. former § 2268]", respectively, on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Civil Service Retirement Act, as amended (May 29, 1930, 46 Stat. 468, ch. 349, as amended, in general by act July 31, 1956, 70 Stat. 743, ch. 804, title IV, § 401), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and §§ 3, 1(c), 18(b) and 18 thereof are now covered, respectively, by the provisions of title 5, U.S.C., cited.

AMENDMENTS

1966—Section 1(a) of act Sept. 19, 1966, amended subsec. (a)(3) to provide that the judicial duties performed by retired judges should be permissive, rather than mandatory, that, while performing such duties, they should be compensated with the salary of the office, rather than only the retirement salary, and that the length of service as may be requested by the chief judge should not exceed 60 days in any calendar year, rather than 90 days in any calendar year under the former mandatory requirement to perform judicial duties upon request of the chief judge.

1964—Section 1 of act Oct. 13, 1964, amended the section to read as above set out. Prior to this amendment the section read as follows: (a) A judge of the District of Columbia Court of Appeals, the District of Columbia Court of General Sessions, or the Juvenile Court of the District of Columbia who, after having served as a judge of the court for a period or periods aggregating twenty years or more, whether continuously or not, retires, resigns, or fails of reappointment upon the expiration of his term of office, shall receive annually in equal monthly installments, during the remainder of his life, a sum equal to such proportion of his salary at the date of his retirement, resignation, or failure of reappointment upon the expiration of his term of office as the total of his aggregate years of service bears to the period of thirty years, to be paid in the same manner as his salary. The sum so received by him may not exceed his salary at the date his service ceases.

(b) In computing the years of service pursuant to this section, service in either the Police Court of the District of Columbia or the Municipal Court of the District of Columbia, or the Juvenile Court of the District of Columbia, as constituted prior to July 1, 1942, or the Municipal Court of Appeals for the District of Columbia, or the Municipal Court for the District of Columbia, as constituted prior to January 1, 1963, shall be included whether or not the service is continuous.

(c) A judge receiving retirement salary pursuant to this section may be called upon by the chief judge of the District of Columbia Court of Appeals or the chief judge of the District of Columbia Court of General Sessions to perform such judicial duties as may be requested of him in either of those courts, or in the Juvenile Court of the District of Columbia; but a retired judge shall not be required to render service for more than ninety days in a calendar year after retirement. In case of illness or disability precluding the rendering of service the retired judge shall be fully relieved of service during his illness or disability.

EFFECTIVE DATE OF ACT OF OCTOBER 13, 1964

Section 3 of act of Oct. 13, 1964, provided: "This Act shall be effective on and after the first day of the first month following the date of its enactment." [October 13, 1964].

POPULAR NAME

Section 2 of the act of Oct. 13, 1964, provided: "This Act [this section] may be cited as the 'District of Columbia Judges Retirement Act of 1964' ".

Subsection (e) added by act Sept. 19, 1966, § 2(a).

RETROACTIVE EFFECT OF 1966 AMENDMENTS

Section 1(b) of act Sept. 19, 1966, Pub. L. 89–587 (of which § 1(a) amended subsec. (a)(3) of this section), provided:

"(b) Any judge referred to in paragraph (3) of subsection (a) of section 11–1701 of the District of Columbia Code [this section] who, while receiving retirement salary under the provisions of such subsection or under the provisions of such section as it existed immediately prior to its amendment by the District of Columbia Judges Retirement Act of 1964, performed judicial duty pursuant to such paragraph or such section during calendar year 1964, 1965, or 1966, shall be entitled to receive salary in accordance with the provisions of such paragraph for such duty so performed for not more than sixty court days during any such calendar year."

The District of Columbia Judges Retirement Act of 1964, referred to in the above-quoted provisions, is act Oct. 13, 1964, Pub. L. 88–644, which amended this section.

Section 2(b) of act Sept. 19, 1966, 80 Stat. 811, Pub. L. 89–587, provided:

"(b) The increases in compensation authorized by the amendment made by this section [by § 2(a) of such act, which added subsec. (e) to this section] shall be retroactive to December 1, 1965."

REVISION NOTES APPLICABLE PRIOR TO ACT OCT. 13, 1964

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–771a, 41–776 (Apr. 1, 1942, ch. 207, § 11, 56 Stat. 197; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 6, 76 Stat. 1171, 1172; July 8, 1963, Pub. L. 88–60, §§ 1, 6, 77 Stat. 77, 78).

Sections 11–751a and 11–771a of D.C. Code, 1961 ed., both enacted by the act of Oct. 23, 1962, are also cited as sources of this section, as (1) section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions, and (2) section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

The provision in section 11–776 of D.C. Code, 1961 ed., defining "retire" and "retirement" as meaning and including "retirement, resignation, or failure of reappointment upon the expiration of the term of office of an incumbent" is omitted as unnecessary and covered by the other provisions as reworded in this revised section.

In subsec. (b) of this revised section, words "as constituted prior to July 1, 1942" are substituted for "as heretofore constituted". Section 11–776 of D.C. Code, 1961 ed., from which this section is derived, was enacted on Apr. 1, 1942 (ch. 207, § 11, 56 Stat. 197), and under section 14 of that act, section 11–776 became effective July 1, 1942 (3 months after Apr. 1, 1942).

Also in subsec. (b), words "or the Municipal Court of Appeals for the District of Columbia, or the Municipal Court for the District of Columbia, as constituted prior to January 1, 1963" are inserted for the purpose of completeness. Jan. 1, 1963, was the effective date of the act of Oct. 23, 1962, which changed the names of those two courts to District of Columbia Court of Appeals, and District of Columbia Court of General Sessions, respectively.

Changes are made in phraseology and arrangement.

Chapter 19.—CORONER

Sec.
11–1901. Definition.
11–1902. Inquests; exceptions; jury.
11–1903. Witnesses; attachment; contempt.
11–1904. Testimony reduced to writing in certain cases; recognizances; returns.
11–1905. Monthly reports of inquests; delivery of property.
11–1906. Fees of witnesses and jurors; allowances.

§ 11–1901. Definition

As used in this chapter, "coroner" means the Board of Commissioners of the District of Columbia or the officer or agency designated by the Board to perform the functions prescribed by this chapter. (Dec. 23, 1963, 77 Stat. 503, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Section is new, and is inserted because of the reorganizational changes effected by Presidential Reorganization Plan No. 5, eff. July 1, 1952, 66 Stat. 824. Under that Plan, a number of agencies and offices, including the Office of the Coroner, were abolished and their functions transferred to the Board of Commissioners, and among other things, the Board was authorized to perform the transferred functions or create new offices and agencies and delegate functions to them. The Board's Reorganization Order No. 1, C.O. 302, 853/11, July 1, 1952, temporarily redelegated the transferred functions to the agencies and offices from which they had been transferred by Presidential Reorganization Plan No. 5. The Board's Reorganization Order No. 51, G.F. No. 6–030, June 29, 1953, effective for the most part on Aug. 15, 1953, again abolished the Office of the Coroner, and created another office with the same designation, under the direction and control of a Commissioner. Among other things, that Order provides that the office so created "shall perform such functions as are now or as may be assigned by provisions of the District of Columbia Code", and, except for the laboratory functions performed by the former office (which were transferred to the Department of Public Health), it transferred to the new office all functions and positions, including all duties, powers, and authorities, of officers and employees of the former office.

However, under Presidential Reorganization Plan No. 5, it would seem that the ultimate responsibility for the performance of the functions delegated to the present coroner by Reorganization Order No. 51 is in the Board of Commissioners, and that the Board is empowered to change the present organization at any time, and, if it so desires, to change the designation of "coroner". Therefore, the purpose of this section is to recognize the ultimate responsibility of the Board to perform the functions and to provide for such a change, should it occur.

§ 11–1902. Inquests; exceptions; jury

(a) Except as provided by subsection (b) of this section, the coroner shall hold an inquest over the body of each person found dead in the District when the manner and cause of death is not already known as accidental or in the course of nature.

(b) The coroner may not summon or hold a jury of inquest over the body of a deceased person where it is known that the deceased came to his death by suicide, accident, mischance, or natural causes; except that where it is not known that the deceased came to his death by suicide the coroner may summon a jury.

(c) A coroner's jury shall consist of six persons. (Dec. 23, 1963, 77 Stat. 503, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–1203, 11–1204, 11–1206 (Mar. 3, 1901, ch. 854, §§ 192, 193, 195, 31 Stat. 1221; Mar. 2, 1911, ch. 192, 36 Stat. 192; June 26, 1912, ch. 182, § 1, 37 Stat. 147).

Section consolidates part of section 11–1203 of D.C. Code, 1961 ed., with sections 11–1204 and 11–1206 thereof. For remainder of section 11–1203, see section 11–1905 herein.

Changes are made in phraseology.

CROSS REFERENCES

Countersigning permit to cremate or otherwise destroy human body, see § 27–125.

Duties of coroner in cases of negligent homicide by operation of motor vehicles, see § 40–606.

Permit to disinter human bodies, see § 27–128.

§ 11–1903. Witnesses; attachment; contempt

The coroner may summon witnesses from any part of the District to appear before him for the purposes of giving evidence, and may compel their attendance by attachment. He may punish for dis-

obedience of a lawful order, or for a contempt committed in his presence, by a fine of not more than $50 or imprisonment of not more than 30 days. (Dec. 23, 1963, 77 Stat. 503, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–1205 (Mar. 3, 1901, ch. 854, § 194, 31 Stat. 1221; Feb. 17, 1909, ch. 134, 35 Stat. 623).

Section is derived from the first sentence of section 11–1205 of D.C. Code, 1961, ed., which provided as follows: "Witnesses may be summoned and compelled by the coroner to attend before him and give evidence, and shall be liable in like maner as if the summons had been issued by the municipal court". The municipal court referred to in the quoted words was the municipal court prior to its merger in 1942 with the police court to form the second Municipal Court, the name of which has since been changed, by act Oct. 23, 1962, Pub. L. 87–873, 76 Stat. 1171, to the District of Columbia Court of General Sessions. Section 11–740 empowered the former municipal court to compel the attendance of witnesses from any part of the District by attachment and to punish them for disobedience, and for disorder or contempt committed in its presence, by fine not exceeding ten dollars or imprisonment not exceeding 10 days. These maximum punishments can be traced back to the act of May 17, 1848, ch. 42, § 14, 9 Stat. 229, empowering the justices of the peace to compel the attendance of witnesses by attachment and to punish them for refusing obedience to a summons. The provisions were carried into the Revised Statutes of the District of Columbia as section 1005. When they were later carried into the Code of 1901 (Mar. 3, 1901, ch. 854, § 25, 31 Stat. 1193; D.C. Code, 1961 ed., § 11–740), the maximum punishments remained the same, but the other provisions were expanded to read as stated above, except that they referred to justices of the peace rather than the municipal court. The justice of the peace courts became the municipal court under the act of Feb. 17, 1909, ch. 134, 35 Stat. 623.

Section 11–756(c) of D.C. Code, 1961 ed., which related to the second Municipal Court, and, since the enactment of the above-mentioned act of Oct. 23, 1962, to the District of Columbia Court of General Sessions, contained provisions substantially similar to those of section 11–740 thereof, except that the maximum punishments were $50 fine or 30-day imprisonment, and presumably these are the maximum punishments to which a party would now be liable for refusal to obey a summons of the coroner or other contempt before him. Therefor, the provisions of section 11–1205 of D.C. Code, 1961, ed., as herein revised, conform with the provisions of section 11–756(c) thereof. The latter provisions are carried into section 11–981 of this revised part.

For remainder of section 11–1205 of D.C. Code, 1961 ed., see section 11–1904 herein.

§ 11–1904. Testimony reduced to writing in certain cases; recognizances; returns

Upon an inquisition taken before the coroner, where a person is charged with having unlawfully caused the death of the person on whom the inquest is held, the coroner shall:

(1) reduce the testimony of the witnesses to writing; and

(2) if the jury find that murder or manslaughter has been committed on the deceased, require such witnesses as he deems proper to give a recognizance to appear and testify in the United States District Court for the District of Columbia; and

(3) return to the United States District Court the inquisition and testimony and recognizance taken by him.

(Dec. 23, 1963, 77 Stat. 504, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–1205 (Mar. 3, 1901, ch. 854, § 194, 31 Stat. 1221; Feb. 17, 1909, ch. 134, 35 Stat. 623; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Section is derived from second sentence of section 11–1205 of D.C. Code, 1961 ed. For remainder of section 11–1205, see section 11–1903 herein.

Changes are made in phraseology and arrangement.

§ 11–1905. Monthly reports of inquests; delivery of property

The coroner shall:

(1) make a monthly report to the Board of Commissioners of the District of all inquests held by him during the immediately preceding month, with a description as far as may be of the age, sex, color, and nationality of deceased persons and the causes of their death, and with particulars as may be necessary to their identification; and

(2) as soon as possible after holding an inquest, deliver to the property clerk of the Metropolitan Police Department all moneys and other property and effects found upon the person of anyone on whom he holds an inquest.

(Dec. 23, 1963, 77 Stat. 504, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–1203 (Mar. 3, 1901, ch. 854, § 192, 31 Stat. 1221).

Section is derived from part of section 11–1203 of D.C. Code, 1961 ed. For remainder of section 11–1203, see section 11–1902 herein.

Changes are made in phraseology.

§ 11–1906. Fees of witnesses and jurors; allowances

Witnesses and jurors lawfully summoned in an inquest shall receive the fees and travel and subsistence allowances as may be fixed, with respect to witnesses, by chapter 119 of Title 28, United States Code, and, with respect to jurors, by section 1871 of Title 28, United States Code. (Dec. 23, 1963, 77 Stat. 504, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–1515 (Mar. 3, 1901, ch. 854, § 195, 31 Stat. 1221.)

Section 11–1515 of D.C. Code, 1961 ed., provided that jurors and witnesses lawfully summoned in any inquest should be paid the same fees and compensation allowed to jurors and witnesses attending the District Court. The provisions, as herein revised, refer to chapter 119 and section 1871 of Title 28, United States Code, which respectively fix the fees and allowances of witnesses and jurors attending the District Court.

Changes are made in phraseology.

Chapter 21.—ATTORNEYS

Sec.
11–2101. Admission to bar; regulations; oath.
11–2102. Censure, suspension, or disbarment by District Court for cause.
11–2103. Disbarment by District Court upon conviction of crime.
11–2104. Censure, suspension, or disbarment by other courts.
11–2105. Procedure for censure, suspension, or disbarment.

§ 11–2101. Admission to bar; regulations; oath

The United States District Court for the District of Columbia may make such rules as it deems proper respecting the examination, qualification, and admission of persons to membership in its bar, and their

censure, suspension, and expulsion. Every person so admitted, before he is permitted to practice therein, shall take and subscribe the following oath:

"I, ————————, do solemnly swear (or affirm) that I will demean myself as a member of the bar of this court uprightly and according to law; and that I will support the Constitution of the United States." (Dec. 23, 1963, 77 Stat. 504, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–1301 (Mar. 3, 1863, ch. 91, 12 Stat. 762; Mar. 3, 1901, ch. 854, § 218, 31 Stat. 1224; Apr. 19, 1920, ch. 153, 41 Stat. 561; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Bar examination papers

Bar examination papers are not part of records of court but belong exclusively to Committee on Admissions and Grievances, which may destroy memoranda after lapse of time subject only to appeal to judges' discretion. *Laughlin* v. *Clephane* (D.C.D.C. 1948, 77 F. Supp. 103).

Committee on admissions and grievances

In exercising right under this section and inherent right to promulgate rules with respect to admissions of attorneys, District Court had right to call to its assistance a committee of lawyers on admissions and grievances, and to compensate members of such committee for their services. *Laughlin* v. *Clephane* (D.C.D.C. 1948, 77 F. Supp. 103).

Common law

Summary proceeding provided by this section is "at least as broad as the rule of the common law." *Diggs* v. *Thurston* (1912, 39 App. D.C. 267).

Composition of court

There should be a general term of the United States District Court for the District of Columbia composed of three justices in proceeding for suspension or explusion of member of its bar for professional misconduct. *H. D. Levine* v. *Committee on Admissions etc.* (1964, 328 F. 2d 519, 117 U.S. App. D.C. 218).

Duty of court

Court has duty to exercise and regulate admission of applicants to the bar by sound and just judicial discretion. *Laughlin* v. *Clephane* (D.C.D.C. 1948, 77 F. Supp. 103).

Funds

A fund controlled by Committee on Admissions and Grievances was rightfully accumulated to make effective the rules promulgated by District Court, and such fund did not belong to United States but to the court and was to be administered as outlined by court. *Laughlin* v. *Clephane* (1948, 77 F. Supp. 103).

Fund resulting from fees paid by applicants for admission to bar, to be distributed by Committee on Admissions and Grievances as it should decide, is not a "tax." *Id.*

Historical

An order by the Criminal Court of the District of Columbia, made in 1867, disbarring an attorney from practice in that court, did not remove the attorney from the bar of the Supreme Court of the District of Columbia (District Court of the United States for the District of Columbia), the criminal court at that time being an independent court. The act of June 21, 1870 (16 Stat. 160, ch. 141), making the criminal court a part of the Supreme Court did not affect that order. *Bradley* v. *Fisher* (1871, 80 U.S. 335, 13 Wall. 335, 20 L. Ed. 646).

Jurisdiction

District Court had no jurisdiction of action under informer's statutes, 31 U.S.C. §§ 231, 232, against Committee on Admissions and Grievances, based on their alleged misconduct in distributing among themselves fees collected from applicants for admission to bar, and in destroying bar examination papers and excluding Negroes from membership on the committee. *Laughlin* v. *Clephane* (D.C.D.C. 1948, 77 F. Supp. 103).

Power of court

Within very wide limits, standards of fitness for membership in the bar of the District Court of the United States for the District of Columbia are for the District Court itself to establish and maintain. *Carver* v. *Clephane* (D.C.D.C. 1948, 77 F. Supp. 103).

To admit applicants to practice law is judicial, not legislative, and vested in courts only. *Laughlin* v. *Clephane* (D.C.D.C. 1948, 77 F. Supp. 103).

Rules for admission

Pursuant to provisions of the District of Columbia Code, the United States District Court for the District of Columbia has the power and authority to make such rules as it deems proper respecting admission of persons to its bar, and it may establish and maintain its standards of fitness for membership within very wide limits. *Lark* v. *West Chairman etc.* (D.C.D.C. 1960, 182 F. Supp. 794).

§ 11–2102. Censure, suspension, or disbarment by District Court for cause

The United States District Court for the District of Columbia may censure, suspend from practice, or expel a member of its bar for crime, misdemeanor, fraud, deceit, malpractice, professional misconduct, or conduct prejudicial to the administration of justice. A fraudulent act or misrepresentation by an applicant in connection with his application or admission is sufficient cause for the revocation by the court of his admission. (Dec. 23, 1963, 77 Stat. 504, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–1302 (Mar. 3, 1863, ch. 91, 12 Stat. 762; Mar. 3, 1901, ch. 854, § 219, 31 Stat. 1224; Apr. 19, 1920, ch. 153, 41 Stat. 561; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Minor changes are made in phraseology.

NOTES TO DECISIONS

I. UNDER PRIOR LAW

Composition of court

There should be a general term of the United States District Court for the District of Columbia composed of three justices in proceeding for suspension or expulsion of member of its bar for professional misconduct. *H. D. Levine* v. *Committee on Admissions etc.* (1964, 328 F. 2d 519, 117 U.S. App. D.C. 218).

Liability of justices

Chief Justice and Associate Justice when affixing their signature to an order for disbarment act within scope of their official authority and within jurisdiction of the court, and they are not liable for damages therefrom. *Fletcher* v. *Wheat* (1939, 100 F. 2d 432, 69 App. D.C. 259, certiorari denied 59 S. Ct. 794, 307 U.S. 621, 83 L. Ed. 1500).

Mandamus

The petition for mandamus is the proper remedy to test the question of the right of the District Court without notice to suspend an attorney from practice during the period prior to the hearing on a motion for disbarment. *Laughlin* v. *Wheat* (1938, 95 F. 2d 101, 68 App. D.C. 190).

Misconduct

Court may order attorney to pay to client money collected for the latter, and retained or paid out without lawful authority, and this authority is not affected by the common-law action available to the client. *Diggs* v. *Thurston* (1912, 39 App. D.C. 267).

When attorney entered in transaction with clients with no deliberate intention of fraudulently profiting at their expense, such misconduct warranted suspension but not disbarment. *Costigan* v. *Adkins* (1927, 18 F. 2d 803, 57 App. D.C. 153, certiorari denied 47 S. Ct. 769, 274 U.S. 760, 71 L. Ed. 1338).

On the evidence defendant's failure to disclose loss of money to client held to be unprofessional conduct, which could be adequately punished by his suspension rather than disbarment. *Id.*

Conduct by an attorney in his professional capacity prejudicial to the administration of justice would necessarily constitute professional misconduct in preparation of pleadings and affidavit. *Curtis* v. *Whiteford* (1930, 41 F. 2d 302, 59 App. D.C. 330).

Order disbarring defendant affirmed on evidence that he filed a false affidavit of merit in suit to recover fees for legal services, stating that he had received no compensation, whereas, in fact he had received two separate payments on account. *Id.*

An attorney is properly disbarred who deceives the court by false statements and misappropriates client's money. *Thomas* v. *Ogilby* (1931, 44 F. 2d 890, 59 App. D.C. 382).

Evidence establishing professional misconduct of attorney and character of the misconduct justified order censuring attorney and suspending him from practice of law for six months. *Halpern* v. *Committee on Admissions and Grievances of the District Court* (1944, 139 F. 2d 361, 78 U.S. App. D.C. 220).

Representing conflicting interests

In negotiating the sale, the interests of the prospective seller and buyer were adverse, but once the terms of sale were agreed upon, the parties were jointly interested in having steps taken to complete the sale promptly and we see no reason why the purchaser could not agree to pay the attorney for his services in accomplishing the results desired. *Kreis* v. *Block* (D.C. Mun. App. 1950, 75 A. 2d 523).

II. Under Present Law

Misconduct

When member of bar is found to have betrayed his high trust by embezzling funds entrusted to him, disbarment should ordinarily follow as matter of course, and only the most stringent of extenuating circumstances would justify lesser disciplinary action, such as suspension. *In re Quimby* (1966, 359 F. 2d 257, 123 U.S. App. D.C. 273).

Act against client evidencing moral turpitude, even though attributable to some aberration or stress that would warrant prosecutor in abstaining from criminal prosecution, may nevertheless warrant severe disciplinary action concerning officer of court. *Id.*

§ 11–2103. Disbarment by District Court upon conviction of crime

When a member of the bar of the United States District Court for the District of Columbia is convicted of an offense involving moral turpitude, and a duly certified copy of the final judgment of the conviction is presented to the court, the name of the member so convicted may thereupon, by order of the court, be struck from the roll of the members of the bar, and he shall thereafter cease to be a member thereof. Upon appeal from a judgment of conviction, and pending the final determination of the appeal, the court may order the suspension from practice of the convicted member of the bar; and upon a reversal of the conviction, or the granting of a pardon, the court may vacate or modify the order of disbarment or suspension. (Dec. 23, 1963, 77 Stat. 505, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–1103 (Mar. 3, 1901, ch. 854, § 219a, as added Apr. 19, 1920, ch. 153, 41 Stat. 561).

Changes are made in phraseology.

§ 11–2104. Censure, suspension, or disbarment by other courts

The District of Columbia Court of Appeals, and the District of Columbia Court of General Sessions, may censure, suspend, or expel an attorney from practice, at their respective bars, for a crime involving moral turpitude, or professional misconduct, or conduct prejudicial to the administration of justice. (Dec. 23, 1963, 77 Stat. 505, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–771a, 11–775 (Apr. 1, 1942, ch. 207, § 10, 56 Stat. 196; Oct. 23, 1962, Pub. L. 87–873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88–60, § 6, 77 Stat. 78).

Section is derived from the first sentence of section 11–775 of D.C. Code, 1961 ed. For remainder of section 11–775, see section 11–2105 herein.

Section 11–771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Enrollment of attorneys

The rule of the Municipal Court of the District of Columbia requiring that attorneys, before practicing, enroll, take a common oath, sign a roll and pay a small sum, was a reasonable requirement of procedure for efficient administration of justice. *Austin* v. *The Municipal Court, District of Columbia* (1956, 235 F. 2d 836, 98 U.S. App. D.C. 339, certiorari denied 77 S. Ct. 682, 353 U.S. 923, 1 L. Ed. 2d 720).

§ 11–2105. Procedure for censure, suspension, or disbarment

A member of the bar may not be censured, suspended, nor expelled as provided by section 11–2102 or 11–2104, until written charges, under oath, against him have been presented to the court, stating distinctly the grounds of complaint. The court may order the charges to be filed in the office of the clerk of the court and shall fix a time for hearing thereon. Thereupon a certified copy of the charges and order shall be served upon the member personally by the United States marshal or such other person as the court designates, or if it is established to the satisfaction of the court that personal service can not be had a certified copy of the charges and order shall be served upon him by mail, publication, or otherwise as the court directs. After the filing of the written charges the court may suspend the person charged from practice at its bar pending the trial thereof. (Dec. 23, 1963, 77 Stat. 505, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–775, 11–1304 (Mar. 3, 1863, ch. 91, 12 Stat. 762; Mar. 3, 1901, ch. 854, § 220, 31 Stat. 1224; Apr. 19, 1920, ch. 153, 41 Stat. 561; Apr. 1, 1942, ch. 207, § 10, 56 Stat. 196).

Section consolidates that part of section 11–775 of D.C. Code, 1961 ed., which related to procedure to be followed in the Municipal Court of Appeals or the Municipal Court (now, District of Columbia Court of Appeals, and District of Columbia Court of General Sessions, respectively), in the censure, suspension, or disbarment of attorneys, with section 11–1304 thereof, which related to the procedure in the District Court. The provisions were substantially identical. For remainder of section 11–775, see section 11–2104 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Conduct of trial

Record in disbarment proceeding did not sustain assignment that court erred in refusing to direct a continuance to enable attorney to procure counsel and character witnesses, where record disclosed that attorney prepared and filed his answer pro se and at trial refused

offer of court to appoint counsel, and that, although attorney sought continuance because of absence of character witnesses, trial counsel for grievance committee conceded that each witness would, if present, testify to attorney's good character, and on that understanding case proceeded. *Tulman* v. *Committee on Admissions and Grievances* (1943, 135 F. 2d 268, 77 U.S. App. D.C. 357).

Review

In disbarment proceeding, attorney's explanation in palliation was for trial court's consideration, and the trial court, in denying effect thereto, exercised its judicial discretion, which was not subject to review on appeal. *Tulman* v. *Committee on Admissions and Grievances* (1943, 135 F. 2d 268, 77 U.S. App. D.C. 357).

Chapter 23.—JURORS AND JURY COMMISSIONERS

Sec.
11–2301. Qualifications of jurors.
11–2302. Exemptions.
11–2303. Jury commission; appointment, qualifications, oath, tenure, compensation, and removal.
11–2304. Record of names; jury box; custody.
11–2305. Selection of jurors.
11–2306. Manner of drawing.
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11–2308. Disposition of box after drawing; excuse from further service.
11–2309. Filling vacancies; deficiencies in panel.
11–2310. Talesmen from bystanders.
11–2311. Summoning jurors.
11–2312. Length of service.
11–2313. Fees of jurors; allowances.
11–2314. Marshal to have charge; deputies.

§ 11–2301. Qualifications of jurors

(a) Any citizen of the United States who has attained the age of 21 years and who has resided for a period of one year within the District of Columbia is competent to serve as a grand or petit juror in courts of the District unless he:

(1) has been convicted in a State, territorial, or federal court of record, or court of the District, of a crime punishable by imprisonment for more than one year, and his civil rights have not been restored by pardon or amnesty;

(2) is unable to read, write, speak and understand the English language; or

(3) is incapable by reason of mental or physical infirmities to render efficient jury service.

(b) An otherwise qualified person is not disqualified from jury service by reason of sex, but a woman may not be compelled so to serve. (Dec. 23, 1963, 77 Stat. 505, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–716, 11–716a, 11–755, 11–936, 11–1417, 11–1418 (Mar. 3, 1901, ch. 854, §§ 45, 215, 31 Stat. 1197, 1223; Mar. 19, 1906, ch. 960, § 35, as added June 1, 1938, ch. 309, 52 Stat. 596 (604); Mar. 3, 1921, ch. 125, § 4, 41 Stat. 1311; Mar. 3, 1925, ch. 443, § 5, 43 Stat. 1120; Feb. 26, 1927, ch. 220, 44 Stat. 1249; Aug. 22, 1935, ch. 604, 49 Stat. 681; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; June 25, 1948, ch. 646, § 32(a)(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; June 29, 1953, ch. 159, § 408, 67 Stat. 107; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, § 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 2, 77 Stat. 78).

Section consolidates section 11–1417 of D.C. Code, 1961 ed., which related to qualifications of jurors, with that part of section 11–1418 thereof which prohibited disqualification of grand or petit jurors by reason of sex; that part of section 11–716a thereof which, as originally enacted, related to the Police Court and provided that jurors serving in that court should have the legal qualifications necessary for jurors in the District Court; that part of section 11–716 thereof, which, with respect to the first Municipal Court (prior to its merger under section 11–751 thereof with the Police Court to form the second Municipal Court, now, under section 11–751a thereof, the District of Columbia Court of General Sessions), although not specifically referring to qualifications of jurors implied that they should have the same legal qualifications as jurors in the District Court by providing that jurors in the Municipal Court should be drawn and selected in the same manner as those drawn and selected for service in the District Court and by making applicable thereto the same laws relating to jurors that were applicable to jurors serving in the District Court; that part of section 11–755(a) thereof, which, in connection with the merger of the Police Court and the first Municipal Court to form the second Municipal Court (under section 11–751 thereof), impliedly continued the same set-up and procedure regarding juries and jurors in criminal and civil cases by providing that the Municipal Court thus established should have a criminal branch and a civil branch (later laws increased the number of branches) and that, in addition to other jurisdiction conferred, the court and its judges should have the same powers and jurisdiction theretofore had by the two courts prior to the merger; and that part of section 11–936 of the Code which, with respect to the Juvenile Court, provided that jurors serving in that court should have the legal qualifications necessary for jurors in the District Court.

Section 11–1417 of D.C. Code, 1961 ed., provided: "No person shall be competent to act as a juror unless he is a citizen of the United States, a resident of the District of Columbia, over twenty-one years of age, able to read and write and to understand the English language, and a good and lawful person, who has never been convicted of a felony or misdemeanor involving moral turpitude."

The provisions of subsec. (a), as herein revised, are patterned upon 28 U.S.C., § 1861, which presumably already applies in the United States District Court for the District of Columbia. See 28 U.S.C., §§ 88, 132, 451. As herein set out, the provisions of this section apply to grand jurors and to petit jurors serving in any court of the District, including the District of Columbia Court of General Sessions.

The clause in section 11–1418 of D.C. Code, 1961 ed., "but the provisions of law relating to the qualifications of jurors and exemptions from jury duty shall in all cases apply to women as well as to men" is omitted as unnecessary. Subsec. (a) of this revised section and section 11–2302 herein are couched in general terms, and relate to both sexes, particularly considering subsec. (b) hereof.

For remainder of sections 11–716, 11–716a, 11–755, 11–936 and 11–1418 of D.C. Code, 1961 ed., see tables.

CROSS REFERENCE

Impaneling jury, see § 11–2306.

NOTES TO DECISIONS

I. UNDER PRIOR LAW

Excusing as juror

Where defendant had four peremptory challenges left, he can not claim prejudice because a woman juror was excused at her own request, after jury was accepted but not sworn. *Fall* v. *United States* (1931, 49 F. 2d 506, 60 App. D.C. 124, certiorari denied 51 S. Ct. 657, 283 U.S. 867, 75 L. Ed. 1471)

Government employees

Government employees and women are legally qualified for jury service, and bias is not to be implied to either class *Smith* v. *United States* (1950, 180 F. 2d 775, 86 U.S. App. D.C. 195).

Qualifications here prescribed do not furnish only test of juror's competency. Common-law provision is still in force making a government employee ineligible in a criminal case. *Crawford* v. *United States* (1909, 29 S. Ct. 260, 212 U.S. 183, 53 L. Ed. 465, 15 Ann. Cas. 392).

Persons voting outside district

Voting outside District of Columbia does not ipso facto deprive voter of residency in district; and therefore it was error to exclude from jury list all persons voting outside district. *Young* v. *United States* (1954, 212 F. 2d 236, 94 U.S. App. D.C. 54, certiorari denied 74 S. Ct 870, 347, U.S. 1015, 98 L. Ed. 1137).

Questions not raised in lower court

Objection to validity of this section made for first time on appeal, held too late. *Howard* v. *United States* (1928, 26 F. 2d 551, 58 App. D.C. 179).

II. Under Present Law

Construction

Statute providing that persons are competent to serve as jurors unless convicted of crime punishable by imprisonment for a year or more and not restored to civil rights by pardon or amnesty, unless unable to read and write, or incapable by reason of mental or physical infirmities to render efficient service is not retroactive and does not require all existing lists of jurors to be discarded and new lists prepared. *United States* v. *C. F. Ware* (D.C.D.C. 1964, 237 F. Supp. 849, affirmed 356 F. 2d 787).

Method of selection of juries

Statutory method of selection of federal court juries by commissions contemplates that qualifications fixed by law are minimum requirements and it is not required that every eligible person be placed on jury lists. *United States* v. *C. F. Ware* (D.C.D.C. 1964, 237 F. Supp. 849, affirmed 356 F. 2d 787).

Pardoned criminals

Persons convicted of a crime and thereafter pardoned do not constitute a separate group or class the exclusion from which jury service is prohibited. *United States* v. *C. F. Ware* (D.C.D.C. 1964, 237 F. Supp. 849, affirmed 356 F. 2d 787).

Purpose of jury commission

Purpose of establishing jury commission is to create impartial body to obtain on individual basis persons suitable to serve on juries. *United States* v. *C. F. Ware* (D.C.D.C. 1964, 237 F. Supp. 849, affirmed 356 F. 2d 787).

Questionnaire to prospective jurors

Defendant, challenging validity of conviction on ground that pardoned convicted felons had been systematically excluded from grand jury which had indicted him or from petit jury which had found him guilty, did not demonstrate that jury commissioners, who had revised questionnaire to prospective jurors before defendant's arrest so as to inquire if convicted persons had been pardoned, had deliberately and systematically excluded these persons from jury list. *F. Ware* v. *United States* (1965, 356 F. 2d 787, 123 U.S. App. D.C. 34).

Questionnaire to prospective jurors permitting them to state on separate sheet anything which would affect their abilities to serve was not subject to attack as excluding by prior question as to conviction of crimes persons who had been convicted but thereafter pardoned. *United States* v. *C. F. Ware* (D.C.D.C. 1964, 237 F. Supp. 849, affirmed 356 F. 2d 787).

§ 11–2302. Exemptions

The following persons are exempt from jury service:

(1) members in active service in the armed forces of the United States;

(2) members of the fire and police departments of the United States and of the District of Columbia;

(3) public officers in the executive, legislative, or judicial branch of the Government of the United States or the Government of the District of Columbia who are actively engaged in the performance of official duties;

(4) attorneys-at-law in active practice;

(5) ministers of the gospel and clergymen of every denomination;

(6) physicians and surgeons in active practice;

(7) keepers of charitable institutions created by or under the laws relating to the District of Columbia; and

(8) persons employed on vessels navigating the waters of the District of Columbia.

All other persons, otherwise qualified according to law, whether employed in the service of the Government of the United States or of the District of Columbia, all officers and enlisted men of the National Guard of the District of Columbia, both active and retired; all officers and enlisted men in the reserve components of the armed forces of the United States, all notaries public, all postmasters, and those who are the recipients or beneficiaries of a pension or other gratuity from the Federal or District Government or who have contracts with the United States or the District of Columbia, are qualified to serve as jurors in the District of Columbia and are not exempt from jury service. (Dec. 23, 1963, 77 Stat. 506, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–1420 (Mar. 3, 1901, ch. 854, § 217, 31 Stat. 1224; Feb. 18, 1909, ch. 146, § 73, 35 Stat. 636; Aug. 22, 1935, ch. 605, 49 Stat. 682).

Clauses (1), (2) and (3), of this section, while they make no change in substance, instead of following, identically, the language in the first paragraph of section 11–1420 of D.C. Code, 1961 ed., with respect to the exemptions they cover, are patterned upon section 1862 of Title 28 U.S.C., which already applies to jury service in the United States District Court for the District of Columbia, and perhaps to other courts of the District, considering the sections of D.C. Code, 1961 ed., cited in revision note under section 11–2301 herein. The remaining clauses in this section are taken from the other provisions in section 11–1420 of D.C. Code, 1961 ed.

In clause (7), reference to "hospitals, asylums, almshouses" is omitted as redundant and covered by "charitable institutions"; and, in clause (8), reference to "captains and masters" is omitted as redundant and covered by "persons employed on vessels", etc.

The second (final) paragraph of section 11–1420 of D.C. Code, 1961 ed., contained a proviso, at the end, as follows: "*Provided*, That employees of the Government of the United States or of the District of Columbia in active service who are called upon to sit on juries shall not be paid for such jury service but their salary shall not be diminished during their term of service by virtue of such service, nor shall such period of service be deducted from any leave of absence authorized by law." This proviso is omitted, as apparently it was superseded by act June 29. 1940, ch. 446, 54 Stat. 689 (5 U.S.C. §§ 30n, 30o, 30p [since repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a), and now covered by 5 U.S.C. §§ 5515, 5537, 6322]).

NOTES TO DECISIONS UNDER PRIOR LAW

Bias

Bias of a prospective juror may be actual or implied. *United States* v. *Wood* (1936, 57 S. Ct. 177, 299 U.S. 123, 81 L. Ed. 78, rehearing denied 57 S. Ct. 319, 299 U.S. 624, 81 L. Ed. 459).

Constitutionality

This section as amended in 1935, qualifying government employees and pensioners for jury service in criminal cases does not violate the sixth amendment to the United States Constitution providing for a trial by an "impartial jury." *United States* v. *Wood* (1936, 57 S. Ct. 172, 299 U.S. 123, 81 L. Ed. 78, rehearing denied 57 S. Ct. 319, 299 U.S. 624, 81 L. Ed. 459).

The 1935 amendment did not render this section either arbitrary or capricious so as to render it violative of the due process clause of the fifth amendment. *Id.*

The argument that the Code authorizing jury service by government employees is unconstitutional is without merit. Government employees are entitled to serve on juries. *Wright* v. *United States* (1950, 183 F. 2d 821, 87 U.S. App. D.C. 67).

Duty of the court

The trial court must be zealous to protect the right of an accused, and the court must do so without reference to an accused's political or religious beliefs however such beliefs may be received by a predominate segment of our population. Ideological status is not an appropriate

gauge of the high standard of justice toward which our courts may not be content only to strive. *Dennis* v. *United States* (1950, 70 S. Ct. 519, 339 U.S. 162, 94 L. Ed. 734).

Government employees

Even though at common law a disqualification as to government employees existed, Congress has power to remove it. *United States* v. *Wood* (1936, 57 S. Ct. 177, 299 U.S. 123, 81 L. Ed. 78).

Four jurors, employed in Government service, but eligible by statute for jury service, were not subject to challenge for implied bias. *Great A. & P. Tea Co.* v. *District of Columbia* (1937, 89 F. 2d 502, 67 App. D.C. 30, certiorari denied 57 S. Ct. 794, 301 U.S. 691, 81 L. Ed. 1347).

Government employees are eligible for jury service, and fact that grand jury as finally constituted contained 13 government employees did not render indictment invalid. *Romney* v. *United States* (1948, 167 F. 2d 521, 83 U.S. App. D.C. 150, certiorari denied 68 S. Ct. 1512, 334 U.S. 847, 92 L. Ed. 1771).

In the absence of any basis for challenge, we do not see how a right to challenge a panel as a whole can arise from the mere fact that the jury chosen by proper procedure from a proper elected panel turns out to be composed wholly of government employees. *Frazier* v. *United States* (1948, 69 S. Ct. 201, 335 U.S. 497, 93 L. Ed. 187, rehearing denied 69 S. Ct. 488, 93 L. Ed. 1072).

A holding of implied bias to disqualify jurors because of their relationship with the government is no longer permissible. Employees of the federal government are not challengeable solely by reason of their employment. *Dennis* v. *United States* (1950, 70 S. Ct. 519, 339 U.S. 162, 94 L. Ed. 734).

Government employees and women are legally qualified for jury service and bias is not to be implied to either class. *Smith* v. *United States* (1950, 180 F. 2d 775, 86 U.S. App. D.C. 195).

Impartiality of jurors

Court's action in excusing for cause on voir dire veniremen who answered affirmatively question whether they were opposed to capital punishment, was not error. *E. E Turberville, B. T. Williams and J. H. Simpson* v. *United States* (1962, 303 F. 2d 411, 112 U.S. App. D.C. 400, certiorari denied 82 S. Ct. 1596).

Impartiality of a jury is not a technical conception. It is a state of mind, and for the ascertainment of this mental attitude of appropriate indifference, the Constitution lays down no particular test and procedure is not chained to any ancient and artificial formula. *Dennis* v. *United States* (1950, 70 S. Ct. 519, 339 U.S. 162, 94 L. Ed. 734).

Review

In action by bus passenger against bus company for injuries sustained when rear end of bus was struck by a post office department truck, there was no error in denial of bus company's request for a new jury panel based on presence of 16 government employees among the 24 prospective jurors. *United States* v. *D.C. Transit System, Inc.* (1959, 266 F. 2d 465, 105 U.S. App. D.C. 264, certiorari denied 80 S. Ct. 62, 361 U.S. 819, 4 L. Ed. 2d 62).

The fact that fourteen members of District of Columbia grand jury, investigating world arrangements with relation to production, transportation, refining and distribution of petroleum in possible violation of federal antitrust acts, are employees of United States Government is no valid reason for exercise of discretionary power of Federal District Court for such District to discharge grand jury. *In re Investigation of World Arrangements with Relation to Production, etc., of Petroleum* (D.C.D.C. 1952, 107 F. Supp. 628).

§ 11–2303. Jury commission; appointment, qualifications, oath, tenure, compensation, and removal

(a) The jury commission shall continue in the District of Columbia.

(b) The commission consists of three commissioners appointed by the United States District Court for the District of Columbia.

(c) Any person may be appointed a jury commissioner if he:

(1) is a citizen of the United States;

(2) is an actual resident of the District, and has been domiciled therein for at least three years prior to his appointment;

(3) owns real property in the District;

(4) is not engaged in the practice of law; and

(5) at the time of his appointment, is not a party to any cause pending in a court of the District.

A person otherwise qualified is not disqualified from service as a jury commissioner by reason of sex, but a woman may not be compelled so to serve.

(d) Jury commissioners shall be appointed or reappointed for terms of three years each, staggered so that one commissioner will be appointed each year; and they shall continue in office until the appointment and qualification of their successors.

(e) Each jury commissioner shall receive $10 per day for each day or fraction of a day when he is actually engaged in the performance of his duties, not to exceed five days in a month, nor $250 in a year, which shall be paid, upon the commissioner's certificate, by the United States marshal for the District of Columbia.

(f) Each jury commissioner, when appointed, shall take an oath of office prescribed by the District Court.

(g) The District Court may summarily remove a jury commissioner for:

(1) absence, inability, or failure to perform his duties; or

(2) misfeasance or malfeasance in office—

and may appoint another person for the unexpired term.

(h) If a jury commissioner is ill or otherwise unable to perform the duties of his office, or is absent from the District, the remaining two commissioners may perform the duties of the commission. (Dec. 23, 1963, 77 Stat. 506, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–1401, 11–1418 (Mar. 3, 1901, ch. 854, § 198, 31 Stat. 1222; Apr. 19, 1920, ch. 153, 41 Stat. 558; Feb. 26, 1927, ch. 220, 44 Stat. 1249; Aug. 8, 1946, ch. 881, 60 Stat. 931; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Section consolidates part of section 11–1401 of D.C. Code, 1961 ed., with part of section 11–1418 thereof. All this section is derived from section 11–1401 except the last paragraph of subsec. (c) prohibiting disqualification by reason of sex. For remainder of section 11–1401 and section 11–1418, see sections 11–2304 and 11–2301 herein, respectively.

The provisions in section 11–1401 of D.C. Code, 1961 ed., restricting the period of appointments and removals to the "general term" of the District Court are omitted as obsolete. Under prior law, there were a "general term" and five "special terms" of the District Court and the latter were designated as, respectively, the circuit court, equity court, criminal court, probate court and district court (D.C. Code, 1961 ed., former sections 11–310, 11–311, which were repealed by act May 24, 1949, ch. 139, § 142, 63 Stat. 110). This arrangement was changed upon the enactment of Title 28 U.S.C. into law in 1948, under which the District of Columbia was made a judicial district. Terms of the United States District Court for the District of Columbia are now governed by 28 U.S.C. §§ 137–141, and rules of court. See also, 28 U.S.C. § 452.

The provision of section 11–1401 of D.C. Code, 1961 ed., that the compensation of the jury commissioners should

be paid "out of the appropriation for pay of bailiffs" is omitted as apparently obsolete. A lump-sum appropriation for fees, expenses, and costs of jurors, compensation of jury commissioners, and fees of United States commissioners and other committing magistrates is now made in annual judiciary appropriation acts. See the Judiciary Appropriation Act, 1963 (act Oct. 18, 1962, Pub. L. 87–843, title IV, 76 Stat. 1097 (1099).

Changes are made in phraseology and arrangement.

CROSS REFERENCES

Challenge of jurors in criminal cases, see § 23–108.

Coroner's jury, see § 11–1902.

Juries for proceedings in juvenile court, see § 16–2382.

Juries in cases to condemn land for alleys and minor streets, see §§ 7–213a, 7–315, 7–317.

Juries in cases to condemn land for streets outside Washington and Georgetown, see §§ 7–205, 7–206, 7–209, 7–213a.

Juries generally, see § 11–2301 et seq.

Jury fees, see § 11–2313.

Jury in incompetency proceedings, see §§ 21–544, 21–545.

Jury to determine sanity of person charged with or convicted of crime, see § 24–301.

Jury trial in vagrancy proceedings, see § 22–3301.

Peremptory challenges, see § 23–107.

Special juries in proceedings to condemn land for United States, see § 16–1357.

Struck juries, see § 13–701.

FEDERAL RULES OF CIVIL PROCEDURE

Alternate jurors, see Rule 47, 28 U.S.C. App.

Juries and jury trials, see Rules 38, 39, 47.

NOTES TO DECISIONS UNDER PRIOR LAW

Application

This section applies alike to grand and petit jurors. *United States* v. *Griffith* (1925, 2 F. 2d 925, 55 App. D.C. 123).

Construction of prior law

A grand jury summoned prior to Jan. 1, 1902, could not be impaneled subsequent thereto when the new regulations went into effect and indictment found by such a grand jury is of no effect and void. *Clark* v. *United States* (1902, 19 App. D.C. 295).

If the code is silent as to the manner of procuring talesmen in capital cases when the regular panel is exhausted, one should then look to the common law or the law of Maryland prior to 1801. Sec. 1, D.C. Code 1901 (31 Stat. 1189, ch. 854). *Milano* v. *United States* (1913, 40 App. D.C. 379).

Negroes, exclusion of

The Court could take judicial notice of the presence in the District of Columbia of members of the Negro race possessing the qualifications of jurors, but could not take judicial notice of their exclusion, systematic or otherwise, from grand jury returning indictment without proof or offer of proof to that effect. *McKenzie* v. *United States* (1942, 126 F. 2d 533, 75 U.S. App. D.C. 270).

Fact that 19 members of jury panel selected in prosecution of three Negroes jointly indicted on charge of murder in perpetration of robbery were members of Negro race indicated that Negroes had not been systematically excluded from panel in violation of Fifth Amendment, and defendants could not complain that thereafter Government peremptorily challenged every Negro juror who had been called to sit in the panel. *Hall* v. *United States* (1948, 168 F. 2d 161, 83 U.S. App. D.C. 166, 4 A.L.R. 2d 1193, certiorari denied 68 S. Ct. 1509, 334 U.S. 853, 92 L. Ed. 1775, rehearing denied 69 S. Ct. 9, 335 U.S. 839, 93 L. Ed. 391).

Oath of office

Where grand jury commissioners took oath when they were originally appointed, fact that they did not take the oath again on their reappointment, did not render drawing of grand jury by such commissioners illegal. *Collazo* v. *United States* (1952, 196 F. 2d 573, 90 U.S. App. D.C. 241, certiorari denied 72 S. Ct. 1065, 343 U.S. 968, 96 L. Ed. 1364).

Terms of office

Act of District Court in appointing grand jury commissioners for full three year terms when appointed to fill positions of commissioners who died or resigned in the middle of their terms instead of for balance of predecessors' terms, was not a violation of this section providing that commissioners shall be appointed and shall serve for term of three years and until their successors are appointed and qualified, except that members first appointed shall serve for one, two, and three years respectively, as may be designated by court. *Collazo* v. *United States* (1952, 196 F. 2d 573, 90 U.S. App. D.C. 241, certiorari denied 72 S. Ct. 1065, 343 U.S. 968, 96 L. Ed. 1364).

§ 11–2304. Record of names; jury box; custody

(a) The jury commission shall:

(1) make and preserve a record of the list of names of grand and petit jurors, including the names of commissioners and jurors in condemnation proceedings, for service in all the courts of the District having cognizance of jury trials and condemnation proceedings;

(2) write the names of the jurors, including the names of commissioners and jurors in condemnation proceedings, on separate and similar pieces of paper, which they shall so fold or roll that the names can not be seen, and place them in a jury box to be provided for the purpose;

(3) thereupon seal the jury box, and after thoroughly shaking it, deliver it to the clerk of the United States District Court for the District of Columbia for safekeeping;

(4) have custody and control of the jury box;

(5) keep a sealed record, in alphabetical form, of all names remaining in the jury box from time to time, and deposit the record for safekeeping in the office of the clerk of the District Court when the commission is not in session.

(b) Only the commmission may unseal or open the jury box, or have access to the record required by clause (5) of subsection (a) of this section. (Dec. 23, 1963, 77 Stat. 507, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–1401, 11–1403, 11–1404, 11–1411 (Mar. 3, 1901, ch. 854, §§ 198, 200, 201, 207, 31 Stat. 1222; Apr. 19, 1920, ch. 153, § 1, 41 Stat. 555 (558, 560); Aug. 8, 1946, ch. 881, 60 Stat. 931; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Section consolidates the fourth sentence of section 11–1401 of D.C. Code, 1961 ed., with sections 11–1403 and 11–1404, and the second sentence of section 11–1411. For remainder of sections 11–1401 and 11–1411, see sections 11–2303 and 11–2306 herein.

The provision in section 11–1401 of D.C. Code, 1961 ed., that the jury commission shall draw the names of jurors and condemnation commissioners "from time to time, as hereinafter provided", is omitted as unnecessary, in view of the other provisions in this chapter prescribing the particular duties of the jury commission.

Changes are made in phraseology and arrangement.

§ 11–2305. Selection of jurors

The jury commission shall select the jurors and commissioners specified by section 11–2304, as nearly as may be, from intelligent and upright residents of the District. (Dec. 23, 1963, 77 Stat. 507, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–1402 (Mar. 3, 1901, ch. 854, § 199, 31 Stat. 1222; Apr. 19, 1920, ch. 153, 41 Stat. 558; June 29, 1953, ch. 159, § 408, 67 Stat. 107).

The provision in section 11–1402 of D.C. Code, 1961 ed., that the jurors shall be selected from the different parts of the District is omitted as covered by section 1865 of Title 28, United States Code.

Changes are made in phraseology.

§ 11–2306. Manner of drawing

(a) Grand and Petit Jurors for District Court.—At least ten days before the commencement of each term of the United States District Court for the District of Columbia, at which jury trials are to be had, the jury commission shall:

(1) publicly break the seal of the jury box and draw therefrom, by lot and without previous examination, the names of such number of persons as the court directs to serve as grand and petit jurors in the court; and

(2) forthwith certify to the clerk of the court the names of the persons so drawn as jurors.

If the United States attorney for the District of Columbia certifies in writing to the chief judge of the District Court, or in his absence, to the presiding judge, that the exigencies of the public service require it, the judge may, in his discretion, order an additional grand jury summoned, which shall be drawn at such time as he designates. Unless sooner discharged by order of the chief judge, or, in his absence, the presiding judge, the additional grand jury shall serve until the end of the term in and for which it is drawn.

(b) Number of Names in Jury Box.—At the time of each drawing of jurors by the jury commission, there shall be in the jury box the names of not less than six hundred qualified persons.

(c) Other Courts.—At least ten days before each term of the District of Columbia Court of General Sessions or of the Juvenile Court of the District of Columbia, at which jury trials are to be had, the jury commission shall:

(1) publicly break the seal of the jury box and draw therefrom, by lot and without examination, the names of persons to serve as petit jurors in those courts; and

(2) forthwith certify to the clerk of the District Court the names of the persons so drawn.

In each drawing of jurors under this subsection, the jury commission shall draw, for service in the Court of General Sessions, such number of names as the court directs, and for service in the Juvenile Court, at least twenty-six names.

Upon receipt of the certification referred to in this subsection, the clerk of the District Court shall certify the names to the Court of General Sessions or the Juvenile Court, as the case may be, for service as jurors for the ensuing term.

(d) The distribution, assignment, reassignment, and attendance of petit jurors in courts of the District shall be in accordance with rules prescribed by the respective courts. (Dec. 23, 1963, 77 Stat. 507, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–716, 11–716a, 11–751a, 11–755, 11–936, 11–937, 11–1407, 11–1408, 11–1411 (Mar. 3, 1901, ch. 854, §§ 45, 204, 207, 31 Stat. 1197, 1222; Jan. 31, 1902, ch. 5, § 1, 32 Stat. 2; Mar. 19, 1906, ch. 960, §§ 35, 36, as added June 1, 1938, ch. 309, 52 Stat. 596 (604), Apr. 19, 1920, ch. 153, 41 Stat. 559, 560; May 19, 1922, ch. 194, 42 Stat. 543; Mar. 3, 1925, ch. 443, § 5, 43 Stat. 1120; June 14, 1926, ch. 577, 44 Stat. 741; July 3, 1926, ch. 784, 44 Stat. 892; Aug. 22, 1935, ch. 604, 49 Stat. 681; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 204, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates section 11–1407 and the first sentence of section 11–1411 of D.C. Code, 1961 ed., which related to the manner of drawing jurors and certification of the names drawn with those parts of sections 11–716, 11–716a, 11–936, and 11–937 thereof, which, with respect to the Police Court and the first Municipal Court (prior to the merger of those two courts, under section 11–751 thereof, to form the second Municipal Court), and the Juvenile Court, provided among other things that jurors for those courts should be drawn and selected under and pursuant to the laws concerning the drawing and selection of jurors for the District Court; with that part of section 11–755(a), which with respect to the merger of the Police Court and the first Municipal Court to form the second Municipal Court, provided (before its amendment by act Oct. 23, 1962) that the court thus formed (now the Court of General Sessions) and the judges thereof should have and exercise the same jurisdiction and powers previously vested in the prior courts and the judges thereof; and with section 11–1408, which provided for the drawing and summoning of an additional grand jury upon certification of the United States attorney.

Section 11–751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11–751 a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The first paragraph of subsec. (a), including clauses (1) and (2) thereof, which relates to the drawing of grand and petit jurors for the District Court, is derived from the first paragraph of section 11–1407 of D.C. Code, 1961 ed., which provided that, at least 10 days before the first Tuesday of each month specified in section "18–1405" (11–1405) when jury trials were to be had, the jury commission should "publicly break the seal of the jury box and proceed to draw", etc. Section "18–1405", referred to therein, is a misprint, and should read "11–1405", which was a section relating to the term of service of petit jurors in the District Court, and in connection therewith provided that such terms should begin on the first Tuesday of October, November, December, January, February, March, April, May, and June of each year and should terminate on the Monday preceding the first Tuesday of the next month thereafter, and among other things also provided that the court in "general term" might direct petit jurors to be drawn for monthly service in the court during the months of July, August, and September, "such service to begin and terminate as aforesaid".

Prior to the enactment, in 1948, of Title 28 of the United States Code, it was provided by statute that the District Court in the District of Columbia should have a general term for the transaction of business (but not for hearing any cause), and special terms (the number of which were to be fixed by the Court in general term) known as the circuit court, equity court, criminal court, probate court, and district court. However, in Title 28 of the United States Code, the District of Columbia is made a judicial district, and the time for holding regular terms is fixed by each district court. Each such court may also fix the time for any special terms pursuant to rules approved by the judicial council of the circuit, at which it may transact any business that may be transacted at regular terms. See 28 U.S.C. §§ 88, 132, 137, 141, 451. See, also, Rule 2 of the Local Rules of the U.S. District Court for the District of Columbia, which fix the commencement of terms of each division of the Court as the first Tuesday of January, April, July, and October.

In view of these changes in the status and operation of the District Court in the District of Columbia, subsec.

(a) of this section, instead of fixing definite times for the drawing of jurors for the District Court, provides merely that at least 10 days before each term of the Court at which jury trials are to be had, the jury commission shall draw the names in the manner provided in the subsection. As before, the number of names to be drawn is left to the discretion of the Court.

The second paragraph of subsec. (a) is derived from section 11–1408 of D.C. Code, 1961 ed. In this paragraph, "presiding judge" is substituted for "senior associate judge," to conform with Title 28 U.S.C. § 136.

Subsec. (b) of this revised section is derived from the first sentence of section 11–1411 of D.C. Code, 1961 ed., cited above. Words in that sentence, "which names shall have been placed therein by said jury commission", are omitted as unnecessary and covered by section 11–2304 herein.

The three paragraphs of subsec. (c), including clauses (1) and (2) in the first paragraph, are derived from the third paragraph of section 11–1407 of D.C. Code, 1961 ed., and parts of section 11–716, 11–716a, 11–936, and 11–937 thereof. Section 11–716a, which, as originally enacted, related to the former Police Court, did not specify the number of names to be drawn for that court, and among other things provided merely that the jury for service in the court (which had criminal jurisdiction only) should consist of twelve persons, and that the jurors should be drawn and selected under and in pursuance of the laws concerning the drawing and selection of jurors for the District Court. Under former section 11–609 of D.C. Code, 1961 ed., the Police Court held a term on the first Monday of every month, and might continue each term from day to day as long as it was necessary for the transaction of its business.

Section 11–716, which related to the first Municipal Court prior to its merger in 1942 with the Police Court to form the second Municipal Court, also provided that jurors for that court (which prior to the merger had civil jurisdiction only) should be drawn and selected in the manner provided for drawing and selecting jurors for the District Court, "as fully as if such laws directly referred to said municipal court, excepting that in said municipal court there may be an additional term of service to begin on the first Tuesday in August of each year, and to terminate on the first Tuesday of October". It further provided that, at least 10 days before the term of service of jurors should begin, the clerk of the District Court should certify to the Municipal Court, for service as jurors for the then ensuing term, the names of not more than 36 persons, "drawn as directed by law". Those provisions were affected to some extent by the third paragraph of section 11–1407, as amended, the contents of which are stated below. Section 11–702 thereof provided that the Municipal Court should have the same terms of court "as those now obtaining, or as hereafter modified, in the circuit branches" of the District Court. The terms of the Municipal Court (now Court of General Sessions), since its merger with the Police Court, are, except for certain of its branches, fixed by court rule, permitted by section 11–754(a) of D.C. Code, 1961 ed., which is carried in to section 11–904 herein. Under the provisions thereof, the chief judge is empowered to fix the time of the various sessions of the court; and under the Rules of the Court, Section I, Rule 80, which relates to the civil division, and Rule 3(a) of the Court's rules relating to the criminal division, the terms of court begin on the first Tuesday of January, April, July, and October. Under Section II, Rule 1, of the rules, the Landlord and Tenant Branch, in which jury trials may be had on demand, holds sessions every week day except Saturday. Under Part I, Section III, Rule 1, the Small Claims and Conciliation Branch, in which jury trials may be had on demand, holds sessions every day except Sundays and legal holidays, and also in Wednesday of each week, at 7:30 p.m. This is required by statute. See section 11–816 of D.C. Code, 1961 ed., which is carried into section 11–1303 herein.

Section 11–936, enacted in 1938, provided that jury service in the Juvenile Court should consist of 12 persons, and that the jurors should be drawn and selected under and in pursuance of the laws concerning the drawing and selection of jurors for the District Court; and section 11–937 thereof, also enacted in 1938, provided that, at least 10 days before the term of service of jurors for the Juvenile Court should begin, the jurors should be drawn, and at least 26 names so drawn be certified by the clerk of the District Court to the Juvenile Court for service as jurors for the then ensuing term. Terms of the Juvenile Court are fixed by statute. Section 11–905 of D.C. Code, 1961 ed. (see section 11–1504 herein), provided that the court shall hold a term on the first Monday of every month and continue the term from day to day as long as it might be necessary for the transaction of its business.

The third paragraph of section 11–1407 of D.C. Code, 1961 ed., which was last specifically amended in 1926, provided that, at least 10 days before the first Monday in January, the first Monday in April, the first Monday in July, and the first Monday in October of each year, the jury commission should draw the names of persons to serve as jurors in the Municipal Court (until affected by the merger law of 1942, the section related to the Police Court) and in the Juvenile Court, and also the names of persons to serve as jurors "in any other court in the District of Columbia which hereafter may have cognizance of jury trials", and certify the respective list of jurors to the clerk of the District Court.

In view of the changed status and manner of operation of these courts since the above-mentioned provisions relating to the drawing of jurors were enacted, the three paragraphs of subsec. (c) of this revised section consolidate those provisions and provide merely that at least 10 days before each term of the Court of General Sessions or of the Juvenile Court, at which jury trials are to be had, the jury commission shall draw (in the manner provided) the names of persons to serve as petit jurors in those courts, and certify them to the clerk of the District Court who, in turn, shall certify them to the Court of General Sessions or the Juvenile Court, as the case may be, for service as jurors for the ensuing term. In the case of the Juvenile Court, the drawing of at least 26 names is preserved. In the case of the Court of General Sessions, the number of names to be drawn is left to the discretion of the court. This conforms with present practice in that court.

The second paragraph of section 11–716 of D.C. Code, 1961 ed., relating to additional jurors for the first Municipal Court prior to its merger with the Police Court, provided:

"Whenever the judges of the municipal court shall certify in writing that the business of said court requires the services of additional jurors and shall file a certificate to that effect in the office of the clerk of the District Court of the United States for the District of Columbia, said District Court shall direct the clerk of the said District Court to certify to said municipal court for service as jurors for the then ensuing terms the names of such number of other persons as may be necessary for such service, which names shall be drawn as directed by law."

That paragraph is omitted as unnecessary, since the provisions for drawing jurors before the commencement of any term of the Court of General Sessions, as herein revised, no longer restrict the drawing to a maximum number of names. The number is left to the discretion of the court, as stated above.

Subsec. (d) of this section is from the second paragraph of section 11–1407 of D.C. Code, 1961 ed., and as herein set out relates to all courts of the District having cognizance of jury trials. This, also, is current practice.

Changes are made in phraseology and arrangement.

For remainder of sections 11–716, 11–716a, 11–755, 11–936, 11–937, and 11–1411 of D.C. Code, 1961 ed., see tables.

NOTES TO DECISIONS

I. Under Prior Law

Irregularities

Where pleas in abatement filed four years after indictment which shows that clerk of jury commissions, charged with duty of selecting persons, unlawfully abstracted names of prospective jurors so that other prospective jurors were not drawn, this constitutes a serious irregularity in organization of grand jury but is not sufficient to show that it is an illegal body; such pleas in abatement were also filed too late. *Hyde* v. *United States* (1910, 35 App. D.C. 451, certiorari granted 31 S. Ct. 228, 218 U.S. 681, 54 L. Ed. 1207, affirmed 32 S. Ct. 793, 225 U.S. 347, 56 L. Ed. 1114, Ann. Cas. 1914A, 614).

Panel exhausted

Where the list of jurors given to accused before trial contained the names of all jurors assigned to serve in the criminal division of the court, but after the panel was exhausted other jurors were called from the civil court, the statutory requirement was satisfied, there being no charge that the selected jury was disqualified. *Eagles* v. *United States* (1928, 25 F. 2d 546, 58 App. D.C. 122, certiorari denied 48 S. Ct. 603, 277 U.S. 609, 72 L. Ed. 1013).

Peremptory challenge

The right of peremptory challenge is given to be exercised on the party's sole discretion, and the right is given to secure a fair and impartial jury, not for creating ground to claim partiality which but for its exercise would not exist. *Frazier* v. *United States* (1949, 69 S. Ct. 201, 335 U.S. 497, 93 L. Ed. 187, rehearing denied 69 S. Ct. 488, 336 U.S. 907, 93 L. Ed. 1072).

Publicly break the seal

Act of assistant clerk in breaking seal of jury box and drawing jury when in the presence of the clerk and witnesses is a sufficient compliance with D.C. Code, 1901 Edit., § 204 (31 Stat. 1222, ch. 854). *Fletcher* v. *United States* (1914, 42 App. D.C. 53, certiorari denied 35 S. Ct. 283, 235 U.S. 706, 59 L. Ed. 434). See, also, *Patten* v. *United States* (1914, 42 App. D.C. 239).

Selecting the panel

The well settled rule is that, given a lawfully selected panel, free from any taint of invalid exclusion or procedures in selection and from which all disqualified for cause have been excused, no cause for a complaint arises merely from the fact that the jury finally shows itself not to be representative of the panel or indeed of the community. *Frazier* v. *United States* (1949, 69 S. Ct. 201, 335 U.S. 497, 93 L. Ed. 187, rehearing denied 69 S. Ct. 488, 336 U.S. 907, 93 L. Ed. 1072).

No prejudicial error was shown where counsel stated to the jury, "Now, I have exhausted my ten challenges, and here I have twelve government jurors who are to decide this defendant's case, which is a violation of the Federal statute, being brought in a Federal Court, prosecuted by a Federal prosecutor, and the case is presented by Federal agents." Given ten arbitrary choices among twenty-two prospective jurors, not disqualified for cause, of whom thirteen were government employees and nine privately engaged, he knowingly rejected nine of the latter and accepted without challenge but one of the former. *Id.*

Use of jury in different division

Fact that jury which tried civil case was drawn from criminal division of court, did not invade any right of defendant, particularly where defendant advanced no contention as to disqualification or lack of qualification of any individual juror or that any irregularity attended drawing of panel. *Guaranty Development Co.* v. *Circle Paving Co.* (D.C. Mun. App. 1951, 83 A. 2d 160).

Venire

Issuance of a venire is unnecessary when after the names of the grand jurors had been drawn the clerk certified those names to the marshal, who notified them of their selection and when to appear in court. *Patten* v. *United States* (1914, 42 App. D.C. 239).

II. Under Present Law

Additional grand jury

Grand jury summoned by judge presiding in Criminal Court No. 1 and not by chief judge had been legally summoned and convened under Federal Criminal Rule providing that court shall order grand jury summoned at such times as public interest requires, notwithstanding 1963 revision of District of Columbia Code of Laws providing that additional grand juries may be summoned by chief judge or in his absence the presiding judge, and indictment returned by that grand jury was valid. *United States* v. *D. C. Brown and M. T. Kent* (1964, 36 F.R.D. 204).

Federal Rules of Criminal Procedure which changed prior statute would not be deemed amended by reenactment of the prior code in revised form. *Id.*

Federal Rules of Criminal Procedure prevail over provisions of reenacted District of Columbia Code insofar as they cover the same ground. *Id.*

Codification

In recodification of statute providing that ordinarily only chief judge in District of Columbia could call grand jury, Congress had no intent to legislate as to validity of indictments. *United States* v. *Wallace and Tiernan, Inc., et al.* (1965, 349 F. 2d 222, 121 U.S. App. D.C. 245).

Reenactment of statute limiting authority of district judges in District of Columbia to call grand juries did not repeal Federal Rule of Criminal Procedure providing that any district judge might call grand jury but Federal Rule remained in force and modified new act as it did prior statute. *Id.*

Indictment, validity of

Grand jury, which was treated by everyone concerned as grand jury and which, pursuant to stipulation at trial on charges of obstructing justice, was referred to as active and sitting grand jury had power to indict and thus could have been subject of obstruction, even though acting beyond its term. *Shimon* v. *United States* (1965, 352 F. 2d 449, 122 U.S. App. D.C. 152).

Assuming validity of statute providing that only chief judge of District of Columbia could call special grand jury, indictment returned by grand jury called by district judge not authorized by statute to do so did not deprive defendants of any substantial right or prejudice them in any significant interest and was not without legal effect. *United States* v. *Wallace and Tiernan, Inc., et al.* (1965, 349 F. 2d 222, 121 U.S. App. D.C. 245).

§ 11–2307. Substitution in case of vacancies

When a person whose name is drawn from the jury box is dead or has removed from the District before being selected, or removes therefrom after being selected, or becomes otherwise disqualified or disabled, the jury commission shall destroy the slip containing his name, and shall draw from the box the name of another person to serve in his stead. (Dec. 23, 1963, 77 Stat. 508, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–1409 (Mar. 3, 1901, ch. 854, § 205, 31 Stat. 1222; Apr. 19, 1920, ch. 153, 41 Stat. 560).

Changes are made in phraseology.

§ 11–2308. Disposition of box after drawing; excuse from further service

When the requisite number of jurors has been drawn, the jury commission shall seal the jury box and deliver it to the clerk of the United States District Court for the District of Columbia for safekeeping. Except in the case of persons who are excused from service or for other reasons fail to serve, the names of the persons drawn may not be placed again in the box for one year. (Dec. 23, 1963, 77 Stat. 508, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–1410 (Mar. 3, 1901, ch. 854, § 206, 31 Stat. 1222; Apr. 19, 1920, ch. 153, 41 Stat. 560; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Changes are made in phraseology.

§ 11–2309. Filling vacancies; deficiencies in panel

When persons drawn as grand or petit jurors cannot be found, or prove to be incompetent, or are

excused from service by the court for which their names were drawn, the jury commission, under the order of the court, shall draw from the box the names of other persons to take their places, and if, after the organization of the jury, vacancies occur therein, the commission shall fill them in like manner. (Dec. 23, 1963, 77 Stat. 508, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–716, 11–716b, 11–755, 11–937, 11–1412 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, §§ 46, 208, 31 Stat. 1197, 1223; Mar. 19, 1906, ch. 960, § 36, as added June 1, 1938, ch. 309, 52 Stat. 596 (604); Apr. 19, 1920, ch. 153, 41 Stat. 560; Mar. 3, 1921, ch. 125, § 4, 41 Stat. 1311; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 26, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, § 2, 76 Stat. 1171; July 8, 1963; Pub. L. 88–60, § 2, 77 Stat. 78).

Section consolidates section 11–1412 of D.C. Code, 1961 ed., relating to filling jury vacancies with respect to the District Court, with those parts of sections 11–716, 11–716b, and 11–937 thereof, that respectively made applicable to the former Police Court (prior to the act of Apr. 1, 1942, the provisions of section 11–716b related to that court), the Municipal Court (prior to its merger with the Police Court), and the Juvenile Court the laws concerning the filling of deficiencies in a jury panel in the District Court. With respect to the merger, in 1942, of the Police Court and the first Municipal Court, to form the second Municipal Court, subsec. (a) of section 11–755 of D.C. Code, 1961 ed., also cited above, provided that, prior to its amendment by the act of Oct. 23, 1962, that the court thus formed (now the Court of General Sessions) and the judges thereof should have and exercise the same jurisdiction and powers previously vested in the prior courts and the judges thereof. For remainder of sections 11–716, 11–716b, 11–755, and 11–937, see tables.

The provisions as redrafted in this section, relate to filling deficiencies in jury panels in the three courts, that is the District Court, the Court of General Sessions, and the Juvenile Court.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Panel exhausted

If any persons are incompetent, the clerk under court's direction shall draw from the box the names of others to take their places, and since this is the only method for procuring a jury in a capital case owing to the exception in § 353 (§ 11–1413), which provides that if during the impaneling, the court may in its discretion draw further names when the panel becomes exhausted, such jury is properly drawn consonant with intent of framers of the statute. *Milano* v. *United States* (1913, 40 App. D.C. 379).

§ 11–2310. Talesmen from bystanders

When sufficient petit jurors are not available, the District of Columbia Court of General Sessions and the Juvenile Court have the same powers to require the United States marshal to summon a sufficient number of talesmen from the bystanders as those vested in the District Court by section 1866(a) of Title 28, United States Code. (Dec. 23, 1963, 77 Stat. 508, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–716, 11–716b, 11–751a, 11–755, 11–937 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, § 46, 31 Stat. 1197; Mar. 19, 1906, ch. 960, § 36, as added June 1, 1938, ch. 309, 52 Stat. 596 (604); Mar. 3, 1921, ch. 125, § 4, 41 Stat. 1311; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 26, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Mar. 9, 1962, Pub. L. 87–413; § 3(d), 76 Stat. 22; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

While the text of this section is new, it is authorized by sections 11–716, 11–716b, and 11–937 of D.C. Code, 1961 ed., cited above, which respectively made the provisions of law relating to the filling of deficiencies in jury panels in the District Court applicable to the former Police Court (prior the act of April 1, 1942, the provisions of section 11–716b related to that court) the Municipal Court (prior to its merger with the Police Court), and the Juvenile Court, and which further provided, in connection with such deficiencies, that judges of those courts should possess all the powers of a judge of the District Court and of that court sitting as a "special term" (see revision note under section 11–2306 herein); and by subsec. (a) of section 11–755 of the Code, cited above, which, in connection with the merger, in 1942, of the Police Court and the first Municipal Court, to form the second Municipal Court, provided that the court thus formed (now, the Court of General Sessions) and the judges thereof should have and exercise the same jurisdiction and powers previously vested in the prior courts and the judges thereof. For remainder of sections 11–716, 11–716b, 11–755, and 11–937, see tables.

Section 11–751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The power of the District Court to require the United States marshal to summon a sufficient number of talesmen from the bystanders, whenever sufficient petit jurors are not available, is conferred by subsec. (a) of section 1866 of Title 28, United States Code, to which this section refers.

§ 11–2311. Summoning jurors

When a petit jury has been drawn for the District of Columbia Court of General Sessions or the Juvenile Court, and the names of the jurors have been certified to the clerk of the court by the clerk of the District Court as provided by section 11–2306(c), the clerk of the former court shall issue summonses for the required number of jurors and deliver them to the United States marshal for the District for service. The marshal or his deputies shall serve each summons and make return of service in the manner provided by section 1867 of Title 28, United States Code, with respect to summoning jurors for district courts. (Dec. 23, 1963, 77 Stat. 508, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–716, 11–716a, 11–751a, 11–755, 11–936 (Mar. 3, 1901, ch. 854, § 45, 31 Stat. 1197; Mar. 19, 1906, ch. 960, § 35, as added June 1, 1938, ch. 309, 52 Stat. 596 (604); Mar. 3, 1921, ch. 125, § 4, 41 Stat. 1311; Mar. 3, 1925, ch. 443, § 5, 43 Stat. 1120; Aug. 22, 1935, ch. 604, 49 Stat. 681; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 204, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

While the text of this section is new, it is presumably authorized by sections 11–716, 11–716a, and 11–936 of D.C.

Code, 1961 ed., cited above, or implied by them, in the respective provisions thereof that jurors for service in the former Police Court (prior to the act of Apr. 1, 1942, the provisions of section 11–716a related to that court), the Municipal Court (prior to its merger, in 1942, with the Police Court), and the Juvenile Court should be drawn and selected under and in pursuance of the laws concerning the drawing and selection of jurors for service in the District Court. Prior to its amendment by the act of Oct. 23, 1962, subsec. (a) of section 11–755 of the Code, cited above, provided, in connection with the merger, in 1942, of the Police Court and the first Municipal Court, to form the second Municipal Court, that the court thus formed (now, under section 11–751a of D.C. Code, 1961 ed., the Court of General Sessions) and the judges thereof should have and exercise the same powers previously vested in the prior courts and the judges thereof. For remainder of sections 11–716, 11–716a, 11–755, and 11–936, see tables.

Section 11–751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Section 1867 of Title 28, United States Code, provides for summoning jurors for district courts, including the United States District Court for the District of Columbia, manner of service, and return of service.

§ 11–2312. Length of service

(a) Petit jurors summoned for service in a court of the District shall serve for such period of time and at such sessions of the court as the court directs, but, unless actually engaged as a trial juror in a particular case, may not be required to serve in the District Court or the District of Columbia Court of General Sessions for more than one month in any twelve consecutive months, or to serve in the Juvenile Court for more than three months in any twelve consecutive months.

(b) Jury service in one court does not exempt, exclude, or disqualify a person from jury service in another court, except during his term of actual service.

(c) This section does not affect the provisions of section 1869 of Title 28, United States Code, relating to frequency of petit jury service in district courts, including the United States District Court for the District of Columbia. (Dec. 23, 1963, 77 Stat. 509, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–716, 11–716a, 11–716b, 11–751a, 11–755, 11–936, 11–937, 11–1405 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, §§ 45, 46, 202, 31 Stat. 1197, 1222; Mar. 19, 1906, ch. 960, §§ 35, 36, as added June 1, 1938, ch. 309, 52 Stat. 596 (604); Apr. 19, 1920, ch. 153, 41 Stat. 559; Mar. 3, 1921, ch. 125, § 4, 41 Stat. 1311; Mar. 3, 1925, ch. 443, § 5, 43 Stat. 1120; Aug. 22, 1935, ch. 604, 49 Stat. 681; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates section 11–1405 of D.C. Code, 1961 ed., which related to term of service of petit jurors in the District Court, with those parts of sections 11–716, 11–716a, 11–716b, 11–936, and 11–937 of the Code, which related to terms of service of petit jurors in the former Police Court (prior to the act of Apr. 1, 1942, the provisions of sections 11–716a and 11–716b related to that court), the Municipal Court (prior to its merger with the Police Court), and the Juvenile Court. In connection with the merger, in 1942, of the Police Court and the first Municipal Court, to form the second Municipal Court, subsec. (a) of section 11–755 of the Code, also cited above, provided (prior to its amendment by the act of Oct. 23, 1962) that the court thus formed (now, under section 11–751a of D.C. Code, 1961 ed., the Court of General Sessions) and the judges thereof should have and exercise the same jurisdiction and powers previously vested in the prior courts and the judges thereof.

Section 11–751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Section 11–1405 of D.C. Code, 1961 ed., provided as follows:

"The respective terms of service of petit jurors drawn for service in the United States District Court for the District of Columbia shall begin on the first Tuesday of October, November, December, January, February, March, April, May, and June of each year and shall terminate on the Monday preceding the first Tuesday of the next month thereafter, except when the jury shall be discharged by the court at an earlier day, or when a jury shall be empaneled and it shall happen that no verdict shall have been found before the day appointed by law for the commencement of the next succeeding term, in which case the court shall proceed with the trial by the same jury in every respect as if its term of service had not ended; and all proceedings to final judgment, if such judgment shall be rendered, shall be entered and have legal effect and operation as of the term at which the jury shall have been empaneled: *Provided,* That the United States District Court for the District of Columbia in general term may direct petit jurors to be drawn for monthly service in said court during the months of July, August, and September, such service to begin and terminate as aforesaid.".

The provisions in the Code with respect to terms of service of jurors in other courts were as set out below.

Former Police Court.—Until affected by the merger act of Apr. 1, 1942, the provisions of section 11–716a provided in part that jurors in the Police Court should serve for a like term as the petit jury in the District Court, and provided further that: "When at any term of said court it shall happen that in a pending trial no verdict shall be found, nor the jury otherwise discharged before the next succeeding term of the court, the court shall proceed with the trial by the same jury, as if said term had not commenced: *Provided,* That this section shall not be effective as to any panel or panels of jurors drawn under the existing law"; and, until also affected by the 1942 act, section 11–716b provided in part: "No person shall be eligible for service on a jury in said Police Court for more than one jury term in any period of twelve consecutive months, but no verdict shall be set aside on such grounds unless objection shall be made before the trial begins. Service on such jury shall not render any person exempt, ineligible, or disqualified for service as a juror in said United States District Court for the District of Columbia, except during his term of actual service in said police court."

Municipal Court.—Section 11–716, which related to the Municipal Court prior to its merger, in 1942, with the Police Court, provided in part that the term of service of its jurors should be the same as that prescribed by the laws "now obtaining, or as hereafter modified", with respect to jurors in the District Court, "as fully as if such laws directly referred to said municipal court, excepting that in said municipal court there may be an additional term of service to begin on the first Tuesday in August of each year, and to terminate on the first Tuesday of October".

Juvenile Court.—Section 11–936 provided that the term of service of jurors in the Juvenile Court should be for three successive monthly terms of the court, "and in any case on trial at the expiration of such time until a verdict shall have been rendered or the jury shall be discharged". It also provided that "The said jury terms shall begin on the first Monday in January, the first Monday in April, the first Monday in July, and the first Monday in October of each year, and shall terminate, subject to the foregoing

provisions, on the Saturday prior to the beginning of the following term. When at any term of said court it shall happen that in a pending trial no verdict shall be found, nor the jury otherwise discharged before the next succeeding term of the court, the court shall proceed with the trial by the same jury as if said term had not commenced". Section 11–937 provided in part that "No person shall be eligible for service on a jury in said juvenile court for more than one jury term in any period of twelve consecutive months, but no verdict shall be set aside on such ground unless objection shall be made before the trial begins".

The provisions of the several sections referred to or quoted above are consolidated into this single section, and are simplified. To conform with section 11–2306 herein, the fixing of the time of commencement of jury service is left to the courts, but subsec. (a) places limits on the periods of required service in each of the courts of the District having cognizance of jury trials. See revision note under section 11–2306.

It will be noted that in subsec. (a) it is provided that, unless actually engaged as a trial juror in a particular case, a juror may not be "required" to serve for a longer time than the periods stated, rather than providing, as in sections 11–716b and 11–937 of D.C. Code, 1961 ed., that no person shall be "eligible" for jury service for more than one jury term in any period of twelve consecutive months. Therefore, the provision in each of those sections "but no verdict shall be set aside on such ground [on the ground of such ineligibility] unless objection shall be made before the trial begins" is omitted.

Section 1869 of Title 28, United States Code, referred to in subsec. (c), provides that in any district court (including the United States District Court for the District of Columbia) a petit juror may be challenged on the ground that he has been summoned and attended such court as a petit juror at any term held within 1 year prior to the challenge.

See, also, sections 138–141 of Title 28, United States Code, under which district courts fix their terms of court, both regular and special, by court rules (which in the case of special terms, must be approved by the judicial council of the circuit). Under section 141, any business may be transacted at a special term that might be transacted at a regular term.

For remainder of sections 11–716, 11–716a, 11–716b, 11–755, 11–936, and 11–937 of D.C. Code, 1961 ed., see tables.

§ 11–2313. Fees of jurors; allowances

Jurors serving in the District of Columbia Court of General Sessions and the Juvenile Court shall receive the fees fixed by section 1871 of Title 28, United States Code. (Dec. 23, 1963, 77 Stat. 509, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–716, 11–716a, 11–751a, 11–755, 11–936 (Mar. 3, 1901, ch. 854, § 45, 31 Stat. 1197; Mar. 19, 1906, ch. 960, § 35, as added June 1, 1938, ch. 309, 52 Stat. 596 (604); Mar. 3, 1921, ch. 125, § 4, 41 Stat. 1311; Mar. 3, 1925, ch. 443, § 5, 43 Stat. 1120; Aug. 22, 1935, ch. 604, 49 Stat. 681; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates those provisions of sections 11–716, 11–716a, and 11–936 of D.C. Code, 1961 ed., which related to the compensation of jurors serving in the former Police Court (prior to the act of Apr. 1, 1942, the provisions of section 11–716a related to that court), the Municipal Court, prior to its merger with the Police Court, and the Juvenile Court. In each of those sections, it was provided that jurors should receive the same compensation as that received by jurors in the District Court. Prior to its amendment by the act of Oct. 23, 1962, subsec. (a) of section 11–755 of D.C. Code, 1961 ed., also cited above as one of the sources of this section, provided, in connection with the merger, in 1942, of the Police Court and the first Municipal Court, to form the second Municipal Court, that the court thus formed (now Court of General Sessions) and the judges thereof should have and exercise the same powers and jurisdiction previously vested in the prior courts and the judges thereof.

Section 11–751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The above-mentioned provisions of sections 11–716, 11–716a, and 11–936 of D.C. Code, 1961 ed., as consolidated and rewritten in this section, refer to section 1871 of Title 28, United States Code, which is the section providing for compensation with respect to jurors in district courts (and before United States commissioners), including the United States District Court for the District of Columbia.

The provision of section 11–716 of D.C. Code, 1961 ed., that jurors in the Municipal Court (now Court of General Sessions) should be subject to the same duties and liabilities as those of jurors in the District Court is omitted as unnecessary in view of the consolidation in this chapter of the provisions relating to jurors in the several courts of the District.

For remainder of sections 11–716, 11–716a, 11–755, and 11–936 of D.C. Code, 1961 ed., see tables.

§ 11–2314. Marshal to have charge; deputies

The United States marshal for the District shall have charge of the juries in the District of Columbia Court of General Sessions and the Juvenile Court, and may assign deputies for the purpose. The deputies shall perform such other services as the judges may require. (Dec. 23, 1963, 77 Stat. 509, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–716b, 11–721, 11–751a, 11–755, 11–937 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, § 46, 31 Stat. 1197; Mar. 19, 1906, ch. 960, § 36, as added June 1, 1938, ch. 309, 596 (604); Mar. 3, 1921, ch. 125, § 10, 41 Stat. 1312; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, §§ 1, 2, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87–242, § 1. 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates the fourth sentence of section 11–716b of D.C. Code, 1961 ed., section 11–721 thereof, and the fourth sentence of section 11–937 thereof.

Section 11–751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11–751a, enacted by the act of Oct. 23, 1962, changed the name of the Municipal Court for the District of Columbia (the second Municipal Court, formed from the 1942 court merger referred to below) to the District of Columbia Court of Special Sessions.

The provisions of section 11–716b of D.C. Code, 1961 ed., which related to the Police Court prior to its merger with the Municipal Court, specified by the fourth sentence thereof that "The marshal of said District, by himself or deputy, shall have charge of said jury, and may appoint a deputy for that purpose". Identical provisions were contained in the fourth sentence of section 11–937 of the Code, which related to the Juvenile Court.

Section 11–721 of D.C. Code, 1961 ed., which related to the first Municipal Court prior to its merger with the Police Court to form the second Municipal Court (now, the Court of General Sessions), provided that "The marshal of the United States in and for the District of Columbia shall designate two of his deputies to take charge of the jurors in the municipal court, under the direction of the trial judge, and they shall perform such other services as the judge may require."

Prior to its amendment by the act of Oct. 23, 1962, subsec. (a) of section 11–755 of D.C. Code, 1961 ed., also cited as one of the sources of this section, provided, in connection with the merger, by the act of Apr. 1, 1942, of the Police Court and the first Municipal Court, to form the second Municipal Court, that the court thus

formed and the judges thereof should have and exercise the same powers and jurisdiction theretofore vested in the prior courts and the judges thereof. After the 1962 amendment, subsec. (a) of section 11–755 provided that the District of Columbia Court of General Sessions and the judges thereof should have the same powers and jurisdiction theretofore vested in the Municipal Court for the District of Columbia (the second Municipal Court, formed from the 1942 merger mentioned above) and the judges thereof.

This section, with changes in phraseology, represents a consolidation of the above-quoted provisions of sections 11–716b, 11–721 and 11–937 of D.C. Code, 1961 ed., with the reference to the Court of General Sessions substituted for the references in those sections to the Municipal Court. For remainder of such sections, see tables.

For powers and duties of the marshals with respect to district courts (including the United States District Court for the District of Columbia) and other federal courts, see section 547 et seq. of Title 28, United States Code.

NOTES TO DECISIONS UNDER PRIOR LAW

Governmental function

Execution of writ of restitution issued by Municipal Court for the District of Columbia was strictly a governmental function. *O'Neill Wilson* v. *Bittinger et al.* (1958, 262 F. 2d 714, 104 U.S. App. D.C. 403).

TITLE 12.—RIGHT TO REMEDY

Title 12 was enacted by Pub. L. 88–241

For disposition of former sections of this title, see table following Title 49

Chap. Sec.
1. Abatement and Revivor..... 12–101
3. Limitation of Actions..... 12–301

Chapter 1.—ABATEMENT AND REVIVOR

Sec.
12–101. Survival of rights of action.
12–102. Substitution of parties.
12–103. Judgment and costs in case of new party.
12–104. Marriage of party.

§ 12–101. Survival of rights of action

On the death of a person in whose favor or against whom a right of action has accrued for any cause prior to his death, the right of action survives in favor of or against the legal representative of the deceased. In tort actions for personal injuries, the right of action is limited to damages for physical injury, excluding pain and suffering resulting therefrom. (Dec. 23, 1963, 77 Stat. 509, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 12–101 (Mar. 3, 1901, ch. 854, § 235, 31 Stat. 1227; June 19, 1948, ch. 508, § 1, 62 Stat. 487).

The second sentence of this section is rewritten from a clause of section 12–101 of D.C. Code, 1961 ed., which read "Provided, however, That in tort actions, the said right of action shall be limited to damages for physical injury except for pain and suffering resulting therefrom" in order to clarify the meaning of that provision. See *Soroka et al.* v. *Beloff*, 1950, 93 F. Supp. 642.

Other changes are made in phraseology.

CROSS REFERENCES

Actions for wrongful death, see §§ 16–2701 to 16–2703.

Dissolution of corporations, effect, see §§ 29–716 to 29–718.

Suits by or against executors or administrators, see § 20–1501.

NOTES TO DECISIONS

I. UNDER PRIOR LAW

Actions which always survived

The statute providing that rights of action that had accrued in favor of a deceased person shall survive in favor of legal representative of deceased has effect of extending the quality of survival to those actions which did not survive under the common law, and does not preclude an heir from suing upon a cause of action which had always survived. *Thomas* v. *Doyle et al.* (1951, 187 F. 2d 207, 88 U.S. App. D.C. 95).

Amendment of complaint

Where an act of negligence causing death gives rise simultaneously to two separate and independent claims, one under the Wrongful Death Act and the other under the Survival Act, the District Court erred in denying plaintiff's motion to amend her complaint to include a demand for damages under the Survival Act over and above the initial demand under the Wrongful Death Act on the ground that the remedies were mutually exclusive. *Sornborger, Executrix, etc.* v. *District Dental Laboratory Inc., et ano.* (1959, 266 F. 2d 694, 105 U.S. App. D.C. 290).

In administrator's action to recover for death of decedent and to recover for decedent's injuries sustained and loss of potential earning capacity, administrator would be allowed to amend complaint to increase damages claimed from $46,500 to $71,500. *Mitchell, Sr., Administrator* v. *Gundlach* (D.C.D.C. 1956, 136 F. Supp. 169).

Application of statute

In an action to enforce a contract to convey property, statute is without application where right of action did not accrue prior to the death of defendant's wife but arose after her death. *Bennett* v. *Bennett* (D.C.D.C. 1949, 83 F. Supp. 19).

Change of venue

Under statute providing for change of venue for convenience of parties and witnesses in interest of justice to other district or division where action might have been brought, United States District Court for District of Maryland could not transfer case to District of Columbia by administrator who was resident of District of Columbia, brought under District of Columbia survival and death statutes, against single defendant who was Maryland resident, and who was not amenable to personal service in district and who would not consent to transfer. *Mitchell, Sr., Administrator* v. *Gundlach* (D.C.D.C. 1956, 136 F. Supp. 169).

—— Interest of justice

In District of Columbia's administrator's action against individual defendant who was resident of Maryland, based on injury sustained by decedent allegedly due to defective commodity manufactured and sold by defendant, evidence on interest of justice did not require that venue be transferred from Baltimore, Maryland, to Washington, D.C. *Mitchell, Sr., Administrator* v. *Gundlach* (D.C.D.C. 1956, 136 F. Supp. 169).

Construction

While perhaps proviso excepting damages for pain and suffering is somewhat inartistically drawn, nevertheless it is not ambiguous and the legislative history supports this conclusion. *Phillips* v. *Lust* (D.C.D.C. 1949 82 F. Supp. 63).

Damages

Generally, the law seeks to award compensation, and no more, for personal injuries negligently inflicted, but injured person may usually recover in full from a wrongdoer regardless of anything he may get from a "collateral source" unconnected with the wrongdoer. *Hudson* v. *Lazarus* (1954, 217 F. 2d 344, 95 U.S. App. D.C. 16).

—— Death actions

In personal injury action, value of all reasonably necessary medical and hospital services furnished plaintiff's decedent without charge by naval hospital because he was veteran should have been included in determining amount of damages. *Hudson* v. *Lazarus* (1954, 217 F. 2d 344, 95 U.S. App. D.C. 16).

Where plaintiff in personal injury action died while action was pending and action was revived in name of plaintiff's administratrix, decedent's probable future earnings during his life expectancy, discounted to present worth, should have been included in determining amount of damages for permanent injuries. *Id.*

Where deceased died within an hour after accident and no pecuniary damages were sustained, only nominal damages were recoverable under survival of action statute,

and award of $300 for deceased's estate would be reduced to $1. *Coleman* v. *Moore et al.* (D.C.D.C. 1953, 108 F. Supp. 425).

—— Pain and suffering

Disabilities sustained by one in automobile collision were not "pain and suffering", within exception in this section precluding recovery for pain and suffering of decedent prior to his death. *Hudson* v. *Lazarus* (1954, 217 F. 2d 344, 95 U.S. App. D.C. 16).

Under this section providing that on death of person for or against whom right of action accrued prior to death, right of action shall survive, provided, however, that in tort actions, such right of action shall be limited to damages for physical injury except for pain and suffering, in case either plaintiff or defendant in personal injury action dies, measure of damages becomes limited to damages for physical injury other than pain and suffering. *Soroka et al.* v. *Beloff* (D.C.D.C. 1950, 93 F. Supp. 642).

This section providing that on death of person for or against whom right of action accrued prior to death, right of action shall survive, provided, however, that in tort actions, right of action shall be limited to damages for physical injury except for pain and suffering, would be construed by application of rule of noscitur a sociis to read as though phrased, provided however, that in action for personal injuries, right of action shall be limited to damages for physical injuries, excluding, however, pain and suffering. *Id.*

Disbarment proceedings

Disbarment proceedings against attorney do not survive, although appeal was pending at his death. *Metzger* v. *O'Donoghue* (1923, 288 F. 461, 53 App. D.C. 107).

Emergency Rent Act

An action to recover double amount of rent paid in excess of maximum rent ceiling prescribed by District of Columbia Emergency Rent Act, § 45–1610, was not for an injury to person or to reputation, and therefore survived death of landlord. *Tyler* v. *Dixson* (D.C. Mun. App. 1948, 57 A. 2d 648).

An action to recover double amount of rent paid in excess of maximum rent ceiling prescribed by District of Columbia Emergency Rent Act, § 45–1610, was an action to recover for a "private wrong" and not for a statutory "penalty," and hence, upon death of landlord, action survived as to double the excess rent and was not limited to amount of excess rent actually paid, even if this section did not provide for survival of action for statutory penalty. *Id.*

Fraud

Complaint which alleged that defendant's marriage to plaintiff's mother, now deceased was a fraud upon mother because defendant at time of marriage ceremony, had another living wife not known to plaintiff's mother, and that deed conveying a joint interest in property owned by plaintiff's mother was executed by her to defendant as result of the purported marriage, sufficiently stated cause of action to set aside the deed on the ground of fraud *Thomas* v. *Doyle et al.* (1951, 187 F. 2d 207, 88 U.S. App. D.C. 95).

Incompetents

Statute of limitations does not begin to run against claim of committee for advances of sums to incompetent's estate for its benefit until committee enters final account with court, demands reimbursement for properly recorded advances, or dies with account open and unsettled. *Wm. H. Clarke, executor etc.* v. *V. K. Hickman, Jr., Committee etc.* (1962, 307 F. 2d 660, 113 U.S. App. D.C. 323).

Legal representative

The term "legal representative," as used in this section providing that rights of action that had accrued in favor of a deceased person shall survive in favor of legal representative of the deceased, is not necessarily restricted to personal representatives of deceased but is sufficiently broad to cover all persons who, with respect to deceased's property, stand in deceased's place and represent deceased's interest, whether transferred to them by deceased's act or by operation of law. *Thomas* v. *Doyle et al.* (1951, 187 F. 2d 207, 88 U.S. App. D.C. 95).

Adopted son, as only heir of mother, was her "legal representative" for purpose of suit to set aside deed to realty executed by mother during her lifetime as result of alleged fraud. *Id.*

Lex loci

Ohio federal court action by administratrix for wrongful death of deceased in Washington, D.C., accident was governed by Ohio statute of limitations. *G. E Meyers, Admt'x of the estate etc.* v. *Alvey-Ferguson Co., et al.* (1964, 331 F. 2d 223, U.S. App. Sixth Circuit).

Libel

Right of action for libel does not survive death of alleged libelee. *M. L. Shearer, Admtx etc.* v. *Bakery and Confectionery Workers etc.* (1961, 294 F. 235, 111 U.S. App. D.C. 39).

Object of statute

Object of statute changing rules of survival of action upon death of party, was to expand rather than limit survival. *Soroka et al.* v. *Beloff* (D.C.D.C. 1950, 93 F. Supp. 642).

Partnerships

This section is not applicable to partnerships, since surviving partner is vested with legal title to the assets of the partnership, and after reducing them to possession will be accountable to representative of deceased partner. *Dingman* v. *Henry* (1922, 279 F. 795, 51 App. D.C. 339).

Personal injury

Where United States marshal was liable to plaintiff for forcible entry late at night of plaintiff's dwelling by his deputies in serving a warrant in a civil proceeding, marshal's subsequent death did not preclude plaintiff from recovering for personal injuries inflicted on him by deputies and his wrongful arrest as elements of his damages by virtue of former provisions of this section providing that actions for personal injuries should not survive in favor of or against legal representatives of deceased. *Colpoys* v. *Foreman* (1947, 163 F. 2d 908, 82 U.S. App. D.C. 349).

The cause of action for personal injury did not survive the death of the wrongdoer or the injured person. *Woolen* v. *Lorenz* (1938, 98 F. 2d 261, 68 App. D.C. 389).

Res judicata

Where success of executrix in suit to set aside testator's sale of realty would inure solely to individual benefit of executrix as sole beneficiary under will, ordinary distinction between her representative and her individual capacity was not material for purposes of application of doctrine of res judicata by virtue of prior ejectment suit against executrix individually. *Jamison* v. *Garrett* (1953, 205 F. 2d 15, 92 U.S. App. D.C. 94).

Where former ejectment action brought by grantee of realty against possessor who claimed an equitable title under grantor's oral agreement to devise was settled by stipulation which provided that possessor should receive payment for all rights and should deliver to grantee a quitclaim deed, judgment therein, which incorporated stipulation, was res judicata of subsequent suit by possessor, as executrix of grantor's will of which she was sole beneficiary, to set aside sale of realty to grantee, but in which she failed to assert any ground which was unknown to her at time of ejectment action. *Id.*

Where appellant sued one Rich for injuries and before trial Rich died, appellant moved for substitution of administratrix and Court ordered complaint dismissed, the order of dismissal operated as an adjudication on the action survived. *Soroka et al.* v. *Beloff* (D.C.D.C. 1950, 93 F. Supp. 642).

Slander

Where defendant in slander action died, all rights of action survived. *Soroka et al.* v. *Beloff* (D.C.D.C. 1950, 93 F. Supp. 642).

II. Under Present Law

Exemplary damages

Plaintiff executrix was not entitled to ask punitive or exemplary damages for injuries suffered by decedent who fell upon seat of taxicab under Survival of Rights of Actions Act where there was no showing that actions of company's driver were willful, wanton or malicious. *L. J.*

Sullivan Executrix etc. v. *Yellow Cab Company* (D.C. App. 1965, 212 A. 2d 616).

Harmless error

Refusal to allow introduction of evidence with respect to damages for physical incapacitation or disability of decedent in negligence action under Survival of Rights of Actions Act was harmless error where jury found that defendant taxicab company's driver was not responsible for decedent's fall on seat of cab as she entered vehicle, and plaintiff executrix was thus not entitled to recover even special damages for which adequate proof had been submitted to jury. *L. J. Sullivan Executrix, etc.* v. *Yellow Cab Company* (D.C. App. 1965, 212 A. 2d 616).

Partition action

Suit for partition of joint tenancy is not a "right of action" of type contemplated by District of Columbia survival statute, and statute is inapplicable to suits for partition of joint tenancies. *H. Cobb* v. *P. Gilmer* (1966, 365 F. 2d 931, 124 U.S. App. D.C. 398).

§ 12–102. Substitution of parties

The substitution of parties in civil actions in the United States District Court for the District of Columbia and District of Columbia Court of General Sessions is governed by the Federal Rules of Civil Procedure. (Dec. 23, 1963, 77 Stat. 509, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 12–102 to 12–105, 12–107 to 12–111, 12–114 to 12–116 (Mar. 3, 1901, ch. 854, §§ 236–239, 241, 243–246, 249–251, 31 Stat. 1227–1230; June 30, 1902, ch. 1329, 32 Stat. 528).

Sections 12–102, 12–103, 12–104, 12–105, 12–107 to 12–111, and 12–114 to 12–116 of D.C. Code, 1961 ed., are consolidated and rewritten to provide for the applicability of the Federal Rules of Civil Procedure to the substitution of parties in civil actions in the District Court and the Court of General Sessions. Although those rules would apply in the District Court in the absence of this section, it seems advisable to provide specifically by statute, with respect to the substitution of parties, for applicability of the rules, in view of the question which has arisen as to whether the time limitation in Rule 25(a)(1) for substitution after death of a party is a valid subject for a rule of procedure. Compare *Perry* v. *Allen,* C.A. 5th 1956, 239 F. 2d 107, and *Foltz* v. *Moore-McCormack Lines, Inc.,* D.C.N.Y. 1956, 19 F.R.D. 301.

This section also makes the Federal rules applicable to the Court of General Sessions in such matters, because it is conceivable that the same question could arise with respect to Rule 25 of that court, which is patterned upon Rule 25 of the Federal rules, and which this section supersedes.

Section 12–102 of D.C. Code, 1961 ed., provided for substitution within 1 year of death of the defendant in an action at common law, except that the plaintiff had 6 months after the issuance of letters testamentary or of administration to make an executor or administrator of the deceased a party.

Section 12–103 of D.C. Code, 1961 ed., provided for substitution for a deceased plaintiff by the 4th day of the second term of the court after the term at which the death is suggested.

Section 12–104 of D.C. Code, 1961 ed., provided for a second substitution upon death of the substituted party or his removal as executor or administrator.

Section 12–105 of D.C. Code, 1961 ed., allowed the new party to use, rely upon, and amend the pleadings of his predecessor.

Section 12–107 of D.C. Code, 1961 ed., related to the death of one of several joint defendants.

Sections 12–108 to 12–111 of D.C. Code, 1961 ed., provided for substitution in case of death of parties in suits in equity.

Sections 12–114 to 12–116 of D.C. Code, 1961 ed., related to the measures for securing the appearance of the representative of a deceased party. These are covered by the provision of Rule 25(a)(1) that the motion for substitution shall be served upon persons who are not parties in the manner provided in Rule 4 for the service of a summons and may be served in any judicial district.

NOTES TO DECISIONS UNDER PRIOR LAW

Divorce

The jurisdiction of the court over a divorce decree was not lost by reason of the death of the plaintiff. *Biscayne Trust Co.* v. *American Security & Trust Co.* (1927, 20 F. 2d 267, 57 App. D.C. 251).

Ejectment

Upon the death of a married woman (plaintiff in an ejectment action), her husband, who thereby becomes entitled to the estate by courtesy, could not be substituted in her place, and "a new action and summons on the part of the new plaintiff was essential." *Welch* v. *Lynch* (1907, 30 App. D.C. 122).

Prior law

The failure to bring in the representative of a deceased plaintiff by the tenth day of the second term of the court after the suggestion of death in pursuance of provisions of act of Maryland of 1785, ch. 80 § 1, could not apply to the case where there were two or more parties plaintiff, against the survivor or survivors of whom the action might be continued. *Corbett* v. *Pond* (1897, 10 App. D.C. 17).

Replevin

It is not competent for plaintiff in replevin to discontinue or dismiss his suit or voluntarily withdraw from it, without the consent of defendant, after the property has been delivered to him under the writ, unless he returns the property taken or makes good his loss; hence plaintiff's death does not bar action, and defendant has the right to compel the executor or administrator to become a party to the suit. *Corbett* v. *Pond* (1897, 10 App. D.C. 17).

Within year

The year within which proper representative must be made a party is measured from the death of defendants, and not from the time that plaintiff learned thereof. *Whelan* v. *Welch* (1921, 269 F. 689, 50 App. D.C. 173).

§ 12–103. Judgment and costs in case of new party

In all cases where a new party is made to an action, the costs which accrued before the new party was made to the action shall be taxed as part of the costs in the action, and the judgment rendered shall be the same as if the action had been originally commenced between persons who are parties to the action. A defendant who is made a new party to the action may not be burdened with debts, damages, or costs beyond the amount of property or assets that have descended or come to his hands from the deceased. (Dec. 23, 1963, 77 Stat. 509, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 12–106 (Mar. 3, 1901, ch. 854, § 240, 31 Stat. 1229).

Changes are made in phraseology.

§ 12–104. Marriage of party

An action does not abate by the marriage of a party. On application of a party the court may, on such terms and notice as it deems proper, allow and order any amendment in the pleadings and the making of any new or additional parties that the marriage may render necessary or proper. (Dec. 23, 1963, 77 Stat. 510, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 12–112 (Mar. 3, 1901, ch. 854, § 247, 31 Stat. 1229).

Changes are made in phraseology.

Chapter 3.—LIMITATION OF ACTIONS

Sec.
12–301. Limitation of time for bringing actions.
12–302. Disability of plaintiff.
12–303. Absence or concealment of defendant.
12–304. Actions stayed by court or statute.
12–305. Actions against decedents' estates.
12–306. Directions as to debts in a will.
12–307. Foreign judgments.
12–308. Actions by the United States.
12–309. Actions against District of Columbia for unliquidated damages; time for notice.

§ 12–301. Limitation of time for bringing actions

Except as otherwise specifically provided by law, actions for the following purposes may not be brought after the expiration of the period specified below from the time the right to maintain the action accrues:

(1) for the recovery of lands, tenements, or hereditaments—15 years;

(2) for the recovery of personal property or damages for its unlawful detention—3 years;

(3) for the recovery of damages for an injury to real or personal property—3 years;

(4) for libel, slander, assault, battery, mayhem, wounding, malicious prosecution, false arrest or false imprisonment—1 year;

(5) for a statutory penalty or forfeiture—1 year;

(6) on an executor's or administrator's bond—5 years; on any other bond or single bill, covenant, or other instrument under seal—12 years;

(7) on a simple contract, express or implied—3 years;

(8) for which a limitation is not otherwise specially prescribed—3 years.

This section does not apply to actions for breach or contracts for sale governed by § 28:2–725. (Dec. 23, 1963, 77 Stat. 510, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; Aug. 30, 1964, 78 Stat. 677, Pub. L. 88–509, § 2.)

AMENDMENT

1964—Section 2 of act Aug. 30, 1964, amended section by adding the last paragraph.

REVISION NOTES

Based on D.C. Code, 1961 ed., § 12–201 (Mar. 3, 1901, ch. 854, § 1265, 31 Stat. 1389; June 30, 1902, ch. 1329, 32 Stat. 542).

Section is based on part of section 12–201. For remainder of that section, see tables.

The exception at beginning of this section is inserted to make it clear that a limitation for a particular type of action found in any other provision of law would take precedence over the general limitations of this section.

Changes are made in phraseology and arrangement.

CROSS REFERENCES

Adverse possession, period of limitation, see § 16–3301.

Common carrier's liability for personal injuries or death of employee, commencement of action within 1 year, see § 44–404.

Death actions, see § 16–2702.

Liens—

Fern and Varnum and Eastern Avenue viaduct, absence of limitation on action to recover part of cost, see § 7–515.

Hospital lien on moneys paid for personal injuries, limitation of enforcement action, see § 38–303.

Mechanics' liens, limitation of enforcement action, see § 38–115.

Subways and viaducts to eliminate grade crossings, absence of limitation on actions to recover part of cost, see § 7–1215.

Minimum wage violations, limitation of actions for unpaid wages or liquidated damages, see § 36–446

Quo warranto for damages for usurpation of office, commencement of action within 1 year, see § 16–3511.

Real estate salesmen's or broker's bond, commencement of action within 1 year, see § 45–1405.

Taxation—

Income and franchise tax, limitation period upon assessment and collection, see § 47–1586i.

Income and franchise tax refunds, limitation period, see § 47–1408.

Personal property taxes, limitation on collection, see § 47–1408.

Usury, commencement of action within 1 year, see § 28–3304.

Wills—

Caveat within 1 year of probate decree, see § 18–509.

Testamentary directions respecting operation of statute of limitations to debts, see § 12–306.

NOTES TO DECISIONS

I. UNDER PRIOR LAW

In general

There is an apparent conflict between this section and § 16–1501, as to the extent of the principal limitation of actions and also as to the extent of the saving to parties under disability; but in order to give effect to both sections, the last-mentioned section, being the act of Congress of March 3, 1899, must be read as an exception to this section. *Gwin* v. *Brown* (1903, 21 App. D.C. 295).

Accounts

An action against executrix, if regarded as one upon account, is barred in three years. *Anglo-Columbian Dev. Co.* v. *Stapleton* (1927, 19 F. 2d 683, 57 App. D.C. 209).

When there is a mutual account and the last item is barred by the statute of limitations, it is not proper for one of the parties to remove the bar of the statute by entering later items on his own side of the account. *Ross* v. *Fickling* (1897, 11 App. D.C. 442).

Accrual of cause of action

Where a debt is payable in independent installments, right of action accrues upon each as it matures, and if obligee fails to commence his action until statutory bar has intervened in case of one or more installments, he can only recover those not barred when his action was commenced. *Namerdy* v. *Generalcar* (D.C. App. 1966, 217 A. 2d 109).

Upon the abandonment of a public improvement, cause of action for the return of assessment for benefits accrues at the time of abandonment. *District of Columbia* v. *Thompson* (1931, 50 S. Ct. 172, 281 U.S. 25, 74 L. Ed. 677).

Whatever right of action appellant might have had against the District occurred when the consideration passed (the date of the deed) and action was barred by the twelve-year period of the statute and by the three-year statute also. *Cobb* v. *Shore* (1950, 183 F. 2d 980, 87 U. S. App. D.C. 162).

Since no liability accrued until the date set by the comptroller, and since suit was brought within three years of that date, the action was not barred. *Strasburger* v. *Schram* (1938, 93 F. 2d 246, 68 App. D.C. 87).

In action by assignee to recover a call under direction of the court upon stockholder, the statute of limitations runs from the date of the order of the court. *Glenn* v. *Sothoron* (1894, 4 App. D.C. 125).

—— Account

An action against executrix, if regarded as one upon account, accrued on the date of the last item. *Anglo-Columbian Dev. Co.* v. *Stapleton* (1927, 19 F. 2d 683, 57 App. D.C. 209).

—— Bailments

Where plaintiff delivered to defendant moneys to be held by defendant until plaintiff needed the money transaction was in the nature of a gratuitous bailment for an indefinite time, and therefore statute of limitations did not begin to run until there was a demand by plaintiff for return of the money and a refusal or some other act of defendant inconsistent with the bailment *Irvine* v. *Gradoville* (1955, 221 F. 2d 544, 95 U.S. App. D.C. 263).

A bailor's right of action accrues only after bailee's breach of duty under contract, and hence this section begins to run only from time of refusal to perform the contract, so that this section does not begin to run against bailor until there has been a denial of bailment and conversion of property by bailee, or some other act of bailee inconsistent with bailment *Schupp* v. *Taendler* (1946, 154 F. 2d 849, 81 U.S. App. D.C. 59).

An action to recover personalty which plaintiffs had turned over to defendant, who agreed to keep it until plaintiffs should ask for it, which action was commenced within three years after demand and refusal to deliver the personalty, was not barred by three-year limitation of this section, since limitation does not begin to run against bailor until there has been a denial of bailment and conversion of property by bailee. *Id.*

—— Contracts

Creditor who testified as to part payments received on account from debtor and who introduced ledger sheets showing amounts received in part payment and the corresponding dates satisfied burden of proving payments which tolled the statute of limitations with respect to debt. *H. Dulberger* v. *A. C. Lippe* (D.C. App. 1964, 202 A. 2d 777).

Even if tenant's action against landlord for injuries sustained when stair railing broke were deemed one for breach of contract, cause of action accrued at date of injury, rather than at date railing was repaired in allegedly faulty manner. *Hanna* v. *Fletcher, Trustee* (1956, 231 F. 2d 469, 97 U.S. App. D.C. 310, 58 A.L.R. 2d 847, certiorari denied 76 S. Ct. 1051, 351 U.S. 989, 100 L. Ed. 1501).

In action for breach of implied warranty to do workmanlike job in insulating plaintiff's home against termites in which plaintiff alleged that holes which defendant had drilled in cement floor of basement and had refilled with cement had damaged tile drain beneath floor resulting in dampness in the basement, and that plaintiff did not discover the damage until leakage made dampness visible, statute of limitations began to run from time of breach rather than from time of discovery, in absence of actual or constructive fraud. *Poole* v. *Terminix Co. of Maryland and Washington, Inc.* (1953, 200 F. 2d 746, 91 U.S. App. D.C. 287).

Where contract for building a house contained a provision that the basement shall be dry and remain so for three years, statute of limitations in action for breach of contract began to run when the contractor abandoned his efforts to remedy condition, and not when the basement first became wet. *Zellan* v. *Cole* (1950, 183 F. 2d 139, 87 U.S. App. D.C. 9).

Claims arise when contracts are broken, not when the resulting damage is precisely ascertained and when applee failed to make due payments for materials and subjected appellant to claims of persons who had supplied them, he broke his contract and the suit was barred when filed more than three years later. *Herfurth, Jr., Inc.* v. *Acker* (1949, 177 F. 2d 38, 85 U.S. App. D.C. 158).

This section begins to run on conclusion of services, where it is not required by agreement or statute that an audit must be made before payment shall be due. *Howard University* v. *Cassell* (1942, 126 F. 2d 6, 75 U.S. App. D.C. 75, certiorari denied 62 S. Ct. 1046, 316 U.S. 675, 86 L. Ed. 1749, rehearing denied 62 S. Ct. 1274, 316 U.S. 711, 86 L. Ed. 1777).

Where university architect was appointed agent of university land extension committee, university trustees adopted resolution requiring land acquired by committee to be assigned to university treasurer on January 1, 1933, and requiring committee to submit report, agent submitted report on April 21, 1933, stated that connection with extension project was completed with submission of report, and requested recommendation that agent be compensated adequately, the agent's cause of action against university for services "accrued" on April 21, 1933, and he could have brought his suit then or any time thereafter within the three-year period, since his rights did not await a check by the university auditors. *Id.*

A cause of action against estate of testate for recovery upon a quantum meruit for services performed, or for specific performance of a contract to compensate for services in will, accrued at death of promisor. *Hurdle* v. *American Sec. & Trust Co.* (1929, 32 F. 2d 954, 59 App. D.C. 58).

Where a broker is engaged to procure a loan on real estate, the statute of limitations, as far as it affects his right to recover commissions, runs from the time that he furnishes a person ready, able, and willing to make the loan, and not from the time of the contract of employment. *Daniel* v. *Drury* (1920, 267 F. 751, 50 App. D.C. 107).

Alleged breach of implied warranty to do a workmanlike job in constructing walls for drive-in theater occurred when walls were constructed, and three year statute of limitations began to run at such time and barred suit filed more than three years thereafter for breach of such warranty resulting in collapse of wall. *Foley Corp.* v. *Dove et al.* (D.C. Mun. App. 1954, 101 A. 2d 841).

When debt is payable in independent installments, the action accrues as it matures upon each, and if the obligee fails to act until statute of limitations has barred some of the installments, he can recover only for those not barred when his action was commenced. *Washington Loan & Trust Co.* v. *Darling* (1903, 21 App. D.C. 132).

—— Ejectment

In action to recover land and mesne profits, where complaint was filed more than 15 years after date on which it was alleged that defendants entered and unlawfully ejected the plaintiff, complaint showed on its face that it was barred by this section and hence, summary judgment for defendant was properly granted, since the cause of action "accrued" within meaning of this section at the time of the ejectment. *Reynolds* v. *Needle* (1943, 132 F. 2d 161, 77 U.S. App. D.C. 53).

—— Fraud

The three year limitation period provided by statute applicable in District of Columbia to actions for fraud begins only upon discovery of facts out of which the claim of fraud arises, or from time such facts should reasonably have been ascertained in the exercise of due diligence. *Wiren* v. *Paramount Pictures* (1953, 206 F. 2d 465, 92 U.S. App. D.C. 347, certiorari denied 74 S. Ct. 378, 346 U.S. 938, 98 L. Ed. 426).

In action based on fraud, this section begins to run, not when cause of action accrued, but from discovery of facts out of which the claim arose, or from time when facts should have reasonably been found out in exercise of due diligence *Johnson* v. *Taylor* (D.C.D.C. 1947, 73 F. Supp. 537). See, also, *White* v. *Piano Mart* (D.C. Mun. App. 1954, 110 A. 2d 542).

Three-year limitation period for action grounded on fraud begins when facts from which claim arose are discovered or from time when such facts should have been ascertained by due diligence. *Maddox* v. *Andy's Refrigeration & Motor Service Co. Inc.* (D.C. Mun. App. 1960, 160 A. 2d 799).

For purposes of principle that three-year limitation period for fraud begins from time when facts from which claim arose are discovered or from time when such facts should have been ascertained by due diligence, fraud is not discovered when one's prior knowledge is confirmed as correct by another. *Id.*

Bar of the statute of limitation will not commence to run in equity until the fraud has been discovered, or until such time as by the use of ordinary care it might reasonably have been discovered. *Lewis* v. *Denison* (1894, 2 App. D. C. 387).

This section would not commence to run against an action to recover damages of notary public and surety on his bond caused by alleged wrongful acknowledgment of signature of forged deed by notary, either against notary or surety, until notary's alleged fraud was discovered or might reasonably have been discovered by plaintiff, notwithstanding that it was not charged that surety participated in the alleged fraud. *Id.*

—— Installment contract

Where, under written agreement for payment of a debt made between parties in New York, installments were due on April 17, May 16, June 16, and July 17, 1961, and obligee originally filed suit for payment in New York on July 17,

1961, but obligor could not be found in that jurisdiction and was finally traced to District of Columbia where suit for payment was filed on April 23, 1964, recovery in District of Columbia on first installment was barred by three-year limitation statute. *Namerdy* v. *Generalcar* (D.C. App. 1966, 217 A. 2d 109).

—— **Negotiable instruments**

In action for deficiency on deed of trust notes, this section begins to run from date of their maturity. *Hoffman* v. *Sheahin* (1941, 121 F. 2d 861, 73 App. D.C. 374).

A promissory note payable on demand is a present debt and the statute begins to run from its date. *Feucht* v. *Keller* (1939, 104 F. 2d 250, 70 App. D.C. 117). See, also, *Kenyon* v. *Youngmen* (1930, 40 F. 2d 812, 59 App. D.C. 300).

—— **Sealed instruments**

Where maker agreed to waive defense of limitation in consideration of withholding action on notes until the date when action on notes would otherwise have been barred by limitations but reserved all other defenses, holders of notes had power to maintain action on notes after date agreed on, and this section began to run anew after such date and action not brought within three years thereafter was barred, although agreement was under seal. *Noel* v. *Baskin* (1942, 131 F. 2d 231, 76 U.S. App. D.C. 332).

—— **Torts**

Action against landlord's contractor for injuries sustained by tenant due to contractor's allegedly faulty repair of stairway railing was based on negligence, founded in tort, and cause of action did not accrue, for limitations purposes, until injury resulted. *Hanna* v. *Fletcher, Trustee* (1956, 231 F. 2d 469, 97 U.S. App. D.C. 310, 58 A.L.R. 2d 847, certiorari denied 76 S. Ct. 1051, 351 U.S. 989, 100 L. Ed. 1501).

Action against railroad to recover damages for wrongful discharge of dining car waiter, commenced more than three years after his discharge, was barred by District of Columbia statute of limitations, since any cause of action for such damages accrued when waiter was discharged and his subsequent appeal under grievance procedure of collective bargaining agreement did not toll the running of the statute. *Condol* v. *Baltimore & O. R. Co.* (1952, 199 F. 2d 400, 91 U.S. App. D.C. 255).

Statute of limitations runs against motorist's claim for damages sustained in collision from date of collision. *Blair* v. *Bryant* (D.C. Mun. App. 1953, 96 A. 2d 508).

Action after dismissal

Where personal injury action filed on July 31, 1956, for personal injuries sustained on July 2, 1955, was dismissed for want of prosecution, and notice of appeal was filed but the appeal was abandoned, suit covering the same subject matter filed on January 13, 1959, which was more than three years after happening of the alleged accident, was barred by the statute of limitations. *Harris* v. *Penn Railroad Co., etc.* (1959, 273 F. 2d 524, 106 U.S. App. D.C. 399).

Adverse possession

If testator's right of entry is barred by adverse possession and statute of limitations, a devisee takes nothing under the devise. *Dangerfield* v. *Williams* (1906, 26 App. D.C. 508).

Adverse possession for 15 years confers title, and § 16–1501 has no application in an action of ejectment based upon adverse possession. *McMillan* v. *Fuller* (1914, 41 App. D.C. 384).

Possession for statutory period by cultivation, pasturage, or other means is sufficient under law of District of Columbia to produce title by "adverse possession", provided it is open, notorious, continuous, and adverse. *Faulks* v. *Schrider* (1940, 114 F. 2d 587, 72 App. D.C. 308).

Affirmance on the Merits

Court of Appeals could affirm on merits though judgment of District Court was based on statute of limitations. *D. Lew* v. *J. A. Suffridge et al.* (1966, 370 F. 2d 487, — U.S. App. D.C. —).

Amendment of pleadings

Where issues relating to right of sole existing residuary legatee to recover amount paid by executor in December, 1956, to satisfy note originally executed by decedent but later assumed by corporation owned by defendant were raised for first time in amended complaint filed in November, 1961, they constituted new matter unconnected with original complaint filed in March, 1959, and could not relate back to 1959 complaint so as to prevent bar of limitations. *M. Nunnally* v. *J. F. Miller* (1964, 330 F. 2d 843, 117 U.S. App. D.C. 377).

Where Federal District Court, in dismissing with prejudice Count 3 of complaint containing multiple claims, except as to claim for services rendered subsequent to certain date, indicated that it tentatively agreed with defendant's contention that claims of Count 3 were barred by limitations, but did not make determinations necessary to effect finality, and no responsive pleadings were filed by defendants, and an effort was made by plaintiff to amend Count 3 before entry of final judgment of dismissal, District Court was required to exercise its discretion in determining whether plaintiff was entitled to amend Count 3. *Cassell* v. *Michaux* (1957, 240 F. 2d 406, 99 U.S. App. D.C. 375).

Where streetcar passenger sued streetcar company for her injuries sustained when streetcar collided with automobile, the streetcar company filed third-party complaint against motorist on ground that motorist's negligence was cause of passenger's injuries, passenger never asserted direct claim against motorist either in passenger's complaint or by amendment thereto, jury found that streetcar company was not negligent and that motorist was negligent and third-part action was dismissed, passenger would not be permitted to amend complaint to include motorist as codefendant at a time when passenger's claim against motorist had become barred by three-year statute of limitations, notwithstanding that streetcar company had impleaded the motorist as third-party defendant prior to time that the statute had run on the passenger's claim against motorist. *Holmes* v. *Capital Transit Co., et ano.* (D.C. Mun. App. 1959, 148 A 2d 788).

Where the cause of action remains the same, an amendment changing it in a different form is not open to the defense of the statute of limitations. *Beasley* v. *Baltimore & P. R.R. Co.* (1906, 27 App. D.C. 595, 6 L.R.A., N.S., 1048). See, also, *District of Columbia* v. *Frazer* (1903, 21 App. D.C. 154).

An amendment made for the purpose of curing a defective cause of action will relate back to time of filing the original petition; and if made after the time limit of the statute, will not be barred itself or cause original petition, which was filed in time, to be barred. *Goodacre* v. *Shulmier* (1935, 73 F. 2d 519, 94 App. D.C. 10).

Assault

Limitation of three years applies to a suit against the Director General of Railroads for damages for assault by special officer of railroad acting within the scope of his employment. *Mellon* v. *Seymoure* (1926, 12 F. 2d 836, 56 App. D.C. 301).

Assignments

Where period of limitations prescribed by applicable District of Columbia law had run prior to assignment of obligation to United States, United States was barred from maintaining action on claim. *United States* v. *Taylor* (D.C.D.C. 1956, 144 F. Supp. 15).

Commencement of action

The filing of complaint "commenced" action within rule 3 of Federal Rules of Civil Procedure, U.S. Code, title 28, Appendix, for purpose of determining whether action to recover land was barred by 15-year limitation of this section. *Reynolds* v. *Needle* (1943, 132 F. 2d 161, 77 U.S. App. D.C. 53).

Computation of period

In computing limitation for action for malicious prosecution, the day on which cause of action accrued should be excluded. *Freeman* v. *Pew* (1932, 59 F. 2d 1037, 61 App. D.C. 223).

The time between the death of the deceased and the granting of letters testamentary is not to be counted in determining whether or not the statute of limitations has run. *National Sav. & Trust Co.* v. *Ryan* (1920, 262 F. 613, 49 App. D.C. 159).

This jurisdiction prefers the rule followed in New York and Pennsylvania, which excludes the day on which the cause of action accrues, as a point of time after which the limitation ensues. *Ambrose* v. *Brown* (1914, 42 App. D.C. 25).

Conflict of laws

District of Columbia statute of limitations governed actions for enforcement in District of Columbia, of claim for $6,000 as plaintiff's unsatisfied equity arising out of deed even though defendant's obligation, if any, had been created in New Jersey. *Filson* v. *Fountain* (1952, 197 F. 2d 383, 90 U.S. App. D.C. 273).

Where a Florida contract was sued upon in the District, the court applied the D.C. Code as the law of the forum. *Wells* v. *Alropra Corp.* (1936, 82 F. 2d 887, 65 App. D.C. 281).

If by the law of the state which has created a right of action, it is made a condition of the right that it shall expire after a certain period of limitation has elapsed, no action begun after the period has elapsed can be maintained in any jurisdiction. *Moran* v. *Harrison* (1937, 91 F. 2d 310, 67 App. D.C. 237, 113 A.L.R. 505, certiorari denied 58 S. Ct. 142, 302 U.S. 740, 82 L. Ed. 572).

A limitation on the time of suit is procedural and is governed by the law of the forum. *Kaplan* v. *Manhattan Life Ins. Co.* (1940, 109 F. 2d 463, 71 App. D.C. 250).

Suit on a policy of life insurance brought within the six-year statute of limitations of New York, where the policy was to be paid, was barred by the three-year statute of the District of Columbia where the suit was brought. *Id.*

Where plaintiffs ceased to be employees of railroad and commenced action in United States District Court for District of Columbia against railway brotherhoods for breach of fiduciary duty to fairly represent plaintiffs in course of collective bargaining and the action in interest of justice and for convenience of parties and witnesses was transferred to Kentucky federal district court for trial, the applicable statute of limitations was the District of Columbia three-year statute and not the Kentucky five-year statute. *Hargrove et al.* v. *Louisville & Nashville Railroad Co., Brotherhood, etc.* (D.C.D.C. 1957, 153 F. Supp. 681).

Where there is no applicable federal statute of limitations, the law of the state where the district court sits determines the period within which the suit may be brought. *United States* v. *Taylor* (D.C.D.C. 1956, 144 F. Supp. 15).

Under Pennsylvania law, Pennsylvania courts are required to follow District of Columbia statute of limitations, if cause arose in District of Columbia, in view of Pennsylvania statute providing that when cause has been fully barred by laws of state in which it arose, such bar is complete defense to action in Pennsylvania. *Id.*

Where decedent loaned defendant $10,000 by giving him check for that amount on District of Columbia bank, in certain restaurant in District of Columbia, cause of action for recovery of indebtedness arose in District of Columbia, and three-year statute of limitations of District of Columbia was applicable in Pennsylvania Federal Court action, within Pennsylvania statute making District of Columbia limitation statute applicable if cause arose in district. *Id.*

The three-year District of Columbia limitation, and not the one-year Virginia limitation, applied to action in District of Columbia to recover for a common-law tort which occurred in Virginia, since Virginia statute of limitations does not destroy the cause of action, but merely bars bringing of the action after the statute has run. *Bell et aux.* v. *Kelly Motor Lines, Inc.* (D.C.D.C. 1951, 95 F. Supp. 682).

Statutory period of limitation applicable to simple contract action in District of Columbia, applies to actions brought upon a contract which has the effect of a specialty in the place where made. *Willard* v. *Wood* (1893, 1 App. D.C. 44, affirmed 17 S. Ct. 176, 164 U.S. 502, 41 L. Ed. 531).

Conspiracy action

Complaint, in action for conspiracy, not alleging any other tortious acts, except of certain slanderous statements allegedly made by defendants, but which were both privileged and barred by statute of limitations, did not state cause of action. *Burns* v. *Spiller* (1945, 4 F.R.D. 299, affirmed 161 F. 2d 377, 82 U.S. App. D.C. 91, certiorari denied 68 S. Ct. 101, 332 U.S. 792, 92 L. Ed. 373).

Constructive notice

August 16, 1946, contract for sale of land and October 7, 1946, deed identifying the property by lot and square number incorporated means by which purchaser might have ascertained true boundaries and dimensions, and purchaser had constructive notice of public records containing precise metes and bounds of property at a time more than three years prior to his October 10, 1949, filing of action against vendor for fraud and misrepresentation as to location of rear boundary, and hence purchaser was precluded by statute of limitations from maintaining action. *Robinson* v. *Orem* (1952, 198 F. 2d 86, 91 U.S. App. D.C. 96).

Contracts

Evidence was sufficient to sustain position that breach of retainer contract, whereby attorney had promised to return retainer if unsuccessful in his efforts to obtain release of his clients' son, occurred within three years prior to institution of suit for return of part of retainer. *N. S. Bowles, Jr.* v. *S. G. Dobson, Sr., and E. I. Dobson* (D.C. App. 1965, 206 A. 2d 271).

When plaintiff claimed she rendered services under an express contract for a specified monthly compensation but more than three years elapsed between date payment became due and bringing of the action, the claim is barred by § 1265 of 1901 Code (this section), which provides a three-year period on express or implied contracts. *McCurley* v. *National Sav. & Trust Co.* (1919, 258 F. 154, 49 App. D.C. 10). See, also, *Boogher* v. *Roach* (1905, 25 App. D.C. 324).

Limitation of three years applies to a suit against estate of testate for recovery upon a quantum meruit for services performed, or for specific performance of contract to compensate for services in will. *Hurdle* v. *American Sec. & Trust Co.* (1929, 32 F. 2d 954, 59 App. D.C. 58).

Section was applicable to action on contract brought in United States Court for China. *Chalaire* v. *Franklin* (C.C.A. 9, 1936, 81 F. 2d 105, certiorari denied 56 S. Ct. 942, 298 U.S. 678, 80 L. Ed 1399).

Where university architect was appointed agent of university land extension committee, even if activities of the agent after completion of his connection with the extension project was an authorized service to university so as to entitle the agent to compensation therefor, such additional activities were under a new appointment and the running of this section on the services rendered in connection with the extension project would not be affected; there being a lack of continuity between the two employments. *Howard University* v. *Cassell* (1942, 126 F. 2d 6, 75 U.S. App. D.C. 75, certiorari denied 62 S. Ct. 1046, 316 U.S. 675, 86 L. Ed. 1749, rehearing denied 62 S. Ct. 1274, 316 U.S. 711, 86 L. Ed. 1777).

Action for declaration that Indian had right to contract with plaintiff in respect to real property which had been allotted and inherited by the Indian was barred by statute of limitations and by laches where not brought for more than 20 years. *Spriggs* v. *McKay, Secretary of the Interior et al.* (D.C.D.C. 1954, 119 F. Supp. 232, affirmed 228 F. 2d 31, 97 U.S. App. D.C. 60).

One who knew that his contract for repair of his property was breached because he had knowledge that his property remained in state of disrepair could not wait more than the three-year limitation period to assert his remedy. *Maddox* v. *Andy's Refrigeration & Motor Service Co., Inc.* (D.C. Mun. App. 1960, 160 A. 2d 799).

The limitation on actions based on the breach of a simple contract is three years. *Guthrie* v. *Greenfield* (D.C. Mun. App. 1954, 109 A. 2d 783).

Where attorney was employed to prosecute client's claim for damages because of alleged illegal confinement in hospital and case was tried in April, 1939, action instituted by client in April, 1944, against attorney for alleged breach of contract and breach of professional duty was barred by three-year statute of limitations. *Case* v. *Ricketts* (D.C. Mun. App. 1945, 42 A. 2d 304).

—— Breach of warranty

In action for breach of implied warranty to do workmanlike job in insulating plaintiff's home against termites in which plaintiff alleged that holes which defendant had drilled in cement floor of basement and had

refilled with cement and damaged tile drain beneath floor resulting in dampness in the basement, and that plaintiff did not discover the damage until leakage made dampness visible, statute of limitations began to run from time of breach rather than from time of discovery, in absence of actual or constructive fraud. *Poole* v. *Terminix Co. of Maryland & Washington, Inc.* (1953, 200 F. 2d 746, 91 U.S. App. D.C. 287).

In action by purchaser of a house for breach of warranty, contained in sales contract, that basement was guaranteed dry for one year, purchaser was entitled to be placed in same position as if there had not been any breach. *Guthrie* v. *Greenfield* (D.C. Mun. App. 1954, 109 A. 2d 783).

Cause of action based on breach of implied warranty to do work in workmanlike manner would be barred by statute of limitations where breach occurred more than three years before commencement of action. *Poole* v. *Terminix Co. of Maryland & Washington* (D.C. Mun. App. 1952, 84 A. 2d 699).

—— Repudiation

Where payee of two-year note paid premiums on life policies which makers had assigned as security, failure of makers ever to reimburse payee for such payments constituted, after time, repudiation of any agreement which may previously have existed to reimburse payee for payment of premiums. *Munter, Sole Liquidation Trustee* v. *Lankford* (1956, 232 F. 2d 373, 98 U.S. App. D.C. 116).

Where, incident to execution of two-year note in 1935, makers assigned life policy to payee as security and, upon expiration of policy in 1939, a maker assigned new policy, cause of action of payee upon repudiation of agreement to reimburse payee for payment of policy premiums was barred by statute of limitations, in case of action begun in 1953, especially in view of absence of waiver of statute of limitations in 1939 policy assignment. *Id.*

—— Conditional sales

Though if conditional sales contract was under seal it was subject to twelve-year period of limitations, a three-year limitation was applicable where seller failed to prove that buyer signed contract. *Stern Equipment Co., Inc.* v. *Pogue* (D.C. Mun. App. 1955, 117 A. 2d 447).

Contribution

Statute of limitations begins to run against right to contribution only from time of disproportionate discharge of common obligation by one of the common obligors. *Bair* v. *Bryant* (D.C. Mun. App. 1953, 96 A. 2d 508).

Corporations

Where it was not clear that there was unreasonable delay on part of the United States in bringing suit to rescind transfers of shares of stock by trustees of charitable corporation organized in District of Columbia, suit was not barred by laches or by three-year statute of limitations. *Mount Vernon Mortgage Corporation* v. *United States* (1956, 236 F. 2d 724, 98 U.S. App. D.C. 429, certiorari denied 77 S. Ct. 386, 352 U.S. 988, 1 L. Ed. 2d 367).

Defense—Statute of limitations

Statute of limitations is available as defense and not as a cause of action, and a suit to cancel lien of deed of trust can not be upon the ground that the power of sale under the trust deed was barred by statute. *Talbott* v. *Hill* (1920, 261 F. 244, 49 App. D.C. 96).

Statute of limitations is "one of repose, and not one of payment or cancellation. It is a bar to the remedy only and does not extinguish or even impair the obligation of the debtor." *Hall* v. *District of Columbia* (1918, 47 App. D.C. 552). See, also, *Talbott* v. *Hill* (1920, 261 F. 244, 49 D.C. 96); *Miles* v. *McGrath* (D.C. Md. 1933, 4 F. Supp. 603).

Disability

Action, filed on December 3, 1952, for assault and battery allegedly committed on May 18, 1951, was barred by one year statute of limitations, irrespective of whether plaintiff was non compos mentis for period of over six months, from May 30, 1951, to December 20, 1951, and irrespective of whether such disability was caused by the assault and battery, where plaintiff claimed only that such disability arose twelve days after the injury, and not that it existed at time cause of action accrued, and where, in any event, plaintiff had almost five months within which to bring suit after his disability was removed. *Taylor* v. *Houston et al.* (1954, 211 F. 2d 427 93 U.S. App. D.C. 391, 41 A.L.R. 2d 724).

Equitable actions

When in equity an attempt was made to avoid a devise as invalid on its face, the statute of limitations will be applied by analogy, and relief will be denied where there has been delay of more than statutory period. *Columbia University* v. *Taylor* (1905, 25 App. D.C. 124).

In cases of concurrent jurisdiction courts of equity will hold themselves bound by the statute of limitations that would govern an action at law upon the same demand; and where the subject-matter of the demand is one ordinarily cognizable at law, but, by reason of special conditions, the remedy for its enforcement in the particular case is obtainable solely in equity, the bar of limitation will be applied, either in obedience to the statute, or by analogy in the same way as at law. *Washington Loan & Trust Co.* v. *Darling* (1903, 21 App. D.C. 132).

—— Bond and mortgage or deed of trust

Enforcement in equity of mortgages and deeds of trust of real estate is governed by twenty-year period of statute of limitations. *Sis* v. *Boarman* (1897, 11 App. D.C. 116).

On petition of holder of one note to participate in proceeds of sale of mortgaged property by foreclosure at the instance of the holder of the other note, the bar of limitations is not that applicable to an action on the note, but that which applies to the remedy for the enforcement of an equitable right under the mortgage; and the same period that would bar an ejectment is required. *Cropley* v. *Eyster* (1896, 9 App. D.C. 373).

Estates, claims against

The exhibition of an authenticated claim prior to the appointment of the executor was a sufficient exhibition so that, upon qualification, executor could make an effective rejection of it, and where the claimant did not bring suit thereon within three months, he was barred by the short statute of limitations. *Lewis* v. *Smith, Executor, etc.* (D.C. Mun. App. 1959, 151 A. 2d 188).

Estoppel

Where university architect was appointed agent of university land extension committee, but university never acknowledged the correctness of the architect's claim for additional compensation as agent, or that it owed anything or that it would pay anything, there were negotiations looking toward an amicable settlement, but there was strong opposition in the board of trustees to the payment of the claim, and the only assurances were to the effect that the architect would be fairly dealt with, the doctrine of equitable "estoppel" did not preclude the university from asserting this section. *Howard University* v. *Cassell* (1942, 126 F. 2d 6, 75 U.S. App. D.C. 75, certriorari denied 62 S. Ct. 1046, 316 U.S. 675, 86 L. Ed. 1749, rehearing denied 62 S. Ct. 1274, 316 U.S. 711, 86 L. Ed. 1777).

If, by agreement to arbitrate, plaintiffs by action of defendant were induced not to bring their suit, defendant would be "estopped" from pleading the bar of this section, but if, after the agreement was made to submit to arbitration, plaintiffs took no steps toward having the matter submitted and did not insist on defendant's submission of the matter, the agreement could not be held to stop the running of this section. *Id.*

Where university architect was appointed agent of university land extension committee, and practically from the time of submission of the architect's claim for additional compensation for services rendered as agent to time when suit was brought, attitude of board of trustees was one of question, if not of active opposition to payment, and, after it became evident that the claim would probably not be recognized, the architect had ample time to bring suit before bar of this section fell, but he even delayed in presenting his claim to the university, the conduct of the university did not work an "estoppel", since it did not lull the architect into inaction until after the limitation period. *Id.*

Oral statements of maker which at most represented bare verbal promises to pay the debt at a vague future time with an implied request for forbearance by the payee

until maker could secure more funds did not estop maker from claiming the three year statute of limitations. *Grass* v. *Eiker, trading as T. E. Eiker & Co.* (D.C. Mun. App. 1957, 135 A. 2d. 153).

Where employer repeatedly assured employee that overtime claims had not been settled and promised to advise employee of action taken by Wage and Hour Division and by Maritime Commission, but failed to do so and employee brought action for overtime, etc., about four months after he learned that claims had been denied, trial judge properly held that employer was estopped to plead limitations. *McCloskey & Co.* v. *Dickinson* (D.C. Mun. App. 1948, 56 A. 2d 442).

"A defendant can not avail himself of the bar of the statute of limitations, if it appears that he has done anything that would tend to lull the plaintiff into inaction, and thereby permit the limitation prescribed by the statute to run against him." *Hornblower* v. *George Washington University* (1908, 31 App. D.C. 64, 14 Ann. Cas. 696).

Executor's bond

Where there was no suggestion of misconduct of executrix in record, statute permitting suit on executor's bond within five years did not apply to claim rejected by executrix. *McNeill and Fuller* v. *Selby* (D.C. Mun. App. 1955, 116 A. 2d 160).

Foreclosure or redemption of mortgage

In absence of specific statute of limitations on foreclosure or redemption of mortgage, 15-year statute of limitations for recovery of land is applied. *J. F. Davis and A. A. Jackson etc.* v. *M. X. Stone* (D.C.D.C. 1964, 236 F. Supp. 553).

Foreign judgments

"The section (this section) is lengthy and prescribes periods of limitation for many actions, civil and criminal, specially enumerated therein. The clause aforesaid (not otherwise provided for) was apparently intended to remedy a possible omission of some action that might have been properly embraced in that enumeration. Foreign judgments were provided for specially in section 1267 (§ 12–203)," and therefore, are not embraced in this section. *McKay* v. *Bradley* (1906, 26 App. D.C. 449).

Fraud

Allegation in a complaint for damages predicated on fraud that there was discovery of the alleged fraud contemporaneously with filing of the complaint precluded dismissal of complaint based on bar of statute of limitations, at least for purposes of a motion to dismiss for failure to state a cause of action. *Page* v. *Comert et al.* (1957, 243 F. 2d 245, 100 U.S. App. D.C. 139).

Complaint filed September 28, 1948, for fraud arising out of bribery of federal judge in May 1932, discovered according to complaint in 1937, was subject to three year statute of limitations applicable in District of Columbia, and, in absence of allegations enlarging the three year period, the action could not be maintained. *Wiren* v. *Paramount Pictures* (1953, 206 F. 2d 465, 92 U.S. App. D.C. 347, certiorari denied 75 S. Ct. 378, 346, U.S. 938, 98 L. Ed. 426).

Action for fraud in inducing plaintiff to purchase realty, barred in three years. *District-Florida Corp.* v. *Penny* (1933, 66 F. 2d 794, 62 App. D.C. 268).

Partners asking for an accounting of a partnership dissolution agreement, on the ground of fraud, four years later, are barred by laches. *Singer* v. *Friedman* (1936, 85 F. 2d 690, 66 App. D.C. 191, certiorari denied 57 S. Ct. 116, 299 U.S. 590, 81 L. Ed. 435).

A complaint for mismanagement and depletion of capital by receiver of building and loan association against former directors who resigned more than three years before commencement of action was barred by limitations, where complaint contained no allegation of concealment and admitted that directors neither obtained any advantage from wrongdoing of incorporators nor intentionally did any affirmative act to cause loss of funds paid in by certificate holders. *Peyser* v. *Owen* (1940, 116 F. 2d 298, 73 App. D.C. 64).

Full faith and credit

Application of Ohio statute of limitations to administratrix' action for wrongful death of deceased in Washington, D.C., accident did not violate Full Faith and Credit Clause of federal Constitution. *G. E. Meyers, Admt'x of the estate etc.* v. *Alvey-Ferguson Co., et al.* (1964, 331 F. 2d 223, U.S. App. Sixth Ct.).

Historical

The Maryland statute of limitations of 1715 "was repealed or superseded by the District Code." *McKay* v. *Bradley* (1906, 26 App. D.C. 449).

By the enactment of this section, §§ 1 and 2 of the statute of James (21 James I, ch. 16), were repealed, and new periods of limitations substituted therefor. *Gwin* v. *Brown* (1903, 21 App. D.C. 295).

Husband and wife

Statute of limitations is not generally applicable to actions between husband and wife prior to divorce although the rule is not applicable under all circumstances. *R. J. Bushboom* v. *S. B. Bushboom* (D.C. Mun. App. 1962, 187 A. 2d 122).

Under evidence that husband and wife were living together intermittently and attempting to effect a reconciliation of their differences, statute of limitations did not commence to run against husband's claim that wife had wrongfully appropriated funds from a bank account at least until the final separation of the parties. *Id.*

Insurance agent

Action against insurance agent for negligence in not supplying insured with protection against liability for injuries sustained by farm employees when agent procured farmers' comprehensive personal liability policy was barred by three-year statute of limitations, where suit was not filed until four years after insured learned from insurer that it denied coverage. *P. V. Finegan* v. *Lumbermens Mutual Casualty Co., et al.* (1963, 329 F. 2d 231, 117 U.S. App. D.C. 276).

Judgment

Part payment of judgment debt within statutory period of limitations will not avoid the operation of the statute when it is pleaded to a scire facias to revive the judgment, or in action of debt on the judgment. *Mann* v. *Cooper* (1894, 2 App. D.C. 226).

—— On pleadings

Where action on notes pleaded agreement by maker waiving defense of limitations in consideration of withholding action on notes until date when action on notes would otherwise have been barred by limitations and action was not brought within three years after date agreed upon, and maker answered setting up defense that action had not been brought within three years after date agreed upon, the matter was properly disposed of on motion for judgment on the pleadings. *Noel* v. *Baskin* (1942, 131 F. 2d 231, 76 U.S. App. D.C. 332).

Letters of administration

When parent agrees to compensate in his will for daughter's services, but no provision is made, she has an action against the administrator and the claim will not be barred by limitations until after the lapse of statutory period after administration is granted. *Tuohy* v. *Trail* (1901, 19 App. D.C. 79).

Libel

The "single publication rule" is applicable in a libel action in the District of Columbia, and therefore libel action in the District of Columbia was barred by one-year statute of limitations governing actions for libel in the District of Columbia where book containing the alleged libelous matter was published in November, 1955, and action was not brought until June 25, 1959, though there were subsequent individual sales of the book within the one-year period prior to the filing of the action. *Ogden* v. *Ass'n of the U.S. Army* (D.C.D.C. 1959, 177 F. Supp. 498).

—— Counterclaim

In Congressman's action against publishers of weekly newsletter for falsely reporting that Congressman had sponsored a "Communist Front", counterclaim, alleging that in letter dated August 29, 1957, "and on numerous occasions subsequent thereto", plaintiff had caused publication and republication of allegedly defamatory statement that defendant had been employed by one organization to dafame another, was not a recoupment", since

it was based on a different transaction, and was not a "setoff" since claims were unliquidated, and "thus even if applicable District of Columbia law permitted set-off to be used defensively despite limitations statute, untimely counterclaim could not be permitted. *McGovern* v. *Martz and Washington News Syndicate* (D.C.D.C. 1960, 182 F. Supp. 343).

In Congressman's action against publishers of weekly newsletter for falsely reporting that Congressman had sponsored a "Communist Front", quoted language in counterclaim alleging that a letter dated August 29, 1957, "and on numerous occasions subsequent thereto", plaintiff had caused publication and republication of allegedly defamatory statement that defendant had been employed by one organization to defame another, was mere "lawyer's throw-in", insufficient to bar dismissal pursuant to statute of limitations. *Id.*

Where defendant filed counterclaim for libel, which occurred more than one year prior thereto, statute was not tolled by the principal claim since the statute of limitations continues to run in respect of a setoff which has no relation to the principal claim. *Walker* v. *Pilkerton* (D.C.D.C. 1949, 82 F. Supp. 321).

Loans

An action for money which had been delivered by plaintiffs to defendant as a loan payable on demand, which action was commenced more than three years after loan was made but within three years of demand, was barred by three-year limitation of this section, since the money became due at once and limitation ran from date of the loan. *Schupp* v. *Taendler* (1946, 154 F. 2d 849, 81 U.S. App. D.C. 59).

Mandamus

This section is not applicable to mandamus proceedings. *United States ex rel. Arant* v. *Lane* (1919, 39 S. Ct. 293, 249 U.S. 367, 63 L. Ed. 650).

Minors

In an action for negligence "the minor * * * has the entire period of his minority and three years thereafter within which to institute the action," and, if the action is brought within his minority, he is not confined to three years after the accrual of the right. *Carson* v. *Jackson* (1922, 281 F. 411, 52 App. D.C. 51).

The interest of adult beneficiary was barred by statute and insurance company was liable to minor beneficiaries only to the extent of their separate interests in the policy. *Kaplan* v. *Manhattan Life Ins. Co.* (1940, 109 F. 2d 463, 71 App. D.C. 250).

New promise or acknowledgement

Where payee surrendered note to maker in January, 1949, at which time the note was not barred by three-year statute of limitations, and the maker in turn gave the payee a second note which was a direct promise to pay, the second note was within statute under which a new or continuing contract takes a case out of the operation of statute of limitations, and hence suit instituted on second note on October 31, 1949, was not barred by three-year statute of limitations, notwithstanding that more than three years had then lapsed since the signing of the first note. *Garfinkle* v. *Needle* (1953, 201 F. 2d 202, 91 U.S. App. D.C. 342).

An acknowledgment or promise must be made either to the creditor or to someone acting for him, or to some third person with intent that it be known by and influence the action of the creditor, in order to take a case out of the statute of limitations. *Grass* v. *Eiker, Trading as T. E. Eiker & Co.* (D.C. Mun. App. 1956, 123 A. 2d 613).

The mere listing of debts in a report to the securities and exchange commission is not an acknowledgment sufficient to stop the running of the statute of limitations against such listed debts. *Id.*

A plaintiff who was pressing a claim which on its face is barred by limitations, and who claims an acknowledgment or new promise in the form of a part payment has the burden of proving such fact, and a part of that burden is to establish date of payment or new promise. *Stern Equipment Co., Inc., etc.* v. *Florine Pogue* (D.C. Mun. App. 1955, 117 A. 2d 447).

Suit for services is barred after three years from the time the action accrued, in the absence of a new promise or an acknowledgment within statutory period. *Boogher* v. *Roach* (1905, 25 App. D.C. 324).

Where property covered by a mortgage barred by limitations, was devised by will, with a provision that the mortgage should be first satisfied, payee was entitled to interest not only to time of maturity of note but to time of payment. *Taylor* v. *Drury* (1926, 12 F. 2d 489, 56 App. D.C. 266).

Commissioner's direction to assessor to cancel the record of paving assessments did not constitute an acknowledgment of indebtedness which would take case out of the operation of the statute of limitations. *Lake for Use of Peyser* v. *District of Columbia* (1934, 72 F. 2d 174, 63 App. D.C. 306).

To take any case out of the operation of the statute, the acknowledgment must not be accompanied by circumstances which negative any intention or promise to pay. *Moore* v. *Snider* (1940, 109 F. 2d 840, 71 App. D.C. 293, certiorari denied 60 S. Ct. 808, 309 U.S. 685, 84 L. Ed. 1029).

Letter by Maryland corporation, whose charter has been forfeited for nonpayment of taxes, to debtor extending, at the debtor's request, the time for action for deficiency judgment, was not sufficient to toll the statute of limitations, and the debtor was not estopped to plead such statute. *Glennan* v. *Lincoln Inv. Corp.* (1940, 110 F. 2d 130, 71 App. D.C. 365).

Omnibus provision

The provision of District of Columbia Code that no action, limitation of which is not otherwise specially prescribed therein, shall be brought after three years from time when right of action accrued, is sufficiently broad to include actions to enforce federally created rights. *Cassell* v. *Taylor* (1957, 243 F. 2d 259, 100 U.S. App. D.C. 153).

—— Workman's compensation award

The provision of District of Columbia Code that no action, limitation of which is not otherwise specially prescribed therein, shall be brought after three years from time when right of action accrued, barred action brought sixteen years after workman's compensation award, to enforce compensation order against plaintiff's employer. *Cassell* v. *Taylor* (1957, 243 F. 2d 259, 100 U.S. App. D.C. 153).

Pension benefits

Where trustees of coal industry union welfare fund had made different investigations into merits of member's pension claim and member's claim had not been completely repudiated until trustees interposed defense in member's suit to determine pension eligibility rights, action was not barred by statute of limitations. *J. Kosty* v. *J. L. Lewis et al., Trustees etc.* (1963, 319 F. 2d 744, 115 U.S. App. D.C. 343).

Three-year statute of limitations was not applicable to action by claimant for pension benefits from trust fund created by National Bituminous Coal Wage Agreement, but rather, the doctrine of laches was applicable. *A. Szuch* v. *John L. Lewis et al.* (D.C.D.C. 1960, 193 F. Supp. 831).

Personal injuries

In a suit for personal injuries sustained as a result of three separate acts, two of which are barred by limitations, evidence of injuries sustained by any but the one act not barred is inadmissible. *Jackson* v. *Emmons* (1905, 25 App. D.C. 146, affirmed 27 S. Ct. 778, 203 U.S. 578, 51 L. Ed. 325).

Pleading

In action to recover land and mesne profits where defendant pleaded res judicata and limitation of this section to complaint which showed on its face that cause of action arose more than 15 years before action was instituted, if plaintiff had facts which would toll this section, he might have amended his complaint, served affidavits, or asked permission to reply. *Reynolds* v. *Needle* (1943, 132 F. 2d 161, 77 U.S. App. D.C. 53).

Where principal of note sued on in Municipal Court for District of Columbia was less than $500, formal pleadings were not required but defendant properly raised defense of statute of limitations by written answer. *Whitman* v. *Noel* (D.C. Mun. App. 1947, 53 A. 2d 280).

Questions of fact

Where affidavit submitted to motions judge presented issue of fact as to defendant's availability for service of process and as to plaintiff's diligence in effecting such service, appellate court could not, in absence of record of oral testimony produced at trial on merits, hold that there had been an abuse of discretion in trial court's failure to sustain defenses, that claim was barred by limitations or by failure to prosecute, when such defenses were raised by motion to dismiss and at trial on merits. *Slater* v. *Cannon* (D.C. Mun. App. 1952, 93 A. 2d 92).

Recovery of personal property

Limitations do not apply to attachment for recovery of property seized by alien property custodian. *Sprunt* v. *Direction Der Disconto Gesellschaft* (1933, 63 F. 2d 127, 61 App. D.C. 350, certiorari denied 53 S. Ct. 526, 289 U.S. 730, 77 L. Ed. 1479).

—— Possession of land

"An action against the commissioners to compel the execution and delivery of a tax deed is not one for the recovery of the possession of land" and does not come within the 15-year limitation, but within the omnibus clause of the section. *Luchs* v. *Christman* (1914, 42 App. D.C. 326).

Release of surety

Whether an indemnitor is discharged by the mere failure of his obligee to sue the principal debtor until suit is barred by the statute of limitations remains an open question in this court. *Chapman* v. *Hoage* (1936, 56 S. Ct. 333, 296 U.S. 526, 80 L. Ed. 370).

Where plaintiff sought to recover under wrongful death statute and, after being given leave to amend, amended complaint without indicating her intent to rely on survival statute, alleged error of District Court in dismissing her complaint seeking recovery under survival statute could not be raised for first time on appeal. *G. E. Meyers, Administratrix etc.,* v. *Alvey-Ferguson Co., et al.* (1964, 326 F. 2d 590, U.S. App. Sixth Circuit).

Review

On appeal from judgment dismissing complaint as barred by statute of limitations, appellant's contention, made in the brief, that defense of statute of limitations should have been raised by answer rather than by motion to dismiss, would not be considered, where question was not raised in District Court and was abandoned in the oral argument. *Peyser* v. *Owen* (1941, 116 F. 2d 298, 73 App. D.C. 64).

Where order of judge denying defendant's motion to dismiss on ground that action was barred by limitations was made before default and represented adjudication of a duly contested matter, such order was properly before Municipal Court of Appeals for review. *Clark* v. *Keesee* (D.C. Mun. App. 1957, 136 A. 2d 394).

The defense that plaintiff's claim was barred by limitations made for the first time in a brief submitted to the trial judge in support of motion for new trial was too late to save the point for review. *Atchison & Keller* v. *Taylor* (D.C. Mun. App. 1947, 51 A. 2d 297).

Sealed instruments

Conditional sales contract which had printed word "(Seal)" after buyer's signature was sealed instrument so that 12-year and not 3-year statute of limitations was applicable when seller's assignee sued buyer for deficiency which resulted when automobile was repossessed and resold. *Phillips* v. *Adjusters* (D.C. App. 1965, 213 A. 2d 586).

Where a note was signed by a corporation by its secretary-treasurer, and corporate seal was impressed through the name of the corporation and that of the secretary-treasurer, and the instrument was on a printed stationer's form headed "Promissory Note" and nowhere did the word or symbol "Seal" or "L.S." appear, and nowhere was there a recital that the instrument was "signed and sealed," intention of maker was not to create a specialty with its attendant liability for 12 years, but the seal would be deemed impressed for identification and as a mark of genuineness, and to give certain knowledge that note was an obligation of the corporation and no one else, and therefore, an action on such note was barred after three years. *Sigler* v. *Mt. Vernon Bottling Co., Inc.* (1958, 261 F. 2d 378, 104 U.S. App. D.C. 260).

Where sealed agreement which gave plaintiffs option to purchase realty was mere evidence of debt owed by defendants to plaintiffs, and did not recite or mention indebtedness, suit to recover amount of indebtedness was not brought on option agreement, and twelve year statute of limitations applicable to suits on sealed instruments was inapplicable and did not extend time within which suit might be brought beyond that for bringing of ordinary contract actions. *Filson* v. *Fountain* (1952, 197 F. 2d 383, 90 U.S. App. D.C. 273).

Where parent British organization signed patent licensing agreement containing introductory clause stating that contract was made by such parent organization for itself and specified British subsidiaries as *"Party* of the One Part" and an American corporation and its American subsidiaries as *"Parties* of the Other Part", British subsidiary, on whose behalf parent British organization had authority to sign, was party to such agreement; and such agreement being under seal, an action by parent British organization and its subsidiary against parent American corporation, for use of patented inventions of the subsidiary British firm, was subject to 12 year statute governing actions on contracts under seal. *Smiths America Corp. et al.* v. *Bendix Aviation Corp.* (1956, 140 F. Supp. 46, affirmed 248 F. 2d 621, 101 U.S. App. D.C. 299).

Twelve-year limitation statute applying to action on contract under seal was applicable to suit brought by physician against medical service corporation for services rendered more than three years before suit was brought but less than twelve years, and not three-year limitation statute applicable to simple contracts, where contract, which was on printed form prepared by corporation, recited that parties affixed their seals thereto, and physician executed contract under seal, and corporation thereafter executed contract without impressing its corporate seal thereon. *R. J. McNulty, M. D.* v. *Medical Service of District of Columbia, Inc.* (D.C. Mun. App. 1962, 176 A. 2d 783).

Statutory penalty or forfeiture

Liability of principal and sureties on bond given by a contractor with District of Columbia, providing that such bond shall be the "usual penal bond" conditioned upon contractor paying expenses for materials and labor, is not a statutory penalty in the proper legal sense as to come within one-year statute of limitations within meaning of section 1265 of the 1901 Code (this section). *Pavarini* v. *Title Guar. & S. Co.* (1911, 36 App. D.C. 348, Ann. Cas. 1912c, 367).

Revocation of license to practice medicine is in the nature of a remedial measure for the protection of the public, and not a penalty or forfeiture, but as less than three years intervened between final judgment of conviction and institution of this proceeding, it is unnecessary to consider the application of the general three-year statute of limitations. *Kemp* v. *Medical Supervisors* (1917, 46 App. D.C. 173).

A proceeding to revoke physician's license who had been convicted of crime involving moral turpitude was not barred by act of Congress of June 3, 1896, 29 Stat. 198, ch. 313, when proceeding is instituted more than two years after affirmance of conviction; and it was not barred by § 1265 of the 1901 Code (this section) which provides for one-year period after cause of action accrued; nor was it barred by the fact that more than three years elapsed between conviction in trial court and proceeding by supervisors. *Id.*

Summary judgment

In action to recover land and mesne profits where complaint showed on its face that it arose more than 15 years before institution of the action, "issues of material fact" were not presented, within rule 56 of Federal Rules of Civil Procedure, U.S. Code, title 28, Appendix, authorizing summary judgment in absence of issues of material fact, because there might possibly be facts which would toll this section and avoid defendants' plea of res judicata, where plaintiff alleged no such facts and raised no such issues. *Reynolds* v. *Needle* (1943, 132 F. 2d 161, 77 U.S. App. D.C. 53).

Where it appeared possible that payees might be able to show that a delay of over three years in enforcing their

claims on two notes was induced by representations or promises of maker accompanying certain oral acknowledgments and admissions, and such a showing might have effect of estopping maker from pleading statute of limitations in bar of payees' claims, maker was not entitled to summary judgment in his favor. *Grass* v. *Eiker, Trading as T. E. Eiker & Co.* (D.C. Mun. App. 1956, 123 A. 2d 613).

That creditor under an agreement for sale of goods on a 60-day credit basis demanded payment less than 60 days after some of the sales were made, though more than 60 days after others, did not establish that the meaning of the credit terms was a disputed question of fact precluding summary judgment. *Curtis Brothers, Inc.* v. *Thomasville Chair Co.* (1961, 289 F. 2d 461, 110 U.S. App. D.C. 84).

Where earliest sales were made on October 5, 1956, under an agreement providing for 60 days credit, no suit could have been brought before December 4, 1956, and suit brought December 2, 1959, was within the three-year statute of limitations. *Id.*

Tolling or suspension of period

Statute which tolls statute of limitations while a party is out of the jurisdiction or when a party absconds or conceals himself is applicable only to persons who were residents at time cause of action accrued. *Namerdy* v. *Generalcar* (D.C. App. 1966, 217 A. 2d 109).

Provisions suspending running of statute of limitations while defendant who is resident of District of Columbia is out of District had no application to defendant who first moved to District in 1951 and was sued two months thereafter for breach of contract executed in California in 1946, and such action was barred by three-year statute of limitations. *Adams* v. *Frank* (1954, 213 F. 2d 198, 94 U.S. App. D.C. 174).

Payments made after life tenant's death tolled the three-year statute under § 1265 of the 1901 Code (this section) as to bringing suit against trustee's executor. *National Sav. & Trust Co.* v. *Ryan* (1920, 262 F. 613, 49 App. D.C. 159).

Where university architect was appointed agent of university land extension committee, university trustees adopted resolution requiring land acquired by committee to be assigned to university treasurer on January 1, 1933, and requiring committee to submit report, agent submitted report on April 21, 1933, stated that connection with extension project was completed with submission of report, and requested recommendation that agent be compensated adequately, the fact that the agent was later requested by auditors to verify several items did not prolong period of limitations under this section on claim of architect who was under no obligation to assist auditors checking his report. *Howard University* v. *Cassell* (1942, 126 F. 2d 6, 75 U.S. App. D.C. 75, certiorari denied 62 S. Ct. 1046, 316 U.S. 675, 86 L. Ed. 7149, rehearing denied 62 S. Ct. 1274, 316 U.S. 711, 86 L. Ed. 1777).

Where university architect was appointed agent of university land extension committtee, university trustees adopted resolution requiring land acquired by committee to be assigned to university treasurer on January 1, 1933, and requiring committee to submit report, agent submitted report on April 21, 1933, stated that connection with extension project was completed with submission of report, and requested recommendation that agent be compensated adequately, activities of the agent subsequent to the submission of his report did not prolong the three-year period of limitations on his claim against university for services, and action instituted on June 4, 1936, was barred, where agent did not seek compensation for, and did not ask for reimbursement for expenses. *Id.*

In District of Columbia, statute of limitations is tolled when bill or declaration is filed and subpoena issued and delivered to marshal for service before statute has run. *Bowles* v. *Dixie Cab Ass'n et al.* (D.C.D.C. 1953, 113 F. Supp. 324).

An owner's mere lack of knowledge of injury to his property will not prevent statute of limitations from running. *Maddox* v. *Andy's Refrigeration & Motor Service Co., Inc.* (D.C. Mun. App. 1960, 160 A. 2d 799).

Provision suspending running of statute of limitations while defendant who is resident of District of Columbia is out of the district, had no application to defendant who first moved to district in 1951 and was sued two months thereafter for breach of contract executed in California in 1946, and action was barred by three year statute of limitations. *Frank* v. *Adams* (D.C. Mun. App. 1953, 98 A. 2d 789).

To toll statute of limitations, no more is ever required than filing of declaration or complaint and issuance of summons within statutory period, followed by diligence in service of summons and prosecution of suit. *Slater* v. *Cannon* (D.C. Mun. App. 1952, 93 A. 2d 92).

To toll statute of limitations in regard to breach of implied warranty to do work in workmanlike manner, there would have to be some trick or connivance intended to exclude suspicion and prevent discovery of cause of action by use of ordinary diligence. *Poole* v. *Terminix Co. of Maryland & Washington* (D.C. Mun. App. 1952, 84 A. 2d 699).

Concealment, by mere silence, of breach of impiled warranty to do work in workmanlike manner would not be sufficient to toll statutes of limitations. *Id.*

When a declaration is filed, with directions, either express or implied, given by the person on whose behalf it is filed, or by his attorney, to the clerk to issue the proper process thereon and nothing then remains to be done but that the clerk should proceed, and the party has otherwise complied with the requirements of law, if other requirements there be, such as payment of necessary fees, the suit must be deemed to be then commenced so far as to arrest the application of the statute of limitations. *Huysman* v. *Evening Star* (1898, 12 App. D.C. 586).

There is nothing in the language of acts of incorporation to prevent the running of the statute of limitations in favor of claimant against the company, to a portion of a public highway. *District of Columbia* v. *Krause* (1897, 11 App. D.C. 398).

Statute of limitations against claim of set-off is not stopped by action in which set-off is pleaded, unless set-off has some connection to the principal claim, but it continues to run until filing of such plea. *Durant* v. *Murdock* (1894, 3 App. D.C. 114).

—— Imprisonment

Where fraud allegedly occurred in 1944 and was discovered in 1948, that plaintiff, who filed suit in 1949, was allegedly in prison, although he was present at court, at time this action came to trial in 1953 and plaintiff obtained dismissal did not invoke statute tolling limitations where plaintiff is imprisoned at time of accruing of right of action, and subsequent action was barred. *Frey* v. *Davis* (1956, 229 F. 2d 774, 97 U.S. App. D.C. 200).

The fact that plaintiff was held to bail and remained under bond did not stop the running of the statute of limitations against his civil action for libel. *Rose* v. *Washington Times Co.* (1885, 23 F. 993, 57 App. D.C. 385, certiorari denied 48 S. Ct. 559, 277 U.S. 597, 72 L. Ed. 1006).

—— Military service

Where cause of action accrued on December 8, 1948, and defendant was called to active duty as member of Organized Naval Reserves on July 28, 1950, and continued on duty for 15 months and two days, three-year statute of limitations was tolled, and time within which the action could be commenced was extended, for period of such military service, and action filed before March 11, 1953, was timely. *Bowles* v. *Dixie Cab Ass'n et al.* (D.C.D.C. 1953, 113 F. Supp. 324).

Tort actions

Complaint, which alleged that attorney for judgment creditor and employee of judgment creditor caused issuance of writ of attachment resulting in seizure of plaintiff's moneys in a bank notwithstanding knowledge that judgment had been satisfied, and that they did so maliciously, alleged a tort of malicious prosecution which was subject to one year statute of limitations. *Morfessis* v. *Baum* (1960, 281 F. 2d 938, 108 U.S. App. D.C. 303).

Where plaintiff sued a Maryland Corporation, solely owned by the U.S. and having the power to be sued in the District in tort actions for negligence, the action was not barred by the general statute of limitations. *Hood* v. *Defense Homes Corp.* (D.C.D.C. 1949, 83 F. Supp. 365).

Trusts

Even if defendant, to whom two promissory notes had been delivered for collection, had been trustee of funds collected, where plaintiff's demand for the proceeds collected had been denied in May, 1947, the trust was thereby terminated and plaintiff's suit in February, 1952, was subject to and barred by three-year statute of limitations. *Calvin* v. *Rafferty* (1954, 214 F. 2d 230, 94 U.S. App. D.C. 60).

Claim for enforcement of certain interest in realty pursuant to alleged resulting trust, if not purely legal was within concurrent jurisdiction of law and equity, and statute of limitations was applicable. *Filson* v. *Fountain* (1952, 197 F. 2d 383, 90 U.S. App. D.C. 273).

Where an action at law was barred by the statute, appellant can not avoid this conclusion by describing the misappropriated money as a trust fund, for equity follows the law in such cases and the limitation would be enforced. *Moran* v. *Schlosberg* (1937, 90 F. 2d 408, 67 App. D.C. 163).

Unemployment contributions

Compulsory unemployment contributions were "taxes" which were expended for a public purpose, that is, the relief of unemployment; and action brought by District Unemployment Compensation Board to recover such contributions was one asserting a public right, and therefore no statute of limitations would run against board in such an action in view of Congress' failure to provide a specific statute of limitations for such an action. *Stonewall Construction Company* v. *McLaughlin et al., etc.* (D.C. Mun App. 1959, 151 A. 2d 535).

Use and occupancy

The three-year limitation statute applied to divorced wife's claim against divorced husband for his use of her realty after date of divorce. *Curles* v. *Curles* (1957, 241 F. 2d 448, 100 U.S. App. D.C. 43).

Usury—Cancellation for

A suit for cancellation of note and deed of trust on ground of usury, regarded as suit for declaratory judgment that complete defense existed to the obligation on the note, was not barred by usury statute of limitations, § 28–2704, or this section. *Hill* v. *Hawes* (1944, 144 F. 2d 511, 79 U.S. App. D.C. 168).

—— Defense

There are no limitations on claim of usury as a defense in a suit based on usurious obligations. *Hill* v. *Hawes* (1944, 144 F. 2d 511, 79 U.S. App. D.C. 168).

Waiver

Where parties agreed that court should first decide whether claim was barred by limitation, and neither party intended to waive merits of controversy, defenses other than bar by limitation were not waived. *R. J. McNulty, M.D.* v. *Medical Service of the D.C. Inc.* (D.C App 1963, 189 A. 2d 125).

Unless a waiver of the statute of limitations is specifically stated to be perpetual, it should be held to operate only for a reasonable time. *Munter, Sole Liquidation Trustee, etc.* v. *Lankford* (1956, 232 F. 2d 373, 98 U.S. App. D.C. 116).

Though two-year note, executed in 1935, to order of estate of certain person, contained recital of waiver of statute of limitations, action on note in 1953 was barred by statute of limitations, in view of rule that such waiver operates only to extend limitation for a reasonable time, which in such case would have been for not longer than one extra three-year limitation period. *Id.*

II. Under Present Law

Account

Where there were mutual dealings between parties with express although oral agreement to allow account to run with view to ultimate adjustment of final balance between them and where items were entered on both sides at periodic intervals which operated to extinguish each other pro tanto and claims upon each side were set off against each other there was mutual account between parties, and three-year statute of limitations began running only from date of last entry on account. *E. P. Hinkel and Company, Inc.* v. *Washington Carpet Corporation* (D.C. App. 1965, 212 A. 2d 328).

Where last entry on mutual account was made within three years prior to filing of defendant's counterclaim in action on account, dismissal on basis of three-year statute of limitations was erroneous. *Id.*

Accrual of cause of action—Fraud

District of Columbia statute of limitations in actions for fraud begins to run only on discovery of facts out of which claim arises or at time such facts should reasonably be ascertained in exercise of due diligence. *E. J. Fontana* v. *Aetna Casualty & Surety Co.* (1966, 363 F. 2d 297, 124 U.S. App. D.C. 168).

Testimony of insurance broker, who wrote policy of compensation insurance, that he had informed compensation insurer that claimant had faked claim was not such notice to insurer as to start running of District of Columbia three-year statute of limitations, applicable in action for fraud, with respect to suit instituted by insurer to recover amount paid in reliance on representation that claimant had sustained compensable injury. *Id.*

Amendment of pleadings

Where plaintiff's original complaint embraced only trustee in bankruptcy, amended complaint which sought judgment against bankrupt corporation effected change in parties defendant, and plaintiff should have sought judicial leave to make amendment and failure to obtain leave justified dismissal. *M. Zackery* v. *Mutual Security Savings and Loan Assn. et ano.* (D.C. App. 1965, 206 A. 2d 580).

A party may amend his pleadings once as matter of course at any time before responsive pleading is served, but an amendment to complaint, which adds or drops a party requires court order, regardless of whether it precedes or follows first responsive pleading of any defendant. *Id.*

Any conflict or ambiguity which results from comparison of rule which refers in specific terms to changes in parties to action by adding or dropping parties, with rule which refers in general terms to broad subject of changes in pleadings by amendment, must be resolved in favor of specific and against the general. *Id.*

Bank's negligence in relation to check

Three-year statute of limitations barred recovery by payee for alleged negligence of drawee in cashing check and delivering proceeds to unauthorized person five or more years before payee discovered the check was missing. *G. Adrian* v. *American Security & Trust Co.* (D.C. App. 1965, 211 A. 2d 771).

Even concealment or silence by drawee is not enough to toll three-year statute of limitations absent some trick or connivance to exclude suspicion or prevent payee's discovery by ordinary diligence of right of action for alleged negligent cashing of check and delivering of proceeds to unauthorized person. *Id.*

Burden of proof

Defendant who pleaded statute of limitations as bar to action failed in meeting his burden of proof. *W. M. Dawson* v. *H. Drazin, etc.* (D.C. App. 1966, 223 A. 2d 375).

Claim against estate

District of Columbia, which waited five years beyond expiration of three-year statute of limitations which would have barred action against patient if she had been personally sued for cost of hospitalization, was not barred by statute of limitations from recovering such cost in action against patient's estate. *J. B. Cullen, Administrator, etc.* v. *District of Columbia* (D.C. App. 1966, 2211 A. 2d 914).

Estoppel

Compensation claimant, who falsely represented to compensation insurer that he was injured on May 13, 1958, who repeated such claim many times in subsequent years, particularly in formal hearing before deputy commissioner, and who in effect, reiterated falsehood each time he cashed biweekly compensation check, was estopped from asserting that suit instituted on May 25, 1964 by insurer to recover amount paid in reliance on representations that claimant had sustained principal injury was barred by District of Columbia statute of limitations applicable in actions for fraud. *E. J. Fontana* v. *Aetna Casualty & Surety Co.* (1966, 363 F. 2d 297, 124 U.S. App. D.C. 168).

§ 12–302. Disability of plaintiff

(a) Except as provided by subsection (b) of this section, when a person entitled to maintain an action is, at the time the right of action accrues:

(1) under 21 years of age; or

(2) noncompos mentis; or

(3) imprisoned—

he or his proper representative may bring action within the time limited after the disability is removed.

(b) When a person entitled to maintain an action for the recovery of lands, tenements, or hereditaments, or upon an instrument under seal, is under any of the disabilities specified by subsection (a) of this section at the time the right of action accrues, he or his proper representative, except where otherwise specified herein, may bring the action within 5 years after the disability is removed, and not thereafter. (Dec. 23, 1963, 77 Stat. 510, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 12–201 (Mar. 3, 1901, ch. 854, § 1265, 31 Stat. 1389; June 30, 1902, ch. 1329, 32 Stat. 542).

Section is based on part of section 12–201.

For remainder of that section, see tables.

Changes are made in phraseology and arrangement.

§ 12–303. Absence or concealment of defendant

(a) When a person who is a resident of the District of Columbia is out of the District or has absconded or concealed himself at the time a cause of action accrues against him, the period limited for the bringing of the action does not begin to run until he comes into the District or while he is so absconded or concealed.

(b) When such a person absconds or conceals himself after the cause of action accrues, the time of his absence or concealment may not be computed as a part of the period within which the action must be brought. (Dec. 23, 1963, 77 Stat. 511, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 12–205 (Mar. 3, 1901, ch. 854, § 1269, 31 Stat. 1389).

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS UNDER PRIOR LAW

Military assignment

Where complainant and defendant in paternity action had been residents of Virginia and complainant moved to District of Columbia a few months before birth of child who was born within the District and defendant was a member of armed forces who came to District of military assignment 2½ years after birth of child, under provision of this section that time within which defendant should be absent from jurisdiction should be excluded from computation of the 2-year statute of limitations, statute of limitations was tolled as to defendant who had not previously been within the jurisdiction. *District of Columbia* v. *Franklin* (D.C. Mun. App. 1959, 154 A. 2d 550).

Non-residents

Statute which tolls statute of limitations while a party is out of the jurisdiction or when a party absconds or conceals himself is applicable only to persons who were residents at time cause of action accrued. *Namerdy* v. *Generalcar* (D.C. App. 1966, 217 A. 2d 109).

Provisions suspending running of statute of limitations while defendant who is resident of District of Columbia is out of District had no application to defendant who first moved to District in 1951 and was sued two months thereafter for breach of contract executed in California in 1946, and such action was barred by three-year statute of limitations. *Adams* v. *Frank* (1954, 213 F. 2d 198, 94 U.S. App. D.C. 174).

This section suspending running of statute of limitations while defendant who is resident of District is out of it, has no application to non-resident defendants. *Filson* v. *Fountain* (1952, 197 F. 2d 383, 90 U.S. App. D.C. 273).

Summary judgment

Where defendants in action in the District of Columbia urged that plaintiff's claims for sums expended by plaintiff in connection with realty and for services were barred by limitations, and plaintiff contended that absence of some of the defendants from the District of Columbia tolled statute of limitations, and plaintiff thereby raised issue of defendants having been residents of District of Columbia when causes of action accrued with subsequent absence from District of Columbia, summary judgment for defendants was precluded, since there was a genuine issue of fact material to decision on question of limitations. *Calvin* v. *Calvin et al.* (1954, 214 F. 2d 226, 94 U.S. App. D.C. 42).

§ 12–304. Actions stayed by court or statute

When the bringing of an action is stayed by an injunction or other order of a court of justice, or by statutory prohibition, the time of the stay may not be computed as a part of the period within which the action must be brought. (Dec. 23, 1963, 77 Stat. 511, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 12–206 (Mar. 3, 1901, ch. 854, § 1270, 31 Stat. 1389).

Changes are made in phraseology.

§ 12–305. Actions against decedents' estates

In an action against the estate of a deceased person, the interval, not exceeding two years, between the death of the deceased and the granting of letters testamentary or of administration may not be computed as a part of the period within which the action must be brought. (Dec. 23, 1963, 77 Stat. 511, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 12–202 (Mar. 3, 1901, ch. 854, § 1266, 31 Stat. 1389; June 30, 1902, ch. 1329, 32 Stat. 542).

Changes are made in phraseology.

CROSS REFERENCE

Claims against estate, see § 20–1318.

NOTES TO DECISIONS UNDER PRIOR LAW

Domestic judgments

This section does not cut down the periods specifically prescribed for actions on domestic judgments. *Miller* v. *Miller* (1941, 122 F. 2d 209, 74 App. D.C. 216).

Maintenance of insane person

The estate of a patient committed to St. Elizabeth's Hospital while a resident of the District of Columbia is liable to the District for his maintenance, and statute of limitations does not run against the District in its claim for such maintenance. *Hart* v. *Commissioners of District of Columbia* (1946, 155 F. 2d 877, 81 U.S. App. D.C. 154).

Proving claim against estate

Proving claim against decedent's estate under section 336 of the 1901 Code (§ 18–509), as suspending running of limitations. *Berry & Whitmore Co.* v. *Dante* (1915, 43 App. D.C. 110).

§ 12–306. Directions as to debts in a will

A provision in the will of a testator devising his real estate, or part thereof, subject to the payment of his debts, or charging the same therewith, does

not prevent the statute of limitations from operating against the debts, unless it plainly appears to be the testator's intention that it shall not so operate. (Dec. 23, 1963, 77 Stat. 511, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 12–207 (Mar. 3, 1901, ch. 854, § 1273, 31 Stat. 1390).

Changes are made in phraseology.

CROSS REFERENCES

Decedents' estates—

Filing claim as tolling limitations, see § 20–1324.

Plea of limitations within discretion of executor or administrator, see § 20–1310.

Sale of real estate directed in will, see § 20–1103.

§ 12–307. Foreign judgments

An action upon a judgment or decree rendered in a State, territory, commonwealth or possession of the United States or in a foreign country is barred if by the laws of that jurisdiction, the action would there be barred and the judgment or decree would be incapable of being otherwise enforced there. (Dec. 23, 1963, 77 Stat. 511, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 12–203 (Mar. 3, 1901, ch. 854, § 1267, 31 Stat., 1389; June 30, 1902, ch. 1329, 32 Stat. 542).

Reference to "commonwealth" is inserted to reflect the new status of the Commonwealth of Puerto Rico, and reference to "possession" is inserted for completeness.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Historical

"This section prescribes two rules of limitation. By the first, all judgments barred by the law of the place of recovery are barred in the District. By the second, if not barred by the law of the place of recovery, still no action can be brought on any such judgment rendered more than ten years before the commencement of the action. On June 30, 1902, section 1267 (this section) was amended by striking therefrom the last part * * * in which the second rule aforesaid is embodied." *McKay* v. *Bradley* (1906, 26 App. D.C. 449).

Bankruptcy

That judgment debtor who filed a voluntary petition in bankruptcy during pendency of suit to have lien for payment of barred California judgment charged on debtor's interest in an estate listed judgment among his scheduled liabilities without indicating its disputed character did not constitute a voluntary "acknowledgment" sufficient to remove the bar of this section against enforcement of the judgment debt. *Fowler* v. *Pilson* (1942, 123 F. 2d 918, 74 App. D.C. 340, certiorari denied 62 S. Ct. 944. 316 U.S. 664, 86 L. Ed. 1740).

Dormant judgment

Possibility of enforcing or satisfying a judgment after a dormant judgment is revived by suit for that purpose is not contemplated by the words "otherwise enforced" or by the general purpose of this section. *Fowler* v. *Pilson* (1942, 123 F. 2d 918, 74 App. D.C. 340, certiorari denied 62 S. Ct. 944, 316 U.S. 664, 86 L. Ed. 1740).

Under West's Ann. Cal. C.C.P. § 685, providing that a barred judgment may be enforced or carried into execution by leave of court on motion and after due notice to judgment debtor and providing for general revival founded on supplemental proceedings, a barred judgment is "dormant" until one of those procedures is made effective, and hence a California judgment barred by West's Ann. Cal. C.C.P. §§ 335, 336, when creditor's bill was filed in the District of Columbia to have lien for payment charged on debtor's interest in an estate could not be "otherwise enforced" within this section. *Id.*

Effect limited

"Section 1267, as amended (this section), has no other effect than to bar an action upon a judgment of another state that is barred, at the time of the commencement of the action by the laws of that state." *McKay* v. *Bradley* (1906, 26 App. D.C. 449).

Enforceability

"Enforceability", within this section, means a right of enforcement which exists at the time suit is begun in the District of Columbia, and not a mere possibility of enforcement in the future which depends on a further showing of facts and a further exercise of judicial discretion. *Fowler* v. *Pilson* (1942, 123 F. 2d 918, 74 App. D.C. 340, certiorari denied 62 S. Ct. 944, 316 U.S. 664, 86 L. Ed. 1740).

Equity, suits in

This section bars suits in equity as well as actions at law. *Fowler* v. *Pilson* (1942, 23 F. 2d 918, 74 App. D.C. 340, certiorari denied 62 S. Ct. 944, 316 U.S. 664, 86 L. Ed. 1740).

Form of action

Under this section the words "otherwise enforced" are used alternatively to "such action" and comprehend that the judgment need not be enforceable in its original jurisdiction in the identical manner or form of proceeding by which enforcement is sought in the District of Columbia. *Fowler* v. *Pilson* (1942, 123 F. 2d 918, 74 App. D.C. 340, certiorari denied 62 S. Ct. 944, 316 U.S. 664, 86 L. Ed. 1740).

Full faith and credit

In this jurisdiction, an action upon a judgment of any state is barred if, by the laws of such state, the action would be barred, and the judgment would be incapable of being otherwise enforced there. *Rosenberg* v. *Ichcovitz* (D.C. Mun. App. 1950, 72 A. 2d 466).

Judgment of Justices of peace

Valid judgments of justices of the peace of other states are enforcible in the District of Columbia provided they are properly proved. *Koehne* v. *Price* (D.C. Mun. App. 1949, 68 A. 2d 806.

Limitations of actions

West's Ann. Cal. C.C.P. §§ 335, 336, prescribing periods for commencement of actions other than for the recovery of realty and requiring an action on a judgment or decree of any federal or state court to be commenced within five years after entry bar suits in equity as well as actions at law, and hence a creditors' bill filed in 1937, whereby assignee of California judgment rendered against defendant in 1930 sought to have a lien for payment of amount of judgment charged on defendant's interest in an estate, could not have been maintained in California had it been brought there when it was begun in the District of Columbia. *Fowler* v. *Pilson* (1942, 123 F. 2d 918, 74 App. D.C. 340, certiorari denied 62 S. Ct. 944, 316 U.S. 664, 86 L. Ed. 1740).

Where Michigan final judgment of divorce was rendered on February 14, 1950, and support payments by husband had not been made since October, 1953, wife's cause of action for debt then accrued, and such action, when commenced within six years, was not barred by Michigan statute of limitations, and further, when action was commenced in the District of Columbia within 10 years since judgment was rendered in Michigan, suit would not be barred under Michigan law and was not barred in District of Columbia. *King, etc.* v. *Fay et al.* (D.C.D.C. 1959, 169 F. Supp. 934).

Where a judgment of a Maryland court was governed by the twelve-year statute of limitations of Maryland, an action brought thereon in the Municipal Court of the District within the twelve years was not barred by Maryland law and therefore not barred by the District of Columbia. *Koehne* v. *Price* (D.C. Mun. App. 1949, 68 A. 2d 806).

Proof of judgment

Where no issue is raised regarding the jurisdiction of the justice of the peace rendering the judgment, a properly certified transcript of the docket entries showing service of process upon the defendant and jurisdiction of

the subject matter is sufficient to support a judgment in another state. *Koehne* v. *Price* (D.C. Mun. App. 1949, 68 A. 2d 806).

Purpose

This section was intended to bring about uniformity between the two jurisdictions in the time allowed for enforcing the judgment by suit and to achieve uniformity in the scope and kinds of substantive relief available. *Fowler* v. *Pilson* (1942, 123 F. 2d 918, 74 App. D.C. 340, certiorari denied 62 S. Ct. 944, 316 U.S. 664, 86 L. Ed. 1740).

§ 12–308. Actions by the United States

Sections 12–301, 12–302, 12–305, and 12–307 do not apply to an action in which the United States is the real and not merely the nominal plaintiff. (Dec. 23, 1963, 77 Stat. 511, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 12–204 (Mar. 3, 1901, ch. 854, § 1268, 31 Stat. 1389; June 30, 1902, ch. 1329, 32 Stat. 542).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Generally

Neither this chapter nor laches applies to any action in which the United States is the real and not merely the nominal plaintiff. *United States* v. *Washington Loan & Trust Co.* (D.C.D.C. 1942, 47 F. Supp. 25, affirmed 134 F. 2d 59, 77 U.S. App. D.C. 284).

Unreasonable delay

Unreasonable delay by Government in giving notice to banks as to discovery of forgery of indorsement of payees of Government checks to prejudice of banks would be a defense to action by Government against banks to extent of the loss shown by banks. *United States* v. *Washington Loan & Trust Co.* (D.C.D.C. 1942, 47 F. Supp. 25, affirmed 134 F. 2d 59, 77 U.S. App. D.C. 284).

§ 12–309. Actions against District of Columbia for unliquidated damages; time for notice

An action may not be maintained against the District of Columbia for unliquidated damages to person of property unless, within six months after the injury or damage was sustained, the claimant, his agent, or attorney has given notice in writing to the Board of Commissioners of the District of Columbia of the approximate time, place, cause, and circumstances of the injury or damage. A report in writing by the Metropolitan Police Department, in regular course of duty, is a sufficient notice under this section. (Dec. 23, 1963, 77 Stat. 511, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 12–208 (Feb. 28, 1933, ch. 138, 47 Stat. 1370).

Changes are made in phraseology.

CROSS REFERENCES

Claims against District, see §§ 1–901 to 1–906.

Liability of District employees, see §§ 1–921 to 1–926.

NOTES TO DECISIONS

I. UNDER PRIOR LAW

Actual or constructive notice

The District of Columbia is not an insurer of the safety of persons from defects in its streets or sidewalks, but its liability sounds in negligence imputed from a failure to perform a duty, and in regard to performance of that duty the District must have timely notice either actual or constructive of the dangerous condition. *Jones* v. *District of Columbia* (D.C. Mun. App. 1956, 123 A. 2d 364).

Compliance with provisions

Under this section requiring that written notice be given to Commissioners of District of Columbia in order to maintain action against District, notice sent to corporation's counsel giving notice of injury was fatally defective. *District of Columbia* v. *Stone* (D.C. Mun. App. 1955, 112 A. 2d 497).

A notice stating that claimant fell on manhole cover on southeast corner of an intersection whereas in fact accident occurred on northeast corner did not substantially comply with this section requiring notice of place of injury and action for injuries could not be maintained. *Id.*

Construction

The statute, being in derogation of common law rights, is to be strictly construed; and oral notice is not sufficient to waive the requirement of the statute; and actual notice is without effect to dispense with a written notice when a statute requires notice in writing. *District of Columbia* v. *World Fire and Marine Insurance Co.* (D.C. Mun. App. 1949, 68 A. 2d 222).

Correction of notice

Where, in action against District of Columbia, for injuries received when plaintiff tripped on manhole alleged to have been defectively maintained by the District of Columbia so that the manhole edge and cover protruded from the ground, inaccuracies were contained in written notice seasonably sent commissioner, and an attempt to cure such inaccuracies was made by seasonable correction conveyed to assistant in office of corporation counsel, to whom commissioners has referred original notice, and to District's inspector of claims, judgment, by which the Municipal Court of Appeals, because of such inaccuracies, reversed judgment rendered for plaintiff in the municipal court, would be reversed. *Stone* v. *District of Columbia* (1956, 237 F. 2d 28, 99 U.S. App. D.C. 32, certiorari denied 77 S. Ct. 221, 352 U.S. 934, 1 L. Ed. 160).

Liquidated or unliquidated damages

The notice requirement governs only where the District is sought to be held on a claim for unliquidated damages and is inapplicable to liquidated claims. *District of Columbia* v. *Hamilton National Bank* (D.C. Mun. App. 1950, 76 A. 2d 60).

Persons notified—Corporation counsel

In making claims against District of Columbia for injuries received when plaintiff tripped on manhole alleged to have been defectively maintained by the District of Columbia, notice of claim was not required to be sent directly to the commissioners, and sending of an otherwise adequate notice to the corporation counsel would not make the notice ineffective. *Stone* v. *District of Columbia* (1956, 237 F. 2d 28, 99 U.S. App. D.C. 32, certiorari denied, 77 S. Ct. 221, 352 U.S. 934, 1 L. Ed. 160).

—— District of Columbia Government

Under this section requiring written notice within six months of accidental injury to Commissioners of District of Columbia, "District of Columbia Government" was a sufficient synonym for "Commissioners of District of Columbia" and notice to "District of Columbia Government" was sufficient and in strict, even though not precisely literal, compliance with this section. *District of Columbia* v. *Green* (1955, 223 F. 2d 312, 96 U.S. App. D.C. 20).

—— Engineer Department

This section requiring that written notice of injury be given within six months to commissioners of District of Columbia was sufficiently complied with where person allegedly injured by defect in sidewalk sent letter containing information to "Engineer Dept. D. of C." and thereafter furnished additional information upon request of inspector of claims, Office of Corporation Counsel, within statutory period, since information was received by proper office within proper time even though original notice was improperly directed. *Hirshfeld, Executrix, etc.* v. *District of Columbia* (1958, 254 F. 2d 774, 103 U.S. App. D.C. 71).

Sufficiency of evidence

In action against the District of Columbia for personal injuries resulting from fall on the sidewalk, the evidence was insufficient to take the case to the jury on the issue of whether the defect in the sidewalk had existed a

sufficient time to charge the District of Columbia with notice thereof. *Jones* v. *District of Columbia* (D.C. Mun. App. 1956, 123 A. 2d 364).

Sufficiency of notice

Notice that pedestrian fell as result of defect in sidewalk in front of named premises was adequate though defect existed in gutter rather than sidewalk. *M. M. Dixon* v. *District of Columbia* (D.C. Mun. App. 1961, 168 A. 2d 905).

While this section requiring that written notice of time, place, cause and circumstances of injury be given to District of Columbia commissioners before action can be maintained against District is mandatory, precise exactness in notice is not essential and reasonable compliance with this section so that District is not misled to its prejudice by any defects of description of place accident happens is sufficient. *Hurd* v. *District of Columbia* (D.C. Mun. App. 1954, 106 A. 2d 702).

Waiver of immunity

District of Columbia did not waive its defense of immunity from suit arising out of collision between private vehicle and Police Department patrol wagon by filing suit against driver of such vehicle. *Adams* v. *District of Columbia* (D.C. Mun. App. 1956, 122 A. 2d 765).

Waiver of notice

Alleged failure of a claimant against the District of Columbia, to give District notice in writing, is a matter of affirmative defense, and not a matter which must be alleged and proved, and where alleged noncompliance with this section was not mentioned by the District in its answer, or at pretrial, such defense would be considered waived. *F. W. Woolworth Co., Inc.* v. *Stoddard* (D.C. Mun. App. 1959, 156 A. 2d 229).

Written notice

Under this section providing that no action shall be maintained against District unless claimant, within six months after injury, gives commissioners written notice of approximate time, place, cause and circumstances of injury, claimant who, within six months, gave commissioners writen notice, but orally advised assistant corporation counsel that location there stated was incorrect and orally gave correct location, did not comply, and could not maintain action. *McDonald* v. *The Government of the District of Columbia* (1955, 221 F. 2d 860, 95 U.S. App. D.C. 305).

The requirements of the statute as to written notice are mandatory and for failure to give such written notice, an action could not be maintained. *District of Columbia* v. *World Fire and Marine Insurance Co.* (D.C. Mun. App. 1949, 68 A. 2d 222).

II. Under Present Law

Argument of counsel

Court properly refused to permit plaintiff's counsel to read to jury, in argument rebutting argument that witness for plaintiff had concocted testimony about weather conditions on day of fall, a letter written by plaintiff's counsel to commissioners of District of Columbia advising them of plaintiff's claim. *S. C. Curtis* v. *District of Columbia, et al.* (1966, 363 F. 2d 973, 124 U.S. App. D.C. 254).

TITLE 13.—PROCEDURE GENERALLY

Title 13 was enacted by Pub. L. 88–241

For disposition of former sections of this title, see table following Title 49

Chap. Sec.
1. Rules of Procedure 13–101
3. Process and Parties 13–301
5. Counterclaims 13–501
7. Trial 13–701

Chapter 1.—RULES OF PROCEDURE

Sec.
13–101. Prescription of rules by courts.

§ 13–101. Prescription of rules by courts

(a) The District of Columbia Court of Appeals, the District of Columbia Court of General Sessions, and the Juvenile Court of the District of Columbia, respectively, shall prescribe rules to provide for the forms of process, writs, pleadings, motions, and practice and procedure in those courts, to provide for efficient administration of justice. Except as otherwise provided by this section, the rules, in the case of the District of Columbia Court of Appeals and the civil division of the Court of General Sessions, shall conform as nearly as may be practicable to the forms, practice, and procedure prescribed by the Federal Rules of Civil Procedure, and, in the case of the Juvenile Court, the rules shall be enforced and construed beneficially for the remedial purposes embraced in chapter 15 of Title 11 and subchapter I of chapter 23 of Title 16.

(b) The judges of the Domestic Relations Branch of the Court of General Sessions, with the approval of the chief judge of the court, shall prescribe, by rules, the forms of process, writs, pleadings, motions, and practice and procedure in that Branch. Except as otherwise specifically provided by the rules prescribed, the applicable rules of the Federal Rules of Civil Procedure shall govern in the Branch.

(c) The Court of General Sessions shall prescribe rules to provide for a simple, inexpensive, and speedy procedure in the Small Claims and Conciliation Branch of that court to effectuate the purposes of chapter 39 of Title 16, and may prescribe, modify, and improve the forms to be used therein, from time to time, to insure the proper administration of justice and to accomplish the purposes of chapter 39 of Title 16.

(d) Rules adopted pursuant to this section by the District of Columbia Court of Appeals, the Court of General Sessions, and the Domestic Relations Branch of the Court of General Sessions may not abridge, enlarge, or modify the substantive rights of a litigant. (Dec. 23, 1963, 77 Stat. 512, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–755, 11–756, 11–766, 11–771a, 11–774, 11–815, 11–930 (Mar. 19, 1906, ch. 960, § 29, as added June 1, 1938, ch. 309, 52 Stat. 596 (603); Mar. 5, 1938, ch. 43, § 15, 52 Stat. 106; Apr. 1, 1942, ch. 207, §§ 4, 5, 9, 56 Stat. 192, 193, 196; June 29, 1953, ch. 159, § 410, 67 Stat. 108; Apr. 11, 1956, ch. 110, 70 Stat. 113; July 26, 1956, ch. 744, § 1, 70 Stat. 676; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 6, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 6, 77 Stat. 77, 78).

Section consolidates subsec. (b) of section 11–756, part of section 11–766, the first paragraph of subsec. (a) of section 11–774, section 11–815, and part of section 11–930, of D.C. Code, 1961 ed. For remainder of sections 11–756, 11–766, 11–774, and 11–930, see tables.

Sections 11–751a, 11–755, and 11–771a of D.C. Code, 1961 ed., are also cited as sources of this section, as (1) section 11–751a, enacted by the Act of Oct. 23, 1962, changed the name of the Municipal Court for the District of Columbia (which had been formed from the merger, by the Act of Apr. 1, 1942, ch. 207, of the first Municipal Court with the Police Court) to the District of Columbia Court of General Sessions, (2) part of the first sentence of subsec. (a) of section 11–755, as amended by the Act of Oct. 23, 1962, continued both the Domestic Relations Branch and the Small Claims and Conciliation Branch (which had been established within the second Municipal Court by sections 11–758 and 11–801, respectively, of D.C. Code, 1961 ed.) within the Court of General Sessions, and (3) section 11–771a, also enacted by the Act of Oct. 23, 1962, changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

The identical provisions in section 11–756(b) and 11–774(a) of D. C. Code, 1961 ed., that, after September 16, 1938 (which was the date of adoption of the Federal Rules of Civil Procedure), all laws in conflict with the rules shall be of no further force or effect, are omitted as unnecessary, in view of the reconciliation or omission, in this revised Part, of statutes heretofore in conflict with rules adopted by the Municipal Court of Appeals and the Municipal Court (now, District of Columbia Court of Appeals, and District of Columbia Court of General Sessions, respectively).

Section 11–756(b) of D.C. Code, 1961 ed., which related to the Municipal Court (now, Court of General Sessions), contained the following proviso: "That nothing in this section shall be construed to require any change in the existing rules, procedure, or practice now in effect in the small claims and conciliation branch of the presently constituted Municipal Court of the District of Columbia [that is, the Municipal Court as it existed prior to its merger with the Police Court in 1942]; nor shall this subchapter and subchapter III [effecting the merger of the two courts, and creating the Municipal Court of Appeals, now, District of Columbia Court of Appeals] or any section thereof in any way repeal or modify the provisions of sections 11–801 to 11–820 [of the D.C. Code, 1961 ed.], establishing said small claims and conciliation branch". This proviso is omitted as no longer necessary. The separate provision (D.C. Code, 1961 ed., § 11–815) directing the prescription of separate rules for the Small Claims and Conciliation Branch of the Court of General Sessions is carried into this section, and the other provisions of section 11–801 et seq., of D.C. Code, 1961 ed., that related to the Small Claims and Conciliation Branch are also carried into this revised Part. Upon reenactment herein, they will stand on an equal basis.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

In general

Provision in rules of American Arbitration Association that award should be executed in accordance with law did not require its arbitrators to make findings or conclusions of law as provided in statutory arbitration proceedings. *Hale* v. *Friedman* (1960, 281 F. 2d 635, 108 U.S. App. D.C. 272).

The procedure in Small Claims Branch of District of Columbia Municipal Court is of simplified nature and strict rules of pleading and practice do not apply. *Ellerbe* v. *Goldberg* (D.C. Mun. App. 1948, 60 A. 2d 232).

When two persons are joined as defendants upon contract, but the proof shows liability of one only, a judgment may be taken against the one liable. *Presbrey* v. *Thomas* (1893, 1 App. D.C. 171).

When two joint contractors were joined in the same action, the entry of judgment against one does not bar the action against the other. *Harris* v. *Leonhardt* (1894, 2 App. D.C. 318).

Maker and endorsers of a promissory note may properly be joined, by the holder, as defendants, and under R.S., D.C., § 827 relating to suits against joint obligors, separate judgments may be rendered against them. *Young* v. *Warner* (1895, 6 App. D.C. 433).

When contract is made with several persons, whether it is under seal or not, if their legal interest is joint, they must, if living, all join in an action on the contract, and if all have not joined in the judgment will be arrested. *Magruder* v. *Belt* (1895, 7 App. D.C. 303).

In a suit against all the joint obligors on a joint and several bond, after judgment has been taken against one by confession, the suit may be continued against the others and there can be no difference between taking judgment by confession and taking judgment by default. *Blagden* v. *United States ex rel. Preinkert* (1901, 18 App. D.C. 370).

Action equitable

A divorce proceeding in this jurisdiction is equitable in character. *Moncure* v. *Moncure* (1922, 278 F. 1005, 51 App. D.C. 292).

Alternative theories

Remarks by plaintiff's counsel during opening statements were too ambiguous to show abandonment by plaintiff of pleaded alternative theories for setting aside of trust created by plaintiff's wife nine months before her death, and therefore trial court erred in limiting its consideration to single theory. *M. Edelman, etc.* v. *National Bank of Washington et al.* (1961, 297 F. 2d 188, 111 U.S. App. D.C. 346).

Amendment of complaint

Where husband sued wife for absolute divorce on ground of voluntary separation but evidence pointed to constructive desertion on part of wife and uncontradicted evidence seemed to justify divorce for desertion, husband was entitled to amend complaint to conform to evidence showing desertion. *Slone* v. *Slone* (D.C. Mun. App. 1957, 134 A. 2d 585).

Application to amend

Appellant was without right to complain that order sustaining motion to dismiss complaint did not allow him opportunity to amend where he made no application for leave to amend, since reviewing court cannot assume that he would have been denied the right of amendment had he sought it. *Johnson* v. *M. J. Uline Co.* (D.C. Mun. App. 1945, 40 A. 2d 260).

Award as condition precedent

An award by arbitration is not a condition precedent to be proved before bringing suit. *Fontano* v. *Robbins* (1901, 18 App. D.C. 402).

Bill of discovery

Bill in equity for discovery is not proper, merely because books, papers, and documents are in possession of defendant, as such evidence can be obtained by legal process. *Curriden* v. *Middleton* (1911, 37 App. D.C. 568, affirmed 34 S. Ct. 458, 232 U.S. 633, 58 L. Ed. 765).

Where joint tenant applied for equitable relief, the proper procedure was to file bill of discovery rather than motion to produce books and records. *Arms & Drury, Inc.* v. *Burg* (1937, 90 F. 2d 400, 67 App. D.C. 155).

Bill of particulars part of declaration

Although a declaration may be defective and not a model of good pleading, a bill of particulars is part thereof and may serve to remove any uncertainty inherent in the latter. *Finney* v. *Pennsylvania Iron Works Co.* (1903, 22 App. D.C. 476).

Burden of proof

In replevin to recover household goods which plaintiff claimed defendant had bought for plaintiff with his money and which defendant claimed to have bought with her own money, burden of proof upon such issue was upon plaintiff, and, if no evidence was produced on either side, plaintiff would have been out of court. *Imhoff* v. *Walker* (D.C. Mun. App. 1947, 51 A. 2d 309).

In replevin to recover household goods which defendant claimed as a gift from plaintiff and which, it was not disputed, had originally been plaintiff's property, defendant had burden of establishing a gift of such goods.

Circuit Courts of Appeals

Writs of mandamus may still be issued by Circuit Courts of Appeals. *National Bondholders Corp.* v. *McClintic* (C.C.A. 4, 1938, 99 F. 2d 595). See, also *Armour & Co.* v. *Kloeb* (C.C.A. 6, 1940, 109 F. 2d 72, reversed on other grounds 61 S. Ct. 213, 311 U.S. 199, 85 L. Ed. 124).

Common-law rule

Quaere: Whether this section modifies common-law rule that "the finding in favor of the plaintiff of an issue of fact raised by a plea in abatement, entitles the plaintiff to a judgment on the merits." *Brown* v. *Savings Bank* (1906, 28 App. D.C. 351).

Complaint

Even if a complaint which contained a recitation as to removal of assets so that it might serve as an affidavit for a writ of attachment before judgment was insufficient because it was sworn to on knowledge and belief instead of in a positive and unqualified manner, court would not be deemed to have erred in denying a motion to quash the writ issued pursuant thereto, in view of fact that a supplemental affidavit was before the court at the hearing on the motion, and such supplemental affidavit could be deemed to have cured alleged irregularity in the complaint. *Hartz* v. *Segner et ano.* (D.C. Mun. App. 1960, 165 A. 2d 489).

Where complaint sought recovery of possession under § 5 of District Rent Act by reason of "substantial altering and remodeling and replacement with new construction of commercial property," no reversible error was committed in allowing an amendment to change body of complaint under a permissive statute where the original complaint stated that the property was "commercial property", since statement that possession was sought under § 5 which applies only to housing accommodations was mere surplusage. *Alpert* v. *Wolf* (D.C. Mun. App. 1950, 73 A. 2d 525).

Where original complaint described the plaintiff as executrix, it was not reversible error to permit amendment describing her as suing individually and as executrix, where the record was clear that it was the intention to sue in her individual capacity. As descriptive word "executrix" in the amended complaint was surplusage. *Id.*

Conciliation

Small Claims Rule 14c prescribing conciliation procedure in every case has the force and effect of law. *Potomac Small Loan Co.* v. *Myles* (D.C. Mun. App. 1943, 34 A. 2d 609).

Conforming to proof by amendment

Where bailor moved to amend her complaint against bailee for loss of and damage to property stored in bailee's warehouse under storage contract containing limitation of liability, to include allegation charging bailee with gross negligence, after testimony of bailee's witnesses revealed to bailor for first time manner in which bailee conducted its business, and court deferred action on motion until conclusion of case, when bailor renewed her motion and court denied it without prejudice to bailor raising issue by prayer for instruction, court in effect

permitted complaint to be amended to conform to proof, and granting of amendment was proper. *Manhattan Storage & Transfer Co., Inc.* v. *Davis et al.* (D.C. Mun. App. 1955, 117 A. 2d 120).

Consolidation

Consolidation of two actions for trial does not combine them into one cause of action or effect a true consolidation where one judgment would be decisive against all parties to both actions. *Gibson* v. *Industrial Bank of Washington* (D.C. Mun. App. 1944, 36 A. 2d 62).

Costs

Where it was held that party attempting to appeal had no right to do so and judgment was affirmed, cost of stenographic record included in record on appeal could not be taxed against appellant by Municipal Court of Appeals, but could only be taxed by trial court. *Klein* v. *Liss* (D.C. Mun. App. 1945, 43 A. 2d 757).

Successful appellant was not entitled to tax against appellee the cost of a reporter's transcript of testimony which was made part of the record on appeal. *Fraser* v. *Crounse* (D.C. Mun. App. 1946, 47 A. 2d 96).

In prescribing in rule 41(c) that, on reversal, cost of transcript of record shall be taxable as costs, the usual transcript on appeal, consisting of copies of pleadings and statement of proceedings and evidence which is ordinarily prepared by counsel and settled and approved by trial judge, was contemplated and not the unusual items of expense such as the cost of a reporter's transcript. *Id.*

Counsel fees

Defendant, who was successful in having bill of interpleader dismissed, was not entitled to allowance of counsel fees, where ground on which such defendant claimed to be entitled to allowance of counsel fees was not apparent. *Continental Trust Co.* v. *Corbin* (D.C. Supp. 1948, 80 F. Supp. 394).

Counterclaims

Court should not have entertained the counterclaims of defendants in suit in which possession was sought on the grounds of unlawful entry and detainer for though the court has held that where a tenant is sued for possession for nonpayment of rent, he may defend by an equitable defense sufficient to defeat the claim for rent or may defend by way of recoupment for a total or partial failure of consideration in order to avoid circuity of action. Yet where the suit was not for payment and the counterclaim sounded in tort, the rule does not apply. *Bellmore* v. *Baum* (D.C. Mun. App. 1949, 68 A. 2d 588).

Discontinuance of count

A discontinuance of a count in a declaration setting up a distinct cause of action is not an amendment, but treating it as such, it creates no necessity for a continuance. *Crandall* v. *Lynch* (1902, 20 App. D.C. 73).

Discretion of court

"There is nothing in section 399 of the Code (this section) to make it mandatory on the courts to allow amendments." *Schrot* v. *Schoenfeld* (1904, 23 App. D.C. 421).

"The grant or refusal of leave to amend is a power entrusted to the trial court that injustice and hardship may be prevented and the merits of the case fairly tried. Whether in the particular instance the leave should be granted or refused is a matter within the discretion of the trial court, and is not reviewable in the appellate court." *Chunn* v. *City & S. R. Co.* (1904, 23 App. D.C. 551, reversed on other grounds 28 S. Ct. 63, 207 U.S. 302, 52 L. Ed. 219). See, also, *German Soc.* v. *Prospect Hill Cemetery* (1894, 2 App. D.C. 310); *Brown* v. *Baltimore & O. R. Co.* (1895, 6 App. D.C. 237); *Plummer* v. *Johnson* (D.C. Mun. App. 1944, 35 A. 2d 647).

"After the appearance of defendant, the granting of additional time to plead and leave to amend affidavits was within the discretion of the court." *Armour* v. *Flook* (1916, 44 App. D.C. 415).

Where defendent filed an additional plea of equitable estoppel to which plaintiff demurred, the granting of leave to file a substituted amended plea within a few days thereafter was within the court's discretion. *Daly* v. *Sacks* (1930, 38 F. 2d 388, 59 App. D.C. 216).

Under this section an amendment of a plea, after the jury was sworn, but before the statement of the case or the admission of evidence, is in the discretion of the court. *Kinchlow* v. *Peoples Rapid Transit Co.* (1937, 88 F. 2d 764, 66 App. D.C. 382, certiorari denied 57 S. Ct. 926, 301 U.S. 693, 81 L. Ed. 1349).

A reasonable discretion is reposed in trial courts in the allowance or refusal of amendments to pleadings. *Plummer* v. *Johnson* (D.C. Mun. App. 1944, 35 A. 2d 647).

Where action on renewal note more than eight months before trial had been at issue under answer containing a general denial and affidavit of defense alleging absence of consideration, and defendant during his testimony asked leave to amend answer to show fraud and undue influence in making the original note, but offered no excuse for not seeking the desired amendment prior to trial, trial court did not abuse its discretion in refusing amendment. *Id.*

The trial court has wide discretion in the allowance of amendments to pleadings both before and during trial. *Peake* v. *Ramsey* (D.C. Mun. App. 1945, 43 A. 2d 763).

It was not an abuse of discretion for trial court to refuse moving party leave to amend after verdict where she knew or should have known what the pending litigation would probably develop and having lost on one defense, she had no right to have case reopened to assert a new one. *Boyle* v. *Smith* (D.C. Mun. App. 1949, 64 A. 2d 428).

Court rules were designed to allow amendments and changes in pleadings liberally; pleadings are to be liberally construed to do substantial justice and the trial court is allowed wide discretion in determining such matters *Pyramid National Van Lines, Inc.* v. *Goetze* (D.C. Mun. App. 1949, 66 A. 2d 693).

Where a motion was made to strike out counterclaims on grounds of omission from the original answer and allegedly filed too late, it was held that since the counterclaims were compulsory, they should not be stricken and the amendments should be allowed with great liberality at any stage unless they prejudiced the rights of the opposing party. *Id.*

It was entirely proper for trial court to permit amendment of bill of particulars since the allowance of amendments to conform to the evidence is in accordance with modern practice and is specifically authorized by the court rules. *Hillyard* v. *Smither & Mayton, Inc.* (D.C. Mun. App. 1950, 76 A. 2d 166).

While the rules of the court contemplate that leave to amend shall be freely given, it is not their purpose to allow amendments under any and all circumstances. *Buchanan* v. *Farmer* (D.C. Mun. App. 1948, 62 A. 2d 367).

Where, in action for breach of contract, case was tried on issues presented by the original complaint, amendment advancing a new theory for recovery after evidence was closed would not be permitted where it would prejudice defendant. *Id.*

Dismissal

Where each plaintiff sought recovery of $50 on theory that each had delivered $50 to defendant on his undertaking to acquire title to an apartment house, and that defendant's resale of apartment house obligated him to return the sums received from plaintiffs, dismissal of the action by small claims branch of Municipal Court without hearing defendant's testimony was not justified by record. *Hodgkins* v. *Beckner* (D.C. Mun. App. 1943, 32 A. 2d 113).

Summary dismissals in the small claims branch of Municipal Court without a full hearing from both sides are not justified save in exceptional cases. *Id.*

Duty of appellant

The primary responsibility for prosecuting an appeal rests upon an appellant and he must guard against time lapses which may result in dismissal. *Bowers* v. *Basiliko* (D.C. Mun. App. 1944, 38 A. 2d 623).

It is duty of the parties and primarily of appellant to present a record complete and adequate for purposes of all questions to be argued on appeal. *Barrett* v. *Adkins Furniture Co.* (D.C. Mun. App. 1945, 43 A. 2d 44).

In the absence of a statute or rule requiring the giving of notice of trial, a party litigant who has appeared in court is required to keep himself informed of the time his case is set for trial. An allegation of fraud in obtaining judgment based on lack of notice is without merit. *Rosenberg* v. *Ichcovitz* (D.C. Mun. App. 1950, 72 A. 2d 466).

Duty of court

In a case tried by the court without a jury, the court has the duty to rule upon requested and pertinent questions of law. *Eggleton* v. *Vaughn* (D.C. Mun. App. 1946, 45 A. 2d 362).

Errors in prayer of complaint do not affect cause of action disclosed by facts alleged, but court must give any relief which those facts will support. *Smith* v. *Schlein* (1944, 144 F. 2d 257, 79 U.S. App. D.C. 166).

Extension of time

The taking of an appeal within the time prescribed by rule is mandatory and jurisdictional, and such time cannot be enlarged. *Valentine* v. *Real Estate Commission etc.* (D.C. Mun. App. 1960, 163 A. 2d 554).

An appeal to Municipal Court of Appeals for District of Columbia is perfected by filing a notice of appeal with clerk, and time therefor may not be extended and thereafter trial court has no power to grant extensions except one ten-day extension for filing statement of proceedings and evidence or reporter's transcript and one extension of five days for filing objections thereto, and other extensions must be obtained from Court of Appeals. *Tendler* v. *L. E. Massey, Inc.* (D.C. Mun. App. 1943, 34 A. 2d 33).

Where Municipal Court without authority extended for five days time for hearing appellee's objections to reporter's transcript because of absence from city of appellee's counsel, and transcript was thereafter approved, Court of Appeals, in its discretion, within time for filing transcript of record on appeal, extended time for approval of transcript to include date on which it was approved. *Id.*

The prohibition against enlarging time for taking appeal is absolute. *Crowley* v. *Wood* (D.C. Mun App. 1943, 31 A. 2d 861).

Counsel could not by their consent to application for extension of time for filing brief render inoperative court rule fixing time limit or fix new limitations of time not contemplated by court rules or specifically sanctioned by court orders. *Werth* v. *Nolan* (D.C. Mun. App. 1943, 31 A. 2d 679).

Alleged fact that appellants' counsel had been engaged in other court work and other legal practice to such extent that he had not had sufficient time to prepare brief did not constitute sufficient cause for failure to file brief within time limited by court rules and extended by court order, and did not justify failure to seek extension of time within prescribed period and therefore an out of time application for extension of time for filing brief was required to be denied even though appellee consented to the application. *Id.*

That appellant miscalculated the time within which to file the designation of record and statement of errors was not an "extraordinary reason" for granting leave to file after the expiration of time fixed by court rule, particularly where extension was sought after expiration of the time fixed. *Bowers* v. *Basiliko* (D.C. Mun. App. 1944, 38 A. 2d 623).

Counsel could not by their consent to application for leave to file designation of record and statement of errors after expiration of time render inoperative court rule fixing time limit for filing, or by withholding consent prevent the court from granting relief in a proper case. *Id.*

Court's discretion in matter of permitting extension of time for filing record and statement of errors will be exercised very sparingly and only upon substantial justification. *Bowers* v. *Basiliko* (D.C. Mun. App. 1944, 38 A. 2d 623). See, also, *Graves* v. *MacDonald* (D.C. Mun. App. 1946, 47 A. 2d 91).

The timely filing of notice of appeal is jurisdictional and, unless such notice is timely filed, court has no power to extend or to review case. *Beach* v. *District of Columbia* (D.C. Mun. App. 1946, 44 A. 2d 926).

The purpose of Municipal Court of Appeals rule 27 (p) that there shall be no extensions of time for filing notice of appeal, reserving power in court to enlarge time for taking any step after notice of appeal is filed, is to set a definite point of time when litigation shall be at an end unless, within the time limited, an appeal is initiated in the prescribed manner. *Id.*

Appellant, filing no brief or application for extension of time to do so before last day for filing thereof, was not entitled to extension of time therefor on oral motion, made by his counsel after case was placed on next month's calendar, solely on ground that counsel had been busy with other matters. *Nash* v. *District of Columbia* (D.C. Mun. App. 1946, 48 A. 2d 469).

Tenant in landlord's action for possession of business property, was not entitled to additional time for completing appeal which was not perfected in time allegedly because pressure of business had prevented tenant's attorney from perfecting appeal, attorney was out of town, and attorney had no idea that landlord's attorney would seek enforcement of rules dealing with time limits for various steps on appeal. *Graves* v. *MacDonald* (D.C. Mun. App. 1946, 47 A. 2d 91).

The reason given in support of motion for leave to file in the trial court a statement of proceedings and evidence, time for so doing having expired, that counsel had been engaged in other courts and had overlooked the date statement of proceedings and evidence was due, was not an "extraordinary reason" within rule, which would justify granting relief. *Cunningham* v. *Dade* (D.C. Mun. App. 1947, 52 A. 2d 894).

Federal Rules of Civil Procedure

Federal Rules of Civil Procedure, 28 U.S.C. App. are inapplicable to Municipal Court of Appeals for District of Columbia. *Taylor* v. *United Broadcasting Co.* (D.C. Mun. App. 1948, 61 A. 2d 480).

Filing instrument sued on

It is not the practice, and it would be unreasonable to require, that a promissory note which is the subject of suit should be filed with the declaration; it is sufficient if it is produced at the trial or at the hearing on motion for judgment; and it will be presumed that this was done where there is nothing in the record to show the contrary. *Finney* v. *Pennsylvania Iron Works Co.* (1903, 22 App. D.C. 476).

Findings of fact

The Domestic Relations Branch of the Municipal Court for the District of Columbia may make findings of fact at close of a plaintiff's case. *Nadell* v. *Nadell* (D.C. Mun. App. 1957, 131, A. 2d 921).

Where trial court announced that it was accepting plaintiff's evidence as being true and correct in considering defendant's motion to dismiss at conclusion of plaintiff's evidence, making the formal findings of fact in entering final judgment of dismissal was inconsistent and required reversal for new trial. *Id.*

Joinder of tort and contract

A count sounding in tort may be joined with a count on contract. *Monton* v. *F. G. Smith Piano Co.* (1911, 36 App. D.C. 137, 33 L.R.A., N.S., 305).

Quaere: Whether, under this section, a count for libel may be joined with one of assault and battery. *Friedlander* v. *Rapley* (1912, 38 App. D.C. 208).

Causes of action for commission for realty sold, and for fraudulent misrepresentation as to the agency to sell property, by which plaintiff had been damaged, not an improper joining. Amended, June 30, 1902, 32 Stat. 520, ch. 1329. *Minar* v. *Sheehy* (1926, 13 F. 2d 290, 56 App. D.C. 318).

Joint liability

Under contract which called for members of creditor's committee of insolvent corporation to assume responsibility for payment of attorney's fee and under which members of committee were identified as promisors, each member was not bound by a separate promise to pay pro rata share but members were jointly liable for entire fee. *V. B. Welch* v. *R. W. Sherwin et al.* (1962, 300 F. 2d 716, 112 U.S. App. D.C. 124).

Judgment against less than all parties

In a suit against the principal and two sureties on a bond the action was discontinued as to one of the sureties. On appeal from an order overruling a motion in arrest of judgment "because the action is against but two of three joint and several obligors," and "because the action has been discontinued against one of the three joint and several obligors," and "because though one of the three joint and several obligors has died since the institution of this suit plaintiffs have failed to make his personal representative a party defendant," the court

ruled: "That the action was discontinued as to Horton who it seems had become insolvent, presents no ground for arresting the judgment. Section 1211 of the code (this section) simply provides that one action may be sustained and judgment recovered against all or any joint and several obligors. It does not require that this shall be done." *Wilkinson* v. *McKimmie* (1911, 36 App. D.C. 336, affirmed 33 S. Ct. 879, 229 U.S. 590, 57 L. Ed. 1342).

Jurisdiction of district court

The "public policy" of the District of Columbia does not require its courts to take jurisdiction of a matrimonial dispute between two persons who are neither domiciled in the District nor even residents thereof, especially where there is no showing that the welfare of children, rights of property, or other public interests in the District are affected. *Melvin* v. *Melvin* (1942, 129 F. 2d 39, 76 U.S. App. D.C. 56).

Under the doctrine "forum non conveniens" the District Court's jurisdiction of actions for separate maintenance between nonresidents domiciled elsewhere should not be exercised unless unusual circumstances justify trial in the District of Columbia. *Id.*

The District Court properly accepted jurisdiction of a wife's action for separate maintenance, even though husband and wife were nonresidents domiciled outside the District of Columbia, where husband's work when not traveling was in the District and husband's domicile was uncertain, both parties lived a few miles away, and husband at one time lived in the District. *Id.*

Where District Court was without jurisdiction of original complaint for divorce because of lack of plaintiff's required residence, it could not entertain the cross-bill, and bill would be dismissed, with the dismissal of the original bill. *Clark* v. *Clark* (D.C.D.C. 1948, 79 F. Supp. 722).

Material prejudice

Although it was error to strike husband's pleadings in divorce action because of his failure to appear before officer for deposition purposes concerning alimony pendente lite, where husband had been given opportunity to appear at final hearing, but husband failed to appear, husband's rights had not been materially prejudiced and limited divorce was properly granted to wife. *Hipp* v. *Hipp* (D.C. Mun. App. 1957, 134 A. 2d 493).

Ministerial duty

As the Comptroller General was not charged with duties requiring the exercise of judgment or discretion, but was called upon to perform a purely ministerial function, mandamus lies to compel him to certify a voucher for refund of immigration fines which were made through error of government officers. *McCarl* v. *United States ex rel. Societa Ligure di Armamento* (1929, 30 F. 2d 561, 58 App. D.C. 319).

Mandamus is the orthodox remedy to compel the performance of a ministerial duty. *Ballou* v. *Kemp* (1937, 92 F. 2d 556, 68 App. D.C. 7).

Mandamus may compel performance of a ministerial duty or compel performance of an act involving discretion, but it cannot direct the discretion. *Thomas* v. *Vinson* (1946, 153 F. 2d 636, 80 U.S. App. D.C. 346).

Where duty in a particular situation is so plainly prescribed as to be free from doubt and equivalent to a positive command, it is regarded as being so far "ministerial" that its performance may be compelled by mandamus unless there is provision or implication to the contrary. *Id.*

Necessary parties

In action by purchaser against agent for return of deposit, where vendors, through their attorney, demanded the deposit from agent but purchaser did not serve vendors, presumably because they were beyond jurisdiction, and did not attempt service other than personal, and agent had personal interest in one-half of deposit but did not interplead vendors, and effect on vendors' interest of litigation between purchaser and agent was uncertain, vendors would be deemed conditionally necessary but not indispensable parties, and proceeding could properly continue without them if circumstances did not permit service. *Gauss* v. *Kirk* (1952, 198 F. 2d 83, 91 U.S. App. D.C. 80, 33 A. L. R. 2d 1085).

Official duties

Where the performance of official duties requires an interpretation of the law which governs that performance, the interpretation placed by the officer upon the law will not be interfered with unless it is clearly wrong and the official action arbitrary and capricious. *Hammond* v. *Hull* (1942, 131 F. 2d 23, 76 U.S. App. D.C. 301, certiorari denied 63 S. Ct. 830, 318 U.S. 777, 87 L. Ed. 1145).

The courts have no general supervisory powers over the executive branches or over their officers which may be invoked by writ of mandamus. *Id.*

Penalty for failure to give deposition

Where husband had failed to appear for the taking of his deposition concerning alimony pendente lite in divorce action, trial judge properly refused to allow husband to testify at preliminary hearing concerning temporary support. *Hipp* v. *Hipp* (D.C. Mun. App. 1957, 134 A. 2d 493).

Personal liability of governmental officer

The fact that this section allows the petitioner to recover damages in the same proceeding does not justify the retention of the petition to charge the secretary personally, since damages are only incident to the allowance of the writ. *Le Crone* v. *McAdoo* (1920, 40 S. Ct. 510, 253 U.S. 217, 64 L. Ed. 869).

Plea in abatement

"That the amendment may relate to the withdrawal of a plea in bar and its substitution by one in abatement, or the reverse, does not alter the rule." *Chunn* v. *City & S. R. Co.* (1904, 23 App. D.C. 551, reversed on other grounds 28 S. Ct. 63, 207 U.S. 302, 52 L. Ed. 219).

Presumptions

Error will not be presumed on appeal and must be shown affirmatively by party asserting it. *Barrett* v. *Adkins Furniture Co.* (D.C. Mun. App. 1945, 43 A. 2d 44).

Principal and agent

In an action in Municipal Court of District of Columbia, joinder of principal and agent where the principal's liability is predicated solely upon agency is proper. *Bailey* v. *Zlotnick* (1943, 133 F. 2d 35, 77 U.S. App. D.C. 84).

Prior law

Under R. S., § 954 (see Fed. Rules Civ. Proc. rules 1, 15, 61, U.S.C. title 28, Appendix), and the Maryland Act of 1785, ch. 80 § 4, the lower court may allow a change, by amendment, of one form of action to another, provided the claim or cause of action sued for be the same in both. *Magruder* v. *Belt* (1895, 7 App. D.C. 303).

Privileged communications

Whether streetcar motorman's report of accident was a privileged communication which streetcar company could not be compelled to produce in passenger's action against it for injuries could not be determined by court without knowledge of circumstances under which report was made, reason and purpose for which it was made, and to whom it was made. *Wolff* v. *Capital Transit Co.* (D.C. Mun. App. 1944, 35 A. 2d 454).

That motorman's report to streetcar company of accident was in possession of streetcar company's counsel did not automatically make report a "privileged communication" which company could not be required to produce in passenger's action against it for injuries. *Id.*

Power of court

Where no notice to produce is served and the paper is not present at trial, court may decline to order its production where such order would unreasonably delay progress of trial or work legal prejudice to adverse party. *Wolff* v. *Capital Transit Co.* (D.C. Mun. App. 1944, 35 A. 2d 454).

A subpoena for attendance as witness or for production of documentary evidence is for the purpose of having witness or document present at trial and if witness or document is present in court, though no subpoena is served, court can order witness to take the stand or order production of the document. *Id.*

Trial court erred in ruling that it could not compel production of documentary evidence admittedly in the possession of defense counsel merely because notice to produce or subpoena duces tecum had not been served. *Id.*

Powers

United States commissioners have only such powers as to procedure that may be conferred by the State statutes on examining magistrates of the State; United States commissioner can go no further in his procedure than the State examining magistrate could do. *United States* v. *Mace* (C.C.A. 8, 1922, 281 F. 635).

Purpose

The true legislative intent was to simplify the practice as between legal and equitable procedure in those courts which already possessed jurisdiction over equitable causes, and was not to give the municipal court general equitable jurisdiction when dealing with defenses to actions. *International Exch. Bank* v. *Pullo* (1923, 285 F. 933, 52 App. D.C. 199).

Questions considered

Where case was never submitted to jury, there could be no complaint, on appeal, of trial court's refusal to grant certain instructions. *National Life Ins. Co.* v. *White* (D.C. Mun. App. 1944, 38 A. 2d 663).

Where plaintiff made no motion for an instructed verdict and did not object to submission of case to jury, claim that court erred in not directing a verdict could not be considered. *Abbott* v. *Fant* (D.C. Mun. App. 1944 38 A. 2d 618).

Where no objection or motion for a mistrial was made before the return of the verdict, and court instructed jurors that it was their duty to disregard any remarks of counsel tending to arouse their sympathy, claim that court should have declared a mistrial because counsel referred to appellee as American citizen whose son was overseas fighting for his country would be overruled. *Id.*

Questions of fact

In wife's divorce action, husband's motion for new trial on ground that wife's divorce decree from another was invalid because of fraud perpetrated on court in respect of wife's residence presented a "question of fact" and decision granting new trial was not so wanting in evidential support as to be arbitrary. *Ruppert* v. *Ruppert* (1943, 134 F. 2d 497, 77 U.S. App. D.C. 65).

Questions on appeal

Where the trial court found no impropriety in proceedings before the referee and no error in the findings of fact and conclusions of law, the Court of Appeals would not disturb judgment adopting referee's report. *Stern* v. *Stern Co. of Washington, D.C.* (1953, 200 F. 2d 364, 91 U.S. App. D.C. 338).

Reasonable notice

The reasonable notice of motion to require party to produce documentary evidence in his possession or control provided for by this section contemplates that party shall not be required to produce papers at trial unless he has had notice and a reasonable time in which to produce them, what constitutes a reasonable time depending on the circumstances of each case. *Wolff* v. *Capital Transit Co.* (D.C. Mun. App. 1944, 35 A. 2d 454).

Record

Stenographic transcript of former trial of case before a different judge was not properly part of record. *Mee* v. *Marlyn Apartment Co.* (D.C. Mun. App. 1943, 31 A. 2d 864).

The responsibility for a complete record rests primarily on the parties and not on the trial court or appellate court. *Zweig* v. *Schwartz* (D.C. Mun. App. 1943, 31 A. 2d 857).

A suggestion by losing party, after case has been briefed, argued, and decided, that there are omissions in the record, come too late.

It is duty of parties coming to appellate court to bring a record complete and adequate for purposes of all questions to be argued, since appellate court cannot consider matter outside record. *Id.*

Where appellees' request to have record corrected was made for first time in motion for rehearing after appellate court had reversed judgment, the request was not in time. *Id.*

If anything material to either party is omitted from record, omission should be called to attention of appellate court timely in order that omission may be supplied and supplemental record, if necessary, filed. *Id.*

If record before Municipal Court of Appeals for the District of Columbia is inadequate to present questions raised, court cannot review the proceedings. *Barrett* v. *Adkins Furniture Co.* (D.C. Mun. App. 1945, 43 A. 2d 44).

Appellate court can consider only what the record discloses. *Heslop* v. *Robert A. Grahame, Inc.* (D.C. Mun. App. 1943, 31 A. 2d 856). See, also, *Barrett* v. *Adkins Furniure Co.* (D.C. Mun. App. 1945, 43 A. 2d 44).

Where copies of letters were attached to defendant's brief but they did not appear in record and counsel had not taken witness stand to identify them nor to recite circumstances of their being written, they were not properly before court on appeal. *McHugh* v. *Duane* (D.C. Mun. App. 1947, 53 A. 2d 282).

Reformation, rescission or performance

The Municipal Court for the District of Columbia would be without jurisdiction to try issues appropriate to suit for reformation or rescission of instrument or for specific performance, unless such issues were presented by way of defense to action within the court's jurisdiction. *Howenstein Realty Corporation* v. *Richardson* (1943, 135 F. 2d 803, 77 U.S. App. D.C. 299).

Remand

"In the case of *Wiggins Ferry Co.* v. *Ohio & M. R. Co.* (142 U.S. 396, 35 L. Ed. 1055, 12 Sup. Ct. 188), it was held by the Supreme Court that where the facts showed that the plaintiff had an equitable title to relief, but that court, on the state of pleadings before it, was unable to afford relief it could and would remand the case to the court below for amendment of pleadings and further proceedings, in order that the right might be availed of." *Wagenhurst* v. *Wineland* (1903, 22 App. D.C. 356). See, also, *Alfred Richards Brick Co.* v. *Atkinson* (1900, 16 App. D.C. 462).

Requisites of interpleader

The four conditions prerequisite to an order for interpleader are: (1) The same thing, debt, or duty must be claimed by both or all the parties against whom relief is demanded; (2) all their adverse titles or claims must be dependent, or be derived from a common source; (3) the person asking the relief—the plaintiff—must not have or claim any interest in the subject-matter; and (4) he must have incurred no independent liability to either of the claimants—that is, he must stand perfectly indifferent between them in the position merely of a stakeholder. *Morgan* v. *Kraft* (1923, 285 F. 906, 52 App. D.C. 172).

Review

An equitable defense not interposed below could not be insisted upon on appeal. *Saks* v. *B. H. Stinemetz & Son Co.* (1924, 293 F. 1005, 54 App. D.C. 38).

Rules, validity

The requirements of due process can be satisfied by compliance with the provisions of the statute as construed in Rule 9 (Rules for the Small Claims and Conciliation Branch of the Municipal Court of the District of Columbia), the latter constituting a reasonable exercise of the rule-making power delegated by the statute to the court, and which, when properly construed, neither abridges nor extends the jurisdiction of the court beyond the limits of the act itself, and therefore has the force and effect of law. *Wise* v. *Herzog* (1940, 114 F. 2d 486, 72 App. D.C. 335).

Rules of court

Time limitations in court rules governing appeals to Municipal Court of Appeals for District of Columbia were designed to prevent unnecessary delay, and Court of Appeals, in its discretion, may decline to accept as sufficient excuses for failure to comply with limitations. *Tendler* v. *L. E. Massey, Inc.* (D.C. Mun. App. 1943, 34 A. 2d 33).

The Federal Rules of Civil Procedure, 28 U.S.C., Appendix, and the Rules of Municipal Court of Appeals for District of Columbia are intended to avoid harshness of the old rules. *Id.*

Where there has not been a compliance with requirements of rules governing appeals, court may, either upon appropriate motion, or sua sponte, dismiss appeal. *Lloyd* v. *U.S. Fidelity & Guaranty Co.* (1943, 31 A. 2d 669,

certiorari denied 64 S. Ct. 88, 320 U.S. 780, 88 L. Ed. 468, rehearing denied 64 S. Ct. 204, 320 U.S. 814, 88 L. Ed. 491, rehearing denied 64 S. Ct. 1148, 322 U.S. 770, 88 L. Ed. 1595).

Where appellant did not submit to trial judge nor to opposing counsel, a "Statement of Proceedings and Evidence" as required by court rules, nor was such a statement or agreed statement in lieu thereof filed, a motion to have the appeal docketed and dismissed could have been filed by appellee. *Id.*

Where appellant did not submit to trial judge nor to opposing counsel a "Statement of Proceedings and Evidence" but there was set forth in brief for appellant a statement of case and appellee's brief contained a section entitled "Restatement of the Case," the statements would be treated as part of record on appeal and appeal would be entertained, but such action was not to be construed as a precedent for pending or future cases. *Id.*

That appellant filed notice of appeal the next day after judgment rather than waiting the full ten days did not excuse unexplained failure to follow up with filing designation of record and assignment of errors within five days required by rule. *Bowers* v. *Basiliko* (D.C. Mun. App. 1944, 38 A. 2d 623).

Where appellant failed to file designation of record and statement of errors within five days from date of filing notice of appeal as required by court rule and no extraordinary reason for granting relief was shown, appellee's motion to docket and dismiss was granted. *Id.*

The rules of Municipal Court of Appeals contemplate that assignments of error shall be specific and definite for the reason that many cases in trial court are not stenographically reported and statements of proceedings and evidence in those cases are prepared in view of errors claimed. *Watwood* v. *Potomac Chemical Co.* (D.C. Mun. App. 1945, 42 A. 2d 728).

The rules of the Municipal Court of Appeals providing how an appeal should be taken and fixing time for filing notice of appeal are in conformity with mandate of this section to follow the Federal Rules of Civil Procedure, 28 U.S.C. App., except as to time limits which conform to the Rules of Practice and Procedure in Criminal Cases, 18 U.S.C. App., adopted by the Supreme Court. *Beach* v. *District of Columbia* (D.C. Mun. App. 1946, 44 A. 2d 926).

On appeal from judgment of Municipal Court, the Municipal Court of Appeals will not apply a Federal Rule of Civil Procedure, U.S. Code, title 28, Appendix, which the Municipal Court has not adopted. *Conrad* v. *Medina* (D.C. Mun. App. 1946, 47 A. 2d 562).

Appellants' failure to file a statement of errors was a breach of rules. *Hoover* v. *Babcock* (D.C. Mun. App. 1947, 53 A. 2d 591).

The court rule providing that judgment if no motion is filed, shall be entered on fifth day after verdict or finding, does not mean that judgment is to be dated as of the fifth day even though entered later. *Corbett* v. *Urciolo* (D.C. Mun. App. 1947, 54 A. 2d 577).

The purpose of the rules of the Municipal Court of Appeals is the orderly and prompt disposition of appeals *Cunningham* v. *Dade* (D.C. Mun. App. 1947, 52 A 2d 894).

Rule permitting Municipal Court of Appeals to call for further statement of evidence, approved by trial court, if such is necessary to determine application for leave to appeal, contemplates such action only when there is at least a prima facie showing of merit in the application. *Ionescue* v. *Dettmers* (D.C. Mun. App. 1947, 53 A. 2d 287).

Rules of the appellate court permit the use of original papers on appeal, and the statute itself provides that there shall be no requirement for printed records or briefs. Rules make it possible for counsel and parties to expedite the hearing of appeals, but they still have the responsibility for calling to our attention the need for emergency actions. *Hill* v. *United States* (D.C. Mun. App. 1950, 75 A. 2d 138).

The purpose of the rules is the orderly and prompt disposition of appeals. Rules are not made for the convenience of the court but for the benefit of litigants, and counsel who have the right to rely on them, ought to comply with them. The court will not condone either willful or negligent disregard of court rules or orders. *Phucas* v. *Washington-Virginia-Maryland Coach Company* (D.C. Mun. App. 1950, 76 A. 2d 59).

Where counsel for appellant has given no explanation of how an inadvertence could have occurred in not filing the brief, court is obliged to conclude that counsel, after receiving two extensions of time totaling twenty-eight days, simply failed to comply with the rules and order of this court. *Id.*

Where the so-called brief in no manner complied with rules, consisted of three pages with an obviously incomplete statement of the case in the first page, seven claims of error in the third, and containing some general statements under the heading "Conclusion" with no index, no citations of authority and no arguments; such a document is not entitled to be called a brief and appeal must be dismissed. *Id.*

Scire facias

"The power of amendment is equally applicable and to the same extent in the case of a scire facias as in the case of an ordinary execution." *Otterback* v. *Patch* (1894, 5 App. D.C. 69).

Self-incrimination

Municipal Court for District of Columbia, Domestic Relations Branch, properly permitted defendant in annulment action to invoke Fifth Amendment privilege against self-incrimination in support of his refusal to respond to requests for admissions seeking his admission that he was married to third person two years before his marriage to plaintiff, that to his personal knowledge his first wife was still living, that marriage had not been dissolved by divorce or annulment, that he had received no notice that such proceedings had been instituted by his first wife, and that he was in fact still married to her at time of purported marriage to plaintiff. *Joann Mayo* v. *Raymond Ford* (D.C. Mun. App. 1962, 184 A. 2d 38).

Service on third person

Personal service upon third person within the jurisdiction is necessary to bring him into court and personal service out of the jurisdiction or service by publication is insufficient. *Dexter* v. *Lichliter* (1904, 24 App. D.C. 222).

Set-off

Damages for breach of warranty of chattel sold on conditional sale, proper set-off in replevin. *Marks* v. *Frigidaire Sales Corp.* (1932, 54 F. 2d 974, 60 App. D.C. 359, certiorari denied 52 S. Ct. 394, 285 U.S. 544, 76 L. Ed. 936).

Setting aside arbitrator's award

Where the trial court found no impropriety in proceedings before the referee and no error in the findings of fact and conclusions of law, the Court of Appeals would not disturb judgment adopting referee's report. *Stern* v. *Stern Co., of Washington, D.C.* (1953, 200 F. 2d 364, 91 U.S. App. D.C. 338).

Award of referee or arbitrator may be vacated or modified only on grounds clearly specified by this section. *Id.*

Arbitrators' corruption or gross mistake, either apparent on face of arbitration award or made out by evidence, warrants court's interference with award, but arbitrators' mere error of judgment does not warrant such interference. *Mascuso* v. *L. Gillarde Co.* (D.C. Mun. App. 1948. 61 A. 2d 677).

If the arbitrator professes to decide upon the law and he mistakes it, the court will set aside the award; also where the arbitrator's reasons did not appear upon the face of the award, but only upon another paper delivered therewith. *Bailey* v. *District of Columbia* (1894, 4 App. D.C. 356).

Specific defenses

A lessee's plea denying default in rent sued for is a good equitable defense. *Smith* v. *O'Connor* (1937, 88 F. 2d 749, 66 App. D.C. 367).

When tenant is sued for possession of realty for nonpayment of rent, he may defend by an equitable defense sufficient to defeat, in whole or in part, landlord's claim for rent or assert, by way of set-off, total or partial failure of consideration. *Seidenberg* v. *Burka* (D.C. Mun. App. 1954, 106 A. 2d 499).

A tenant who is sued for possession of real property for non-payment of rent may defend by an equitable defense sufficient to defeat landlord's claim for rent in whole or in part, or may defend by way of recoupment for

a total or partial failure of consideration in order to avoid circuity of action. *Lalekos* v. *Manset* (D.C. Mun. App. 1946, 47 A. 2d 617).

In landlord's action for possession of leased premises and for money judgment for rent, exclusion of testimony of oral agreement to repair, made before signing of lease, was error, since violation of such agreement would have constituted an equitable defense. *Mitchell* v. *David* (D.C. Mun. App. 1947, 51 A. 2d 375).

Statement of proceedings and evidence

Where only explanation for failure to file statement of proceedings and evidence within time or failure to apply for extension of time was that appellant's counsel was occupied with trial of cases, appellee's motion to docket and dismiss would be granted. *Stroup* v. *Howe* (D.C. Mun. App. 1943, 32 A. 2d 297).

Where statement of proceedings and evidence is prepared by counsel for one of interested parties with or without suggestions or instructions from court, counsel for other side is entitled to be served with copy and afforded an opportunity of making objections prior to final action thereon. *Franklin* v. *Chas. C. Schulman Co.* (D.C. Mun. App. 1943, 31 A. 2d 871).

The settling and approval of statement of proceedings and evidence is a "judicial function", and trial judge should not delegate the duty to counsel for one of the parties. *Id.*

A properly authenticated statement of proceedings and evidence must be accepted by appellate court as conclusive. *Id.*

Where appellee's counsel filed objections to statement of proceedings and evidence prepared by appellant's counsel and after conference trial judge directed appellee's counsel to prepare statement, approval of statement prepared by appellee's counsel without notice to appellant warranted a new trial. *Heslop* v. *Robert A. Grahame, Inc.* (D.C. Mun. App. 1943, 31 A. 2d 856).

A statement of proceedings and evidence properly settled and approved by trial judge must be accepted by appellate court as correct. *Id.*

Where trial judge did not settle statement, but instead approved two conflicting statements, appellate court could not pass on the merits and would remand case to trial court to approve and send to appellate court one correct statement of proceedings and evidence, or, if it was impossible to do so, to set aside judgment and order a new trial. *Id.*

Where appellant submitted a statement of proceedings and evidence to the trial judge and appellees filed objections thereto and both the statements and objections were approved by the trial judge and separately incorporated into the record, such procedure was confusing and proper procedure was to have statements of proceedings and evidence reflect in one document a complete and continuous narrative statement of what happened at the trial. *Washington Nat. Ins. Co.* v. *Stanton* (D.C. Mun. App. 31 A. 2d 680).

Testimony in trial court may be presented to the Municipal Court of Appeals by an agreed statement on appeal, by a narrative statement of proceedings and evidence prepared by counsel and approved by the trial judge, and through the medium of a reporter's transcript of the testimony. *Fraser* v. *Crounse* (D.C. Mun. App. 1946, 47 A. 2d 96).

Rules contemplate that in preparing a statement of proceedings and evidence, both parties be given an opportunity to assist in the preparation, and when disagreement arises as to what actually occurred at the trial, it is the function of the trial judge to confer with the parties and settle the dispute since the appellate court must accept as conclusive the statement properly settled and approved. *Edmonston* v. *Stanley* (D.C. Mun. App. 1950, 76 A. 2d 778).

Statute of limitations

Where a declaration is filed within the period of the statute of limitations, an amendment made after the statute has run which charges the same cause of action in a different form is not open to the defense of the statute. *Beasley* v. *Baltimore & O. R. Co.* (1906, 27 App. D.C. 595, 6 L.R.A., N.S., 1048). See, also, *District of Columbia* v. *Frazer* (1903, 21 App. D.C. 154).

In an action in ejectment, where the defense was the general issue, it is not error to permit defendant to amend by pleading the statute of limitations (after the evidence has been introduced and a motion by plaintiff for a directed verdict has been overruled). "Plaintiff was not taken by surprise; no additional evidence was introduced; plaintiff sustained no possible legal injury." *McMillan* v. *Fuller* (1914, 41 App. D.C. 384).

Mandamus, being a remedial process, is not within the statute of limitations, but is within the discretion of the court, and application to compel restoration to government service is barred by laches of twenty months. *United States ex rel. Arant* v. *Lane* (1919, 39 S. Ct. 293, 249 U.S. 367, 63 L. Ed. 650).

Stay of proceedings

This section does not authorize an equity court, having jurisdiction, to stay proceedings to await the bringing of another action in an inferior court. *Sambataro* v. *Caffo* (1927, 20 F. 2d 276, 57 App. D.C. 260).

Striking of pleading in divorce action

Rule that pleadings may be stricken if person wilfully fails to appear before officer for deposition purposes is permissive and does not require that it be done and was not applicable in divorce case since only purpose for striking an answer would be to proceed as if in default, but code specifically forbids the grant of divorce on default. *Hipp* v. *Hipp* (D.C. Mun. App. 1957, 134 A. 2d 493).

Striking pleadings

Although it was error to strike husband's pleadings in divorce action because of his failure to appear before officer for deposition purposes concerning alimony pendente lite, where husband had been given opportunity to appear at final hearing, but husband failed to appear, husband's rights had not been materially prejudiced and limited divorce was properly granted to wife. *Hipp* v. *Hipp* (D.C. Mun. App. 1926, 134 A. 2d 493).

Submission to arbitration without order of court

As to submission to arbitration without an order of court, see *District of Columbia* v. *Bailey* (1898, 18 S. Ct. 868, 171, U.S. 161, 43 L. Ed. 118).

Substitution of parties

Although this section should be liberally construed, a suit begun in the name of a deceased plaintiff is a nullity (and this is true, although the plaintiff is merely a formal, nominal, use plaintiff); hence there can be no amendment substituting the administrator of the deceased plaintiff as party plaintiff. *Karrick* v. *Wetmore* (1903, 22 App. D.C. 487). See, also, *Wetmore* v. *Karrick* (1907, 27 S. Ct. 434, 205 U.S. 141, 51 L. Ed. 745).

Summons

Where wife obtained a limited divorce from husband, and thereafter she filed a petition for enlargement of the decree into a decree for absolute divorce, and rule to show cause was issued, but husband refused to appear, rule to show cause would be discharged, and wife was required to proceed by summons. *Stern* v. *Stern* (D.C.D.C. 1948, 80 F. Supp. 266).

Time for motions

Where finding is made out of presence of counsel or parties, notice of such action shall be given by mail, and in such a situation the time for filing a motion for new trial is enlarged by one day. *United Retail Cleaners and Tailors Ass'n of D.C.* v. *Denahan* (D.C. Mun. App. 1945, 44 A. 2d 69).

Motion of appellant's counsel for leave to file brief almost a month after it was due, on ground that because of the pressure of other cases he had not been able to concentrate on the preparation of the brief sought to be filed, was denied and appeal was dismissed. *Karika* v. *District of Columbia* (D.C. Mun. App. 1946, 47 A. 2d 93).

Trial, amendment at

To warrant obtaining leave to amend a pleading at trial there must be some showing of surprise or some reasonable explanation of the delay in seeking to amend. *Plummer* v. *Johnson* (D.C. Mun. App. 1944, 35 A. 2d 647).

Use of mandamus in general

Mandamus is the proper remedy when a case is outside the discretion of the inferior court, and is one of irregularity, or against law, or of flagrant injustice, or without jurisdiction. *Ex parte Bradley* (1866, 74 U.S. 364, 7 Wall. 364, 19 L. Ed. 214).

Where an administrative remedy is available, it must generally be first exhausted before judicial relief may be obtained by writ of mandamus or otherwise. *Hammond* v. *Hull* (1942, 131 F. 2d 23, 76 U.S. App. D.C. 301, certiorari denied 63 S. Ct. 830, 318 U.S. 777, 87 L. Ed. 1145).

Mandamus should issue only when the duty of the officer to act is clearly established and plainly defined and the obligation to act is peremptory. *Id.*

A petition for mandamus to review action of trial court in treating petitioner's complaint as an application for writ of habeas corpus would be denied, since petitioner's remedy was by appeal, and mandamus may not be used as a substitute for appeal. *In re De Marcos* (1944, 139 F. 2d 841, 78 U.S. App. D.C. 187).

Mandamus lies to compel the performance of a plain legal duty, not to control the way in which administrative discretion is exercised. *Prince* v. *Klune* (1945, 148 F. 2d 18, 80 U.S. App. D.C. 31).

Writ of mandamus may not be used as a substitute for appeal. *In re Fullam* (1946, 152 F. 2d 141, 80 U.S. App. D.C. 273).

Mandamus never lies except where there is no other remedy. *McMurtrey* v. *Clark* (1946, 157 F. 2d 703, 81 U.S. App. D.C. 294, certiorari denied 67 S. Ct. 492, 329 U.S. 805, 91 L. Ed. 687).

A writ of mandamus neither creates nor confers power to act, but may be used only to compel exercise of powers already existing. *Id.*

Where duty is not plainly prescribed but depends on statute or statutes, the construction and application of which is not free from doubt, it is regarded as involving character of judgment or discretion which cannot be controlled by mandamus. *Thomas* v. *Vinson* (1946, 153 F. 2d 636, 80 U.S. App. D.C. 346).

Mandamus is employed to compel action, when refused, in matters involving judgment and discretion, but not to direct the exercise of judgment or discretion in a particular way nor to direct the retraction or reversal of action already taken in the exercise of either. *Edgerton* v. *Kingsland* (1948, 168 F. 2d 128, 83 U.S. App. D.C. 8).

Use of mandamus in particular cases

In action by a contractor against the Emergency Fleet Corporation to have a claim submitted to the audit of the Comptroller General, mandamus is the proper remedy. *United States ex rel. Skinner & Eddy Corp.* v. *McCarl* (1927, 48 S. Ct. 12, 275 U.S. 1, 72 L. Ed. 131).

For use of mandamus in particular cases (since 1910), see *United States ex rel. Thomson* v. *Custis* (35 App. D.C. 247) to board of medical advisors to compel issuance of license to practice); *United States ex rel. Phillips* v. *Ballinger* (35 App. D.C. 520) (to Secretary of Interior to vacate order disbarring attorney); *Rudolph* v. *Moshewvel* (37 App. D.C. 76) (to Commissioners, District of Columbia, to compel medical board to examine fireman dismissed for physical disability); *United States ex rel. Hammond* v. *Custis* (37 App. D.C. 449) (to board of medical advisors to compel issuance of license to practice); *United States ex rel. Todd* v. *Gongwer* (37 App. D.C. 555) (to Auditor of Treasury to compel consideration of claim for longevity pay); *United States ex rel. Moser* v. *Myer* (38 App. D.C. 13) (to Secretary of Navy to compel placing of relator's name on retired list); *United States ex rel. McKenzie* v. *Fisher* (39 App. D.C. 7) (to Secretary of Interior to compel issuance of land patent); *Kalbfus* v. *Siddons* (42 App. D.C. 310) (to compel restoration to public office); *Prail* v. *Stafford* (42 App. D.C. 383) (to compel justice of District Court, District of Columbia, to enter final decree on mandate of Court of Appeals); *United States ex rel. Newman* v. *City & Suburban Co.* (42 App D.C. 417) (to compel respondent to condemn land for street extension); *Persing* v. *Daniels* (43 App. D.C. 470) (to compel restoration of employee to service of United States); *United States ex rel. Bowlegs* v. *Lane* (43 App. D.C. 494); *Lane* v. *Duncan Townsite Co.* (44 App. D.C. 63, affd. 245 U.S. 308, 62 L. Ed. 309, 38 Sup. Ct. 99); *Hoglund* v. *Lane* (44 App. D.C. 310, affd. 244 U.S. 174, 61 L. Ed. 1066, 37 Sup. Ct. 558); *United States ex rel. Reynolds* v. *Lane* (45 App. D.C. 50) (to compel Secretary of Interior to approve or disapprove lease); *Ewing* v. *United States ex rel. Fowler Car Co.* (45 App. D.C. 185) (to Commissioner of Patents to compel direction of interference in patent cases) revd. on the ground that the proper remedy was a suit in equity (244 U.S. 1, 61 L. Ed. 955, 37 Sup. Ct. 494); *Blair* v. *United States ex rel. Hellman* (45 App. D.C. 353) (to school board to compel restoration of relator as a teacher); *Handel* v. *Lane* (45 App. D.C. 389); *Richards* v. *Davison* (45 App. D.C. 395) (to assessor, District of Columbia, to compel issuance of license to conduct dance hall). *United States ex rel. Schwerdtfeger* v. *Brownlow* (45 App. D.C. 412) (to commissioners, District of Columbia, to compel placing of relator's name on fireman's pension roll); *Hight* v. *McCoy* (46 App. D.C. 238) (to compel justice, District Court, District of Columbia, to sign bill of exceptions); *United States ex rel. Coal Co.* v. *Roper* (46 App. D.C. 443); *United States ex rel. Ashley* v. *Roper* (48 App. D.C. 69) (to compel Secretary of Treasury to abrogate decision construing act of Congress); *LeCrone* v. *McAdoo* (48 App. D.C. 181, dism. 253 U.S. 217, 64 L. Ed. 869, 40 Sup. Ct. 510) (to compel Secretary of the Treasury to pay over fund to petitioner); *United States ex rel. McDonald* v. *Lane* (49 App. D.C. 234, 263 Fed. 630); *United States ex rel. McDuffie* v. *Hawley* (50 App. D.C. 137, 269 Fed. 479) (to Board of Dental Examiners to compel issuance of license to dentist); *United States ex rel. Anderson* v. *Simon* (50 App. D.C. 199, 269 Fed. 715) (to school board to restore teacher); *United States ex rel. Russell* v. *District of Columbia* (50 App. D.C. 296, 271 Fed. 370); *Weeks* v. *United States ex rel. Creary* (51 App. D.C. 195, 277 Fed. 594) (to Secretary of War to vacate discharge and restore to rank in Army); *United States ex rel. Norris* v. *Forbes* (51 App. D.C. 248, 278 Fed. 331) (to Director of Bureau of War Risk Insurance to compel payment of insurance); *Robertson* v. *United States ex rel. Baff* (52 App. D.C. 177, 285 Fed. 911) (to review proceedings disbarring attorney from Patent Office and compel restoration).

Where trial judge had rejected affidavits of bias and prejudice because they failed to comply with statutory requirements both as to time of filing and as to manner of certification and had refused to disqualify himself and trial was in progress, federal appellate court would not issue writ of mandamus or prohibition. *Dilling* v. *United States* (1944, 142 F. 2d 473, 79 U.S. App. D.C. 47).

Where district court had ruled on petitioner's motion in forma pauperis for transcript of record, indictment and judgment containing sentence and order of commitment for use in preparing a motion to vacate judgment, mandamus would not lie to review determination of district court. *In re Fullam* (1946, 152 F. 2d 141, 80 U.S. App. D.C. 273).

Mandamus to compel payment of widow's allowance by Paymaster General of Navy was inappropriate remedy in view of fact that act to be performed was not purely ministerial, but widow was entitled under Federal Rule of Civil Procedure 54c, 28 U.S.C. App., to whatever judgment evidence warranted, irrespective of whether it was precise relief prayed for in complaint, and hence, under provision of Administrative Procedure Act, 5 U.S.C. § 1009, that any applicable form of relief might be granted, judgment in favor of widow would be given form of a mandatory injunction directing necessary payment, though complaint prayed for relief in nature of mandamus. *Snyder* v. *Buck* (D.C.D.C. 1948, 75 F. Supp. 902, reversed on other grounds 179 F. 2d 466, 85 U.S. App. D.C. 428, affirmed 71 S. Ct. 93, 340 U.S. 15, 95 L. Ed. 15).

Use plaintiff

Where suit was commenced by plaintiff in his individual name and thereafter plaintiff added name of insurance company as a use plaintiff on suggestion of trial judge and without objection by defendant, and it appeared on appeal that insurance company was not a necessary party to the action but that defendant had not been harmed by addition of such party, judgment would be modified by striking name of insurance company. *Quinn* v. *Milner, to Use of Hartford Fire Ins. Co.* (D.C. Mun. App. 1943, 34 A. 2d 259).

Chapter 3.—PROCESS AND PARTIES

SUBCHAPTER I.—GENERAL PROVISIONS

Sec.
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13–331. Service under other laws and rules of court.
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SUBCHAPTER I.—GENERAL PROVISIONS

§ 13–301. Courts to which applicable

Except as otherwise specifically provided by law or rules of court, this chapter applies in all courts of the District of Columbia, including any branches of the courts. (Dec. 23, 1963, 77 Stat. 513, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–755, 11–765 (Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; Apr. 11, 1956, ch. 204, § 109, 70 Stat. 113; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 7, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section consolidates parts of sections 11–755(b) and 11–765. For remainder of those sections, see tables.

Section 11–751a of D.C. Code, 1961 ed., enacted by the Act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Section has been completely rewritten to clarify the application of the provisions of this chapter on process.

The provisions of this chapter on the manner of service of process appeared in the 1901 Code under the subchapter on the former Supreme Court of the District of Columbia, which is now the United States District Court. But they were not by their terms limited to a particular court and since there were no provisions concerning manner of service of process issued by the justices of the peace, whose jurisdiction was taken over by the first Municipal Court, it seems probable that these provisions also applied in that court. Section 11–755(b) of D.C. Code, 1961 ed., provided that service of process in the civil division of the Municipal Court for the District of Columbia, created by the merger of the first Municipal Court and the Police Court in 1942, should be had as provided under existing law for such former Municipal Court, or in such other manner as might be prescribed by rules of court.

With respect to the Domestic Relations Branch of the Municipal Court (now, Court of General Sessions), section 11–765 of D.C. Code, 1961 ed., provided in part that service of process for the Domestic Relations Branch might be had by publication in the same manner as service of process was had by publication for the United States District Court for the District of Columbia.

As pointed out in the revision note under section 13–331 herein, the basic provisions governing process are found in the Federal Rules of Civil Procedure, which apply in the United States District Court, and in the rules of the other courts and branches which, under section 13–101 herein, are to conform as nearly as may be practicable to the Federal Rules of Civil Procedure.

Since this chapter is supplementary to the rules, this section makes the chapter applicable to all courts and branches, except as otherwise specifically provided by law or rules of court.

§ 13–302. Service by marshal

Subject to the provisions of law or rules of court for service by other persons, the United States marshal for the District of Columbia or his deputy shall serve the process of the District of Columbia Court of Appeals, and the District of Columbia Court of General Sessions, including the Domestic Relations Branch thereof. (Dec. 23, 1963, 77 Stat. 513, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–748, 11–751a, 11–755, 11–765, 11–771a, 11–774 (Mar. 3, 1901, ch. 854, § 41, 31 Stat. 1195; Feb. 17, 1909, ch. 134, 35 Stat. 623; Apr. 1, 1942, ch. 207, §§ 4, 9, 56 Stat. 192, 196; Apr. 11, 1956, ch. 204, § 109, 70 Stat. 113; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 6, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 6, 77 Stat. 77, 78).

Section consolidates part of the first paragraph of section 11–748 of the D.C. Code, 1961 ed., which related to service of process of the first Municipal Court prior to its merger, in 1942, with the Police Court, to form the second Municipal Court; that part of subsec. (b) of section 11–755 thereof which provided that service of process in the civil division of the court thus formed "shall be had as provided under existing law" for the Municipal Court prior to the merger, "or in such other manner as may be prescribed by rules of court"; the first sentence of section 11–765 thereof which, in connection with the Domestic Relations Branch of the second Municipal Court, likewise provided that service of process should be made by the United States marshal or his authorized assistants; and the second paragraph of subsec. (a) of section 11–774 thereof, which, with respect to the Municipal Court of Appeals (now, District of Columbia Court of Appeals), also provided for service of process by the United States marshal. For remainder of sections 11–748, 11–755, 11–765, and 11–774, see tables.

Sections 11–751a and 11–771a of D.C. Code, 1962 ed., both enacted by the Act of Oct. 23, 1962, are also cited as sources of this section, as (1) section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions; and (2) section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

The provision of section 11–748 of D.C. Code, 1961 ed., that the coroner shall serve the process of the Municipal Court (now, Court of General Sessions) upon disqualification of the marshal, is omitted as obsolete or, in any event, unnecessary. It would seem that in such cases the process could be served by the marshal's deputies.

The opening phrase of this section is inserted to cover the provisions of the rules of court which permit service by persons appointed by the court and, in the case of subpoenas, by any persons over 21 years of age and not interested in the action. See Court of General Sessions Rules, Civil Rule 4(g).

§ 13–303. Service or execution on Sunday

Except in cases of treason, felony, or breach of the peace, a writ, process, warrant, order, judgment, or decree may not be served or executed, or caused to be served or executed, on Sunday. Any such service or execution is void to all intents and purposes. A person who makes such a service or execution is liable to the aggrieved party to the same extent as if he had done it without a writ, process, warrant, order, judgment, or decree. (Dec. 23, 1963, 77 Stat. 513, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 13–102 (29 Car. 2, ch. 7, § 6, 1676; Kilty's Rept., p. 242; Alex. Br. Stat., p. 562; Comp. Stat., C.C., p. 451, § 54).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Necessity for summons

Where wife obtained a limited divorce from husband, and thereafter she filed a petition for enlargement of the decree into a decree for absolute divorce, and rule to show cause was issued, but husband refused to appear, rule to show cause would be discharged, and wife was required to proceed by summons. *Stern* v. *Stern* (D.C. Sup. 1948, 80 F. Supp. 266).

Search warrant

Where defendants were charged with violating statute in the sale of alcoholic beverages, the intervention of Sunday did not prevent a valid execution of the search warrant and the relevancy of the validity of the search warrant is not apparent where, under the ruling of the trial court, no evidence seized under the warrant was used in evidence against defendant. *Edwards* v. *District of Columbia* (D.C. Mun. App. 1949, 68 A. 2d 286).

Service of process

Where trial court found that the place of service at time of service was neither defendant's dwelling house nor her usual place of abode, an order quashing service supported by more than substantial evidence must be affirmed. *Halpern* v. *Gunn* (D.C. Mun. App. 1949, 66 A. 2d 207).

SUBCHAPTER II.—SERVICE OF PROCESS; LEGAL REPRESENTATIVES

§ 13–331. Service under other laws and rules of court

This chapter does not limit or affect the right to serve process in any other manner now or hereafter required or permitted by:

(1) other law, including any other provisions of this Code; or

(2) rule of court.

(Dec. 23, 1963, 77 Stat. 513, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

This section is inserted to make it clear that this chapter does not supersede any other methods of service authorized by other provisions of law and by rules of court.

The basic provisions governing the service of process are found in Rule 4 of the Federal Rules of Civil Procedure and the corresponding rules of the other courts. In some situations, however, these rules apply the federal statutes or the laws of the state (which includes the District of Columbia under Rule 81). Therefore, this chapter contains statutory provisions that were continued in effect by the rules.

There are also some federal statutes of general application that govern service of process in the District. The most important is 28 U.S.C. § 1655, providing for service on absent defendants in actions concerning real property.

Other provisions of this Code which are continued in effect by this section include chapter 9 of Title 29, relating to service on domestic and foreign business corporations; and section 40–423, concerning nonresident motorists.

CROSS REFERENCES

Attachment and garnishment proceedings, process in, see § 16–502.

Institutions of learning, service of process against, see § 29–412.

Insurance companies, service of process upon, see §§ 35–423, 35–601, 35–1327.

FEDERAL RULES OF CIVIL PROCEDURE

Issuance and service of summons, see Rule 4, 28 U.S.C. App.

Summons, see Form 1, Appendix of Forms, 28 U.S.C. App.

§ 13–332. Service on infants; appointment and compensation of guardian and attorney

(a) When an infant is a party defendant in an action, the summons and complaint shall be served upon him personally and, when he is under 16 years of age, upon the person with whom he resides, if within the District. The infant shall be produced in court unless, for cause shown, the court dispenses with his appearance. The provisions of rules of court regarding guardians ad litem apply, and whenever in the judgment of the court the interests of an infant defendant require it, the court shall assign an attorney to represent the infant whose compensation shall be paid by the plaintiff, or out of the estate of the infant, at the discretion of the court.

(b) An infant who secretes himself or evades service of process may be proceeded against as if he were a nonresident.

(c) Whoever secretes an infant against whom process has issued, so as to prevent service of the process, or prevents his appearance in court, is liable to attachment and punishment as for contempt. (Dec. 23, 1963, 77 Stat. 513, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 13–105, 13–106 (Mar. 3, 1901, ch. 854, §§ 102, 103, 31 Stat. 1205, 1206; June 30, 1902, ch. 1329, 32 Stat. 523).

Section consolidates sections 13–105 and 13–106 of D.C. Code 1961 ed.

This section supplements Rule 4(d)(2) of the Federal Rules of Civil Procedure, which requires service on an infant in the manner prescribed by the law of the state.

In subsec. (a), the words "The provisions of rules of court regarding guardians ad litem shall apply" are substituted for the provisions of section 13–105 of D.C. Code, 1961 ed., for appointment of guardians ad litem for infants. See Rule 17(c) of the Federal Rules of Civil Procedure, and Rule 17(b) of the civil rules of the Court of General Sessions, the latter being patterned upon the former. Under each rule, the court shall appoint a guardian ad litem or make such order as it deems proper for the infant's protection. See, also, Rule 1 of the Domestic Relations Branch of the Court of General Sessions, and Rule 27 of Small Claims and Conciliation Branch thereof, both of which provide that, insofar as applicable, the rules of the civil division shall govern in those branches, and the former of which provides that, insofar as applicable, the Federal Rules of Civil Procedure shall also govern in the Domestic Relations Branch. And see section 13–101 of this revised Part with respect to rules of the Court of General Sessions and its branches.

Further, under Rule 55(b)(2) of the Federal Rules of Civil Procedure, and Rule 55(b) of the rules of the Court of General Sessions (Part I, Civil Division), a default judgment may not be entered against an infant unless he is represented in the action by a general guardian or other representative who has appeared therein.

Changes are made in phraseology.

CROSS REFERENCES

Guardians ad litem—

Insanitary buildings, condemnation proceedings, see § 5–624.

Parks and playgrounds, land for, see § 1–1011.

Streets, land for, see § 7–204.

FEDERAL RULES OF CIVIL PROCEDURE

Process, see Rule 4, 28 U.S.C. App.

NOTES TO DECISIONS UNDER PRIOR LAW

Adoption

General statutes prescribing appointment of guardian ad litem to protect infants, and the Federal Rules of Civil Procedure in the District Courts authorizing appointment of guardian ad litem for infant or incompetent person not otherwise represented in an action do not

govern procedure in adoption proceedings. *Barnes* v. *Paanakker* (1940, 111 F. 2d 193, 72 App. D.C. 39).

Answer filed by guardian

Decree of court is valid against infant although there was no service upon him, where a guardian ad litem had been appointed for him and an answer had been filed by such guardian. *Manson* v. *Duncanson* (1897, 17 S. Ct. 647, 166 U.S. 533, 41 L. Ed. 1105).

Appointment of guardian ad litem

Trial courts have a mandatory duty to appoint a guardian ad litem for every infant who is sued. *Besarick* v. *Lewis* (D.C. Mun. App. 1956, 125 A. 2d 320).

Trial courts have mandatory duty under this section to provide guardian ad litem for every underage defendant, and to make inquiry as to defendant's actual age whenever the defense of infancy is advanced. *Gray* v. *Droze* (D.C. Mun. App. 1947, 55 A. 2d 340).

Where defense of infancy was asserted, trial court should satisfy itself as to defendant's age and appoint guardian ad litem before proceeding with trial, if infancy were established, even though defendant's attorney did not make formal request for guardian ad litem and did not insist on offering testimony as to defendant's age. *Id.*

If defendant was infant, service by leaving copy of complaint and summons with person of suitable age at his usual place of abode was improper, and default judgment entered against defendant for whom no guardian ad litem had been appointed was void: and verified affidavit, accompanying motion to set aside default judgment and giving birth date which, if accurate, established defendant's infancy, compelled inquiry as to actual age of defendant. *Hamer* v. *Eastern Credit Association, Inc., etc.* (D.C. App. 1963, 192 A. 2d 127).

Attorneys' fees

Where landlord brought an action against an infant tenant for rent, and tenant engaged services of counsel selected by tenant herself, but not assigned by the court, counsel was not impliedly appointed by the court by being awarded a fee within meaning of statute providing for appointment of an attorney for an infant defendant and assessment of his fees against a plaintiff, and therefore, in the absence of such appointment, trial court was without power to assess landlord for an attorney's fee. *Besarick* v. *Lewis* (D.C. Mun. App. 1956, 125 A. 2d 320).

Civil proceedings

This section applies only to civil and not criminal proceedings. *Ledrick* v. *United States* (1914, 42 App. D.C. 384).

Guardians' fees

In action against minor defendant, there was no abuse of discretion by trial court in ordering fee awarded to guardian ad litem for minor defendant to be paid from the estate of the minor in favor of whom judgment had been rendered in the litigation giving rise to the appointment of the guardian ad litem. *Reed* v. *Bulman* (1957, 244 F. 2d 772, 100 U.S. App. D.C. 324).

Representation

In proceedings before commission on mental health relative to sanity of person, such person must be represented either by an attorney or a guardian ad litem who is an impartial person not otherwise interested in the proceeding; the guardian ad litem need not always be an attorney, but may be a relative or friend selected by the court. *Dooling* v. *Overholser* (1957, 243 F. 2d 825, 100 U.S. App. D.C. 247).

Review

Although a landlord did not assign as error lack of authority in lower court to allow an infant tenant an attorney's fees after landlord dismissed her action for rent, Municipal Court of Civil Appeals would nevertheless, in the interests of fundamental justice, consider and correct error of trial court in awarding tenant an attorney's fee without strictly complying with governing statutory provisions for appointment of an attorney for an infant defendant. *Besarick* v. *Lewis* (D.C. Mun. App. 1956, 125 A. 2d 320).

§ 13–333. Service on incompetent persons

When a person non compos mentis is a party defendant in an action, process shall be served upon him personally, if within the District, and upon his committee, if there is one within the District. (Dec. 23, 1963, 77 Stat. 513, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 13–107 (Mar. 3, 1901, ch. 854, § 104, 31 Stat. 1206; June 30, 1902, ch. 1329, 32 Stat. 523).

This section supplements Rule 4(d)(2) of the Federal Rules of Civil Procedure, which requires service on an incompetent person in the manner provided by the law of the State, and Rule 4(c)(2) of the civil rules of the Court of General Sessions, which requires service on an incompetent person in the manner provided by law.

The provision of section 13–107 of D.C. Code, 1961 ed., for appointment of a guardian ad litem is omitted as covered by Rule 17(c) of the Federal Rules of Civil Procedure, and Rule 17(b) of the civil rules of the Court of General Sessions.

Changes are made in phraseology.

CROSS REFERENCES

Guardians ad litem—

Insanitary buildings, condemnation proceedings, see § 5–624.

Parks and playgrounds, land for, see § 1–1011.

Streets, land for, see § 7–204.

Service of process on inmates of the District Training School, see § 21–1121.

Summons in feeble-minded inquest, see § 21–1104.

FEDERAL RULES OF CIVIL PROCEDURE

Process, see Rule 4, 28 U.S.C. App.

§ 13–334. Service on foreign corporations

(a) In an action against a foreign corporation doing business in the District, process may be served on the agent of the corporation or person conducting its business, or, when he is absent and can not be found, by leaving a copy at the principal place of business in the District, or, where there is no such place of business, by leaving a copy at the place of business or residence of the agent in the District, and that service is effectual to bring the corporation before the court.

(b) When a foreign corporation transacts business in the District without having a place of business or resident agent therein, service upon any officer or agent or employee of the corporation in the District is effectual as to actions growing out of contracts entered into or to be performed, in whole or in part, in the District of Columbia or growing out of any tort committed in the District. (Dec. 23, 1963, 77 Stat. 513, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 13–103 (Mar. 3, 1901, ch. 854, § 1537, 31 Stat. 1419; June 30, 1902, ch. 1329, 32 Stat. 544; Feb. 1, 1907, ch. 445, 34 Stat. 874).

This method of service on foreign corporations is an alternative to the method provided by Rule 4(d)(3) of the Federal Rules of Civil Procedure, and is authorized by Rule 4(d)(7).

Another method of service on foreign corporations is found in chapter 9 of Title 29 of the D.C. Code, 1961 ed.

Changes are made in phraseology.

NOTES TO DECISIONS

I. UNDER PRIOR LAW

In general

It was intended merely to remedy an existing mischief by providing a simple and effectual way through which a foreign corporation doing business in the District of

Columbia might be brought before the court and it does not attempt to limit the general jurisdiction of the courts of the District and cannot prevent their jurisdiction from attaching in any case where a foreign corporation might, like a natural person resident elsewhere, appear by competent authority and answer the cause of action. *Howard* v. *Chesapeake & O. R. Co.* (1897, 11 App. D.C. 300).

Agents

Where attorneys for plaintiff and defendant corporations, with authority and approval of their clients, compromised their differences and thereafter defendants paid plaintiff as required by agreement, which was done through attorneys, attorneys for defendant corporations, which were both incorporated outside district, were not, in subsequent suit involving agreement, agents within statute allowing service on a foreign corporation transacting business in the district by service on agent. *Wica, Inc.* v. *WWSW, Inc. et al.* (1951, 191 F. 2d 502, 89 U.S. App. D.C. 308).

Service of process on location supervisor of New Jersey corporation, who was in jurisdiction as agent or representative of defendant corporation and was conducting its business in discharge of its contractual obligations, gave reasonable assurance of notice to the corporation of impending suit and was proper. *Weinstein* v. *Ajax Distributing Co.* (D.C. Mun. App. 1955, 166 A. 2d 580).

Concealment by agent

Where writ of garnishment was served on secretary of garnishee, a foreign corporation, and secretary filed answers to interrogatories in garnishee's name, but the secretary was the judgment debtor and concealed fact of service for her own interest and prevented notice from reaching the garnishee, the service was not in compliance with spirit of this section providing that process against a foreign corporation may be served on agent of corporation, or on person conducting its business and the service would not support judgment against the garnishee. *Encyclopaedia Britannica* v. *Shannon* (1943, 133 F. 2d 397, 77 U.S. App. D.C. 125).

Constitutionality

This section is constitutional. *Hoffman* v. *Washington-Virginia R. Co.* (1916, 44 App. D.C. 418).

Contracts entered into or to be performed

District of Columbia statute making service upon officer of foreign corporation transacting business in District without place of business or resident agent therein effectual as to suits growing out of contracts entered into therein and statute providing that foreign corporation transacting business in District without certificate shall be deemed to have appointed commissioners its agents are to be read in pari materia, and, in respect to action on District contract, service on commissioners was valid. *Central Insurance Agency Co., Ins.* v. *Financial Credit Corp., et al.* (D.C.D.C. 1963, 222 F. Supp. 627).

"It will be observed that the statute is not confined to general agency or an established custom of doing business, but it applies to a suit growing out of a contract 'entered into or to be performed, in whole or in part, in the District of Columbia'." *Berkeley* v. *Culley* (1914, 42 App. D.C. 140).

The utilization of procedure outlined in this section for service in line of publication on nonresidents in action in rem, in causing service of written motion to have defendant adjudged in contempt for failure to pay permanent alimony to be made by deputy marshal upon defendant, resulting in service of notice in accordance with method provided in Fed. Rules Civ. Proc. rule 5(b), 28 U.S.C. App., did not convert motion into a new action in personam wherein such procedure was unavailable. *Tilghman* v. *Tilghman* (D.C.D.C. 1944, 57 F. Supp. 417).

Definitions

This section providing that, when a corporation shall "transact business" in District of Columbia without having any place of business or resident agent therein, service upon any officer or agent or employee of such corporation in District shall be effectual, etc., uses quoted words as meaning "doing business". *Bilbrey* v. *Chicago Daily News* (D.C.D.C. 1945, 57 F. Supp. 579).

Doing business

A Delaware corporation was not "doing business" in District of Columbia within federal venue statute or District of Columbia statute relating to service of process on foreign corporations doing business in District, notwithstanding that corporation employed vice president and four employees in District on permanent basis with combined monthly payroll of $10,000, where employees solicited no business in District. *R. Fandel and A. Fandel* v. *Arabian-American Oil Company* (D.C.D.C. 1964, 231 F. Supp. 572).

Although Virginia railway corporation had "minimum contracts" with District of Columbia for purpose of service of process, jurisdiction would not be assumed where plaintiffs were not residents of District, their cause of action did not arise out of corporation's activities within District, and evidence could be produced as easily, if not more easily, in another forum. *L. Byrd and J. D. Byrd* v. *Norfolk and Western Railway Company* (D.C. App. 1963, 194 A. 2d 651).

Indiana corporation which had its principal place of business in Minnesota but which maintained a resident agent in Washington, D.C., to trade with foreign governments through their representatives in the District, was "doing business" in the District for purposes of service in the District upon corporation's agent in action for alleged tortious breach of contract in the District. *Mutual International Export Co.* v. *NAPCO Industries, Inc.* (1963, 316 F. 2d 393, 114 U.S. App. D.C. 392).

A foreign corporation was "doing business" in District of Columbia for purpose of service of process in action against corporation for personal injuries allegedly caused in District by negligent manufacture of insecticide bomb, where corporation obtained orders in District with full knowledge that its products would be delivered in District and that injuries might occur in District, and such activities were continuous and systematic. *G. Key* v. *S. C. Johnson & Son, Inc.* (D.C. App. 1963, 189 A. 2d 361).

The test of whether foreign corporation is "doing business" in jurisdiction for purpose of service of process is one of practicality, reasonableness and fairness. *Id.*

The concept of "doing business" for purpose of service of process on foreign corporation has undergone an evolution; a mechanical approach, with emphasis on a warehouse here or an office there, is no longer proper: the problem is one essentially of accommodating the federal system, with its inherent jurisdictional limitations, to a unitary economic system with modern methods of marketing and distribution by which the corporation maintains a steady flow of goods into marketing area without the necessity of having an outlet in each jurisdiction. *Id.*

Canadian aircraft manufacturer which had main plant and offices in Canada and maintained single employee in District of Columbia, who served as liaison man with United States Government and whose principal duties were to transmit information about government's requirements and to keep in contact with government agencies and who had no authority to accept orders from any source or execute contracts, was not "doing business in the district" and service of process upon such employee in action for injuries sustained in an airplane crash allegedly caused by negligence of manufacturer was properly quashed. *R. H. Trasher et al.* v. *DeHavilland Aircraft of Canada Ltd.* (1961, 294 F. 2d 299, 111 U.S. App. D.C. 33).

Where foreign corporation was not licensed to do business in the District of Columbia, and maintained no office or telephone directory listing there, and did not operate manufacturing plants, warehouses, sales or administrative offices there, and its assistant secretary maintained office there solely for liaison with departments and agencies of federal government and was without authority to make commitments for or to accept orders for said corporation, corporation was not "doing business" in District of Columbia within statute governing service of process. *Weisblatt, Trading as King's Credit, etc.* v. *United Aircraft Corp., etc.* (D.C. Mun. App. 1957, 134 A. 2d 713).

In proceeding in the District of Columbia by judgment creditor to attach credits of judgment debtor in the hands of the latter's employer, where employer moved to quash

attachment on ground that employer was foreign corporation not doing business in District within statute governing service of process, the court properly accepted and considered affidavit of one of employer's officers, in view of the rule. *Id.*

Where New Jersey corporation had authorized representative in jurisdiction, who not only had power to solicit, but to negotiate and contract with businessmen there, and corporation had supplied him with its printed form of contract and authorized him to sign as distributor, as well as to accept payment for its machines and to issue its form of official receipt, and in addition had machine location supervisor in jurisdiction, such corporation was doing business in the jurisdiction within meaning of statute authorizing service of process on any officer or agent or employee of such foreign corporation. *Weinstein* v. *Ajax Distributing Co.* (D.C. Mun. App. 1955, 116 A. 2d 580).

Under this section providing that service may be made upon person conducting the business of a foreign corporation doing business in the District, service upon salesman who, although acting for other companies as well, sold foreign corporation's products to local grocers, he being the only person in District authorized to act for foreign corporation, was sufficient. *District Grocery Stores, Inc.* v. *Brunswick Quick Freeze Co.* (D.C. Mun. App. 1954, 106 A. 2d 134).

Foreign finance corporation purchasing commercial paper discounted by seller in jurisdiction of seller is not doing business in jurisdiction of seller and is not amenable to process therein. *Bahlke* v. *Byram* (D.C. Mun. App. 1951, 78 A. 2d 384).

An action by a foreign corporation against another foreign corporation may be brought in District of Columbia when the defendant has business there. *Guilford Granite Co.* v. *Harrison Granite Co.* (1903, 23 App. D.C. 1).

A newspaper corporation which, in addition to its chief business of publishing a newspaper in New York, also maintains a permanent office in the District of Columbia, is doing business in the District within terms of statute so that service of process may be had. *Ricketts* v. *Sun Printing & Pub. Co.* (1906, 27 App. D.C. 222).

Maintenance of an office in the District for the performance by the general officers of their duties of management and supervision of the affairs of the corporation amounts to doing business therein, especially when its president, secretary, and treasurer transacted business incidentally relating to corporate purposes. *Ferguson Contracting Co.* v. *Coal & Coke R. Co.* (1909, 33 App. D.C. 159).

Service on corporation was not proper when their room in the building had been abandoned and used as a storage place, and the officers had left the District. *Mitchell Min. Co.* v. *Emig* (1910, 35 App. D.C. 527).

When scales corporation not only negotiated sales, but looked after deliveries, collections, and complaints, service upon agent was proper under part of § 1537 of the 1901 Code (this section). *Toledo Computing Scales Co.* v. *Miller* (1912, 38 App. D.C. 237).

Service was not proper on corporation that had no office in the District of Columbia, at the time of service, for the transaction of business, and was not doing business therein; in fact it was not doing business anywhere, in the ordinary sense of the term, its purpose having been accomplished by issue of stock for purchase of patent, which formed the sole basis of its capitalization. *Doremus* v. *National Cotton Impr. Co.* (1912, 39 App. D.C. 295).

Service was proper upon agent of foreign corporation that was engaged in selling tickets for transportation between New York and Europe when such corporation had office in District of Columbia. *Wendell* v. *Holland American Line* (1913, 40 App. D.C. 1).

"In this section Congress clearly has recognized the distinction made by the Supreme Court of the United States between the doing of business within a state at a place regularly established therefor, and the intermittent transaction of business through agents who come and go. Notwithstanding that a corporation is deemed to be a resident of the state of its creation, if it goes within another State or jurisdiction, and there establishes a place of business from which, through its authorized agents, its business is transacted, it must be regarded as also within that jurisdiction." *Hoffman* v. *Washington-Virginia R. Co.* (1916, 44 App. D.C. 418).

The agent or person contemplated by the Code must be possessed of such authority as will justify the conclusion that his principal, by him, is in the District. *Chase Bag Co.* v. *Munson S.S. Line* (1924, 295 F. 990, 54 App. D.C. 169).

Solicitation of business by railroad having no line in District is not "doing business." *Cancelmo* v. *Seaboard A.L.R. Co.* (1926, 12 F. 2d 166, 56 App. D.C. 225). See, also, *Knobel* v. *Seaboard A.L.R. Co.* (1926, 12 F. 2d 169, 56 App. D.C. 228).

An express company, doing business in the District, may be sued there for damages to a shipment, although shipment began and ended in other states; nor does this cause an unlawful burden on interstate commerce. *Harris* v. *American R. Exp. Co.* (1926, 12 F. 2d 587, 56 App. D.C. 264, certiorari denied 47 S. Ct. 92, 273 U.S. 695, 71 L. Ed. 845).

Having selling agency contract constitutes "doing business." *Carroll Elec. Co.* v. *Freed-Eisemann Radio Corp.* (1931, 50 F. 2d 993, 60 App. D.C. 228).

A foreign newspaper maintaining correspondent in District constitutes "doing business." *Neely* v. *Philadelphia Inquirer Co.* (1933, 62 F. 2d 873, 61 App. D.C. 334).

The mere collection of news in Washington and its transmission to a paper published outside the District of Columbia is not "doing business" within meaning of statute. *Layne* v. *Tribune Co.* (1934, 71 F. 2d 223, 63 App. D.C. 213, certiorari denied 55 S. Ct. 83, 293 U.S. 572, 79 L. Ed. 670).

A foreign corporation is amenable to process to enforce a personal liability, in the absence of consent only if it is doing business within the state in such manner as to warrant the interference that is present there. *Philadelphia & Reading Co.* v. *McKibbin* (1917, 37 S. Ct. 280, 243 U.S. 264, 61 L. Ed. 710). See, also, *Whitaker* v. *Macfadden Publications* (1939, 105 F. 2d 44, 70 App. D.C. 165).

The trial court was without jurisdiction and the original judgment was void where foreign corporation was never engaged in business in the District of Columbia, and has no officer or agent in the District upon whom process could be served. *Consolidated Radio Artists* v. *Washington Section* (1939, 105 F. 2d 785, 70 App. D.C. 262).

The mere insuring of residents of a foreign state, the contract of insurance being made and carried out in the home state, does not constitute "doing business" in the state of the insured. *Sasnett* v. *Iowa State Traveling Men's Assn.* (C.C.A. 8, 90 F. 2d 514, certiorari denied 58 S. Ct. 30, 302 U.S. 711, 82 L. Ed. 549).

The fundamental principle underlying the "doing business" concept, rendering foreign corporation amenable to process is the maintenance within jurisdiction of a regular, continuous course of business activities, whether or not it includes the final stage of contracting and if, in addition to regular course of solicitation, other business activities are carried on, the corporation is "present" for jurisdictional purposes. *Frene* v. *Louisville Cement Co.* (1943, 134 F. 2d 511, 77 U.S. App. D.C. 129, 146 A.L.R. 926).

In determining whether acts of foreign corporation's agents constitute "doing business" in jurisdictional sense, the test of agent's authority is not found in inquiry whether he is required to do questioned act by formal instructions of corporation or his failure to do it would be breach of duty to corporation, but rather in nature of the act, in relation to corporation's business, and whether the corporation has assented to it either by explicit modification of original instructions or impliedly by a course of conduct inconsistent with the limitations they impose. *Id.*

Where foreign corporation's employee was not required by original authorization to do more than solicit orders in court's territorial jurisdiction but to create good will and with corporation's consent employee visited jobs where corporation's product was being used, made suggestions for solving difficulties, received complaints, forwarded them to corporation's home office and aided generally in preventing and clearing up difficulties and the corporation accepted benefits derived from such activities, the employee's activities constituted "doing

business" or "transacting business" so as to make the corporation amenable to process. *Id.*

A foreign corporation is amenable to process to enforce a personal liability only if it is doing business within state to such extent as to warrant inference that it is present there. *Bibery* v. *Chicago Daily News* (D.C.D.C. 1945, 57 F. Supp. 579).

An Illinois newspaper publishing corporation maintaining an office in Washington and a "Washington correspondent" in charge was not "doing business" within the District so as to give court of District jurisdiction by service of process on such correspondent. *Id.*

The mere maintenance of an office for solicitation of business within District does not subject foreign corporation to process of course of District as "doing business" therein. *Atlantic Coast Line R. Co.* v. *Goldberg* (D.C. Mun. App. 1944, 39 A. 2d 563).

Where railroad, which had no tracks in District but whose cards continued into District over tracks of another railroad which controlled and operated them, maintained offices in District for solicitation of business and for conduct of its dining car service, it was "doing business" in District, and service of process on its agent within District was valid. *Id.*

Mere solicitation of orders by foreign corporation's agent does not constitute "doing business" within this section governing service of process. *Mueller Brass Co.* v. *Alexander Milburn* (1946, 152 F. 2d 142, 80 U.S. App. D.C. 274).

Where foreign corporation engaged almost entirely in manufacture of war materials for the United States maintained representative in Washington, D.C., with primary duty of maintaining contact with various government agencies in respect to reports, allocations, and directives relating to the corporation's requirements for materials and incidentally with duty of soliciting orders but without authority to make any binding commitment, corporation maintained office for the representative in Washington and its name was carried in telephone directory, city directory, and in a trade catalog, the corporation was not "doing business" within this section governing service of process. *Id.*

Under this section, District Court of United States for District of Columbia has jurisdiction over corporations which are domestic in a local sense and over those which, by doing business, are present in the District of Columbia. *Fehlhaber Pile Co.* v. *Tennessee Val. Authority* (1946, 155 F. 2d 864, 81 U.S. App. D.C. 124).

Where Tennessee Valley Authority was organized as government agency under 16 U.S.C. § 831g providing that it should be resident of northern judicial district of Alabama within 28 U.S.C. former § 112, now covered by §§ 1391, 1401, 1693, 1695, but Authority maintained office in District of Columbia, the Authority was not "doing business" in the district in jurisdictional sense and did not waive venue. *Id.*

"Doing business" is equivalent to "transacting business" and generally statutes prohibiting a foreign corporation from doing business until it has filed a certificate, etc., have reference to a continuation in some form of business and do not apply where a foreign corporation does a single act of business within the state. *Frye* v. *Batavia (N.Y.) Veterans Administration Emp. Federal Credit Union No. 189, Inc.* (1948, 8 F.R.D. 334).

It can well be that many corporations have representatives in the City of Washington solely for the purposes of transacting business with the government and this would not constitute the doing of business within the District under the statute; however, when a corporation maintains an office and otherwise holds itself out to the public generally as being present in the city for the purpose of doing business, it submits itself to the jurisdiction of the courts of the District. *State of Maryland* v. *Eastern Airlines* (D.C.D.C. 1948, 81 F. Supp. 345).

A Maryland corporation operating as a private school, with all its educational activities conducted in Maryland, is not amenable to service under statute despite the fact that it maintained bank accounts in the District, made purchases or advertised in local papers and was listed in the local telephone directory. *Lichtenberg* v. *Bullis Schools, Inc.* (D.C. Mun. App. 1949, 68 A. 2d 586).

Maryland corporation, solely owned by the U.S. and doing business in the District of Columbia, may be sued in the District in the manner provided by law. *Hood* v. *Defense Homes Corp.* (D.C.D.C. 1949, 83 F. Supp. 365).

The term "doing business" is not one possessed of but a single meaning in the law but is used in connection with many different situations and must be characterized and defined according to the context and what constitutes doing business for purpose of taxation may be very different from doing business for purpose of process and subjection by foreign corporation to the jurisdiction of local courts. *Goldberg* v. *Southern Builders, Inc.* (1950, 184 F. 2d 345, 87 U.S. App. D.C. 191).

It is clear that the foreign corporation's contacts with the District have been regular and systematic, since its books, records, and offices all are in the District and under such circumstances, a foreign corporation was doing business in the District and upon service of process, was subject to the jurisdiction of the district court. *Id.*

General appearance

Coupling of a motion to dismiss with a motion to quash service of process did not constitute a "general appearance" by foreign corporation and thus give court jurisdiction. *Frye* v. *Batavia (N.Y.) Veterans Administration Emp. Federal Credit Union No. 189* (1948, 8 F. R.D. 334).

The fact that affidavits filed by counsel for nonresident corporation in connection with motion to quash service of process also went to merits did not amount to a "general appearance" so as to give the court jurisdiction. *Id.*

Independent contractor

Evidence showed that foreign corporation was not doing business in the District of Columbia, and service upon independent contractor of the corporation did not bring such corporation before the court. *Read* v. *LaSalle Extension University* (1946, 156 F. 2d. 575, 81 U.S. App. D.C. 177).

Partnerships

Statute relating to foreign corporations does not apply to partnerships. *Matson* v. *Mackubin* (1932, 57 F. 2d 941, 61 App. D.C. 102).

Pending bankruptcy proceeding

No effective service in a creditor's suit for appointment of receiver of company whose only asset is a claim against the United States Shipping Board and Emergency Fleet Corporation can be made owing to a bankruptcy proceeding begun in another court having full jurisdiction. *Zibell* v. *Meacham & Babcock Shipbldg. Co.* (1927, 16 F. 2d 330, 56 App. D.C. 385).

Pleading

To raise the question whether summons was served on proper representative, motion to quash service is proper. *Bloedorn* v. *Washington Times Co.* (1937, 89 F. 2d 835, 67 App. D.C. 91). See, also, *Read* v. *LaSalle Extension University* (1946, 156 F. 2d 575, 81 U.S. App. D.C. 177).

Purpose

The statute is remedial in purpose and its object is quite clear—to enable the District of Columbia courts to exercise jurisdiction over foreign corporations which engage in business activities in the District. *Goldberg* v. *Southern Builders, Inc.* (1950, 184 F. 2d 345, 87 U.S. App. D.C. 191).

Service upon officer

Under District of Columbia law, service upon corporation in tort action for personal injuries which occurred in New York was properly made on chief clerk at corporation's offices within district if corporation was "doing business" within district. *O. F. Collins et al.* v. *New York Central System etc.* (1963, 327 F. 2d 880, 117 U.S. App. D.C. 182).

Where railroad as defendant in action for personal injuries which occurred in New York filed motion to dismiss action in federal district court in District of Columbia and quash service made on railroad's chief clerk at offices within district on ground that railroad was not doing business within district, action on motion to dismiss should have awaited railroad's answers to interrogatories which sought fuller disclosure as to whether railroad was "doing business" within district. *Id.*

President of Maryland corporation which did business in District of Columbia as independent manufacturers'

representative and who, without obligation, as accommodation to one of his suppliers had made certain inquiries and delivered certain forms for it was not an "officer or agent or employee" of such other corporation within district statute providing for service upon officer, agent or employee of foreign corporation transacting business in district. *A. P. De Sanno & Sons, Inc.* v. *M. G. Brown, D. E. Wooster et al.* (1963, 313 F. 2d 898, 114 U.S. App. D.C. 217).

Since automobile importer, whose wholesale distributor had its principal place of business in District of Columbia, had a continuing contact with District, it was subject to service, in suit under Automobile Dealers Franchise Act, pursuant to District Code section providing for service on agent of foreign corporation or person conducting its business; and under that section, importer could be served by making service upon its distributor's president. *Fiat Motor Co., Inc.* v. *Alabama Imported Cars, Inc.* (1961, 292 F. 2d 745, 110 U.S. App. D.C. 252).

Since automobile importer, whose wholesale distributor had its principal place of business in District of Columbia, had a continuing contact with District, it was subject to service, in suit under Automobile Dealers Franchise Act, pursuant to District Code section providing for service on agent of foreign corporation or person conducting its business; and under that section, importer could be served by making service upon its distributor's president. *Fiat Motor Co., Inc.* v. *Alabama Imported Cars, Inc.* (1961, 292 F. 2d 745, 110 U.S. App. D.C. 252).

In action for injuries sustained on defendant foreign corporation's State Fair premises, district court correctly granted defendant's motion to quash service of process in District of Columbia on corporation's director residing therein, in absence of sufficient showing that corporation was doing business in District or that such director was corporation's agent. *Grimes* v. *Maryland State Fair, Inc.* (1956, 230 F. 2d 825, 97 U.S. App. D.C. 275, certiorari denied 77 S. Ct. 102, 352 U.S. 882, 1 L. Ed. 2d 80).

A foreign corporation is amenable to process to enforce a personal liability, in absence of consent, only if it is doing business within jurisdiction in such manner as to warrant inference that it was present there, and even if it is doing business within jurisdiction, process will be valid only if served on some authorized agent. *Bahlke* v. *Bryan* (D.C. Mun. App. 1951, 78 A. 2d 384).

Where defendant seller was neither an agent, officer or employee of finance corporations and only relation between finance corporations and seller was by virtue of a contract whereby finance corporations agreed to buy certain conditional sales contracts and commercial papers from seller and finance corporations were not doing business in District of Columbia, buyer's service of process made on seller as agent of defendant finance corporations, in action based on alleged fraud in sale of two automatic popcorn machines and usury in charges on purchase money installment note given seller and discounted with defendants, in part payment of machines, was properly quashed. *Id.*

When officers of corporation are not in the District in their official or representative capacity and it is not shown that they are clothed with authority, the corporation is not liable to suit in a jurisdiction foreign to its creation. *Ambler* v. *Archer* (1893, 1 App. D.C. 94).

Statute must be strictly followed

When appellant had closed its office and removed its property from the District and there were no agents in the District, service of summons could not be secured, and statutes pertaining to such service must be strictly followed. *New York Continental Filtration Co.* v. *Karr* (1908, 31 App. D.C. 459).

II. Under Present Law

Doing business

Newspaper corporation which maintained in the District of Columbia a regular office, permanently maintained by a staff of employees, in which an important part of its business and functions were transacted and where it expended a considerable amount of money in the gathering and transmission of news, was doing business in the District of Columbia and subject to service of process in the District and to jurisdiction over its person. *V. E. Oregoni* v. *Bulletin Company, et al.* (D.C.D.C. 1966, 258 F. Supp. 359).

New Jersey insurer, which administered its hospital insurance contracts in District of Columbia, through officers, personnel and facilities of sister insurer for which it provided similar expert services in New Jersey, engaged in "transaction of business" in the District of Columbia, so that it could be required, on being properly summoned, to answer resident of District of Columbia in United States District Court for alleged dereliction having its immediate impact in District of Columbia. *M. Washington, Admt'x etc.* v. *Hospital Service Plan of N. J.* (1965, 345 F. 2d 105, 120 U.S. App. D.C. 211).

Delaware corporation which produced, refined and sold oil and gas in Saudi Arabia was not doing business within District of Columbia where it maintained an office which was used solely for purpose of maintaining continuing relationships with and exchanging information with state department, other federal agencies, diplomatic missions and public and private educational and international organizations, and corporation could not be sued within District for personal injuries sustained in Saudi Arabia. *R. Fandel et al.* v. *Arabian American Oil Co.* (1965, 345 F. 2d 87, 120 U.S. App. D.C. 193).

Foreign corporation which maintained an office within the District of Columbia for purpose of transacting substantial amount of business with the federal government and which had one full-time employee who serviced company's current contracts with the government as well as solicited new ones from that office was doing business in the District, and was amenable to service of process there. *C. Raymond* v. *Anthony Company* (D.C.D.C. 1964, 233 F. Supp. 305).

§ 13–335. Service by publication on domestic or foreign corporations

In an action specified by section 13–336, when process can not be served upon a domestic or foreign corporation, the corporation may be proceeded against as a nonresident defendant, by notice by publication. (Dec. 23, 1963, 77 Stat. 514, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., § 13–104 (Mar. 3, 1901, ch. 854, § 112, 31 Stat. 1207).

A provision is inserted limiting the section to actions specified in section 13–336, because of the decision in *United States* v. *Matthews,* C.A.D.C. 1955, 221 F. 2d 837, that this section is so limited and does not apply in actions in personam.

Other methods of service on domestic and foreign corporations are found in chapter 9 of Title 29 of the D.C. Code, 1961 ed.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Domestic corporation, process on

Corporation chartered under laws of District of Columbia was not subject to service by publication in suit brought against it by United States for money judgment, notwithstanding that United States had been unable to find any officer or representative of such corporation in District of Columbia on whom personal service could be made and that marshal had returned summons not found. *United States* v. *Mathews* (1955, 221 F. 2d 837. 95 U.S. App. D.C. 282).

§ 13–336. Service by publication on nonresidents, absent defendants, and unknown heirs or devisees

(a) In actions specified by subsection (b) of this section, publication may be substituted for personal service of process upon a defendant who can not be found and who is shown by affidavit to be a nonresident, or to have been absent from the District for at least six months, or against the unknown heirs or devisees of deceased persons.

(b) This section applies only to:

(1) actions for partition;

(2) actions for divorce or annulment;

(3) actions by attachment;

(4) actions for foreclosure of mortgages and deeds of trust;

(5) actions for the establishment of title to real estate by possession;

(6) actions for the enforcement of mechanics' liens, and other liens against real or personal property within the District; and

(7) actions that have for their immediate object the enforcement or establishment of any lawful right, claim, or demand to or against any real or personal property within the jurisdiction of the court.

(Dec. 23, 1963, 77 Stat. 514, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 13–108 (Mar. 3, 1901, ch. 854, § 105, 31 Stat. 1206; Apr. 19, 1920, ch. 153, 41 Stat. 556; June 20, 1949, ch. 230, 63 Stat. 214).

Section is based on part of section 13–108. For remainder of that section, see section 13–337 herein.

The provisions of this chapter on service other than personal service are statutes of the United States that are applicable under Rule 4(e) of the Federal Rules of Civil Procedure.

Other provisions for service on absent defendants in actions concerning property are found in 28 U.S.C. § 1655.

Changes are made in phraseology and arrangement.

CROSS REFERENCE

Service of process on nonresident owner of motor vehicles, see, § 40–423.

NOTES TO DECISIONS

I. UNDER PRIOR LAW

In general

"Constructive service is a statutory proceeding, and each step required to be taken is essential to the validity of the service." *Thompson* v. *Tanner* (1923, 287 F. 980, 53 App. D.C. 3).

Generally, mere casual and occasional acts do not furnish a sufficient basis for assertion of jurisdiction of person in cases of nonresidents. *Frene* v. *Louisville Cement Co.* (1943, 134 F. 2d 511, 77 U.S. App. D.C. 129, 146 A.L.R. 926).

Adoption proceeding

Where summons in adoption proceeding was delivered to child's legal custodian in another jurisdiction, his letter to clerk of court stating that he was not interested in outcome of suit and that letter was to be treated as his answer to the summons was not an "appearance," but a mere acknowledgment of summons. *Wathen* v. *Ugast* (1944, 143 F. 2d 160, 79 U.S. App. D.C. 162).

In proceeding for adoption of child who was in custody of legal custodian in another jurisdiction, service of process upon custodian in that jurisdiction, not being authorized by statute, was invalid. *Id.*

Alien property custodian

Supreme Court of District had jurisdiction over suit against Secretary of Treasury to determine right to fund created by Alien Property Custodian. *Doerschuck* v. *Mellon* (1932, 55 F. 2d 741, 60 App. D.C. 383).

Court had jurisdiction to assemble parties in suit against Alien Property Custodian for purpose of determining title to claimed property. *Pilger* v. *Sutherland* (1932, 57 F. 2d 604, 61 App. D.C. 84).

Alimony

Any attempt to enforce the payment of an order for alimony and suit mony pendente lite in a foreign jurisdiction is in the nature of an action personam, and can be maintained only through personal service upon the defendant. *Johnston* v. *Johnston* (1935, 74 F. 2d 774, 64 App. D.C. 87).

Fact that written motion to have defendant adjudged in contempt for failure to pay permanent alimony awarded in judgment for absolute divorce was served upon defendant personally instead of attorney, without obtaining in advance an order of court authorizing such service, did not invalidate the service. *Tilghman* v. *Tilghman* (D.C.D.C. 1944, 57 F. Supp. 417).

A decree for payment of alimony against a non-resident brought before the court by constructive or extra-territorial service is void except as to property which is within the court's jurisdiction, and which has been specifically proceeded against in the divorce action. *Gaines* v. *Gaines* (1946, 157 F. 2d 521, 81 U.S. App. D.C. 260).

Order of District Court of District of Columbia directing resident of Virginia who was personally served in Virginia, to pay alimony pendente lite, was "in personam" and void for lack of jurisdiction, in absence of any acts by non-resident to subject himself to court's authority, and in absence of a claim of, right to, or lien on any personalty in District of Columbia. *Id.*

Use of service by publication or service outside of District of Columbia was authorized where divorced husband resided in Ohio, and wife, who sought support for herself and minor child, also sought to subject former marital home in District to support payments awarded and to have determined her property right in the home and to obtain injunction against the sale. *S. S. Wagner* v. *C. A. Wagner* (1961, 293 F. 2d 533, 110 U.S. App. D.C. 345).

Substituted service upon husband, who was residing in Ohio, of complaint wherein wife sought determination of property rights of husband's real estate in District of Columbia was sufficient to give court in District of Columbia power to enforce her rights without attachment of the property at time of filing suit. *Id.*

Attachment

Although this section authorizes publication in cases of attachment, an attachment can not issue under § 445 (§ 16–301) against the property of a decedent for a debt due by him, when the estate is being administered in another jurisdiction. *Jordan* v. *Landram* (1910, 35 App. D.C. 89).

Service by publication is not good in actions in personam on nonresidents not found within jurisdiction unless property of party within jurisdiction is the subject of attachment. *Indemnity Ins. Co. of North America* v. *Smoot* (1946, 152 F. 2d 667, 80 U.S. App. D.C. 287, 163 A.L.R. 498, certiorari denied 66 S. Ct. 981, 328 U.S. 835, 90 L. Ed. 1611).

Attorney and client

In proceedeing in his own name by attorney retained on contingent fee basis to realize on judgment which he had obtained establishing client's right to recover upon client's subsequent failure or refusal to enforce collection of the judgment, client should be made party defendant, and court might, if it considered it advisable, require that, in lieu of newspaper publication, personal service provided for by statute be had on client. *Falcone and Millstein* v. *Hall et al.* (1956, 235 F. 2d 860, 98 U.S. App. D.C. 363).

Construction with other laws

Personal service of process on non-resident defendant in the state where he resided was not invalid because prior thereto a summons had not been issued and returned "Not to be found" in the District of Columbia and because his non-residence had not been proved by affidavit according to § 13–109 dealing with service on a non-resident by publication, since that section has no application to provision of this section relating to personal service on a non-resident. *Gaines* v. *Gaines* (1946, 157 F. 2d 521, 81 U.S. App. D.C. 260).

Dismissal

Where complaint was not predicated solely on establishment of a lien upon fund held by Secretary of Treasury for benefit of non-resident defendant but also sought injunction and specific performance against non-resident personally, fact that order of publication against non-resident defendant was required to be vacated as not within purview of this section did not entitle non-resident defendant to dismissal of the action as to him, since if non-resident defendant should be personally served court would have jurisdiction to give appropriate relief. *Dunn* v. *Parker* (1948, 8 F.R.D. 373).

Divorce

This section which authorizes substituted service in suits for divorce does not apply in suits for maintenance. *Bliss* v. *Bliss* (1931, 50 F. 2d 1002, 60 App. D.C. 237).

Where wife six years after husband's alleged desertion met her sister-in-law on the street and upon learning that husband was living in Georgia made no effort to obtain his precise address and two years later filed a divorce suit and sent a copy of notice of publication to husband simply addressed "Macon, Georgia", the wife did not exercise "diligent effort" to serve the husband and her suit for divorce was properly dismissed. *Gardner* v *Gardner* (D.C. Mun. App. 1958, 140 A. 2d 179).

Domestic corporation

Corporation chartered under laws of District of Columbia was not subject to service by publication in suit brought against it by United States for money judgment, notwithstanding that United States had been unable to find any officer or representative of such corporation in District of Columbia on whom personal service could be made and that marshal had returned summons not found. *United States* v. *Matthews* (1955, 221 F. 2d 837, 95 U.S. App. D.C. 282).

Maintenance

A suit for maintenance is a proceeding in personam, and this section, authorizing substituted service does not apply. *Vertner* v. *Vertner* (1934, 70 F. 2d 783, 63 App. D.C. 179).

Personal property

Quaere: Whether a defendant in a contract action, by complying with the conditions of § 1531 (§ 13–217), can convert the same into one having for its "immediate object the enforcement * * * of any lawful right * * * to * * * any personal property within the jurisdiction," so as to authorize service by publication under this section. *Dexter* v. *Lichliter* (1904, 24 App. D.C. 222).

A check or draft in the hands of the Treasurer of the United States, in which the United States has no longer any interest is "personal property" within the meaning of this section. *Jones* v. *Rutherford* (1905, 26 App. D.C. 114).

A treasury check held by the Government was "personal property" within meaning of statute. *Morgenthau* v. *Fidelity & Deposit Co.* (1938, 94 F. 2d 632, 68 App. D.C. 163).

A trust res in the form of a deposit in a local bank is personal property within the meaning of this section. *Green* v. *Brophy* (1940, 110 F. 2d 539, 71 App. D.C. 299).

Money paid into United States Treasury by the Mexican Government is "personal property" within meaning of statute. *American-Mexican Claims Bureau, Inc.* v. *Morgenthau* (D.C.D.C. 1939, 26 F. Supp. 904).

Suit against trustee and beneficiary of trusts by beneficiary's divorced wife to establish on behalf of herself and minor child interest in trust funds, located within District of Columbia, and proceeds thereof, was for purpose of enforcing or establishing a lawful right against "property" within this section, so that process was properly served by publication on beneficiary who was absent from district. *Buchanan* v. *National Sav. & Trust Co.* (1945, 146 F. 2d 13, 79 U.S. App. D.C. 278).

Publication of process

Statutory expression that service of process in a divorce action may be had "by publication" means by publication or its statutory equivalent, and therefore service of process on a nonresident defendant outside the district, in a divorce action, was valid. *Wiggins* v. *Wiggins* (D.C. Mun. App. 1957, 135 A. 2d. 154).

Quashing service

In a suit for an accounting and discovery and for appointment of receiver, where verified complaint alleged that defendant was resident of District of Columbia, but summons was served on defendant in Virginia and the return, verified by a Virginia sheriff, alleged that defendant "is a nonresident of the District of Columbia," denial of defendant's motion, made on special appearance, to quash service of process was error. *Contella* v. *Clayton* (1944, 140 F. 2d 469, 78 U.S. App. D.C. 291).

Reversion interest

Where divorced wife sued husband for payment of money due by reason of property settlement incorporated into divorce decree and husband was not resident of District of Columbia and divorced husband had created a District of Columbia trust and possessed a vested reversion and in May, 1960, would receive a portion of the trust assets on partial termination of the trust, divorced wife could assert jurisdiction over the property and the husband under District of Columbia Code which provides substantially as to service and the matter thereof on nonresident defendant who has personal property within the jurisdiction against which a claim of a plaintiff is asserted and also under District of Columbia statute relating to attachment before judgment. *King, etc.* v. *Fay et al.* (D.C.D.C. 1958, 169 F. Supp. 934).

Revival of judgment

The service of notice of motion to revive a judgment obtained in Municipal Court of District of Columbia could be made upon a judgment debtor in Maryland upon showing that he was a non-resident, without first having a summons issued in the District of Columbia and returned "not to be found" and the debtor's non-residence established by affidavit. *White* v. *O. R. Evans & Bro.* (1947, 157 F. 2d 857, 81 U.S. App. D.C. 272).

Right as statutory

Notice by publication is in derogation of the common law, and it can be availed of only when a statute permits. *Cooper* v. *Burton* (1942, 127 F. 2d 741, 75 U.S. App. D.C. 298.

Situs of the "claim"

The situs of the claim alone does not authorize notice to a nonresident defendant by publication under the code. *Lindberg* v. *Humphrey* (1923, 289 F. 901, 53 App. D.C. 243).

United States

The federal District Court for District of Columbia lacked jurisdiction of action for declaratory judgment that Secretary of Interior and Indian woman were trustees for plaintiff of certain lands in Indian allotments wherein Indian defendant acquired interests through descent and will where United States did not consent to be sued, if lands were still governed by General Allotment Act, and Indian defendant was not personally served with process in District. *Spriggs, Sr.* v. *McKay, Secretary of the Interior* (1956, 228 F. 2d 31, 97 U.S. App. D.C. 60).

Vacating order

Plaintiff's action so far as it related to establishment of a lien upon a fund held by Secretary of Treasury for benefit of non-resident defendant under Settlement of Mexican Claims Act, 22 U.S.C. former § 668(b), did not come within purview of this section providing for publication as to non-residents, and, hence, non-resident defendant's motion to vacate order of publication would be granted. *Dunn* v. *Parker* (1948, 8 F.R.D. 373).

Waiver by appearance

When the jurisdiction over the defendant rests upon her having voluntarily appeared and answered the bill without objection, the decree binds her. *Houston* v. *Ormes* (1920, 40 S. Ct. 369, 252 U.S. 469, 64 L. Ed. 667).

A general appearance waives irregularities in obtaining the order of publication. *Landram* v. *Jordon* (1905, 25 App. D.C. 291, affirmed 27 S. Ct. 17, 203 U.S. 56, 51 L. Ed. 88).

II. Under Present Law

Real property actions

Sections of District of Columbia code authorizing personal service of process on nonresidents and substitution of publication for personal service on nonresident include actions equitable in nature, although court's power may be limited to property within jurisdiction. *S. W. Poorvu* v. *R. P. Vacca* (D.C.D.C. 1965, 241 F. Supp. 948).

Action for specific performance of contract conveying interest in land within District of Columbia had, as an immediate object, the enforcing of right against realty within District of Columbia, within code provision to effect that section pertaining to service of process on nonresident defendant applies to actions having such objectives and service on nonresident would not be quashed as improper under the code. *Id.*

§ 13–337. Personal service outside District in lieu of publication

(a) In actions specified by section 13–336, personal service of process may be made on a nonresident defendant out of the District, and the service has the same effect, and no other, as an order of publication duly executed.

(b) The service may be made by any person not a party to or otherwise interested in the subject-matter in controversy. The return shall be made under oath in the District of Columbia, unless the person making the service is a sheriff, deputy sheriff, marshal, or deputy marshal, authorized to serve process where service is made. The return must show the time and place of service and that the defendant so served is a nonresident of the District of Columbia.

(c) The cost and expense of such service of process out of the District shall be borne by the party at whose instance it is made and may not be taxed as part of the costs in the case; but where the service of process is made by an authorized officer of the law specified by this section, the actual and usual cost of the service of process shall be taxed as a part of the costs in the case. (Dec. 23, 1963, 77 Stat. 514, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 13–108 (Mar. 3, 1901, ch. 854, § 105, 31 Stat. 1206; Apr. 19, 1920, ch. 153, 41 Stat. 556; June 20, 1949, ch. 230, 63 Stat. 214).

Section is based on part of section 13–108. For remainder of that section, see section 13–336 herein.

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS

Quashing of service, burden of proof

Nonresident defendant moving to quash return of personal service of process had burden of proving that he in fact owned no property in District over which court had jurisdiction, where he contended that he had assigned his admitted interest in property prior to institution of suit but did not deny that lease agreements recorded subsequent to assignment transferred interest in property back to defendant. *S. W. Poorvu* v. *R. P. Vacca* (D.C.D.C. 1965, 241 F. Supp. 948).

Nonresident defendant moving to quash return of personal service of process failed to establish that he in fact owned no property in District. *Id.*

§ 13–338. Prerequisites for order of publication

An order for the substitution of publication for personal service may not be made until:

(1) a summons for the defendant has been issued and returned "Not to be found," and

(2) the nonresidence of the defendant or his absence for at least six months is proved by affidavit to the satisfaction of the court.

(Dec. 23, 1963, 77 Stat. 514, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 13–109 (Mar. 3, 1901, ch. 854, § 106, 31 Stat. 1206).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Construction with other laws

Personal service of process on non-resident defendant in the state where he resided was not invalid because prior thereto a summons had not been issued and returned "Not to be found" in the District of Columbia and because his non-residence had not been proved by affidavit according to this section dealing with service on a non-resident by publication, since this section has no application to provision of § 13–108 relating to personal service on a nonresident. *Gaines* v. *Gaines* (1946, 157 F. 2d 521, 81 U.S. App. D.C. 260).

Diligent effort

Where wife six years after husband's alleged desertion met her sister-in-law on the street and upon learning that husband was living in Georgia made no effort to obtain his precise address and two years later filed a divorce suit and sent a copy of notice of publication to husband simply addressed "Macon, Georgia", the wife did not exercise "diligent effort" to serve the husband and her suit for divorce was properly dismissed. *Gardner* v. *Gardner* (D.C. Mun. App. 1958, 140 A. 2d 179).

Pluries summons

Order of publication cannot be had before return day named in summons, and this rule applies as well to pluries summons. *Thompson* v. *Tanner* (1923, 287 F. 980, 53 App. D.C. 3). See, also, *Plumb* v. *Bateman* (1894, 2 App. D.C. 156).

§ 13–339. Form of order of publication

An order of publication shall be in the following or an equivalent form:

United States District Court for the District of Columbia.

AB, plaintiff,
versus
CD, defendant. } In ———. No. ———

The object of this action is to (state it briefly).

On motion of the plaintiff, it is this ——— day of ———, A.D. ———, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in cause of default.

———

Judge.

(Dec. 23, 1963, 77 Stat. 515, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 13–110 (Mar. 3, 1901, ch. 854, § 107, 31 Stat. 1206; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(a)(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

This form is made to conform to present terms and procedure by changing "complainant" to "plaintiff", and "suit" to "action".

§ 13–340. Manner of publication; mailing of copy; default; appointment and compensation of guardian and attorney

(a) An order of publication shall be published at least once a week for three successive weeks, or oftener, or for such further time as the court orders.

(b) An order, judgment or decree may not be entered against an absent or nonresident defendant upon proof of notice by publication, unless the plaintiff, his agent, or attorney files in the action an affidavit showing that at least twenty days before applying for the order, judgment or decree he mailed, postpaid, a copy of the advertisement, directed to the party therein ordered to appear, at his last known place of residence, or that after diligent effort he has been unable to ascertain the last place of residence of the party.

(c) On failure of the defendant to appear in obedience to the notice within the time stated therein, a judgment or decree by default may be entered.

(d) If the absent or nonresident defendant is an infant, the provisions of the rules of court concerning guardians ad litem and default judgments shall apply, and the court may assign counsel to represent the infant in the manner provided by subsection (a) of section 13–332.

(e) If the absent or nonresident defendant is non compos mentis, the provisions of the rules of court concerning guardians ad litem and default judgments shall apply, and the court shall assign an attorney to represent the defendant, whose compensation shall be paid by the plaintiff, or out of the estate of the defendant, at the discretion of the court. (Dec. 23, 1963, 77 Stat. 515, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 13–111, 13–112 (Mar. 3, 1901, ch. 854, §§ 108, 109, 31 Stat. 1206, 1207; June 30, 1902, ch. 1329, 32 Stat. 523).

In subsecs. (d) and (e), the provisions making applicable the provisions of the rules of the court concerning guardians ad litem and default judgments are substituted for the provision in section 13–111 of D.C. Code, 1961 ed., that, with respect to an infant, the court shall appoint a guardian ad litem, and for the provision in section 13–112 thereof, that, with respect to a defendant non compos mentis, "no decree or judgment shall be passed unless the cause is fully proved". For example, Rules 17(c) and 55(b)(2) of the Federal Rules of Civil Procedure, and corresponding rules in other courts (see Rules 17(b) and 55(b) of the civil rules of the Court of General Sessions) govern the appointment of guardians ad litem for infants and incompetent persons, and provide that a judgment shall not be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other representative who has appeared therein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Diligent effort

Dismissal of wife's divorce action based on desertion on ground that wife had not offered satisfactory proof of mailing of publictaion to last known residence of husband was improper where address to which publication had been sent was, to wife's knowledge, last place at which husband had lived and efforts to locate husband were persistent and diligent. *C. S. McIntyre* v. *J. D. McIntyre* (D.C. Mun. App. 1961, 176 A. 2d 238).

Even if wife did not succeed in accurately establishing husband's most recent place of residence, evidence established that she had diligently tried to ascertain it before bringing action for absolute divorce on ground of desertion. *Id.*

Where wife six years after husband's alleged desertion met her sister-in-law on the street and upon learning that husband was living in Georgia made no effort to obtain his precise address and two years later filed a divorce suit and sent a copy of notice of publication to husband simply addressed "Macon, Georgia", the wife did not exercise "diligent effort" to serve the husband and her suit for divorce was properly dismissed. *Gardner* v. *Gardner* (D.C. Mun. App. 1958, 140 A. 2d 179).

Domestic corporation

Corporation chartered under laws of District of Columbia was not subject to service by publication in suit brought against it by United States for money judgment, notwithstanding that United States had been unable to find any officer or representative of such corporation in District of Columbia on whom personal service could be made and that marshal had returned summons not found. *United States* v. *Matthews* (1955, 221 F. 2d 837, 95 U.S. App. D.C. 282).

Sufficiency

Two publications in each of four consecutive periods of seven days from date of order of publication satisfy requirement that publication be twice a week for period of not less than four weeks. *Leach* v. *Burr* (1903, 23 S. Ct. 993; 188 U.S. 510, 47 L. Ed. 567).

§ 13–341. Service by publication on persons unknown to be living or dead and on unknown heirs and devisees

(a) When a person would be a proper party to a judicial proceeding if living, and upon allegation under oath and proof satisfactory to the court that it is unknown whether he is living or dead, he may be proceeded against as if he were living, and with like effect, if a representative of or claimant under him does not intervene in the action before final determination thereof, after notice by publication as in the case of nonresident parties.

(b) When a person who would have been a proper party to a judicial proceeding is dead, and it is unknown whether he died testate or left heirs, or his heirs and devisees are unknown, the unknown persons may be described as the heirs or devisees of the person who, if living, would be the proper party. Notice shall be given by publication to them according to that description, and the same proceedings shall be had against them as are had against nonresident defendants, except that:

(1) the notice shall be published at least twice a month for such period, not less than three months without good cause shown, as the court orders, and the notice shall require the parties to appear on or before the day fixed in the notice to appear; and

(2) an order, judgment or decree may not be entered against the parties unless the court is satisfied that due diligence has been used to ascertain the unknown heirs.

(Dec. 23, 1963, 77 Stat. 515, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 13–113 (Mar. 3, 1901, ch. 854, § 110, 31 Stat. 1207; June 30, 1902, ch. 1329, 32 Stat. 524).

In par. (1) of subsec. (b), words "on or before the day fixed in the notice to appear" are substituted for "on or before the first rule day occurring after the expiration of such prescribed period". Under present local court practice, rule days have been abolished.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Intervention

In proceeding involving competing claims to interstate's estate, wherein service by publication was authorized on unknown heirs and next of kin of intestate and all others concerned, allowing additional claimants to intervene after date set therefor in service by publication but prior to entry of a final decree did not constitute an abuse of trial court's discretion. *Collins et al.* v. *O'Brien et al.* (1953, 208 F. 2d 44, 93 U.S. App. D.C. 152, certiorari denied 74 S. Ct. 640, 347 U.S. 944, 98 L. Ed. 1092, rehearing denied 74 S. Ct. 776 347 U.S. 970, 98 L. Ed. 1111).

Chapter 5.—COUNTERCLAIMS

Sec.

13–501. Counterclaim by way of set-off as an action by defendant.
13–502. Effect of assignment.
13–503. Action against principal and sureties.
13–504. Action by trustee.
13–505. Action by or against executor or administrator.

§ 13–501. Counterclaim by way of set-off as an action by defendant

In a civil action, a defendant who files a counterclaim by way of set-off shall be deemed to have brought an action at the time of filing the counterclaim for the matters mentioned therein. (Dec. 23, 1963, 77 Stat. 516, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1903 (Mar. 3, 1901, ch. 854, § 1565, 31 Stat. 1423; Mar. 3, 1921, ch. 125, § 1, 41 Stat. 1310).

Words "counterclaim by way of set-off" are substituted for "plea of set-off", and, in another place, "counterclaim" is substituted for "plea", to conform with court procedural rules. See Rule 13 of the Federal Rules of Civil Procedure, and Rule 13 of the civil rules of the Court of General Sessions, the latter being patterned upon the former. In the first substitution referred to, the reference to "set-off", although not used in the rules mentioned, is retained to restrict the scope of this section to that contemplated by section 16–1903 of D.C. Code, 1961 ed., from which this section is derived. Apparently, section 16–1903 barred the set-off if the statute of limitations had run after plaintiff had brought his action but before defendant had filed the plea of set-off; but it had no effect on the filing of a plea of recoupment, which was a common-law right, in contrast with set-off, which was strictly a statutory right. The general rule for recoupment was that if plaintiff's action was timely, so was the defendant's plea of recoupment, since the recoupment claim, as distinguished from a claim of set-off, arose from the same general contract. See *Durant* v. *Murdock*, 3 App. D.C. (1894) 114, 124–125; *Sullivan* v. *Hoover* (D.D.C. 1947), F.R.D. 513.

The provision "but it shall not be necessary that the amount of the claim so sought to be set off shall be such that the court would have jurisdiction of an original action to recover the same" is omitted as obsolete. See sections 11–961(a)(b)(3) and 11–962 herein. For the same reason, the proviso at the end of section 16–1903 of D.C. Code, 1961 ed., *"Provided,* that nothing herein contained shall be construed to enlarge the jurisdiction of the municipal court so as to authorize any judgment by such court in excess of one thousand dollars exclusive of interest and costs" is omitted.

Section 16–1903 of D.C. Code, 1961 ed., also contained the following provisions: "and the plaintiff shall not thereafter be allowed to dismiss his suit without the consent of the defendant, but the defendant shall be entitled to a trial of and judgment upon his claim, but the same shall be open to the same defenses to which it would be open in an action brought by him thereon; and on the trial of an issue on said plea of set-off judgment shall be rendered for the balance found due, whether to the plaintiff or to the defendant, with costs". These provisions are omitted as superseded by the Federal Rules of Civil Procedure, and the Rules of the Court of General Sessions. See, particularly, rules 7(a), 12(b), 13, 41(a)(2)(c), 42(b), and 54(b) of the former, and the identically numbered rules in Section I of the latter.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Generally

Where defendant has sought affirmative relief by set-off or counterclaim, plaintiff may not discontinue action without defendant's consent, and, even though plaintiff fails to prosecute his claim, defendant is entitled to trial of and judgment upon his claim. *Tendler* v. *L. E. Massey, Inc.* (D.C. Mun. App. 1943, 33 A. 2d 626).

Damages from wrongful injunction

Where District Court dismissed wife's suit for divorce and taxed husband with her counsel fees, if court should find that wife's attorney knowingly participated in wrongful suing out of injunction by wife to tie up husband's funds, husband would be allowed to set off his damage from the injunction against the claim for counsel fees. *Shima* v. *Shima* (1944, 139 F. 2d 533, 78 U.S. App. D.C. 265, 150 A.L.R. 1179).

Where judgment dismissing wife's suit for divorce and taxing husband with wife's counsel fees determined neither the facts nor the law with regard to husband's right to set off, against claim for counsel fees, damages sustained by wife's suing out of an injunction tying up husband's funds, husband would be allowed to set off such damage against the claimed fees if wife's attorney knowingly participated in wrongful issuance of injunction, notwithstanding allowance of fees had become final. *Id.*

Decisions under prior law

Durant v. *Murdock* (1894, 3 App. D.C. 114) (plea of set-off barred on its face by statute of limitations cannot be pleaded to prevent a summary judgment under 73d rule); *United States* v. *West* (1896, 8 App. D.C. 59) (when a plea of set-off only is filed, it is equivalent to a plea of confession and avoidance and transfers burden of proof to defendants); *Samaha* v. *Samaha* (1901, 18 App. D.C. 76) (right of plaintiff to dismiss after plea filed).

Even if defendant had entered a plea of recoupment coupled with non assumpsit, it would not amount to an admission of the existence of a cause of action, for the plea of non assumpsit is a denial of liability. *Hornblower* v. *George Washington University* (1908, 31 App. D.C. 64, 14 Ann. Cas. 696).

Distinguished from common law

Set-off did not exist at common law and is entirely founded upon statutory regulation and it is carefully to be distinguished from recoupment, which is a right existing at common law, and which arises when there are counterclaims accruing upon the same general contract *Durant* v. *Murdock* (1894, 3 App. D.C. 114).

In equity

In equity suit against a contractor to enforce mechanics' lien for materials furnished, a recoupment or set-off will not be allowed against claim of complainant, of penalty by reason of failure to finish building on time, as complainant was not privy to the contract. *Carver* v. *Hall* (1894, 3 App. D.C. 170).

A creditor, having unliquidated demands against another not reduced to judgment, may set them off in equity against a judgment recovered against him by that other person, if there has been no opportunity to set them off in the suit which led to the judgment, and if the person who holds the judgment is insolvent. *Fedarwisch* v. *Alsop* (1901, 18 App. D.C. 318).

Cross-demands and counterclaims, whether arising out of the same or wholly disconnected transactions, and whether liquidated or unliquidated, may be enforced by way of set-off whenever the circumstances are such as to warrant the interference of equity to prevent wrong and injustice. *Fitzgerald* v. *Wiley* (1903, 22 App. D.C. 329).

Damages, to be recouped in equity proceeding, by a cross-bill, as to foreclose of mortgage on patents to be granted against person interested in mortagage debt, as result of negilgence on the part of such person, a patent attorney, in not notifying mortgagor whereby patent lapsed and sale was prevented, must be limited to interest person has in original bill. *Id.*

Jurisdiction

In landlord's proceeding in municipal court for possession and rent, where tenant elected to plead its claim against landlord for $2,859.05 for negligent injury allegedly caused by leakage of rain to chattels in leased premises, the issue was within the jurisdiction of the municipal court. *Geracy, Inc.* v. *Hoover* (1943, 133 F. 2d 25, 77 U.S. App. D.C. 55, 147 A.L.R. 185).

Pleading

Where plaintiff filed in municipal court of District of Columbia particulars of demand in which she set up cause of action for $109.80, to which defendants responded with affidavit of defense and counterclaim accompanied by bill of particulars admitting they owed $100, and claiming $420 in counterclaim and demanding judgment for $320 plaintiff was not required to file an affidavit of defense in response to affidavit of merit which accompanied counterclaim, since rule 16 of such court must be so interpreted as to produce a result consistent with clearly expressed purpose of rule 2, providing that no

formal pleadings shall be required, even for initiation of Class B cases. *Shields* v. *Hawkins* (1942 125 F. 2d 204, 75 U.S. App. D.C. 172).

Plea of set-off "must state facts which not only bring it within the privilege of set-off, but would also constitute a good cause of action if the party pleading were the plaintiff in the prosecution of a suit therefor. And while the technical formality and accuracy of a declaration may not be required, the plea must, nevertheless, inform the plaintiff, with reasonable certainty, of the particulars of the demand which he is called upon to defend." *McGuire* v. *Gerstley* (1905, 26 App. D.C. 193, affirmed 27 S. Ct. 332, 204 U.S. 489, 51 L. Ed. 581).

Set-off must be specially pleaded. *Simmons* v. *Jaselli* (1912, 38 App. D.C. 242). See, also, *Knight* v. *W. T. Walker Brick Co.* (1904, 23 App. D.C. 519).

Replevin

In replevin action, after default on conditional sales contract, the right of defaulting buyer for breach of contract may be set off. *Marks* v. *Frigidaire Sales Corp.* (1932, 54 F. 2d 974, 60 App. D.C. 359, certiorari denied 52 S. Ct. 394, 285 U.S. 544, 76 L. Ed. 936).

Tenants' defenses

When tenant is sued for possession of realty for nonpayment of rent, he may defend by an equitable defense sufficient to defeat, in whole or in part, landlord's claim for rent or assert, by way of set-off, total or partial failure of consideration. *Seidenberg* v. *Burka* (D.C. Mun. App. 1954, 106 A. 2d 499).

Res judicata

Where tenant claimed $2,859.05 from landlord for negligent injury to chattels in leased premises, if tenant chose to reduce its claim to the dimensions of municipal court jurisdiction and submit to the adjudication of municipal court, in which the landlord had instituted proceeding for restitution of premises, the tenant was privileged to do so, but, if it did so, it forfeited the privilege of having the same issue adjudicated in the district court. *Geracy, Inc.* v. *Hoover* (1943, 133 F. 2d 25, 77 U.S. App. D.C. 55, 147, A.L.R. 185).

Where tenant pleaded its claim for $2,859.05 against landlord for negligent injury to chattels in leased premises as a defense to landlord's action in municipal court for possession of premises and for rent, the determination of the issue adversely to the tenant became "res judicata" thereof, and precluded tenant from recovering on such claim in action instituted in district court. *Id.*

Voluntary nonsuit taken by plaintiff without objection by defendant or expression of any desire to proceed with hearing on defendant's cross-claim was not "res judicata" of plaintiff's right to maintain a subsequent action against defendant on same cause of action. *Tendler* v. *L. E. Massey, Inc.* (D.C. Mun. App. 1943, 33 A. 2d 626).

§ 13–502. Effect of assignment

When cross-demands have existed between persons under such circumstances that if one had brought an action against the other a counterclaim could have been pleaded, neither can be deprived of the benefit thereof by an assignment by the other; but in an action by the assignee of a nonnegotiable debt the defendant may set off by counterclaim any indebtedness to him of the assignor, existing before notice of the assignment, as well as any indebtedness to him of the plaintiff. (Dec. 23, 1963, 77 Stat. 516, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1904 (Mar. 3, 1901, ch. 854, § 1566, 31 Stat. 1423).

In one place words "by counterclaim" are inserted after "set-off", in conformity with the Federal Rules of Civil Procedure and the Rules of the Court of General Sessions. See, for example, rule 13 of the former and the identically numbered rule in Section I of the latter.

For inapplicability of this section to negotiable instruments, see *Lincoln* v. *Grant* (47 App. D.C. 475).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

No application to negotiable instruments

"Taking this section as a whole, it is resolved into the statement that in an action by the assignee of any nonnegotiable debt, the defendant may set off any indebtedness to him of the assignor. The terms used are wholly inapplicable to negotiable instruments. According to accurate legal terminology, the person who transfers a promissory note is not called an assignor, but an indorser; the person to whom it is transferred is not designated the assignee, but the indorsee; and the use of the words 'nonnegotiable debt,' as meaning a negotiable promissory note would be a startling neologism." *Lincoln* v. *Grant* (1918, 47 App. D.C. 475).

§ 13–503. Action against principal and sureties

In an action against principal and sureties, an indebtedness of the plaintiff to the principal may be set off by counterclaim as if he were the sole defendant. When the indebtedness so set off exceeds the plaintiff's demand, the judgment for the excess shall be in favor of the defendant who is sued as principal. (Dec. 23, 1963, 77 Stat. 516, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1906 (Mar. 3, 1901, ch. 854, § 1568, 31 Stat. 1423).

Words "by counterclaim" are inserted after the first "set-off", in conformity with rule 13 of the Federal Rules of Civil Procedure and the identically numbered rule in Section I of the Rules of the Court of General Sessions.

The provisions of sections 16–1906 to 16–1908 of D.C. Code, 1961 ed., are carried into and preserved in this section and sections 13–504 and 13–505 herein because, while rule 13 of the Federal Rules of Civil Procedure and the identically numbered rule in Section I of the Rules of the Court of General Sessions provide for counterclaims between opposing parties in civil actions, they do not define "opposing party", as used therein. With respect to the types of parties referred to in these three sections, the sections may be considered as supplemental to those rules.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Sufficiency of facts

Plea that plaintiffs attempted to destroy defendants' business by persuading one partner to dissolve the partnership held not to set up facts sufficient to constitute a valid set-off, recoupment, or cause of action. *McGuire* v. *Gerstley* (1905, 26 App. D.C. 193, affirmed 27 S. Ct. 332, 204 U.S. 489, 51 L. Ed. 581).

§ 13–504. Action by trustee

When the plaintiff in a civil action is trustee for another, or has no actual interest in the contract on which the action is founded, a demand against the plaintiff may not be pleaded by way of counterclaim, but a demand against the person whom he represents or for whose benefit the action is brought may be pleaded. (Dec. 23, 1963, 77 Stat. 516, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1907 (Mar. 3, 1901, ch. 854, § 1569, 31 Stat. 1423).

"Counterclaim" is substituted for "set-off", in conformity with rule 13 of the Federal Rules of Civil Procedure and the identically numbered rules in Section I of the Rules of the Court of General Sessions.

The reason for preserving the provisions carried into this section is given in revision note under section 13–503 herein.

Changes are made in phraseology.

§ 13–505. Action by or against executor or administrator

In an action against an executor or administrator, in his representative capacity, the defendant may plead, by way of counterclaim, a demand belonging to the decedent where he would have been entitled to rely upon the demand in an action against him; and in an action brought by an executor or administrator, in his representative capacity, a demand against the decedent, belonging at the time of his death to the defendant, may be pleaded by way of counterclaim, as if the action had been brought by the decedent in his lifetime. (Dec. 23, 1963, 77 Stat. 516, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1908 (Mar. 3, 1901, ch. 854, § 1570, 31 Stat. 1423).

"Counterclaim" is substituted for "set-off" in two places, in conformity with rule 13 of the Federal Rules of Civil Procedure and the identically numbered rule in Section I of the Rules of the Court of General Sessions.

The reason for preserving the provisions carried into this section is given in revision note under section 13–503 herein.

A minor change is made in phraseology.

Chapter 7.—TRIAL

Sec.
13–701. Special juries in District Court.
13–702. Jury trials in civil cases in Court of General Sessions.

§ 13–701. Special juries in District Court

(a) In a case, civil or criminal, called for trial in the United States District Court for the District of Columbia, in which either party desires a special or struck jury, the clerk shall prepare a list of twenty jurors from the jurors in attendance and furnish the list to each of the parties. Each party or his counsel may strike off the names of four persons from the list, and the persons whose names remain on the list shall thereupon be impaneled and sworn as the petit jury in the case. If either party or his counsel neglects or refuses to strike from the list the number of names authorized by this subsection, the clerk may strike off the names, and the twelve persons whose names remain on the list shall be impaneled as the petit jury in the case.

(b) If the proceeding authorized by subsection (a) of this section is not insisted upon by either party, either party may furnish to the clerk a list of the jurors, not exceeding four in number, whom he wishes to be omitted from the panel sworn in the case, and the clerk, in making up the panel, shall omit the jurors to whom objection was so made.

(c) This section does not deprive a person of the right to challenge the array or polls of a panel returned, or to have all or any of the jurors examined on their voir dire before the list is prepared to determine their competency to sit in a particular case. (Dec. 23, 1963, 77 Stat. 517, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–319 (Mar. 3, 1901, ch. 854, § 72, 31 Stat. 1201; June 30, 1902, ch. 1329, 32 Stat. 523).

Words "civil or criminal" are inserted to make it clear that this section applies to both types of cases.

Changes are made in phraseology.

CROSS REFERENCE

Additional peremptory challenges, see 28 U.S.C. § 1870.

NOTES TO DECISIONS UNDER PRIOR LAW

Examination of jurors

Where, on voir dire examination, questions concerning claims for personal injuries previously suffered by jurors were propounded to panel and in response two jurors remained silent, there was no sufficient inquiry by counsel, on voir dire, to support a motion for new trial, or contention on appeal based on ground that some jurors gave false answers or concealed information by silence, and a denial of new trial was not an abuse of discretion. *Orenberg* v. *Thecker* (1944, 143 F. 2d 375, 79 U.S. App. D.C. 149).

§ 13–702. Jury trials in civil cases in Court of General Sessions

When the amount in controversy in a civil action pending in the District of Columbia Court of General Sessions exceeds $20, and in all actions for the recovery of possession of real property, either party shall be entitled to a trial by jury, if he demands it in the manner provided by rules of the court. In such a case tried by jury, the trial judge shall conduct the jury trial and according to the practice and procedure in the United States District Court for the District of Columbia, and has the same power to instruct juries, set aside verdicts, arrest judgments, and grant new trials as judges of that court. (Dec. 23, 1963, 77 Stat. 517, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–715, 11–751a, 11–755 (Mar. 3, 1921, ch. 125, § 3, 41 Stat. 1310; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section 11–715 of D.C. Code, 1961 ed., related to the Municipal Court prior to its merger, in 1942, with the Police Court, to form the second Municipal Court. Prior to its amendment by the act of Oct. 23, 1862, subsec. (a) of section 11–755 of the Code provided that the court thus established and the judges thereof should have the same jurisdiction and powers theretofore vested in the two former courts and the judges thereof. After the 1962 amendment, subsec. (a) of section 11–755 provided that the Court of General Sessions and the judges thereof should have the same jurisdiction and powers theretofore vested in the Municipal Court for the District of Columbia (the second Municipal Court) and the judges thereof. Section 11–751a of D.C. Code, 1961 ed., enacted by the 1962 act, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

For remainder of section 11–755 of D.C. Code, 1961 ed., see tables.

In the first sentence of this section, the phrase (with respect to demand for jury trial) "in the manner provided by rules of the court", is inserted for the purpose of completeness. See the following rules of the Rules of the Court: Civil Rules, rule 38; Landlord and Tenant Rules, rule 7; Small Claims Rules, rule 17.

Changes are made in phraseology.

The provisions of sections 11–818 and 11–915 and 11–936 (first clause) of D.C. Code, 1961 ed., relating to jury trials in the Small Claims and Conciliation Branch of the court (11–818) and the Juvenile Court (11–915 and 11–936) are carried into those chapters herein dealing with procedure in that branch and that court.

The provisions of 11–715a and 11–716a (first clause) of D.C. Code, 1961 ed., relating to jury trials in criminal cases in the court are carried into chapter 7 of Title 16 herein relating to criminal procedure in the court.

NOTES TO DECISIONS UNDER PRIOR LAW

Construction

Landlord suing tenants for alleged breach of rental agreement should not have been denied jury trial unless he would retain an attorney to represent him. *J. F. Paton* v. *J. C. Rose and A. L. Rose* (D.C. App. 1963, 191 A. 2d 455).

One who wishes to act as his own lawyer in a civil or criminal case in which he is a party has a right freely and voluntarily to do so but he can expect no concessions and must conform to rules of court procedure. *Id.*

This section providing that, in all actions for recovery of possession of real property, either party may demand a trial by jury, is permissive rather than mandatory and gives right to jury trial but does not require such trial. *Kass* v. *Baskin* (1948, 164 F. 2d 513, 82 U.S. App. D.C. 385).

Demand for jury trial

When the value in controversy exceeds $20, either party to an action in the municipal court may demand a trial by jury. *Kennedy* v. *David* (1940, 109 F. 2d 676, 71 App. D.C. 340).

Where court rule required demand for jury trial to be filed not later than appearance day, and two days before appearance day defendants filed motion to dismiss and before it was decided, but after appearance day, defendants filed demand for jury trial, demand was timely. *Daly* v. *Scala* (D.C. Mun. App. 1944, 39 A. 2d 478).

Where defendants in a class B suit against them on note, filed their jury demand before the return day, but did not accompany it by an answer as required by court rule, striking out defendants' jury demand was not error. *Alvarado* v. *Rosenberg* (D.C. Mun. App. 1947, 50 A. 2d 269).

Discretion of court

Where defendant did not file demand for jury trial within time prescribed by court rule nor request extension of time for demand, denial of motion for jury trial filed four days later was not an abuse of discretion, where trial court found that defenses involving questions of fact were insubstantial, that jury trial was being sought primarily for purposes of delay, and that no circumstances indicating the advisability of such trial in the interest of justice existed. *Kass* v. *Baskin* (1948, 164 F. 2d 513, 82 U.S. App. D.C. 385).

Evidence

Where landlord sued for possession, the situation disclosed a genuine issue as to whether landlord sought the premises in good faith for immediate personal use. Since this was a material factual issue, the court must disregard the tenants' affidavits which were based on information and belief and did not conform to the rules. *Dewey* v. *Clark* (1950, 180 F. 2d 766, 86 U.S. App. D.C. 137).

Factual issues

If conflict appears as to a material fact, the summary judgment procedure does not apply unless the evidence on one or the other hand is too incredible to be accepted by reasonable minds or is without legal probative force even if true; and to support summary judgment, the situation must justify a directed verdict insofar as the facts are concerned. *Dewey* v. *Clark* (1950, 180 F. 2d 766, 86 U.S. App. D.C. 137).

In making determination of factual issues, doubts are to be resolved against the granting of a summary judgment. *Id.*

Factual issues are not to be tried or resolved by summary judgment procedure; only the existence of a genuine and material factual issue is to be determined. *Id.*

Good faith

In a suit for possession, the presence of the question of good faith as a crucial one should cause the court to hesitate more than ordinarily before concluding that it is in a position to deny a trial. *Dewey* v. *Clark* (1950, 180 F. 2d 766, 86 U.S. App. D.C. 137).

Interrogatories

Where there is a seeming inconsistency in answers of jury to interrogatories or some question as to what constituted true verdict of jury, matter is to be decided by trial judge in the proper exercise of his discretion. *Henderson* v. *Allison* (D.C. Mun. App. 1945, 44 A. 2d 220).

Where jury found in answer to three interrogatories that there had been a subletting, that landlord was not precluded from charging it as a basis of suit for possession, and that landlord was entitled to possession for tenant's violation of convenant against subletting, a comprehensive disposition of entire case was made, and it was unnecessary for jury to consider remaining interrogatories as to whether there had been a transfer of possession to alleged subtenant and jury's answer to remaining interrogatories was voluntary and mer surplusage. *Id.*

Questions for jury

Under the evidence, whether tenant violated covenant in lease against subletting so as to authorize landlord to repossess premises was for jury. *Henderson* v. *Allison* (D.C. Mun. App. 1945, 44 A. 2d 220).

In landlord's action for possession of leased premises, tenant could not complain that fact issue of landlord's oral agreement that tenant might remain in possession was left to jury. *J. & J. Slater, Inc.* v. *Brainerd* (D.C. Mun. App. 1945, 43 A. 2d 714).

Where in a suit for possession for immediate and personal use, the crucial issue is whether landlord seeks possession in good faith, it is an extraordinary issue of fact since it involves the state of mind or motives rather than the ascertainment of a fact in the ordinary sense. *Dewey* v. *Clark* (1950, 180 F. 2d 766, 86 U.S. App. D.C. 137).

Rules of court

Parties may not be deprived of right to jury trial by a rigid construction of a procedural court rule. *Daly* v. *Scala* (D.C. Mun. App. 1944, 39 A. 2d 478).

Rules of the Municipal Court that demand for jury trial shall be filed not later than time for appearance of defendant stated in notice, or such extended time as judge may fix by special order, is reasonable. *Kass* v. *Baskin* (1948, 164 F. 2d 513, 82 U.S. App. D.C. 385).

"Excusable neglect" is not a factor in fixing the applicability of a rule of court which makes no reference to such neglect. *Id.*

Special verdict

In landlord's action to recover possession of leased premises, conflicting evidence authorized submission for special verdict of issue whether landlord orally agreed that tenant could remain in possession so long as it paid any rental asked by landlord, and municipal court properly assumed responsibility of deciding remainder of case and questions of law. *J. & J. Slater, Inc.* v. *Brainerd* (D.C. Mun. App. 1945, 43 A. 2d 714).

Waiver of right to jury trial

Where no demand for jury trial was made within five days after case was at issue, the right to jury trial was waived, though the case was consolidated for trial with another case in which jury trial had been demanded. *Grant* v. *Williams* (D.C. Mun. App. 1953, 94 A. 2d 475).

Where trial of consolidated cases started before jury but judge later announced that one of the cases would not be submitted to the jury because there had been no jury demand in that case, and no objection was raised to such action, such ruling was not subject to review on appeal. *Id.*

TITLE 14.—PROOF

Title 14 was enacted by Pub. L. 88–241

For disposition of former sections of this title, see table following Title 49

Chap.		Sec.
1.	Evidence Generally; Depositions	14–101
3.	Competency of Witnesses	14–301
5.	Documentary Evidence	14–501
7.	Absence for Seven Years	14–701

Chapter 1.—EVIDENCE GENERALLY; DEPOSITIONS

Sec.
14–101. Evidence under oath; affirmation in lieu of oath; perjury.
14–102. Impeachment of own witness; surprise.
14–103. Depositions for use in State and Territorial Courts.
14–104. Testimony of nonresident witnesses for use in Court of General Sessions.

§ 14–101. Evidence under oath; affirmation in lieu of oath; perjury

(a) All evidence shall be given under oath according to the forms of the common law.

(b) A witness who has conscientious scruples against taking an oath, may, in lieu thereof, solemnly, sincerely, and truly declare and affirm. Where an application, statement, or declaration is required to be supported or verified by an oath, the affirmation is the equivalent of an oath.

(c) Whoever swears, affirms, declares, or gives testimony in any form, where an oath is authorized by law, is lawfully sworn, and is guilty of perjury in a case where he would be guilty of that crime if sworn according to the forms of the common law. (Dec. 23, 1963, 77 Stat. 517, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 14–101, 14–102 (Mar. 3, 1901, ch. 854, §§ 1056, 1057, 31 Stat. 1354).

Section consolidates sections 14–101 and 14–102 of the D.C. Code, 1961 ed.

Manner of taking testimony, see Rule 43(a) of the Federal Rules of Civil Procedure and Rule 26 of the Federal Rules of Criminal Procedure.

Provisions similar to subsec. (b) of this section relating to affirmations are found in Rule 43(d) of the Federal Rules of Civil Procedure and Rule 43(c) of the Court of General Sessions Civil Rules. Oath as including affirmation, see section 49–206 of the D.C. Code, 1961 ed., and 1 U.S.C. § 1.

Changes are made in phraseology.

CROSS REFERENCE

Immunity of witnesses testifying in prostitution cases, see § 22–2721.

NOTES TO DECISIONS UNDER PRIOR LAW

Admissibility

As a general rule any evidence which is logically probative of some fact in issue is relevant and prima facie admissible unless it conflicts with the same settled exclusionary rule. *Fowel* v. *Wood* (D.C. Mun. App. 1949, 62 A. 2d 636).

Bill of particulars

In prosecution for perjury allegedly committed by witness before Senate Internal Security Subcommittee, count of indictment charging that witness testified falsely when he testified that he did not at request of Administrative Assistant to the President of the United States take care of correspondence of Administrative Assistant while he was away was so indefinite that witness was entitled to bill of particulars stating overt acts on which the government relied in proving that witness perjured himself in testifying that he had not taken care of Administrative Assistant's mail while he was away. *United States* v. *Lattimore* (D.C.D.C. 1953, 112 F. Supp. 507).

In prosecution for perjury allegedly committed by witness before Senate Internal Security Subcommittee, count of indictment that witness testified falsely when he stated that prior to certain date he did not know that certain person was a Communist was so indefinite that witness was entitled to bill of particulars stating overt acts on which the government relied to show that witness had been told that such person was a Communist, and defining the word "Communist", and informing witness as to identity of persons who told witness that such person was a Communist, and time, place, and circumstances under which witness was told this. *Id.*

Custom and usage

A custom to be binding must be shown to be the general usage of the trade and must be definite, uniform, well-known and established by clear and satisfactory evidence. *Goldberg* v. *Stouck* (D.C. Mun. App. 1950, 76 A. 2d 785). See, also, *Lucas* v. *Auto City Parking* (D.C. Mun. App. 1949, 62 A. 2d 557).

Examination of witness

It was not prejudicial error for a police officer, in testifying, to state "It looks like he had been caught again," on the ground that this testimony referred to his prior record, since it did not refer to a prior conviction. *Davenport* v. *District of Columbia* (D.C. Mun. App. 1949, 67 A. 2d 522.

Expert testimony

Rarely is expert testimony as to value binding on the trier of the facts and it is never binding when inconsistent with other evidence. *Urciolo* v. *Sachs* (D.C. Mun. App. 1948, 62 A. 2d 308).

It was error to exclude testimony of police officers who observed defendant that, in their opinion, defendant was under influence of intoxicating liquor, on ground that an expert may not testify to his conclusion regarding facts from which the jury are capable of drawing their own conclusions for even though one is not an expert, he may give his opinion based on personal observation as to whether a person is intoxicated. *Woolard* v. *District of Columbia* (D.C. Mun. App. 1949, 62 A. 2d 640).

Hearsay

Statements made by the operator of house of ill fame in appellant's presence while they were both under arrest to the effect that appellant was visiting her and that she was operating a house of ill fame, were heresay; but since such statements were received without objection the trial judge had a right to consider them along with defendant's silence. *Wilson* v. *District of Columbia* (D.C. Mun. App. 1949, 65 A. 2d 214).

Hypothetical questions

Permitting witness to answer hypothetical question which had no basis in the evidence which preceded it was improper. *Henkel* v. *Varner* (1944, 138 F. 2d 934, 78 U.S. App. D.C. 197).

Practice of eliciting expert testimony by having experts listen to other witnesses and give an opinion based upon such evidence is not generally approved though it is harmless when basic testimony is not voluminous nor complicated; and hypothetical questions containing salient points of previous witnesses' testimony are generally preferred to avoid confusion. *Walsh* v. *Schafer* (D.C. Mun. App. 1948, 61 A. 2d 716).

Indictment

In prosecution for perjury allegedly committed by witness before Senate Internal Security Subcommittee, count of indictment charging that witness lied in denying that he had ever been a sympathizer or promoter of Communism or Communist interests, was fatally defective because in violation of the Sixth Amendment to the federal Constitution protecting accused in right to be informed of nature and cause of such accusation against him. *United States* v. *Lattimore* (D.C.D.C. 1953, 112 F. Supp. 507).

In prosecution for perjury allegedly committed by witness before Senate Internal Security Subcommittee, count charging that witness perjured himself when he said that he did not know that certain person was a Communist, was invalid because violative of First Amendment to the federal Constitution providing that Congress shall make no law abridging freedom of speech or of the press and the Sixth Amendment protecting an accused in the right to be informed of the nature and cause of the accusation against him. *Id.*

Instructions

It was error for trial court in its charge to the jury to state "that the jury had a duty to probe the minds of the parties as to the meaning of a supplemental written contract" where the court made no amplification or explanation of this instruction. *Syndicated Constr. Corporation* v. *Ross* (D.C. Mun. App. 1948, 62 A. 2d 368, appeal dismissed 73 A. 2d 899).

Irrelevancy

Inclusion of an "incidental book" maintained at police precinct to prove District had notice of a depression in District road was harmless error where there was considerable other evidence covering the same subject and report would have no relevancy without testimony connecting the depression with the accident. *Bale* v. *District of Columbia* (D.C. Mun. App. 1949, 62 A. 2d 551).

Market value

In an action for breach of contract to convey real property, evidence of market value is what a willing buyer would pay in cash to a willing seller and speculative value is not market value. *Urciolo* v. *Sachs* (D.C. Mun. App. 1948, 62 A. 2d 308).

In an action for breach of contract to convey real property, trial court is not compelled to accept speculative transactions as evidencing true market value. *Id.*

Materiality

In a perjury case arising out of a congressional investigation, which concededly may be broad in its scope as far as determining necessity for corrective legislation is concerned, element of materiality must be present or charges fall. *United States* v. *Lattimore* (D.C.D.C. 1953, 112 F. Supp. 507).

Oaths

Where witness testified that "he did not believe in the God or the Bible, nor in rewards or punishments after death, but that he did recognize a right and duty of society to force member to speak the truth," his evidence was not inadmissible where he was permitted to testify on affirmation. *Gillars* v. *United States* (1950, 182 F. 2d 962, 87 U.S. App. D.C. 16).

In proceeding by mother to have daughter committed to psychiatric school on ground that daughter was habitually beyond mother's control, daughter had right to insist that facts be presented by witnesses who were under oath in view of fact that daughter's liberty was involved. *In re Sippy* (D.C. Mun. App. 1953, 97 A. 2d 455).

Parole evidence

Where an owner signed a listing agreement with broker authorizing sale on specified terms, if and when a purchaser was found, it was not error for trial court to permit the owner to testify that she had signed on the assurance that time would be extended if she had no place to go and such testimony does not vary a written contract by parol testimony and was not offered to contradict any written instrument, but only to show misrepresentation. *Ellis* v. *Morgan* (D.C. Mun. App. 1949, 65 A. 2d 797).

The existence of a separate oral agreement as to any matter on which a written contract is silent, and which is not inconsistent with its terms, may be proved by parol, if under the circumstances it may properly be inferred that the party did not intend the writing to be a complete and final statement of the whole transaction. *Jay's Restaurant* v. *Jack Stone Co.* (D.C. Mun. App. 1949, 62 A. 2d 799).

Recordation of evidence

Defendant who contended that his former attorney had failed to comply with his request that testimony in prosecution be recorded was not prejudiced in any way where case was brought to Court of Appeals on an approved statement of evidence which recited testimony of each witness in great detail and there was nothing to indicate that such statement was incomplete or defective, or failed to give an accurate narration of what happened at trial. *W. Delaney* v. *United States* (D.C. App. 1963, 190 A. 2d 100).

In an action for breach of contract, it was error for trial court to permit appellee to testify that he signed a supplemental contract with the understanding that it related only to house and lot and did not include the wall or fence, where there was no explanation as to how this "understanding" was arrived at and it represented merely the mental process of the witness. *Syndicated Const. Corporation* v. *Ross* (D.C. Mun. App. 1948, 62 A. 2d 368, appeal dismissed 73 A. 2d 899).

Res gestae

Declaration made anywhere from a few moments to five or ten minutes after an accident neither met test of spontaneity nor closeness of time so as to be considered part of the res gestae. *Bale* v. *District of Columbia* (D.C. Mun. App. 1949, 62 A. 2d 551).

Reversible error, exclusion

No error was committed by excluding a letter which contained no recitals of fact but merely claimed that defendant had sold the shop without his knowledge and demanded his half of the proceeds. *Boyle* v. *Smith* (D.C. Mun. App. 1949, 64 A. 2d 428).

Exclusion of testimony of a witness who did not hear the entire conversation was reversible error where it appeared that the testimony, according to the proffer of proof, went to the heart of the controversy; hence, the witness should have been permitted to testify as to how much of the conversation he heard when subjected to cross-examination. *Fowel* v. *Wood* (D.C. Mun. App. 1949, 62 A. 2d 636).

Shop book rule

It was reversible error to exclude entries made in the accounts receivable ledger regarding credit transactions of a client to prove that such client was operating as a partnership as such ledger sheet was admissible under the Federal Shop Book Rule as a record made in the regular course of business. *Orndorff* v. *Cohen* (D.C. Mun. App. 1949, 62 A. 2d 794).

Weight of evidence

The weight of evidence is a question for the trier of the facts and a finding of fact supported by substantial evidence cannot be set aside on appeal and the weight of such evidence is not necessarily determined by the number of witnesses. *Cohen* v. *United States* (D.C. Mun. App. 1949. 63 A. 2d 854).

To be entitled to recover commission, broker must have produced a purchaser who was ready, able and willing to buy on the terms authorized by the principal and purchaser's signature on contract is some evidence of

willingness to proceed but not that he was financially able or ready to do so. *Long* v. *Murchison* (D.C. Mun. App. 1948, 62 A. 2d 370).

§ 14–102. Impeachment of own witness; surprise

When the court is satisfied that the party producing a witness has been taken by surprise by the testimony of the witness, it may allow the party to prove, for the purpose only of affecting the credibility of the witness, that the witness has made to the party or to his attorney statements substantially variant from his sworn testimony about material facts in the cause. Before such proof is given, the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness, and he must be asked whether or not he made the statements and if so allowed to explain them. (Dec. 23, 1963, 77 Stat. 518, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., § 14–104 (June 30, 1902, ch. 1329, § 1073a, 32 Stat. 540).

Rules 43 of the Federal Rules of Civil Procedure and the Court of General Sessions Civil Rules, respectively, relate to the scope of examination and cross-examination of witnesses but do not cover the subject of impeachment by proof of contradictory statements.

This section is consistent with Rule 26 of the Federal Rules of Criminal Procedure because it merely codifies the established rule.

See *Wheeler* v. *U.S.* 1953, 93 U.S. App. D.C. 159, 211 F. 2d 19.

Changes are made in phraseology

NOTES TO DECISIONS

I. Under Prior Law

Conduct of prosecutor

In prosecution for murder, where prosecution did not abide by the court's ruling that it could not impeach its own witness and over repeated objections sought to convince jury that the witness had given a statement that was inconsistent with his sworn testimony at trial and made references to a prior statement of the witness not in evidence and improper conduct was renewed in summation to the jury, improper conduct of the prosecutor required reversal where conduct of the prosecutor might have affected the verdict on the issue of self-defense or the degree of homicide. *Belton* v. *United States* (1958, 259 F. 2d 811, 104 U.S. App. D.C. 81).

Cross-examination

Where trial judge had sustained the prosecutor's contention that witness was hostile, prosecutor's asking of a series of questions phrased "You don't remember [such-and-such]?" did not constitute attempt to cross-examine prosecution witness. *Doto* v. *United States* (1955, 223 F. 2d 309, 96 U.S. App. D.C. 17, certiorari denied 76 S. Ct. 59, 350 U.S. 847, 100 L. Ed. 754).

Discretion of court

In prosecution for carnally knowing and abusing a ten year old girl, trial court did not abuse its discretion in permitting the prosecution, when it impeached the girl, who was the prosecution's witness, because the prosecution was surprised by testimony of girl contrary to statement made by girl to the police and to the grand jury, to use the entire statement of the girl to the police. *Wheeler* v. *United States* (1954, 211 F. 2d 19, 93 U.S. App. D.C. 159, certiorari denied 74 S. Ct. 876 347 U.S. 1019, 98 L. Ed. 1140, rehearing denied 75 S. Ct. 21, 348 U.S. 852, 99 L. Ed. 671).

Granting Government permission to cross-examine witnesses as hostile was not an abuse of discretion, where witness was at time of transactions giving rise to prosecution a business associate of defendant. *Fields* v. *United States* (App. D.C. 1947, 164 F. 2d 97, certiorari denied 68 S. Ct. 355, 332, U.S. 851, 92 L. Ed. 421, rehearing denied 68 S. Ct. 607, 333 U.S. 893, 92 L. Ed. 1123).

Foundation for impeachment

The refusal to admit transcript of testimony of witness at first trial was not error where no foundation was laid to permit introduction of transcript for purpose of affecting credibility of witness. *Glover* v. *District of Columbia* (D.C. Mun. App. 1951, 77 A. 2d 788).

Government witness

Witness having been assured by court that he could not incriminate himself by testifying to purchase of narcotics made at instance of Government, United States Attorney had right to believe that witness would testify in accordance with receipt by which he acknowledged receiving money from officer for purchase of heroin, and had right, for impeachment purposes, to announce "surprise" when witness refused to do so. *Carrado* v. *United States* (1954, 210 F. 2d 712, 93 U.S. App. D.C. 183, certiorari denied 74 S. Ct. 874, 347 U.S. 1018, 98 L. Ed. 1140).

Harmless or prejudicial error

In prosecution for conducting rooming house without a license where prosecution expected witness to testify that he paid rent and was surprised by witness' testimony that he paid no rent, but there was no other testimony by anyone that such witness paid rent, permitting proof of prior inconsistent statement of witness was prejudicial error. *Byrd* v. *District of Columbia* (D.C. Mun. App. 1945, 43 A. 2d 46).

Impeachment of Government witness

Government may impeach accomplice of accused, upon surprise, by questioning him concerning a statement made and now repudiated. *Smith* v. *United States* (1927, 17 F. 2d 223, 57 App. D.C. 71). See, also *Johnson* v. *Newton* (1928, 25 F. 2d 542, 58 App. D.C. 118).

Impeaching Government's own witness by prior written statements, within discretion of court. *Bedell* v. *United States* (1934, 68 F. 2d 776, 63 App. D.C. 31).

Instructions

Prior inconsistent statements of witness admitted for impeachment purposes are not received as affirmative proof of fact for any other purpose, and in jury cases the jury should be so instructed. *Byrd* v. *District of Columbia* (D.C. Mun. App. 1945, 43 A. 2d 46).

Prejudice as necessary

Prior inconsistent statements by witness are received only for impeachment purposes and are allowed for the purpose of counteracting actual hostile testimony with which the party has been surprised, and may not be received when the witness' testimony is not prejudicial to the party's case. *Byrd* v. *District of Columbia* (D.C. Mun. App. 1945, 43 A. 2d 46).

To justify impeachment by proof of prior inconsistent statements, it must appear that the witness testified to facts which tended to destroy or injure the party's case or contradicted evidence which he was reasonably relied on to corroborate. *Id.*

Review

Trial court's ruling on "surprise," for impeachment purposes, may not be disturbed unless it plainly appears that ruling is without any rational basis. *Carrado* v. *United States* (1954, 210 F. 2d 712, 93 U.S. App. D.C. 183, certiorari denied 74 S. Ct. 874, 347 U.S. 1018, 98 L. Ed. 1140).

Surprise

Permitting prosecution to claim surprise during examination of government witness, who first testified that he could not tell whether person who emerged from alley in which victim had been shot was male or female, and to allow prosecution to exhibit to witness his prior written statement, whereupon witness testified that he had seen tall colored man emerge from alley, was not reversible error. *F. Robinson* v. *United States* (1962, 308 F. 2d 327, 113 U.S. App. D.C. 372).

Statute permitting surprise party to introduce prior inconsistent statement of witness only for purpose of affecting credibility of witness differentiates between objective of affecting credibility of witness and objective of proving statement's contents as a fact. *L. Bartley* v. *United States* (1963, 319 F. 2d 717, 115 U.S. App. D.C. 316).

Admission of prior inconsistent statement of witness for prosecution, which claimed surprise, without admonition that statement was to be considered only as bearing

on credibility of witnesses was plain error affecting substantial rights of defendant and was, under circumstances, reversible error even though there was no objection made to statement's admission or request for instruction. *Id.*

Permitting prosecution to claim surprise during examination of government witness who first testified that he could not tell whether person who emerged from alley in which victim had been shot was male or female, and to allow prosecution to exhibit to witness his prior written statement, whereupon witness testified that he had seen tall colored man emerge from alley, was not reversible error. *F. Robinson* v. *United States* (1962, 308 F. 2d 327, 113 U.S. App. D.C. 372).

Though this section allows an exception to the general rule that one cannot impeach his own witness by use of previously made contradictory statements, to come within the exception, actual surprise must be found. *Belton* v. *United States* (1958, 259 F. 2d 811, 104 U.S. App. D.C. 81).

A finding of surprise is, by this section in the District of Columbia, a prerequisite to the impeachment by a party of his own witness by former testimony, but even when a prior statement is used to impeach, it is admissible solely to affect credibility and is not to be considered as support for the truth of its contents. *Young* v. *United States* (1954, 214 F. 2d 232, 94 U.S. App. D.C. 62).

This section providing that, whenever court shall be satisfied that party producing witness has been taken by "surprise" by testimony of witness, such party may, in discretion of court, be allowed to prove, for purpose only of affecting credibility of witness, that witness has made to such party or his attorney statements substantially variant from his sworn testimony about material facts in the cause, allows ample latitude for application of a broad concept of "surprise" by requiring only that court shall be satisfied that "surprise" exists. *Wheeler* v. *United States* (1954, 211 F. 2d 19, 93 U.S. App. D.C. 159, certiorari denied 74 S. Ct. 876, 347 U.S. 1019, 98 L. Ed. 1140, rehearing denied 75 S. Ct. 21, 348 U.S. 852, 99 L. Ed. 671).

Transcript of previous testimony

Transcript of testimony in earlier trial is not automatically admissible in a later trial but may be admissible for the purpose of affecting the credibility of a witness. *Glover* v. *District of Columbia* (D.C. Mun App. 1951, 77 A. 2d 788).

II. Under Present Law

Inconsistent statements as evidence

Prior inconsistent statements introduced to impeach witness could not be considered as substantive evidence. *A. E. Byrd* v. *United States* (1965, 342 F. 2d 939, 119 U.S. App. D.C. 360).

§ 14–103. Depositions for use in State and Territorial Courts

When a commission is issued or notice given to take the testimony of a witness found within the District of Columbia, to be used in an action pending in a court of a State, territory, commonwealth, possession, or place under the jurisdiction of the United States, the testimony may be taken by leave of a judge of the United States District Court in like manner and with like effect as other depositions are taken in United States district courts. (Dec. 23, 1963, 77 Stat. 518, Pub. L. 88–241, § 1, eff. Jan. 1 ,1964.)

Revision Notes

Based on D.C. Code, 1961 ed., § 14–204 (Mar. 3, 1901, ch. 854 § 1062, 31 Stat. 1357; June 30, 1902, ch. 1329, 32 Stat. 540; June 25, 1948, ch. 646, § 39, 62 Stat. 992; May 24, 1949, ch. 139, § 139, 63 Stat. 109).

Reference to "commonwealth" is inserted to reflect the new status of the Commonwealth of Puerto Rico.

Depositions for use in foreign countries are covered by 28 U.S.C. § 1782. Depositions generally are covered by Rules 26 et seq. and 45 of the Federal Rules of Civil Procedure and Rule 26 et seq. of the Civil Rules of the Court of General Sessions, which superseded sections 14–103 and 14–201 to 14–203 of D.C. Code, 1961 ed.

Minor changes are made in phraseology.

Cross References

Depositions—
Criminal cases, see §§ 23–111, 23–112.
Probate court, see § 16–3111.

NOTES TO DECISIONS UNDER PRIOR LAW

In general

The code provisions relative to depositions, etc., supersede all former legislation on the subject. *Hutchins* v. *Hutchins* (1914, 41 App. D.C. 367).

Depositions

Deposition may be offered in evidence by adverse party. *New Arcade Co.* v. *Owens* (1919, 258 F. 965, 49 App. D.C. 65).

Counsel had the right to read as a part of his own case so much of the deposition as he desired, which was not clearly fragmentary and misleading. *Bernhardt* v. *City & S. R. Co.* (1920, 263 F. 1009, 49 App. D.C. 265).

Deposition taken in New York City, pursuant to notice, wherein, witness testified that he lived in that city, is admissible without proof that witness was unavailable at time of trial. "In such a case the law presumes that the witnesses continued to live in that city and were there at the time of the trial." *Campbell* v. *Willis* (1923, 290 F. 271, 53 App. D.C. 296).

Foreign countries

Testimony of witness in foreign country must be taken on interrogatories and cross-interrogatories, under letters rogatory. *Hutchins* v. *Hutchins* (1914, 41 App. D.C. 367).

General Interrogatories

General interrogatories which do not inform the opposing party of the answer that might be expected are improper, and "should be called attention to by motion to exclude or suppress the answer, in advance of the trial." *Walker* v. *Warner* (1908, 31 App. D.C. 76). See, also, *Anacostia & P. R.R. Co.* v. *Klein* (1896, 8 App. D.C. 75); *Massachusetts Mut. Acc. Assn.* v. *Dudley* (1899, 15 App. D.C. 472).

Objection

Objections to questions and answers must be noted at the time of taking of deposition or within 10 days after the return thereof, and an objection first made when the deposition is read to the jury comes too late. *MacAfee* v. *Higgins* (1908, 31 App. D.C. 355). See, also, *Welch* v. *Lynch* (1907, 30 App. D.C. 122).

Review

Reviewing a decision of the Board of Tax Appeals, whose rules of practice and procedure are in accordance with the rules of evidence applicable in courts of equity of the District of Columbia, court applied Supreme Court Equity Rule 46. *Garden City Feeder Co.* v. *Com. Int. Rev.* (C.C.A. 8, 1935, 75 F. 2d 804).

Witnesses

Word "witnesses" is used in its ordinary sense, and includes all persons whose declarations under oath are received for any legal purpose, and embraces deponents in affidavits and the recorder is a representative of the Civil Service Commission, duly authorized by it to administer oaths of witnesses, and is therefore a person authorized by the laws of the United States to administer oaths. *United States* v. *Crandol* (D.C.-Va. 1916, 233 F. 331).

§ 14–104. Testimony of nonresident witnesses for use in Court of General Sessions

If the testimony of nonresident witnesses is required by either party to a civil action or proceeding in the District of Columbia Court of General Sessions the Court, upon motion designating the names of the witnesses, may appoint an examiner to take their testimony, to whom it shall issue a commission. The testimony shall be taken on writ-

ten interrogatories and cross-interrogatories. The written interrogatories must be filed at least three days before the issuance of the commission. The commission shall not issue unless the party or his agent or attorney applying therefor file his affidavit, setting forth that he believes that the testimony of the witnesses is material to the issue in the action or proceeding and that the motion is not made for the purpose of delay. (Dec. 23, 1963, 77 Stat. 518, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–741, 11–751a, 11–755 (Mar. 3, 1901, ch. 854, § 26, 31 Stat. 1194; June 30, 1902, ch. 1329, 32 Stat. 521; Feb. 17, 1909, ch. 134, 35 Stat. 623; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 67 Stat. 103; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates section 11–741 of D.C. Code, 1961 ed. (from which the text of this section is derived), which related to the first Municipal Court, with that part of section 11–755(a) thereof, which, in connection with the merger, in 1942, of the first Municipal Court and the former Police Court, to form the second Municipal Court, provided, prior to its amendment by the act of Oct. 23, 1962, that the second Municipal Court and the judges thereof should have and exercise the same powers and jurisdiction theretofore had or exercised by the two former courts. After the 1962 amendment, subsec. (a) of section 11–755 vested in the Court of General Sessions and the judges thereof the same powers and jurisdiction theretofore vested in the second Municipal Court and the judges thereof.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

For additional provisions relating to depositions to be used in the Court of General Sessions, see Rule 26 et seq. (particularly Rule 28) of the civil rules of that court. See, also, section 13–101(a) of this revised part, which requires that the procedural rules prescribed by the Court of General Sessions for its Civil Division "shall conform as nearly as may be practicable to the forms, practice, and procedure prescribed by the Federal Rules of Civil Procedure". That provision is derived from section 11–756(b) of D.C. Code, 1961 ed.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Depositions

Tax Court did not have authority to require taking of deposition of director of corporate taxpayer to perpetuate testimony, where taxpayer had not filed a petition for redetermination with Tax Court. *Louisville Builders Supply Co.* v. *Commissioner of Internal Revenue* (1961 294 F. 2d 333, U.S. App. 6th Cir.).

Foreign countries

Order requiring husband in his divorce suit to pay transportation expenses and costs incurred by counsel for wife in traveling to Iran to take her deposition, based on finding that her financial statement was incomplete and that she was unable to travel to United States because of illness, would be reversed where it appeared that prior refusal of American consul to provide notarial service for wife in connection with deposition was error which could have been corrected through diplomatic channels, and case would be remanded with instructions to determine proper notarial powers of American consul in Iran so that further evidence could be taken by written interrogatories and cross-interrogatories under letters rogatory. *M. R. Moezie* v. *G. J. Mozie* (D.C. App. 1963, 192 A. 2d 808).

The proper method of obtaining further evidence in action against Iranian resident who claimed inability to travel to United States was by written interrogatories and cross-interrogatories under letters rogatory. *Id.*

Chapter 3.—COMPETENCY OF WITNESSES

Sec.
14–301. Parties and other interested persons generally.
14–302. Testimony against deceased or incapable person.
14–303. Testimony of deceased or incapable person.
14–304. Death or incapacity of partner or other interested persons.
14–305. Conviction of crime.
14–306. Husband and wife.
14–307. Physicians.
14–308. Assessment officials as expert witnesses in condemnation proceedings.
14–309. Clergy.

§ 14–301. Parties and other interested persons generally

Except as otherwise provided by law, a person is not incompetent to testify in a civil action or proceeding by reason of his being a party thereto or interested in the result thereof. If otherwise competent to testify, he is competent to give evidence on his own behalf and competent and compellable to give evidence on behalf of any other party to the action or proceeding. (Dec. 23, 1963, 77 Stat. 518, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 14–301 (Mar. 3, 1901, ch. 854, § 1063, 31 Stat. 1357).

The provisions of this chapter on competency of witnesses are still effective under Rule 43(a) of the Federal Rules of Civil Procedure, which provides, in part: "All evidence shall be admitted which is admissible under the statutes of the United States, or under the rules of evidence heretofore applied in the courts of the United States on the hearing of suits in equity, or under the rules of evidence applied in the courts of general jurisdiction of the state in which the United States court is held. In any case, the statute or rule which favors the reception of the evidence governs and the evidence shall be presented according to the most convenient method prescribed in any of the statutes or rules to which reference is herein made. The competency of a witness to testify shall be determined in like manner." For the meaning of "state" and "statute of the United States" as applied to the District of Columbia, see Rule 81(e).

Changes are made in phraseology.

NOTES TO DECISIONS

I. UNDER PRIOR LAW

In general

Acts of Congress relating to the admission of parties to testify in the courts of the United States apply to the courts of the District of Columbia. *Page* v. *Burnstine* (1880, 102 U.S. 664, 12 Otto 664, 26 L. Ed. 268).

Children, competency of

The competency of a child as a witness depends upon capacity and intelligence of the child, his appreciation of difference between truth and falsehood, as well as of his duty to tell the truth. *Posey* v. *United States* (D.C. Mun. App. 1945, 41 A. 2d 300).

In order to be competent as a witness, a child should have a just appreciation of difference between right and wrong. *Id.*

The testimony of an infant may be excluded in toto on grounds of incompetency, but once the child is allowed to testify, the uncertainty of his evidence goes only to its weight and does not disqualify it. *Fowel* v. *Wood* (D.C. Mun. App. 1949, 62 A. 2d 636).

Confidential communications of third persons

Where widow was neither a party nor interested in the suit, she was incompetent to testify to private conversations between her and her husband in his lifetime. *Hopkins* v. *Grimshaw* (1897, 17 S. Ct. 401, 165 U.S. 342, 41 L. Ed. 739).

In suit for custody of child, letters of the child's father's second wife, written to him before marriage, were material, relevant, and competent, and the father was a

competent witness to testify concerning them. *Halback* v. *Hill* (1920, 261 F. 1007, 49 App. D.C. 127).

Whether streetcar motorman's report of accident was a privileged communication which streetcar company could not be compelled to produce in passenger's action against it for injuries could not be determined by court without knowledge of circumstances under which report was made, reason and purpose for which it was made, and to whom it was made. *Wolff* v. *Capital Transit Co.* (D.C. Mun. App. 1944, 35 A. 2d 454).

That motorman's report to streetcar company of accident was in possession of streetcar company's counsel did not automatically make report a "privileged communication" which company could not be required to produce in passenger's action against it for injuries. *Id.*

Expert testimony

Owner of household goods who had previously operated rooming house and obviously was an experienced housewife was competent without qualifying as an expert to testify as to value of such items, and weight of testimoney was for trial court. *Walsh* v. *Schafer* (D.C. Mun. App. 1948, 61 A. 2d 716).

II. Under Present Law

Expert testimony

Qualifications of expert witness to express an opinion on particular matter are for determination of trial judge. *Waggaman* v. *Forstmann* (D.C. App. 1966, 217 A. 2d 310).

Decision of trial judge on qualifications of an expert witness to express an opinion on a particular matter will ordinarily not be disturbed on appeal except for clear showing of abuse of discretion. *Id.*

§ 14–302. Testimony against deceased or incapable person

(a) In a civil action against:

(1) a person who, from any cause, is legally incapable of testifying, or

(2) the committee, trustee, executor, administrator, heir, legatee, devisee, assignee, or other representative of a deceased person or of a person so incapable of testifying,

a judgment or decree may not be rendered in favor of the plaintiff founded on the uncorroborated testimony of the plaintiff or of the agent, servant, or employee of the plaintiff as to any transaction with, or action, declaration or admission of, the deceased or incapable person.

(b) In an action specified by subsection (a) of this section, if the plaintiff or his agent, servant, or employee, testifies as to any transaction with, or action, declaration, or admission of, the deceased or incapable person, an entry, memorandum, or declaration, oral or written, by the deceased or incapable person, made while he was capable and upon his personal knowledge, may not be excluded as hearsay. (Dec. 23, 1963, 77 Stat. 519, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., § 14–302 (Mar. 3, 1901, ch. 854, § 1064, 31 Stat. 1357; Apr. 19, 1920, ch. 153, 41 Stat. 567; June 24, 1948, ch. 609, 62 Stat. 579).

Changes are made in arrangement and phraseology.

NOTES TO DECISIONS

I. Under Prior Law

In general

"We think the statute should not be extended to prevent the living party from testifying to the truth or falsity of mere extraneous facts, which have been testified to by other witnesses, not involving declarations or admissions by the deceased party." *Lockwood* v. *Rucker* (1910, 34 App. D.C. 376). See, also, *Cafritz* v. *Corporation Audit Co.* (D.C.D.C. 1945, 60 F. Supp. 627).

In action by administrator against decedent's debtor, debtor having been called as a witness by administrator may testify as to transaction, for herself, or as to declarations by the intestate. *Lemon* v. *Martin* (1925, 3 F. 2d 710, 55 App. D.C. 186).

This section seeks to protect only persons legally representing deceased against claims which may be fraudulent and does not seek to prevent anyone from showing who does or does not legally represent deceased. *Duckett* v. *Duckett* (1943, 134 F. 2d 527, 77 U.S. App. D.C. 303).

Admissions of decedents

Plaintiff can not testify as to statements made by defendant's testator to a third person, in the presence of the witness for the statute "clearly forbids the surviving party to testify to any admission of the deceased made with respect to a transaction had with him." *McCurley* v. *National Sav. & Trust Co.* (1919, 258 F. 154, 49 App. D.C. 10). See, also, *Dawson* v. *Waggaman* (1904, 23 App. D.C. 428); *Patten* v. *Glover* (1893, 1 App. D.C. 466, affirmed 17 S. Ct. 165 U.S. 394, 41 L. Ed. 760); *Manogue* v. *Herrell* (1898, 13 App. D.C. 455); *Parish* v. *McGowan* (1912, 39 App. D.C. 184, reversed on other grounds 35 S. Ct. 543, 237 U.S. 285, 59 L. Ed. 955).

Compensation for services

Defendant's testimony, in support of his counterclaim for legal services, that decedent who died in 1954 leaving estate of $40,000, had in 1948 claimed to be unable to pay for services rendered to him at such time, did not compel finding, as matter of law, that decedent had fraudulently concealed cause of action against himself for services and had thus extended time for commencement of action. *Da Costa, Administratrix* v. *Hardy* (D.C. Mun. App. 1956, 118 A. 2d 805).

Corporate officers and stockholders

A stockholder, officer and director of a corporation is not a "party" with reference to a contract between the corporation and decedent, and his testimony is not excluded. *Cush* v. *Allen* (1926, 13 F. 2d 299, 56 App. D.C. 327, 54 A.L.R. 261).

In suit against corporation, seeking to show liability of corporation on contract of sale negotiated by deceased promoter, "Section 1064 (this section) affords no proper basis for exclusion of the evidence." *Lucas* v. *Hamilton Realty Corp.* (1939, 105 F. 2d 800, 70 App. D.C. 277).

Corporate transactions

Evidence by automobile buyer regarding cash payment made to deceased taxpayer was admissible in action respecting redetermination of income tax liability of deceased. *Logan Square Auto Mart. Inc., et al.* v. *Commissioner of Internal Revenue* (1961, 291 F. 2d 136, U.S. App. 7th Circuit).

The surviving witness rule under this section does not apply where transactions are between an individual and a corporation. *Corporation Audit Co.* v. *Cafritz* (1946, 156 F. 2d 839, 81 U.S. App. D.C. 196).

Where plaintiff, preparing for an extended vacation, signed and left with general manager of an audit company checks payable to plaintiff's corporations, in action against audit company and estate of general manager for proceeds of checks, this section did not exclude plaintiff's testimony against audit company on account of general manager's death, but it did not permit plaintiff's testimony against manager's estate by reason of survivorship of corporation. *Id.*

Corporation controlled by deceased

Testimony allegedly violating "surviving party" rule was not subject to objection by corporations controlled by deceased participant. *Cafritz* v. *Corporation Audit Co.* (D.C.D.C. 1945, 60 F. Supp. 627).

Corroborations

Evidence, adduced by former employee of decedent, suing administratrix for back salary due, including canceled checks, payroll records, and tax returns, sufficiently corroborated plaintiff's testimony to avoid prohibition of statute precluding judgment against decedent's representative on uncorroborated testimony of adversary. *A. P. Pekofsky, Admt'x etc.* v. *O. Blalock* (D.C. Mun. App. 1961, 175 A. 2d 604).

Under statute prohibiting judgment against representative of decedent on unsupported testimony of adversary, each case depends upon its own facts, but test is whether

evidence, taken as whole, tends to make story substantially more credible. *Id.*

This section now enables the surviving party to testify but limits the effect of his testimony; and upon the evidence presented, appellee's testimony was sufficiently corroborated. *Rosinski* v. *Whiteford* (1950, 184 F. 2d 700, 87 U.S. App. D.C. 313, 21 A.L.R. 2d 1009).

In action for accounting by testatrix, brother, individually and as administrator of estate of another brother, against executrix of estate of third brother, who had served as executor of testatrix' estate, to permit judgment to be based on plaintiff's testimony that he had met third brother in 1946 and had asked that certain stock be sent to him and that third brother had agreed to do so, credible evidence corroborating such testimony was necessary. *Bevard* v. *Bevard* (D.C.D.C. 1952, 103 F. Supp. 533).

In action for accounting by testatrix' brother, individually and as administrator of estate of another brother, against executrix of estate of third brother, who had served as executor of testatrix' estate, instrument signed by third brother and dated 1930 certifying that as of that date third brother held in his own name certain corporate stock for plaintiff did not corroborate alleged admission by third brother that in 1946, he still held such stock for plaintiff, particularly in view of fact that third brother with plaintiff's acquiescence, exercised his own judgment freely in reinvesting plaintiff's share of the estate. *Id.*

Where, in proceeding on claim against a decedent's estate, no evidence other than plaintiff's own testimony was presented by plaintiff in support of the claim which was based on an alleged agreement by decedent to pay plaintiff $100 per month for his services in setting up a bookkeeping system for her, such testimony alone was insufficient to prove the claim. *Hohensee* v. *Vanech Administrator etc.* (D.C. Mun. App. 1960, 161 A. 2d 703).

A judgment against an estate on a claim by a survivor can be based substantially on the survivor's testimony if there is other evidence from which reasonable men might conclude that his testimony is probably true. *Id.*

Under statutory provision that in any civil action against executor of deceased person, no judgment or decree shall be rendered in favor of plaintiff founded on uncorroborated testimony of plaintiff as to any transaction with or action, declaration, or admission of deceased, corroborative evidence need not be sufficient of itself to support judgment, but judgment could be based essentially on survivor's testimony if there was other evidence from which reasonable men might conclude that survivor's testimony was probably true. *Davis* v. *Carmody* (D.C. Mun. App. 1959, 154 A. 2d 132).

In action by nurse against executor to recover for alleged overtime services to decedent on theory that decedent has promised to reimburse nurse therefor, testimony of two witnesses called in attempt to corroborate nurse's testimony was not sufficient, and nurse therefore could not recover. *Id.*

Cross-examination

Testimony brought out on cross-examination after calling of witness by adversary is competent. *Payne* v. *Payne* (1926, 11 F. 2d 464, 56 App. D.C. 167).

Evidence

In action by husband's executors against widow to impress constructive trust on proceeds of bank account, for which printed bank cards which recited a right of survivorship had been signed by both husband and widow, and from which widow, after husband's death, withdrew all the funds for deposit elsewhere in her own name, evidence failed to rebut presumption, based on fact that funds for such account had been provided only by husband, that widow did not have a survivorship interest. *Imirie* v. *Imirie and Bogley, etc.* (1957, 246 F. 2d 652, 100 U.S. App. D.C. 371).

Judgment rendered for plaintiff in action to set aside a deed to realty executed by plaintiff's deceased father in favor of plaintiff's defendant sister, was not rendered invalid by this section prohibiting rendition of judgment in civil action against representative of a deceased on uncorroborated testimony of plaintiff or of agent or employee of plaintiff as to transaction with or action, declaration, or admisison of deceased, on the ground that evidence was admitted in violation of this section, where judgment was supported by other evidence. *Santucci* v. *Pignatello* (1951, 188 F. 2d 463, 88 U.S. App. D.C. 190).

In action for accounting by testatrix' brother, individually and as administrator of estate of another brother, against executrix of estate of third brother, who had served as executor of testatrix' estate, in absence of corroborating evidence plaintiff's testimony that at a meeting with third brother in 1946, such brother had promised to send certain corporate stocks to plaintiff would be excluded. *Bevard* v. *Bevard* (D.C.D.C. 1952, 103 F. Supp. 533).

Where, in action arising from a collision between a truck of the plaintiff and defendant's taxicab, testimony of the appellant that relationship between the defendant and the driver of her taxicab was one of bailment and not one of master and servant should have been admitted because the issue was fundamental to the case and this section, which seeks to protect only persons who legally represent the deceased against claims which may be fraudulent under which the evidence was excluded is clearly inapplicable here since it is clear that defendant was not such a person. *Nash* v. *Holzbeierlein* (D.C. Mun. App. 1949, 68 A. 2d 403).

Insurance

This section providing that, if one of original parties to transaction or contract has died, the other party thereto shall not be allowed to testify to any declaration of deceased in suit against personal representative of deceased, did not require exclusion of beneficiary's account of her husband's conversation with finance office clerk, to show intent to change beneficiary of National Service Life policy, particularly because change of beneficiary was not a "transaction" between insured and beneficiary but between him and his insurer. *Rosenschein* v. *Citron* (1948, 169 F. 2d 885, 83 U.S. App. D.C. 346).

Joint maker of note

Quaere: Whether a joint maker of a note can testify as a witness for plaintiff as to an agreement with the deceased comaker, stopping the statute of limitations, where the suit was originally brought against the witness and the representatives of the decedent, and prosecuted only against decedent. *White* v. *Connecticut General Life Ins. Co.* (1910, 34 App. D.C. 460).

Objection not raised at trial

Although the testimony was not objected to, Court of Appeals did not consider objection waived and disregarded testimony on appeal; dissenting opinion states this rule to be different from that in all other jurisdictions. *Faunce* v. *Woods* (1925, 5 F. 2d 753, 55 App. D.C. 330, 40 A.L.R. 208).

Offer of proof

In action for rent, refusal to permit tennant's wife to testify as to an agreement with landlord's agent respecting acceptance of repairs in lieu of rent, on ground that agent was deceased, did not reveal error where tennant made no offer of proof as to conversation with agent, and was permitted to show all repairs that had been made and landlord's acquiescence in payment of repairs by agent. *Shlopak* v. *Davison* (D.C. Mun. App. 1943, 34 A. 2d 126).

Protection against fraudulent claims

This section providing that, if one of original parties to transaction or contract has died, other party thereto shall not be allowed to testify to any declaration of deceased in suit against personal representative of deceased, seeks to protect only persons legally representing deceased against claims which may be fraudulent. *Rosenschein* v. *Citron* (1948, 169 F. 2d 885, 83 U.S. App. D.C. 346).

Suits by fiduciary

This section prohibiting judgment on uncorroborated testimony in actions against administrators has no applications to suits commenced by an administrator. *Pryor* v. *Bond* (D.C. Mun. App. 1954, 110 A. 2d 539).

Surviving party

Neither a corporation nor its agent can be a surviving "party" to a transaction within meaning of this section. *Corporation Audit Co.* v. *Cafritz* (1946, 156 F. 2d 839, 81 U.S. App. D.C. 196).

Widows

Testimony of widow as to work done in connection with business owned jointly with her husband is not testimony "to a transaction or contract" with the deceased. *Ellis* v. *Ellis* (1922, 280 F. 457, 51 App. D.C. 383). See, also, *Tuohy* v. *Trail* (1901, 19 App. D.C. 79).

Wills

The persons named as executors and legatees in an alleged will cannot, in order to probate the will, be permitted to utilize this section. *Duckett* v. *Duckett* (1943, 134 F. 2d 527, 77 U.S. App. D.C. 303).

Where probate of will naming testatrix' sister sole beneficiary was opposed on ground of undue influence and want of testamentary capacity, this section did not require exclusion of testimony of testatrix' brother that testatrix had repeatedly agreed or promised in presence of others to leave him her real estate if he remained single and continued to live with her. *Id.*

Witness called by court

It is not the duty of the court to call a party to testify whenever the party requests that it be done, but it should be done only when there is something extreme or special. *Ockstadt* v. *Bowles* (1909, 34 App. D.C. 58). See, also, *Janes* v. *Janes* (1922, 278 F. 576, 51 App. D.C. 267).

When appellant's deposition was regularly taken and he was fully and carefully cross-examined by counsel for appellees, the result was exactly the same as though he had been called to testify by the court. *Conkling* v. *New York Life Ins. & Trust Co.* (1920, 262 F. 620, 49 App. D.C. 166).

II. Under Present Law

Evidence

Record failed to support claim of error in dismissal of complaint seeking to enforce mechanic's lien on ground that there was no testimony establishing that plaintiff's services had been engaged by agent of owner or that owner himself had agreed to pay for repairing and remodeling work done by plaintiff. *H. Berenter* v. *R. E. Staggers* (1966, 362 F. 2d 971, 124 U.S. App. D.C. 141).

§ 14–303. Testimony of deceased or incapable person

When a party, after having testified at a time while he was competent to do so, dies or becomes incapable of testifying, his testimony may be given in evidence in any trial or hearing in relation to the same subject-matter between the same parties or their legal representatives, as the case may be; and in such a case the opposite party may testify in opposition thereto. (Dec. 23, 1963, 77 Stat. 519, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., § 14–303 (Mar. 3, 1901, ch. 854, § 1065, 31 Stat. 1357; June 30, 1902, ch. 1329, 32 Stat. 540).

Words "insane or otherwise" preceding "incapable" are omitted as covered by "incapable".

Changes are made in phraseology.

NOTES TO DECISIONS

I. Under Prior Law

Coroner's inquest

A coroner's inquest is not an action or judicial proceeding between the same parties or their legal representatives within the meaning of this section. *Capital Trac. Co.* v. *King* (1916, 44 App. D.C. 315).

II. Under Present Law

Same parties

Within statute providing that when party, after having testified at time when competent to do so, dies or becomes incapable of testifying, his testimony may be given in evidence in any trial or hearing in relation to same subject matter and between same parties and their legal representatives, to be admissible, testimony must be from one who was party at original proceeding and who is party personally or by legal representative to proceedings in which testimony is offered. *United States* v. *W. Franklin* (D.C.D.C. 1964, 235 F. Supp. 338).

Within statute providing that when party, having testified when competent to do so, dies or becomes incapable of testifying, his testimony may be given in evidence in any trial in relation to same subject matter between same parties or their legal representatives, persons who were defendants at original trial and who testified for state at retrial of one codefendant following reversal as to him were not "parties". *Id.*

§ 14–304. Death or incapacity of partner or other interested person

Where any of the original parties to a contract or transaction which is the subject of investigation are partners or other joint contractors, or jointly entitled or liable, and some of them have died or become incapable of testifying, any others with whom the contract or transaction was personally made or had, or in whose presence or with whose privity it was made or had, or admissions in relation to the same were made, are not, nor is the adverse party, incompetent to testify because some of the parties or joint contractors, or those jointly entitled or liable, have died or become incapable of testifying. (Dec. 23, 1963, 77 Stat. 519, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., § 14–304 (Mar. 3, 1901, ch. 854, § 1066, 31 Stat. 1357).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Corporations controlled by deceased

Testimony allegedly violating "surviving party" rule was not subject to objection by corporations controlled by deceased participant. *Cafritz* v. *Corporation Audit Co.* (D.C.D.C. 1945, 60 F. Supp. 627).

In action for accounting against corporations and administratrix of individual who controlled them, testimony concerning transaction between plaintiff and individual was admissible under this section applicable where original parties to transaction are jointly liable and some of them have died, especially where such testimony related to extraneous facts not involving declarations or admissions, and evidence established that individual actively participated in corporation's wrong. *Id.*

Surviving party

Neither a corporation nor its agent can be a surviving "party" to a transaction within meaning of this section. *Corporation Audit Co.* v. *Cafritz* (1946, 156 F. 2d 839, 81 U.S. App. D.C. 196).

§ 14–305. Conviction of crime

A person is not incompetent to testify, in either civil or criminal proceedings, by reason of his having been convicted of crime. The fact of conviction may be given in evidence to affect his credibility as a witness, either upon the cross-examination of the witness or by evidence aliunde; and the party cross-examining him is not bound by his answers as to such matters. To prove the conviction of crime the certificate, under seal, of the clerk of the court wherein proceedings containing the conviction were had, stating the fact of the conviction and for what cause, is sufficient. (Dec. 23, 1963, 77 Stat. 519, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., § 14–305 (Mar. 3, 1901, ch. 854, § 1067, 31 Stat. 1357; June 30, 1902, ch. 1329, 32 Stat. 540).

Changes are made in phraseology.

NOTES TO DECISIONS

I. Under Prior Law

Appeal of conviction

In prosecution for possession of government check stolen from mails, for forged endorsement, and for uttering of check so forged, defendant's prior conviction for same offenses was not admissible where defendant's appeal was pending and consequences of error in admitting such evidence for purpose of showing a pattern of conduct or scheme on part of defendant were sufficiently grave, under the circumstances, to warrant new trial. *Fenwick* v. *United States* (1958, 252 F. 2d 124, 102 U.S. App. D.C. 212).

It is wholly illogical and unfair to permit a defendant to be interrogated upon a previous conviction from which an appeal is pending as the pendency of an appeal prevents the prosecution from proving a previous conviction for impeachment purposes, but though error was committed, it was not so prejudicial as to require reversal. *Campbell* v. *United States* (1949, 176 F. 2d 45, 85 U.S. App. D.C. 133).

Business of repairing firearms

Defendant charged with carrying pistol for which he had no license, was not within District of Columbia statute providing that licensing provisions did not apply to persons engaged in business of repairing firearms when pistol is carried unloaded in a secure wrapper from place of business to home, where defendant claimed that repairing guns was only his hobby and that he had volunteered to work on gun which he claimed belonged to another. *Cormier* v. *United States* (D.C. Mun. App. 1957, 137 A. 2d 212).

Conviction

Disposition of child in Juvenile Court proceeding does not constitute "conviction of crime" within statute providing that fact of conviction may be given in evidence to affect credibility as witness. *R. R. Brown* v. *United States* (1964, 338 F. 2d 543, 119 U.S. App. D.C. 203).

It was error for prosecutor on cross-examination of defendant's juvenile companion to bring out that juvenile companion had been committed to "The National Training School", and such error was reversible error, where juvenile companion's testimony exculpating defendant comprised major portion of defense. *Id.*

Evidence that attorney was brother of accused and had been convicted and disbarred for crime although he had been pardoned and reinstated, was admissible to disprove alleged good faith reliance on legal advice, introduced to negate specific intent of accused to violate statute, where pardon was of kind commonly given to first offenders who have given promise of reform. *A. J. Wacksman* v. *United States* (D.C. Mun. App. 1961, 175 A. 2d 789).

It was improper, in impeaching witness, to admit indictment as to two counts resulting in conviction and to put before the jury the other counts of which witness was acquitted: however, reversal was not required where inadmissible material could have had no substantial effect on jury, in view of the other evidence available. *Id.*

Basis of this section providing that conviction of a witness may be given in evidence to affect his credibility is an assumption that testimony of a person who has demonstrated his dishonesty in the past is unworthy of trust, and basis for such rule does not exist when crime for which witness has been convicted is not of such a dishonesty-evincing nature. *Colter* v. *Einbinder, Deputy Commissioner, etc.* (D.C.D.C. 1960, 184 F. Supp. 523).

The remoteness of the conviction does not affect its admissibility. *Murray* v. *United States* (1923, 288 F. 1008, 53 App. D.C. 119, certiorari denied 43 S. Ct. 703, 262 U.S. 757, 67 L. Ed. 1218).

To constitute "conviction" under this section there must be plea or verdict of guilty, as well as judgment and sentence. *Crawford* v. *United States* (1930, 41 F. 2d 979, 59 App. D.C. 356). See, also, *Thomas* v. *United States* (1941, 121 F. 2d 905, 74 App. D.C. 167).

Instructions with reference to the effect of evidence of prior convictions on credibility. *Mostyn* v. *United States* (1933, 64 F. 2d 145, 62 App. D.C. 22).

Charge that government asked defendant concerning his conviction of attempted murder without disclosing that he had been "pardoned" revealed no impropriety on part of prosecutor, in absence of showing that prosecution was aware of the "pardon" or indication of its existence until after sentence, particularly where paper produced was not a pardon but a document purporting to remove political disabilities arising out of the conviction. *Slaughter* v. *United States* (D.C. Mun. App. 1948, 60 A. 2d 700).

Crimes, felonies, and misdemeanors

The word "crime" includes both felonies and misdemeanors. *Murray* v. *United States* (1923, 288 F. 1008, 53 App. D.C. 119, certiorari denied 43 S. Ct. 703, 262 U.S. 757, 67 L. Ed. 1218).

The word "crime," as used in statute, includes both felonies and misdemeanors, this case involving a simple assault. *Bostic* v. *United States* (1938, 94 F. 2d 636, 68 App. D.C. 167, certiorari denied 58 S. Ct. 523, 303 U.S. 635, 82 L. Ed. 1095).

This section permitting an attack on credibility of one "convicted of a crime" does not include violations of municipal ordinances or misdemeanors involving no element of inherent wickedness. *Frost* v. *Hays* (D.C. Mun. App. 1958, 146 A. 2d 907).

Cross-examination

Accused may be cross-examined respecting previous arrest and peace bond to refresh his memory concerning threats to deceased. *Hawkins* v. *United States* (1930, 39 F. 2d 294, 59 App. D.C. 249).

In prosecution for purchase of morphine sulphate not in nor from original stamped packages, permitting district attorney to draw from accused on cross-examination admissions of his prior convictions on two occasions of grand larceny was not error. *Goode* v. *United States* (1945, 149 F. 2d 377, 80 U.S. App. D.C. 67).

Denial by witness

Since defendant denied that he had been formerly convicted and counsel abandoned the matter, defendant was not prejudiced. *Clifton* v. *United States* (1924, 295 F. 925, 54 App. D.C. 104).

If denial of witness was false, counsel for prosecution could have pursued the matter and established the conviction by evidence aliunde, or by production of a certificate by the clerk of the court wherein the conviction was had. *Id.*

According to this section, "the certificate is necessary only in order to prove previous convictions where the defendant being examined denies the convictions." *Gordon* v. *United States* (1923, 289 F. 552, 53 App. D.C. 154).

Examination of witness

It was no error to ask defendant, a witness for himself, if he had not been convicted of five misdemeanors. *Scaffidi* v. *United States* (C.C.A. 1, 1930, 37 2d 203).

Exclusiveness of remedy

This section providing method for proof of prior convictions for purpose of affecting credibility prescribes the exclusive method, and proof by any other means is not admissible. *Cormier* v. *United States* (D.C. Mun. App. 1957, 137 F. 2d 212).

In prosecution of defendant for carrying unlicensed pistol, use of F.B.I. records of various arrests and convictions of defendant as rebuttal to his testimony on cross-examination respecting prior convictions, was erroneous. *Id.*

Impeachment

Trial court is not required to allow impeachment by prior conviction every time a defendant takes stand in his own defense; instead, matter is for court's sound judicial discretion. *C. M. Luck* v. *United States of America* (1965, 348 F. 2d 763, 121 U.S. App. D.C. 151).

In exercise of trial judge's discretion in determining whether to allow impeachment of defendant by prior conviction when defendant takes stand in his own defense, relevant factors are nature of prior crimes, defendant's criminal record, age, and circumstances, and extent to which it is more important to the search for truth for jury to hear defendant's story than to know of a prior conviction. *Id.*

Matter of permitting showing of prior conviction to impeach defendant testifying in his own defense is for exercise of trial judge's discretion and that discretion is to

be accorded a respect appropriately reflective of inescapable remoteness of appellate review. *Id.*

Permitting a showing of prior grand larceny conviction for purpose of impeaching a defendant testifying in his own defense was not reversible error, even though defendant had been a juvenile at the time of earlier crime, where juvenile court had waived jurisdiction over defendant, and he had been treated as an adult in the district court and had been sentenced under the Youth Correction Act. *Id.*

Fact that defendant charged with grand larceny had received a pardon for prior conviction based upon unauthorized use of a motor vehicle, which pardon was received pursuant to Presidential proclamation promulgating a general amnesty for persons convicted of violations of federal statutes who had served honorably in World War II for not less than a year, did not preclude prosecutor from cross-examining defendant concerning prior conviction in effort to impeach defendant's credibility. *Richards* v. *United States* (1952, 192 F. 2d 602, 89 U.S. App. D.C. 354, 300 L.R. 2d 880, certiorari denied 72 S. Ct. 564, 342 U.S. 946, 96 L. Ed. 703, rehearing denied 72 S. Ct. 676, 343 U.S. 921, 96 L. Ed. 1334).

Impeachment in civil assault case by showing indictment for forgery is prejudicial. *Chebithes* v. *Price* (1930, 37 F. 2d 1008, 59 App. D.C. 212).

Violation of ordinance against the sale of half of round trip railroad ticket not crime, to impeach credibility. *Clawans* v. *District of Columbia* (1933, 62 F. 2d 383, 61 App. D.C. 298).

It is improper for impeachment purposes, to show accusation, arrest or indictment. *Sanford* v. *United States* (1938, 98 F. 2d 325, 69 App. D.C. 44).

When an accused offers himself as a witness, his credibility may be impeached as in the case of any other witness, and previous convictions may be shown to that end. *Goode* v. *United States* (1945, 149 F. 2d 377, 80 U.S. App. D.C. 67).

It is improper for impeachment purposes to show accusation, arrest or indictment for a crime, in any case, civil or criminal. *Wanamaker* v. *Lewis, Jr. WWDC Inc., etc., et ano.* (D.C.D.C. 1959, 173 F. Supp. 126).

It is improper to question a witness as to when she was first arrested for the purpose of impeaching the witness' credibility which can be impeached only by evidence of conviction of crime. *United States* v. *Offutt* (D.C.D.C. 1956, 145 F. Supp. 111, modified on other grounds 247 F. 2d 88, 101 U.S. App. D.C. 97, certiorari denied 78 S. Ct. 85, 355 U.S. 856, 2 L. Ed. 2d 64).

Where party claiming right to possession of rings deposited with police department was at time of trial in prison, and his case was presented by interrogatories and cross-interrogatories, admission in evidence of claimant's criminal record as affecting his credibility as witness was not error despite fact that he had not been questioned concerning his record on cross-interrogatories, in view of fact that claimant had disclosed earlier in proceedings that he was in prison and could consequently anticipate that criminal record would be used against him. *Kronick* v. *Sullivan* (D.C. Mun. App. 1951, 83 A. 2d 518).

Defendant's admission of three prior convictions was admissible for purpose of affecting his credibility as a witness. *Slaughter* v. *United States* (D.C. Mun. App. 1948, 60 A. 2d 700).

Scope of inquiry

Whether the witness is or is not a defendant, if the opposing party introduces his previous conviction the witness should be allowed either to extenuate his guilt or to assert his innocence of the previous charges. *United States* v. *Boyer* (1945, 150 F. 2d 595, 80 U.S. App. D.C. 202, 166 A.L.R. 209).

In prosecution for obtaining money by false pretenses, where government brought out on cross-examination that defendant had been previously convicted of bad check charges and of embezzlement, and defendant was permitted to explain all bad check convictions, refusal to permit defendant to explain the conviction of embezzlement, although technically wrong, did not justify a reversal. *Id.*

Where evidence of previous conviction of a defendant or other witness is offered for impeachment, inquiry into the previous crime should stop with any reasonably brief protestations on behalf of a defendant or witness which he may wish to make, and how far the inquiry should go is a matter in which the trial judge should be given a wide discretion. *Id.*

It is improper for impeachment purposes to ask a witness if he has been convicted of a felony when he has not been so convicted. *Wanamaker* v. *Lewis, Jr., WWDC, Inc., et ano.* (D.C.D.C. 1959, 173 F. Supp. 126).

Evidence of prior convictions must be restricted to question of defendant's credibility and may not be considered for purpose of determining his guilt or innocence of the offense charged. *Peyton* v. *District of Columbia* (D.C. Mun. App. 1953, 100 A. 2d 36).

Tax court proceedings

In proceedings before the Tax Court, convictions for income tax evasion of taxpayers could be put into evidence as affecting their credibility, though based on pleas of nolo contendere. *Masters and Williams* v. *Commissioner of Internal Revenue* (C.A. 3d, 1957, 243 F. 2d 335).

Where one of the taxpayers did not personally take the stand in proceedings before Tax Court, but his sworn income tax returns were in evidence as were his other records, his conviction for income tax evasion was properly admitted in evidence as affecting his credibility. *Id.*

In proceedings on petitions for assessment of income tax deficiences, Tax Court properly admitted, for impeachment purposes, testimony and judgments, entered upon pleas of nolo contendere in prior proceeding convicting taxpayer and partner for income tax evasion during certain years, and properly permitted Government's cross-examination with respect to convictions, in view of 26 U.S.C. (I.R.C. L939) § 1111 providing that Tax Court is bound by rules of evidence applicable in District Courts and District Code provision authorizing admission of evidence of prior conviction testimony entered upon pleas of nolo contendere. *Kilpatrick* v. *Commissioner of Internal Revenue* (C.A. 5th, 1956, 227 F. 2d 240).

II. Under Present Law

Confession

Officer's testimony that when questioned defendant admitted being user of narcotics and that he had had a "fix" on preceding day was too indefinite to constitute proof of confession of being felon, for purposes of vagrancy statute. *L. R. Ferguson* v. *District of Columbia* (D.C. App. 1965, 208 A. 2d 96).

Impeachment

Court of Appeals, in its discretion, declined to consider constitutionality of code section providing that fact of prior conviction may be given in evidence to affect a defendant's credibility as a witness where objection to admission of such evidence was made in general terms with no suggestion of constitutional basis and trial court exercised discretion to limit evidence of prior criminal record to two convictions disclosed by testimony. *E. Trimble* v. *United States* (1966, 369 F. 2d 950, — U.S. App. D.C. —).

Trial court's failure to direct government, at defendant's request, that it could not use defendant's felony conviction, after waiver from juvenile court, to impeach defendant should he take stand was not abuse of discretion under circumstances, in view of inadequacy of defendant's presentation of request. *S. H. Hood and H. A. Jackson* v. *United States* (1966, 365 F. 2d 949, 125 U.S. App. D.C. 16).

Petty offenses

"Crime," within statute to effect that no person shall be incompetent to testify by reason of his having been convicted of crime, but such fact may be given in evidence to affect his credit as witness, does not encompass so-called petty offenses to which right of trial by jury does not apply. *Y. Pinkney* v. *United States* (1966, 363 F. 2d 696, 124 U.S. App. D.C. 209).

Prosecution was not entitled to attempt to impeach testimony of defendant indicted for second-degree murder by referring to thirteen prior convictions of petty offenses of vagrancy, disorderly conduct and soliciting prostitution, inasmuch as, although such offenses were District of Columbia Code offenses, as distinguished from municipal ordinances, none of them was triable by jury. *Id.*

§ 14–306. Husband and wife

(a) In civil and criminal proceedings, a husband or his wife is competent but not compellable to testify for or against the other.

(b) In civil and criminal proceedings, a husband or his wife is not competent to testify as to any confidential communications made by one to the other during the marriage. (Dec. 23, 1963, 77 Stat. 519, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 14–306, 14–307 (Mar. 3, 1901, ch. 854, §§ 1068, 1069, 31 Stat. 1358).

Section consolidates sections 14–306 and 14–307 of the D.C. Code, 1951 ed.

Changes are made in phraseology.

CROSS REFERENCE

Confidential communications between husband and wife in criminal prosecutions for non-support, see § 22–904.

NOTES TO DECISIONS UNDER PRIOR LAW

In general

This section must be taken "as qualified by § 964 of the 1901 Code (§ 16–420), which provides a special rule of evidence for divorce cases." *Lenoir* v. *Lenoir* (1904, 24 App. D.C. 160). See, also, *Hopkins* v. *Grumshaw* (1897, 17 S. Ct. 401, 165 U.S. 342, 41 L. Ed. 739); *Chase* v. *United States* (1895, 7 App. D.C. 149); *McCartney* v. *Fletcher* (1897, 10 App. D.C. 572); *Capital Trac. Co.* v. *Lusby* (1898, 12 App. D.C. 295); *Bergheimer* v. *Bergheimer* (1901, 17 App. D.C. 381); *Mallery* v. *Frye* (1903, 21 App. D.C. 105).

"The Code specifically provides that 'husband and wife shall be competent * * * to testify for or against each other.' Section 964 of the 1901 Code (§ 16–420) * * * has no relation to the competency of the witnesses * * *. The section (§ 16–420) deals only with the weight of the evidence." *Early* v. *Early* (1920, 261 F. 1003, 49 App. D.C. 123).

"The purpose of section 1068 (this section) * * * was to remove grounds of incompetency and not increase them * * *. Therefore a husband or wife, under this statute, can claim no greater privilege than existed at common law." *Halback* v. *Hill* (1920, 261 F. 1007, 49 App. D.C. 127).

The provisions of this section apply to all proceedings wherein it is sought to compel the testimony of the husband or wife for or against one another, including bills of discovery, interrogatories in garnishment, and like proceedings. *Commercial Credit Co.* v. *McReynolds* (1934, 68 F. 2d 990, 63 App. D.C. 42).

Action for injuries to wife

In action by husband and wife for injuries to the wife, the wife is a competent witness. *Capital Trac. Co. v. Lusby* (1898, 12 App. D.C. 295).

Divorce

No decree for divorce or the annulment of a marriage can be given upon the mere unsupported petition of either husband or wife, even though the petition should be sworn to; and it is not apparent that the conditions are altered by the substitution of a deposition for the petition as plain purpose of this is to prohibit divorce or annulment of marriage upon statement of one without corroborative evidence. *Lenoir* v. *Lenoir* (1904, 24 App. D.C. 160).

Where defendant's witness testified that he was present and saw transaction regarding which defendant had testified but on cross-examination prosecution established that witness could not possibly have witnessed the transaction, the jury might properly have disregarded the whole of defendant's testimony as unworthy of belief. *Arbuckle* v. *United States* (1945, 146 F. 2d 657, 79 U.S. App. D.C. 282).

The parties to a divorce suit are competent witnesses. *Buford* v. *Buford* (1946, 156 F. 2d 567, 81 U.S. App. D.C. 169).

Circumstances of conversation

In plaintiff's action against his sister-in-law based on a debt for money loaned, it was error not to allow sister-in-law, when her husband was on the witness stand, to show on preliminary examination facts and circumstances surrounding an alleged conversation between sister-in-law and her husband in an attempt to bring out its confidential nature, since if confidential the communication was inadmissible. *Sacks* v. *Sacks* (1942, 124 F. 2d 527, 75 U.S. App. D.C. 165).

Communications prior to marriage

Communications prior to marriage are not confidential. *Halback* v. *Hill* (1920, 261 F. 1007, 49 App. D.C. 127).

Confidential nature

Communication of husband to wife must have been one of a confidential nature to come within this section. *Dobbins* v. *United States* (1946, 157 F. 2d 257, 81 U.S. App. D.C. 218, certiorari denied 67 S. Ct. 99, 329 U.S. 734, 91 L. Ed. 634).

Where some of testimony of defendant's former wife concerned defendant's financial affairs before they were married, and other portions of testimony related to transactions or prospective transactions which by their nature required communications to third persons, the testimony did not relate to confidential communications, and admission of testimony was not error. *Id.*

Criminal proceedings

Affidavit by defendant's wife, which defendant had offered in aid of his motion for mental examination, could be used by prosecution in cross-examining defense psychiatrist, despite privilege afforded marital relation by District of Columbia statute. *J. W. Jackson, Jr.* v. *United States* (1964, 337 F. 2d 136, 119 U.S. App. D.C. 100).

Under statute it was not reversible error to permit wife to take stand as a government witness over husband's objection when wife, who did not actually testify against him, did not object to being called. *I. J. Postom* v. *United States* (1963, 322 F. 2d 432, 116 U.S. App. D.C. 219).

Under statute court should, outside presence of jury, tell one who is called to testify for or against his spouse that his testimony cannot be compelled but may be received if volunteered. *Id.*

Examination of witness

Cross-examination of witness regarding conviction of crime was proper. *Hall* v. *Gordon* (1942, 128 F. 2d 461, 76 U.S. App. D.C. 33).

Garnishment proceedings

Testimony of husband or wife for or against one another including interrogatories in garnishment can not be compelled. *Commercial Credit Co.* v. *McReynolds* (1934, 68 F. 2d 990, 63 App. D.C. 42).

Historical

At common law "in collateral proceedings not immediately affecting their mutual interests, either husband or wife might be a witness, although the evidence of one tended to criminate the other, or to contradict the other, or to subject the other to a legal demand." *Halback* v. *Hill* (1920, 261 F. 1007, 49 App. D.C. 127).

Husband's instructions to wife

Quaere, whether, in the prosecution of the husband for selling liquor on Sunday, the wife of the accused, who made the sale, will be permitted to testify as to instructions or prohibitions she had from her husband as to selling on Sunday. *Trometer* v. *District of Columbia* (1904, 24 App. D.C. 242).

Interrogatories

One spouse can not be compelled to answer interrogatories, for such disclosures would amount pro tanto to testimony of witness in the case. *McGrew* v. *McGrew* (1924, 298 F. 204, 54 App. D.C. 331).

Interrogatories in garnishment proceedings are within the provisions of this section. *Commercial Credit Co.* v. *McReynolds* (1934, 68 F. 2d 990, 63 App. D.C. 42).

Legal representative

Decedent's niece who was named as beneficiary in a prior will and who joined in caveat filed by her mother

was not a "legal representative" within this section. *In re Cottrill's Estate* (D.C.D.C. 1941, 39 F. Supp. 689).

Marriage

Testimony of the husband as to the fact of marriage is admissible. *Chase* v. *United States* (1895, 7 App. D.C. 149).

Self-interest, testimony against

Wife being a competent witness may testify against her own interest, that she had nothing more than a naked legal title while the sole beneficial ownership was in the husband. *Mallery* v. *Frye* (1903, 21 App. D.C. 105).

Waiver of privilege

Until a legal representative of a deceased person has been appointed, no authority exists to waive a physician's privilege under this section. *In re Cottrill's Estate* (D.C.D.C. 1941, 39 F. Supp. 689).

Widow

A wife shall not be compellable to disclose any communication made to her by her husband during the marriage and it applies as well after the death as during the lifetime of the husband, and it is immaterial whether the objection be taken by demurrer or answer. *McCartney* v. *Fletcher* (1897, 10 App. D.C. 572).

§ 14–307. Physicians

(a) In the courts of the District of Columbia a physician or surgeon may not be permitted, without the consent of the person afflicted, or of his legal representative, to disclose any information, confidential in its nature, that he has acquired in attending a patient in a professional capacity and that was necessary to enable him to act in that capacity, whether the information was obtained from the patient or from his family or from the person or persons in charge of him.

(b) This section does not apply to:

(1) evidence in criminal cases where the accused is charged with causing the death of, or inflicting injuries upon, a human being, and the disclosure is required in the interests of public justice; or

(2) evidence relating to the mental competency or sanity of an accused in criminal trials where the accused raises the defense of insanity, or in the pretrial or posttrial proceedings involving a criminal case where a question arises concerning the mental condition of an accused or convicted person.

(Dec. 23, 1963, 77 Stat. 519, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 14–308 (Mar. 25, 1896, ch. 245, 29 Stat. 138; Mar. 3, 1901, ch. 854, §§ 1073, 1636, 31 Stat. 1358, 1434; Aug. 9, 1955, ch. 673, § 4, 69 Stat. 612).

The privilege granted by this section is subject to waiver in discovery proceedings for physical and mental examination of persons under Rule 35 of the Federal Rules of Civil Procedure and the Court of General Sessions Civil Rules, respectively.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Admissibility in general

Physician who does not treat prisoner, but only examines him in order to testify about his condition, may testify as to such fact. *Taylor* v. *United States of America* (1955, 222 F. 2d 398, 95 U.S. App. D.C. 373).

"It is for the court, and not the witness, to determine whether or not the facts upon which the conclusion or opinion is founded are within or without the limitations of the statute," and it is error to permit the "witness to discriminate as to matters of fact in his own mind, and merely state his conclusion to the jury." *Hutchins* v. *Hutchins* (1919, 48 App. D.C. 495).

Testimony of physician attending testatrix inadmissible; confidential relationship presumed; tender of proof out of presence of jury. *Stafford* v. *American Secur. & Trust Co.* (1932, 55 F. 2d 542, 60 App. D.C. 380).

Evidence that physicians had attended insured, to contradict application denying medical attendance, is admissible. *Kavakos* v. *Equitable Life Assur. Soc.* (1937, 88 F. 2d 762, 66 App. D.C. 380). See, also, *Eureka-Maryland Assur. Co.* v. *Gray* (1941, 121 F. 2d 104, 74 App. D.C. 191, certiorari denied 62 S. Ct. 114, 314 U.S. 613, 86 L. Ed. 494).

Where four physicians, two representing each side, examined defendant in connection with a probable prosecution, defendant took no ailment or complaint to them as his physicians, and defendant was told the circumstances of the mental examination and was warned against making statements that might be to his detriment, permitting the physicians who represented the government at the examination to testify in prosecution for murder and rape was not error. *Catoe* v. *United States* (1942, 131 F. 2d 16, 76 U.S. App. D.C. 292).

Under this section, the type of evidence that is not admissible is that which is given in confidence by a patient to a physician, and it protects the personal nature of an ordinary patient-physician relationship. *Id.*

Annulment or divorce

Where wife sought annulment of marriage, contracted in Virginia, on ground of husband's fraudulent concealment of fact that he was suffering with a venereal disease, and wife acted promptly, as soon as she ascertained truth, and refused thereafter to continue marital status, the wife who failed to produce Virginia examining physician, counsel having been appointed by court to represent husband, did not come under rule that a party who has it peculiarly within his power to produce a witness, by failing to do so, creates an inference that if the testimony were produced it would be unfavorable. *Stone* v. *Stone* (1943, 136 F. 2d 761, 78 U.S. App. D.C. 5).

Autopsy or post mortem reports

"It is well settled that physicians and surgeons may be compelled to testify to the facts disclosed by an autopsy, where the relation of physician and patient did not exist under the lifetime of the deceased." *Carmody* v. *Capital Trac. Co.* (1915, 43 App. D.C. 245, Ann. Cas. 1916D, 706). See, also, *Eureka-Maryland Assur. Co.* v. *Gray* (1941, 121 F. 2d 104, 74 App. D.C. 191, certiorari denied 62 S. Ct. 114, 314 U.S. 613, 86 L. Ed. 494).

Report of a post mortem examination is not privileged under this section making privileged communications to physician or information obtained by physician concerning patient, though examination is made in hospital where patient was treated, if examination does not relate to diagnosis or treatment of patient. *Ferguson* v. *Quaker City Life Insurance Co.* (D.C. Mun. App. 1958, 146 A. 2d 580).

In action by beneficiary against insurer on industrial life policy, wherein insurer defended on provision of policy that policy is voidable if, within two years before date of issue of policy, insured received treatment for serious disease or physical condition, report of post mortem examination of insured and testimony of physician concerning objective laboratory findings derived from post mortem examination, were admissible over objection that they were privileged, though post mortem examination was made at hospital where insured was treated, in absence of showing that information obtained in course of treatment of insured was significant in guiding the post mortem examination. *Id.*

Construction

The full spirit of this section regarding admissibility of testimony of physician is to be made effectual. *Catoe* v. *United States* (1942, 131 F. 2d 16, 76 U.S. App. D.C. 292).

—— Rules of Civil Procedure

Fed. Rules Civ. Proc. rule 35(b) (1), (2) that party requesting and receiving copy of his adversary's physician's report of physical or mental examination of such party must furnish adversary, on request, like report of any previous or subsequent examination of same condition, is in derogation of statutory privilege and should be strictly construed. *Sher* v. *De Haven* (1953, 199 F. 2d 777, 91 U.S. App. D.C. 257, certiorari denied 73 S. Ct. 797, 345 U.S. 936, 97 L. Ed. 1363).

Cross-examination

Commitment of girl to psychiatric school on strength of alleged professional opinion of doctor, whom girl had no opportunity to cross-examine and whose professional status was not established in record, was error, especially in view of fact that mother's counsel was permitted to repeat what doctor had told him and urge acceptance of doctor's recommendation. *In re Sippy* (D.C. Mun. App. 1953, 97 A. 2d 455).

Death certificate

Death certificate properly admitted in evidence. *Labofish* v. *Berman* (1932, 55 F. 2d 1022, 60 App. D.C. 397).

Executors

The term "legal representative" includes "executor." *Thompson* v. *Smith* (1939, 103 F. 2d 936, 70 App. D.C. 65, 123 A.L.R. 76).

Physician was not competent to testify when called by the caveatees, one of whom was the nominated executor, as the latter could not waive the privilege. *McCartney* v. *Holmquist* (1939, 106 F. 2d 855, 70 App. D.C. 334, 126 A.L.R. 375).

Extent of privilege

This section governing disclosure by physician or surgeon of confidential information which he may have acquired in attending a patient in professional capacity is very broad and forbids disclosure by physician or any information obtained by him in professional capacity. *Taylor* v. *United State of America* (1955, 222 F. 2d 398, 95 U.S. App. D.C. 373).

The privilege against physicians' disclosure of confidential information, acquired in attending patient, without patient's consent, extends not only to information orally given physician by patient, but also to any information obtained by physician in his professional capacity through his observation or examination and diagnosis and treatment of patient as well as all inferences and conclusions therefrom. *Sher* v. *De Haven* (1953, 199 F. 2d 777, 91 U.S. App. D.C. 257, certiorari denied 73 S. Ct. 797, 345 U.S. 936, 97 L. Ed. 1363).

Hospital record

A properly authenticated hospital record of patient's name, address, age, and the like, is admissible, provided there is no disclosure of diagnosis or treatment. *Kaplan* v. *Manhattan Life Ins. Co.* (1940, 109 F. 2d 463, 71 App. D.C. 250).

In action by beneficiary against insurer on industrial life policy, wherein insurer defended on provision of policy that policy is voidable if, within two years before date of issue of policy, insured received treatment for serious disease or physical condition, hospital records were properly admitted for limited purpose of establishing dates of insured's admissions into hospitals without violating this section making privileged communications to physician or information obtained by physician concerning patient. *Ferguson* v. *Quaker City Life Insurance Co.* (D.C. Mun. App. 1958, 146 A. 2d 580).

This section respecting confidential communications to a physician encompasses information contained in hospital records concerning diagnosis or treatment. *Ferguson* v. *Quaker City Life Ins. Co.* (D.C. Mun. App. 1957, 129 A. 2d 189).

In action on an industrial life policy with defense of violation of provisions of the policy respecting hospital treatment, admitting hospital records concerning the insured to indicate the basis of treatment was improper as involving a privileged matter, since basis for hospitalization entailed a diagnosis within the privilege of this section. *Id.*

Legal representative

As used in this section disqualifying physician from giving testimony disclosing confidential information without consent of patient or his "legal representative", the quoted term refers to persons who are entitled to enforce the particular substantive right of the patient which is involved in a particular case. *Calhoun* v. *Jacobs* (1944, 141 F. 2d 729, 79 U.S. App. D.C. 29).

Mental condition

At trial in November, 1955, for robbery committed May 9, 1955, court properly applied amendment effective August 9, 1955, which removed prohibition of disclosure of confidential information by physicians in criminal trials when accused raises the defense of insanity. *Parker* v. *United States* (1956, 235 F. 2d 21, 98 U.S. App. D.C. 262).

Privilege created by this section as to information acquired by physician in attending patient affords protection to patients who have been committed to public mental hospitals. *Taylor* v. *United States of America* (1955, 222 F. 2d 398, 95 U.S. App. D.C. 373).

Even though testimony of physician as to information acquired by him in attending patient in professional capacity was inadmissible at that person's criminal trial, such testimony could be included for consideration by trial judge in deciding whether such person, who had previously been found incompetent to stand trial, was now competent. *Id.*

Admission of testimony of mental hospital physician and psychiatrist who had treated defendant in mental hospital to which defendant had been committed until he was mentally competent to stand trial was in violation of this section creating privilege as to facts learned by physician in treating patient, and was error requiring reversal of conviction. *Id.*

Persons waiving privilege

Under this section, in suit by grantor's heirs to set aside, on ground of grantor's mental incapacity, a conveyance of realty to a stranger, the heirs were entitled to exercise, as against the grantee, the patient-grantor's privilege of waiver so that medical testimony and hospital records that grantor was insane were properly admitted. *Calhoun* v. *Jacobs* (1944, 141 F. 2d 729, 79 U.S. App. D.C. 29).

In proceeding by mother to have daughter committed to psychiatric school on ground that daughter was habitually beyond mother's control, mother, as daughter's antagonist, would not waive daughter's right of privilege concerning prognosis and recommendations of her personal physician. *In re Sippy* (D.C. Mun. App. 1953, 97 A. 2d 455).

Physicians' records

In action for personal injuries, District Court did not abuse its discretion in denying defendant's pretrial motion to require plaintiffs to produce and permit defendant to inspect and copy physicians' reports of their examinations and treatment of plaintiffs after accident, as such reports were privileged and hence not subject to discovery. *Sher* v. *De Haven* (1953, 199 F. 2d 777, 91 U.S. App. D.C. 257, certiorari denied 73 S. Ct. 797, 345 U.S. 936, 97 L. Ed. 1363).

Professional capacity

The doctor-patient privilege extends only to information the physician acquires in attending a patient in a professional capacity, but such privilege does not include information obtained merely by an examination. *Browne* v. *Brooke* (1956, 236 F. 2d 686, 98 U.S. App. D.C. 391).

The doctor-patient privilege will not attach to an examination of a patient by a physician, if the person examined is capable of forming a judgment on the subject and understands that the physician is not attending or treating him, but if not capable of forming such a judgment the question of the physician's status must be determined objectively. *Id.*

Where physician testified that no normal patient-physician relationship existed between him and testatrix when he conducted an examination of her, and that she was under no misapprehension that there was such a relationship, his testimony as to the unsoundness of testatrix's mind when he conducted such examination was not privileged. *Id.*

If psychiatrist at mental hospital was examining physician, disclosures made by him by murderer might come within exception to privilege, in that physician who does not treat prisoner but only examines him in order to testify about his condition may testify as to such fact. *Kendall* v. *Gore Properties* (1956, 236 F. 2d 673, 98 U.S. App. D.C. 378).

Public justice

Under this section the application of the criterion "public justice" is a matter of discretion with the trial judge, *Catoe* v. *United States* (1942, 131 F. 2d 16, 76 U.S. App. D.C. 292).

Purpose

This section is intended to protect interests of the patient, and person with whom patient deals cannot insist upon the disqualification of physician to prejudice and over objections of persons who stand in the patient's shoes. *Calhoun* v. *Jacobs* (1944, 141 F. 2d 729, 79 U.S. App. D.C. 29).

Review

Though jury was not warranted on evidence in failing to entertain reasonable doubt that except for diseased mental condition defendant would have committed robberies, Court of Appeals would not direct that defendant be acquitted by reason of insanity, but would remand for new trial, where testimony of expert who had not testified at second trial would be available at retrial, resolvable ambiguities existed in testimony, and dearth of prosecution's nonmedical testimony, might be overcome. *Douglas* v. *United States* (1956, 239 F. 2d 52, 99 U.S. App. D.C. 232).

Subsequent examination by physician

Plaintiff calling a physician to testify as to his physical condition at a certain time does not waive the right to object to the testimony of a physician who made an examination at a different time. *Mays* v. *New Amsterdam Cas. Co.* (1913, 40 App. D.C. 249, 46 L.R.A., N.S., 1108, certiorari denied 35 S. Ct. 662, 238 U.S. 624, 59 L. Ed. 1494). See, also, *Prudential Inc. Co.* v. *Lear* (1908, 31 App. D.C. 184); *Baltimore & O. R. Co.* v. *Morgan* (1910, 35 App. D.C. 195).

Waiver

Any physician-patient privilege which existed between defendant and psychiatrist was waived by psychiatrist's testimony relating to defendant's mental faculty to formulate and harbor larcenous intent, and government had thereupon right to cross-examine psychiatrist to explore underlying basis for his opinion, and, in so doing, could properly ask whether defendant had informed psychiatrist defendant was under arrest on charge of falsifying statements. *A. A. Dani* v. *United States* (D.C. Mun. App. 1961, 173 A. 2d 736).

In personal injury suit, defendant's mere willingness to furnish plaintiff a copy of defendant's medical examiner's report on his examination of plaintiff after accident, as stated in defendant's pretrial motion to require plaintiff to produce and permit defendant to inspect and copy plaintiff's physicians' reports of their examinations and treatment of plaintiff, did not entitle defendant to demand such reports under civil procedure rule, where plaintiff had not requested or received report of defendant's medical examiner nor taken his deposition and hence had not waived privilege of plaintiff's physicians' reports. *Sher* v. *De Haven* (1953, 199 F. 2d 777, 91 U.S. App. D.C. 257, certiorari denied 73 S. Ct. 797, 345 U.S. 936, 97 L. Ed. 1363).

Life policy provision waiving privilege against disclosure of information acquired through confidential treatment by physician was sufficient waiver of statutory privilege regarding testimony of physician. *New York Life Ins. Co.* v. *Taylor* (1945, 147 F. 2d 297, 79 U.S. App. D.C. 66).

Where attorneys in personal injury action exchanged reports of doctors who examined plaintiff, any privilege which might have existed with respect to testimony of one doctor who examined the plaintiff for purposes of testifying was waived. *Fisher* v. *Small et al.* (D.C. Mun. App. 1960, 166 A. 2d 744).

In action on industrial life policy with defense of violation of policy provisions respecting hospital treatment of insured, where hospital records concerning insured were admitted in evidence, claimant did not waive privilege of this section by signing a form for sole purpose of proving death of the insured, where form contained no waiver of physician-patient privilege in express terms. *Ferguson* v. *Quaker City Life Ins. Co.* (D.C. Mun. App. 1957, 129 A. 2d 189).

This section does not apply where there was an application for the policy, signed by insured, and a purported waiver of the privilege; moreover, it is not important whether the hospital records were privileged before trial because it is clear that any privilege which might have existed was fully waived when they were put in evidence by plaintiff at the trial. *Mutual Benefit Health and Accident Association* v. *McGinn* (D.C. Mun. App. 1950, 75 A. 2d 643).

War risk insurance

In action on war risk insurance policy by the mother of insured, who claimed that insured had become permanently and totally disabled, by failure of his mind, at and before the time the policy lapsed, the report of the examination of insured by a physician was admissible in evidence, the insured himself having sent it to the Veterans' Bureau, but so far as the physician's opinions were based on information received in professional confidence, they should be excluded. *United States* v. *Witbeck* (1940, 113 F. 2d 185, 72 App. D.C. 231).

§ 14–308. Assessment officials as expert witnesses in condemnation proceedings

In an action for the condemnation of lands, an official or other employee of the District, charged with the duty of appraising real property for assessment purposes, is not disqualified, by reason of the fact that he is so employed, from testifying as an expert witness to the market value of lands, and as to benefits. (Dec. 23, 1963, 77 Stat. 520, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 14–309 (Feb. 11, 1932, ch. 39, 47 Stat. 48).

Section 14–309 of D.C. Code, 1961 ed., referred to the Assessor of the District; but in this section the provisions are revised to refer to "an official or other employee of the District, charged with the duty of appraising real property for assessment purposes". Reorganization Order No. 20, Nov. 10, 1952, as amended, of the Board of Commissioners, abolished the Office of the Assessor, and among other things provided that the Finance Officer, whose office it created, should be the Assessor and the head of a new Office of the Assessor also created thereby as one of several offices set up within the Finance Office. Under the Board's Reorganization Order No. 121, 57–3276, dated Dec. 12, 1957, as amended, which, like Reorganization Order No. 20, was issued under authority of the President's Reorganization Plan No. 5 of 1952, and which superseded Reorganization No. 20, as amended, the appraisement of real property for assessment purposes is one of the functions of the Property Tax Division, one of several divisions set up by Order No. 121 within the Finance Office, all under the general supervision and control of the Finance Officer. Order No. 121, does not provide that the Finance Officer shall be the "Assessor". However, the Board of Commissioners has the authority, under the President's Reorganization Plan No. 5 of 1952, referred to above, to change offices and functions at any time, and, under Reorganization Order No. 121, also referred to above, the Finance Officer has the authority to reassign functions. For these reasons, the provisions of this section are rephrased in the general terms quoted above.

Other changes are made in phraseology.

§ 14–309. Clergy

A priest, clergyman, rabbi, or other duly licensed, ordained, or consecrated minister of a religion authorized to perform a marriage ceremony in the District of Columbia or duly accredited practitioner of Christian Science may not be examined in any civil or criminal proceedings in the courts of the District of Columbia with respect to any—

(1) confession, or communication, made to him, in his professional capacity in the course of discipline enjoined by the church or other religious body to which he belongs, without the consent of the person making the confession or communication; or

(2) communication made to him, in his professional capacity in the course of giving religious

or spiritual advice, without the consent of the person seeking the advice; or

(3) communication made to him, in his professional capacity, by either spouse, in connection with an effort to reconcile estranged spouses, without the consent of the spouse making the communication.

(Dec. 23, 1963, 77 Stat. 520, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 14–310 (Sept. 26, 1961, Pub. L. 87–318, 75 Stat. 681).

Changes are made in phraseology.

Chapter 5.—DOCUMENTARY EVIDENCE

Sec.
14–501. Proof of record.
14–502. Records of deeds, instruments, and wills.
14–503. Record of will as prima facie evidence of contents and execution.
14–504. Force in District of Columbia of wills probated elsewhere.
14–505. Municipal ordinances and regulations.
14–506. Certified mail return receipts as prima facie evidence of delivery.
14–507. Other methods of proof.

§ 14–501. Proof of record

An exemplification of a record under the hand of the keeper of the record, and the seal of the court or office where the record is made, is good and sufficient evidence to prove a record made or entered in any State, territory, commonwealth or possession of the United States. The certificate of the person purporting to be the keeper of the record, accompanied by the seal, is prima facie evidence of that fact. (Dec. 23, 1963, 77 Stat. 520, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 14–501 (Mar. 3, 1901, ch. 854, § 1070, 31 Stat. 1358).

The methods of proof in this chapter are additional to those authorized by other laws and rules of court; see section 14–506 herein.

Reference to "commonwealth" is inserted to reflect the new status of the Commonwealth of Puerto Rico, and reference to "possession" is inserted for completeness.

Changes are made in phraseology.

CROSS REFERENCES

Articles of association of fraternal benefit association as prima facie evidence of existence and due incorporation, see § 35–909.

Authentication of papers by superintendent of insurance, effect, see § 35–401.

Certified copies of certificate of incorporation presumptive evidence of facts therein stated, see § 29–236.

Corporate stock books presumptive evidence of fact contained therein, see § 29–226.

Stock book of domestic life insurance company presumptive evidence of facts therein contained, see § 35–515.

Transcribed copy of proceedings before public utilities commission admissible as evidence, see § 43–421.

Upon division of insurance business of fraternal benefit association, original policies prima facie evidence of liability of successor corporation, see § 35–925.

FEDERAL RULES OF CIVIL PROCEDURE

Proof of official records, see Rule 44, 28 U.S.C. App.

NOTES TO DECISIONS UNDER PRIOR LAW

Proof of judgment

Where no issue is raised regarding the jurisdiction of the justice of the peace rendering the judgment, a properly certified transcript of the docket entries showing service of process upon the defendant and jurisdiction of the subject matter is sufficient to support a judgment in another state. *Koehne* v. *Price* (D.C. Mun. App. 1949, 68 A. 2d 806).

§ 14–502. Records of deeds, instruments, and wills

Under the hand of the keeper of a record and the seal of the court or office in which the record was made:

(1) a copy of the record of a deed, or other written instrument not of a testamentary character, where the laws of the State, territory, commonwealth, possession or country where it was recorded require such a record, and that has been recorded agreeably to those laws; and

(2) a copy of a will that the laws require to be admitted to probate and record by judicial decree, and of the decree of the court admitting the will to probate and record—

are good and sufficient prima facie evidence to prove the existence and contents of the deed, will, or other written instrument, and that it was executed as it purports to have been executed.

(Dec. 23, 1963, 77 Stat. 521, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 14–402 (Mar. 3, 1901, ch. 854, § 1071, 31 Stat. 1358).

In par. (1), reference to "commonwealth" is inserted to reflect the new status of the Commonwealth of Puerto Rico, and reference to "possession" is inserted for completeness.

Changes are made in arrangement and phraseology.

CROSS REFERENCES

Certain irregular deeds legalized, see § 45–504.

Transcript of surveyor's records, see § 1–611.

NOTES TO DECISIONS UNDER PRIOR LAW

Burden of proof

When will is contested for want of mental capacity, proponent who introduces it in support of her title, has burden of proof. *Prall* v. *Prall* (1926, 13 F. 2d 305, 56 App. D.C. 333, motion to recall and amend mandate granted in part 15 F. 2d 735, 56 App. D.C. 336).

Jurisdiction

Where testamentary trust named cotrustees, and realty comprising part of trust res was located in District of Columbia, Ohio judgment appointing sole trustee in effect purported to change title to realty in District of Columbia by vesting it in one trustee, instead of two as provided by will, and in such respect, Ohio court was without jurisdiction over subject matter, and judgment was not entitled to full faith and credit. *Hughes et al.* v. *Hughes* (D.C.D.C. 1953, 112 F. Supp. 899).

Maryland probate

Sufficiency of authentication under this section of copy of will probated in Maryland. *Scott* v. *Herrell* (1906, 27 App. D.C. 395). See, also, *Droop* v. *Ridenour* (1897, 11 App. D.C. 224).

§ 14–503. Record of will as prima facie evidence of contents and execution

A record of a will or codicil recorded in the office of the Register of Wills of the District of Columbia, that has been admitted to probate by the United States District Court for the District of Columbia, or by the former orphans' court of the District, or a record of the transcript of the record and probate of a will or codicil elsewhere, or of a certified copy thereof filed in the office of the Register of Wills, is prima facie evidence of the contents and due execution of the will or codicil. (Dec. 23, 1963, 77 Stat. 521, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 14–403 (July 9, 1888, ch. 597, 25 Stat. 246; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

In general

The statute assumes the probates to have been lawfully made; and it no more undertakes to define or to regulate the jurisdiction of the courts of probate of the District for the future, than it does the jurisdiction of those courts in the past, or the jurisdiction of the courts elsewhere whose proceedings filed in the District are equally made evidence. *Campbell* v. *Porter* (1896, 16 S. Ct. 871, 162 U.S. 478, 40 L. Ed. 1044).

Where will had been admitted to probate before caveat was filed, caveatee was entitled to rely on record of probate as her prima facie proof of due execution. *Flocken* v. *Di Gennaro et al.* (1951, 187 F. 2d 513, 88 U.S. App. D.C. 133).

§ 14–504. Force in District of Columbia of wills probated elsewhere

A record in the office of the Register of Wills for the District of Columbia of a duly certified copy, or transcript of the record of proceedings, admitting a will or codicil to probate outside of the District of Columbia; and a record in that office of a will or codicil admitted to probate in the District before June 8, 1898, and not annulled or declared void according to law prior to June 8, 1898, shall be deemed and held as of the same force and effect as if the will or codicil had been duly proved and admitted to probate and record pursuant to sections 19–301 to 19–303. (Dec. 23, 1963, 77 Stat. 521, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 14–404 (June 8, 1898, ch. 394, § 10, 30 Stat. 437).

Changes are made in phraseology.

REFERENCES IN TEXT

Sections 19–301 to 19–303, referred to in this section, were repealed by act Sept. 14, 1965, 79 Stat. 780, Pub. L. 89–183, § 8, eff. Jan. 1, 1966. Present provisions relating to probate of wills are covered by chapter 5 of Title 18.

NOTES TO DECISIONS UNDER PRIOR LAW

Jurisdiction

Decree appointing sole trustee of testamentary trust which named cotrustees, one of whom refused to serve, was entitled to full faith and credit if court awarding decree had jurisdiction, but was open to challenge if jurisdiction was lacking. *Hughes et al.* v. *Hughes* (D.C.D.C. 1953, 112 F. Supp. 899).

Ohio court had power to compel execution of deed by parties personally before it, and thereby could indirectly affect realty beyond its territorial jurisdiction, but could not affect realty which was located in District of Columbia and which had been devised to cotrustees where one of the trustees was not before the court. *Id.*

§ 14–505. Municipal ordinances and regulations

Municipal ordinances and regulations in force in the District of Columbia may be proved by producing in evidence a copy thereof certified by the secretary or an assistant secretary of the Board of Commissioners; and the certified copy is prima facie evidence of the due adoption and promulgation of the ordinances and regulations. (Dec. 23, 1963, 77 Stat. 521, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 14–406 (Apr. 19, 1920, ch 153, § 1073b, 41 Stat. 567).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Admissibility

In action for injuries sustained in automobile collision, court properly refused to receive traffic regulations defining intersection in evidence, where both parties conceded that collision occurred out of intersection. *Coleman* v. *Chudnow* (D.C. Mun. App. 1944, 35 A. 2d 925).

Judicial notice

In prosecution for violating ordinance regulating blackouts, the ordinance was not required to be introduced in evidence, since the municipal court would take notice of the ordinance. *Dibble* v. *District of Columbia* (D.C. Mun. App. 1944, 35 A. 2d 825).

§ 14–506. Certified mail return receipts as prima facie evidence of delivery

Return receipts for the delivery of certified mail which is utilized under any provision of law shall be received in the courts as prima facie evidence of delivery to the same extent as return receipts for registered mail. (Dec. 23, 1963, 77 Stat. 521, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 14–407 (June 11, 1960, Pub. L. 86–507, § 2, 74 Stat. 204).

Section 2 of the act of June 11, 1960, cited above, which was classified as section 14–407 of D.C. Code, 1961 ed., also relates to courts outside the District of Columbia. Hence, it is not included in the schedule of repeals in the bill to enact this revised part.

§ 14–507. Other methods of proof

This chapter does not prevent the proof of records or other documents by any method authorized by other laws or rules of court. (Dec. 23, 1963, 77 Stat. 521, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

This section is inserted to make it clear that the methods of proof provided for by this chapter are additional to, and do not supersede, the methods authorized by 28 U.S.C. §§ 1731–1745; Rule 44, respectively, of the Federal Rules of Civil Procedure and the Court of General Sessions Civil Rules; Rule 27 of the Federal Rules of Criminal Procedure; Rule 30 of the Court of General Sessions Criminal Rules; and any other provisions of the D.C. Code on this subject.

NOTES TO DECISIONS

Documentary evidence

Documentary evidence must be authenticated before it will be admitted, but authentication need not be by direct proof, and circumstantial evidence will suffice under proper conditions. *Namerdy* v. *Generalcar* (D.C. App. 1966, 217 A. 2d 109).

Admitting original written agreement for payment of debt due and a subsequent modification agreement was not error where there was an adequate showing that obligor had signed both agreements. *Id.*

Introduction without objection of copy of modification of original agreement for payment of debt between parties in form of a letter sent to obligor by obligee wherein obligor was asked to "please sign and return the copy of letter" and on which was what was purported to be obligor's signature under statement that "payments agreed upon according to above terms" was sufficient circumstantial proof of obligor's signature, and distinctive as it was, was sufficient to demonstrate the authenticity of his signature on the original agreement. *Id.*

Where a letter is received in response to a letter sent by receiver, law will presume that letter is from person whose name is signed to it. *Id.*

Chapter 7.—ABSENCE FOR SEVEN YEARS

Sec.
14–701. Presumption of death.
14–702. Person presumed dead found living.

§ 14–701. Presumption of death

If a person leaves his domicile without a known intention of changing it, and does not return or is not heard from for seven years from the time of his so leaving, he shall be presumed to be dead in any case where his death is in question, unless proof is made that he was alive within that time. (Dec. 23, 1963, 77 Stat. 522, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1951 ed., § 14–401 (Mar. 3, 1901, ch. 854, § 252, 31 Stat. 1230).

Changes are made in phraseology.

CROSS REFERENCE

Administration of estates of absentees and absconders, see § 20–2301 et seq.

NOTES TO DECISIONS UNDER PRIOR LAW

Generally

Under this section enacting common-law presumption of death arising from absence for seven years, in order to raise presumption of death the absentee must leave his domicile, without any known intention of changing it, and not return or be heard from for seven years. *Jemison* v. *Metropolitan Life Ins. Co.* (D.C. Mun. App. 1943, 32 A. 2d 704).

Common law

The statutory presumption of death arising from absence of seven years is but a declaration of the common-law rule. *Jemison* v. *Metropolitan Life Ins. Co.* (D.C. Mun. App. 1943, 32 A. 2d 704).

Evidence

Evidence was insufficient to support statutory presumption of insured's death arising from absence for seven years, so as to authorize recovery on life policy, where insured was not living with his family at time of his disappearance but had a fixed abode in another State, and it did not appear that any inquiry concerning insured's whereabouts had been made in city in which he had his abode at the time of his disappearance. *Jemison* v. *Metropolitan Life Ins. Co.* (D.C. Mun. App. 1943, 32 A. 2d 704).

Failure to hear

Mere failure of insured's family to hear from insured for more than seven years was not sufficient to raise presumption of death, so as to authorize recovery on life policy, where insured was not living with his family but had a fixed abode in another State. *Jemison* v. *Metropolitan Life Ins. Co.* (D.C. Mun. App. 1943, 32 A. 2d 704).

Foreign insurance company

Insurance company, although incorporated elsewhere, can not effectively adopt by-law seeking to overcome presumption of death from long-continued absence. *National Union* v. *Sawyer* (1914, 42 App. D.C. 475).

Historical

There is no presumption of death from an absence of less than seven years, unless it appears that during that time the absent person "encountered some specific peril, or within that period came within the range of some impending or immediate danger, which might reasonably be expected to destroy life," or that he disappeared under circumstances inconsistent with a continuation of life. *Groff* v. *Groff* (1911, 36 App. D.C. 560). See, also, *Angell* v. *Groff* (1914, 42 App. D.C. 198); *Hamilton* v. *Rathbone* (1896, 9 App. D.C. 48, reversed on other grounds 20 S. Ct. 155, 175 U.S. 414, 44 L. Ed. 219).

"The common-law presumption of death was made statutory, and the statute declares the public policy of the District in that respect." *National Union* v. *Sawyer* (1914, 42 App. D.C. 475).

Rebuttal of presumption

Presumption of death after seven years under § 252 of 1901 Code (this section) is rebutted by the appearance of insured at the trial. *La Raw* v. *Prudential Inc. Co.* (1928, 22 F. 2d 717, 57 App. D.C. 289).

Time of death

Under this section, there is no presumption concerning the time when the person died. *Jones* v. *Metropolitan Life Ins. Co.* (1941, 116 F. 2d 555, 73 App. D.C. 92).

There is no presumption as to the time of death. *Hamilton* v. *Rathbone* (1896, 9 App. D.C. 48, reversed on other grounds 20 S. Ct. 155, 175 U.S. 414, 44 L. Ed. 219).

§ 14–702. Person presumed dead found living

If the person presumed to be dead pursuant to section 14–701 is found to be living, a person injured by the presumption shall be restored to the rights of which he was deprived by reason of the presumption. (Dec. 23, 1963, 77 Stat. 522, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 14–502 (Mar. 3, 1901, ch. 854, § 253, 31 Stat. 1230).

Changes are made in phraseology.

TITLE 15.—JUDGMENTS AND EXECUTIONS; FEES AND COSTS

Title 15 was enacted by Pub. L. 88–241

For disposition of former sections of this title, see table following Title 49

Chap. Sec.

1. Judgments and Decrees 15–101
3. Enforcement of Judgments and Decrees ... 15–301
5. Exemptions and Trial of Right to Seized Property 15–501
7. Fees and Costs 15–701

Chapter 1.—JUDGMENTS AND DECREES

SUBCHAPTER I.—GENERALLY

Sec.

15–101. Enforceable period of judgments; expiration.
15–102. Lien of judgment, decree, or forfeited recognizance.
15–103. Effect of revival.
15–104. Priority of liens.
15–105. Decree confirming sale of property; effect; ordering conveyance.
15–106. Judgment and damages assessed in actions on bonds or penal sums.
15–107. Setting off judgments.
15–108. Interest on judgment for liquidated debt.
15–109. Interest on judgment for damages in contract or tort.
15–110. Interest on judgment on contracts made elsewhere.
15–111. Counsel fee in proceeding on bond or undertaking.

SUBCHAPTER II.—COURT OF GENERAL SESSIONS

15–131. Judgments and executions generally; interest.
15–132. Enforceable period of unrecorded judgments; Enforcement of judgments, etc., of the District of Columbia Court of General Sessions.
15–133. Satisfaction of judgment; recordation.

AMENDMENT

1966—Section 3(b) of act Nov. 2, 1966, 80 Stat. 1178, Pub. L. 89–745, amended item 132 in chapter analysis by substituting "Enforceable period of unrecorded judgments—Enforcement of judgments, etc. of the District of Columbia Court of General Sessions" for "Enforceable period of judgments; effect of docketing in District Court; Domestic Relations Branch".

1964—Section 3(b)(2) of act Aug. 30, 1964, 78 Stat. 678, Pub. L. 88–509 amended the analysis of subchapter I of chapter 1, title 15, by adding section 15–108 to 15–111.

SUBCHAPTER I.—GENERALLY

§ 15–101. Enforceable period of judgments; expiration

(a) Except as provided by subsection (b) of this section, every final judgment or final decree for the payment of money rendered in the:

(1) United States District Court for the District of Columbia; or

(2) civil division of the District of Columbia Court of General Sessions, when filed and recorded in the office of the Recorder of Deeds of the District of Columbia—

is enforceable, by an execution issued thereon, for the period of twelve years only from the date when an execution might first be issued thereon, or from the date of the last order of revival thereof. The time during which the judgment creditor is stayed from enforcing the judgment, by written agreement filed in the case, or other order, or by the operation of an appeal, may not be computed as a part of the period within which the judgment is enforceable by execution.

(b) At the expiration of the twelve-year period provided by subsection (a) of this section, the judgment or decree shall cease to have any operation or effect. Thereafter, except in the case of a proceeding that may be then pending for the enforcement of the judgment or decree, action may not be brought on it, nor may it be revived, and execution may not issue on it. (Dec. 23, 1963, 77 Stat. 522, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; Nov. 2, 1966, 80 Stat. 1177, 1178, Pub. L. 89–745, § 1(a), 7.)

AMENDMENTS

Section 1(a) of act Nov. 2, 1966, amended clause (2) of subsec. (a), by substituting "when filed and recorded in the office of the Recorder of Deeds of the District of Columbia" for "when certified to and docketed in the clerk's office of the District Court".

EFFECTIVE DATE OF 1966 AMENDMENTS; RECORDATION OF CERTAIN JUDGEMENTS, ETC., RENDERED BEFORE NOV. 1, 1966

Section 8(a) of act Nov. 2, 1966, provided:

"(a)(1) Except as otherwise provided in paragraph (2), the amendments made by sections 1, 2, and 3 of this Act [to §§ 15–101, 15–102 and 15–132] shall apply only with respect to a judgment or decree rendered, or a recognizance declared forfeited, by the United States District Court for the District of Columbia or the District of Columbia Court of General Sessions on and after November 1, 1966.

"(2) A judgment or decree rendered, or an entry or order of forfeiture of a recognizance made, before November 1, 1966, by the District of Columbia Court of General Sessions which was not docketed in the office of the clerk of the United States District Court for the District of Columbia before such date may be filed and recorded in the office of the Recorder of Deeds of the District of Columbia on and after such date but not later than six years following the date such judgment or decree was rendered or entry or order made."

Section 8(d) of such act provided: "The amendment made by section 7 of this Act [repealing §§ 8, 9 and 10 of act July 5, 1966, Pub. L. 89–493, which had amended this section and §§ 15–102 and 15–132] shall take effect on the date on the enactment of this Act [Nov. 2, 1966]."

REPEAL OF PRIOR 1966 AMENDMENT

Section 7 of act Nov. 2, 1966, cited to the text repealed act July 5, 1966, 80 Stat. 264, Pub. L. 89–433, § 8, which, effective on first day of first month which was at least 90 days after July 5, 1966, had added a clause (3) to subsec. (a) of this section, reading "(3) civil division of the District of Columbia Court of General Sessions, if the judgment or decree was rendered on or after the effective date of this clause". For effective date of the repeal, see § 8(d) of such act Nov. 2, 1966, set out as a note above.

REVISION NOTES

Based on D.C. Code, 1961 ed., §§11–751a, 15–101, 15–102. (Mar. 3, 1901, ch. 854, §§ 1212, 1213, 31 Stat. 1381; June 30,

1902, ch. 1329, 32 Stat. 542; Feb. 17, 1909, ch. 134, 35 Stat. 623; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section consolidates sections 15–101 and 15–102 of the D.C. Code, 1961 ed.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Words "final judgment or final decree" are substituted in subsec. (a) for the reference in section 15–101 of the D.C. Code, 1961 ed., to final judgment "at common law" and final decree "in equity" as, in civil matters, there is now only one form of action in the District Court and in the Court of General Sessions, known as a "civil action". See Rule 2 of the Federal Rules of Civil Procedure and Rule 2 of the civil rules of the Rules of the Court of General Sessions.

In subsec. (a), words "or from the date of the last order of revival thereof" are substituted for words in section 15–101 of D.C. Code, 1961 ed., "or from the date of the last revival thereof under scire facias". The writ of scire facias was abolished, with respect to all district courts, by Rule 81(b) of the Federal Rules of Civil Procedure, which further provides that the relief theretofore available by scire facias may be obtained by appropriate action or motion under the practice prescribed in those rules. In the United States District Court for the District of Columbia, a judgment may be revived by motion and hearing. See Rule 30 of that Court's local civil rules.

For the same reason as given above words "nor may it be revived" are, in subsec. (b), substituted for "nor any scire facias [issued]" which appeared in section 15–102 of D.C. Code, 1961 ed.

When sections 15–101 and 15–102 of D.C. Code, 1961 ed., were enacted in 1901, the reference in section 15–101 to the municipal court read "justice of the peace court". The act of 1909, cited above, changed the name to "municipal court". The court continued to have civil jurisdiction only until its merger in 1942 with the Police Court. Now (as the Court of General Sessions), it has a civil division and a criminal division. Therefore, for the purpose of clarity, in clause (2) of subsec. (a) of this section, "civil division of the District of Columbia Court of General Sessions" is substituted for the reference in section 15–101 of D.C. Code, 1961 ed., to the "municipal court".

Changes are made in phraseology and arrangement

CROSS REFERENCES

Action of account, see § 16–101.

Adoption proceedings, final or interlocutory decree, see § 16–218.

Foreign judgments, see § 12–307.

Interest on judgments, see §§ 15–108 to 15–110.

NOTES TO DECISIONS UNDER PRIOR LAW

In general

This section must be considered when construing § 1535c of the 1901 Code (§ 13–214). *International Exch. Bank* v. *Pullo* (1923, 285 F. 933, 52 App. D.C. 199).

Judgment of condemnation before ultimate determination of all claims in case has been had does not, in all circumstances, operate to permit garnishee, without risk of liability, to release balance of assets garnished, and matter depends on determination as to which of the parties, plaintiff or garnishee, was at fault in permitting situation to develop. *J. M. Zamoiski Co.* v. *Discount Sales Co.* (D.C.D.C. 1960, 187 F. Supp. 663).

Where garnishee, before it was called on to pay out any attached money, received letter from plaintiff's counsel stating that plaintiff had moved for summary judgment in certain amount, and that such sum would be condemned as soon as judgment was entered, and that it would be necessary for garnishee to hold balance of attached funds until determination of case, and thereafter partial judgment and judgment of condemnation had thereon both recited that the judgment was a partial judgment, and garnishee inadvertently released balance of attached funds before final judgment was entered for plaintiff, plaintiff was entitled to satisfaction of the final judgment by condemnation. *Id.*

Abrogation of common law

Sections 1212 to 1215, inclusive [§§ 15–101 to 15–103, 15–107], and § 1078 of the code [§ 15–205] completely abrogate the rule of the common law on the subject of the limitation and revival of judgments in the District of Columbia. "Twelve years is fixed by statute as the life of a judgment under our code, and at any time during that period the writ of scire facias may be issued by the creditor for the revival of the judgment by merely filing a praecipe with the clerk." *Simpson* v. *Minnix* (1908, 30 App. D.C. 582).

Decisions under prior laws

See *Mann* v. *Cooper* (1894, 2 App. D.C. 226). See, also, *Galt* v. *Todd* (1895, 5 App. D.C. 350); *Mann* v. *McDonald* (1895, 6 App. D.C. 548).

Historical

"This section [section 12–203] prescribes two rules of limitation. By the first, all judgments barred by the law of the place of recovery are barred in the District. By the second, if not barred by the law of the place of recovery, still no action can be brought on any such judgment rendered more than ten years before the commencement of the action. On June 30, 1902, section 1267 [section 12–203] was amended by striking therefrom the last part * * * in which the second rule aforesaid is embodied." *McKay* v. *Bradley* (1906, 26 App. D.C. 449).

Motions

A writ of scire facias, now replaced in District of Columbia by motion, may be contested. *Michael* v. *Smith* (1955, 221 F. 2d 59, 95 U.S. App. 186, 52 A.L.R. 2d 667).

Municipal court judgment

A judgment of the municipal court docketed in the Supreme Court was enforceable for 12 years from the date it was so docketed. *Brown* v. *Allen E. Walker & Co.* (1928, 26 F. 2d 545, 58 App. D.C. 173).

Prior judgment

Where plaintiff brought suit against United States based upon a prior judgment, and no issues were raised not already litigated, and plaintiff sought nothing more than reaffirmation of first judgment, the first judgment was a bar to instant suit. *Citizens Bank and Trust Co. etc.* v. *United States* (1957, 240 F. 2d 863, 100 U.S. App. D.C. 1, certiorari denied 78 S. Ct. 31, 355 U.S. 825, 2 L. Ed. 2d 38, rehearing denied 78 S. Ct. 146, 355 U.S. 885, 2 L. Ed. 2d 115).

Recognizance

A fortified recognizance is not a "judgment" within this section fixing period of limitation in which a judgment is enforceable by execution. *Walsh* v. *United States* (1955, 220 F. 2d 488, 95 U.S. App. D.C. 123).

Revival

Judgments not satisfied, and not revived within 12-year period of limitations, were extinct, and no longer subsisted, for purposes of execution thereon. *G. A. Lee* v. *G. A. England et al.* (D.C.D.C. 1962, 206 F. Supp. 957).

Judgment becomes extinct at expiration of 12 years unless revived by scire facias within that time. *Dutton* v. *Parish* (1910, 34 App. D.C. 393).

Tolling of statute of limitations

Where judgment was entered in favor of appellant in 1934 against one who, though a citizen, was in enemy country, the statute of limitations was suspended during World War II, and an order denying motion to revive and extend the judgment should be reversed. *Salvoni* v. *Pilson* (1950, 181 F. 2d 615, 86 U.S. App. D.C. 227, certiorari denied 70 S. Ct. 1030, 339 U.S. 981, 94 L. Ed. 922).

Validity of extension order

Under District of Columbia law, where motion for renewal of money judgment was made within 12 years of date of judgment, order extending judgment was valid even though entered day after expiration of 12 year period. *Michael* v. *Smith* (1955, 221 F. 2d 59, 95 U.S. App. D.C. 186, 52 A.L.R. 2d 667).

A writ of scire facias, now replaced in District of Columbia by motion, may be contested. *Id.*

§ 15–102. Lien of judgment, decree, or forfeited recognizance

(a) Each—

(1) final judgment or decree for the payment of money rendered in the United States District Court for the District of Columbia from the date when it is rendered.

(2) final judgment or decree rendered in the civil division of the District of Columbia Court of General Sessions, from the date such judgment or decree is filed and recorded in the office of the Recorder of Deeds of the District of Columbia.

(3) recognizance taken by the United States District Court for the District of Columbia, or a judge thereof, from the date when such recognizance is declared forfeited, and

(4) recognizance taken by the criminal division of the District of Columbia Court of General Sessions, or a judge thereof, from the date the entry or order of forfeiture of such recognizance is filed and recorded in the office of the Recorder of Deeds of the District of Columbia,

shall constitute a lien on all the freehold and leasehold estates, legal and equitable, of the defendants bound by such judgment, decree, or recognizance, in any land, tenements, or hereditaments in the District of Columbia, whether the estates are in possession or are reversions or remainders, vested or contingent. Such liens on equitable interests may be enforced only by an action to foreclose.

(b) Liens created as provided by this section continue as long as the judgment, decree, or recognizance is in force or until it is satisfied or discharged. (Dec. 23, 1963, 77 Stat. 523, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; Nov. 2, 1966, 80 Stat. 1177, 1178, Pub. L. 89–745, §§ 2, 7.)

AMENDMENTS

Section 2(a) of act Nov. 2, 1966, amended subsec. (a) primarily to provide for recordation, in the office of Recorder of Deeds, rather than in clerk's office of District Court, of judgments and decrees of civil division of Court of General Sessions, and of forfeited recognizances taken by criminal division of that court, or a judge thereof, before such judgments, decrees, or forfeited recognizances may become liens; and to add a sentence that such liens on equitable interests may be enforced only by an action to foreclose.

Section 2(b) of act Nov. 2, 1966, repealed a former subsec. (b) of this section, and designated subsec. (c) as subsec. "(d)". Said former subsec. (b) had provided for recordation of forfeited recognizance taken in a criminal division of the Court of General Sessions, in the clerk's office of the District Court, with the same effect as if taken in the District Court.

REPEAL OF PRIOR 1966 AMENDMENT

Section 7 of act Nov. 2, 1966, repealed act July 5, 1966, 80 Stat. 264, Pub. L. 89–493, § 9, which effective on first day of first month which was at least 90 days after July 5, 1966, had added two clauses to subsec. (a) of this section designated "(4)" and "(5)" and reading as follows:

"(4) recognizance taken by the criminal division of the District of Columbia Court of General Sessions, or judge thereof, from the time when it is declared forfeited (if the forfeiture occurred on or after the effective date of this clause); and

"(5) judgment or decree rendered in the civil division of the District of Columbia Court of General Sessions after the effective date of this clause—".

and, in a former subsec. (b) of this section (see 1966 amendment note above), had substituted "forfeited prior to the effective date of subsection (a)(4)" for "after being forfeited". For effective date of the repeal, see § 8(d) of such act Nov. 2, 1966, set out as a note under § 15–101.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment made by act Nov. 2, 1966, § 2, to this section, as applicable only with respect to judgment or decree rendered, or recognizance declared forfeited, by U.S. District Court for District of Columbia or District of Columbia Court of General Sessions on and after Nov. 1, 1966, see § 8(a)(1) of such act, set out as a note under § 15–101.

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 15–103 (Mar. 3, 1901, ch. 854, § 1214, 31 Stat. 1381; June 30, 1902, ch. 1329, 32 Stat. 542; Feb. 17, 1909, ch. 134, 35 Stat. 623; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, § 1, 56 Stat. 190; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section is derived from section 15–103 of D.C. Code, 1961 ed.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

In subsec. (a), the reference "civil division of the District of Columbia Court of General Sessions" is substituted for "municipal court", and, in subsec. (b), the reference "criminal division of the Court of General Sessions" is substituted for "municipal court". See revision note under section 15–101 herein.

Changes are made in phraseology and arrangement.

CROSS REFERENCES

Docketing judgments rendered in the Court of General Sessions, see § 15–132.

Execution on forfeited recognizance, see § 16–709.

Fees of recorder of deeds, see § 45–708.

Issuance of execution, see § 15–302.

Purchase money lien, see § 15–104.

NOTES TO DECISIONS UNDER PRIOR LAW

Acquisition after judgment

Judgement lien attaches to after-acquired real estate by the judgment debtor, but only to the extent of actual title which the debtor has therein. *Atlas Portland Cement Co.* v. *Fox* (1920, 265 F. 444, 49 App. D.C. 292).

Conveyance, real estate

A judgment at law is not a lien upon real estate in the City of Washington, which, before the judgment was rendered, had been conveyed to trustees with a power of sale to secure the payment of the debts of the grantor described in the deed of trust. *Morsell* v. *First Nat. Bank* (1875, 91 U.S. 357, 1 Otto 357, 23 L. Ed. 436).

Creditors

The statutory reference to "creditors" in the recording acts includes a good faith judgment creditor holding a statutory lien obtained under the statute without the necessity of such creditor executing his lien by attachment or by filing a bill in equity. *Osin* v. *Johnson et al.* (1957, 243 F. 2d 653, 100 U.S. App. D.C. 230).

Effective date of lien

Where Court of Appeals set aside district court judgment for plaintiff and remanded case for further proceedings, plaintiff's lien on defendant's real estate attached on date district court entered judgment in plaintiff's favor after remand. *F. S. Bowen Electric Co., Inc.* v. *J. D. Hedin Construction Co., Inc.* (1963, 316 F. 2d 362, 114 U.S. App. D.C. 361).

Equitable estate

A final judgment at common law is made a lien, not only upon the legal, but as well upon the equitable, interests in real estate of the judgment debtor from the date when the same is rendered. *Reilly* v. *Sabin* (1936, 81 F. 2d 259, 65 App. D.C. 125).

Jury trial

Where vendor conveyed property and grantee without disclosing the vendor's prior unrecorded lien against his

title, borrowed money from defendant executing deeds of trust against the property and foreclosure proceedings were thereafter commenced, vendor's suit for equitable relief against foreclosure proceedings and judgment creditors of the grantee was properly heard by the trial court without a jury, since the suit was addressed to the equity jurisdiction of the court. *Osin* v. *Johnson et al.* (1957, 243 F. 2d 653, 100 U.S. App. D.C. 230).

Priority in time

A judgment prior in time will take priority over a subsequent judgment, as a lien against defendant's property, although the subsequent judgment debtor has been to considerable trouble and expense in uncovering debtor's equitable interests. *Ginder* v. *Giuffrida* (1933, 62 F. 2d 877, 61 App. D.C. 338).

Real estate

Where judgment was obtained for nonpayment of cost of an oil burner and a copy of the judgment was filed in the District Court as permitted by law, it became a lien upon appellant's real property. *Clark* v. *General Electric Credit Corp.* (D.C. Mun. App. 1950, 72 A. 2d 43).

Recognizance

A forfeited recognizance is not a "judgment" within statute fixing period of limitation in which a judgment is enforceable by execution. *Walsh* v. *United States* (1955, 220 F. 2d 488, 95 U.S. App. D.C. 123).

Trust encumbrance

Where the real estate involved was encumbered by two trusts, the provisions of this section are directly applicable. *Biggs* v. *Campbell* (1917, 46 App. D.C. 288). See, also, *Carroll* v. *Elkins* (1929, 29 F. 2d 638, 58 App. D.C. 265).

Vacation of judgment

Where, after action by real estate broker for commission allegedly due from defendant for sale of her house had been dormant for 2½ years, trial date was set but continuance was granted, and, three months later, default judgment for broker was entered subject to ex parte proof, and, 10 months later, judgment on ex parte proof was awarded broker, defendant would, when broker sought to enforce his lien five years later, be entitled to have judgment vacated, in absence of showing that proper notice had been given defendant, and even though defendant, pending settlement negotiations, had waited four months after receiving notice before moving to vacate judgment. *Cahan* v. *Cokas, etc.* (D.C. Mun. App. 1960, 166 A. 2d 266).

§ 15–103. Effect of revival

An order of revival issued upon a judgment or decree during the period of twelve years from the rendition or from the date of an order reviving the judgment or decree, extends the effect and operation of the judgment or decree with the lien thereby created and all the remedies for its enforcement for the period of twelve years from the date of the order. (Dec. 23, 1963, 77 Stat. 523, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–107 (Mar. 3, 1901, ch. 854, § 1215, 31 Stat. 1381).

The provisions are reworded not only to make phraseological changes, but also to refer to "order of revival" and "order", rather than "scire facias" and "fiat". See revision note under section 15–101 herein.

CROSS REFERENCE

Execution against specific property, see § 16–555.

NOTES TO DECISIONS UNDER PRIOR LAW

Conversion into action

Scire facias is a judicial writ, which may, however, be converted into an action by appearance and plea thereto by defendant, and if not so converted, it remains a judicial writ merely, the life of which is ended and its force spent after a year and a day from the date of issuance. *Collins* v. *McBlair* (1907, 29 App. D.C. 354).

Motion

A writ of scire facias, now replaced in District of Columbia by motion, may be contested. *Michael* v. *Smith* (1955, 221 F. 2d 59, 95 U.S. App. D.C. 186, 52 A.L.R. 2d 667).

Scire facias

To support the scire facias, it is incumbent upon the plaintiff in the judgment to show that the judgment debtor had title to the land. *Roller* v. *Caruthers* (1895, 5 App. D.C. 368).

A plea to scire facias to revive a judgment entered upon power of attorney to confess judgment is sufficient which states that the defendant was never served with process, hadn't authorized anyone to appear for him, nor confessed judgment, nor waived service of process, nor submitted himself to the jurisdiction of the court. *Harper* v. *Cunningham* (1896, 8 App. D.C. 430).

Sufficiency

A scire facias to enforce a judgment, addressed to named parties as devisees of judgment debtor is fatally defective as it does not allege that judgment debtor was dead at the time the writ was issued, that he left a will under which addressees succeeded as sole devisees, and failed to describe this realty. *Waters* v. *Taylor* (1923, 284 F. 639, 52 App. D.C. 135).

Tolling of statute of limitations

Where judgment was entered in favor of appellant in 1934 against one who, though a citizen, was in enemy country, the statute of limitation was suspended during World War II, and an order denying motion to revive and extend the judgment should be reversed. *Salvoni* v. *Pilson* (1950, 181 F. 2d 615, 86 U.S. App. D.C. 227, certiorari denied 70 S. Ct. 1030, 339 U.S. 981, 94 L. Ed. 922).

Validity of extension order

Under District of Columbia law, where motion for renewal of money judgment was made within 12 years of date of judgment, order extending judgment was valid even though entered day after expiration of 12 year period. *Michael* v. *Smith* (1955, 221 F. 2d 59, 95 U.S. App. D.C. 186, 52 A.L.R. 2d 667).

§ 15–104. Priority of liens

The lien of a mortgage or deed of trust upon real property, given by the purchaser to secure the payment of the whole or any part of the purchase-money, is superior to that of a previous judgment or decree against the purchaser. (Dec. 23, 1963, 77 Stat. 523, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–108 (Mar. 3, 1901, ch. 854, § 1216, 31 Stat. 1381).

Changes are made in phraseology.

§ 15–105. Decree confirming sale of property; effect; ordering conveyance

A decree confirming the sale of real or personal property sold pursuant to a decree, divests the right, title, or interest sold out of the former owner, party to the action, and vests it in the purchaser, without any conveyance by the officer or agent of the court conducting the sale. The decree constitutes notice to all persons of the transfer of title when a copy thereof is registered among the land-records of the District. In particular cases, the court may order its officer or agent to make a conveyance, if that mode is deemed preferable. (Dec. 23, 1963, 77 Stat. 523, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–109 (R.S.D.C., § 793; Comp. Stat. D.C., p. 75, § 6).

The second reference to "decree" is substituted for "decree in equity", as, under the Federal Rules of Civil Procedure, there is only one form of action in district courts, which is designated as a "civil action". See Rule 2.

Changes are made in phraseology.

CROSS REFERENCE

Judgment in mortgage foreclosure, see § 45–616.

§ 15–106. Judgment and damages assessed in actions on bonds or penal sums

(a) In a civil action on a bond or on a penal sum for the nonperformance of covenants or agreements contained in an indenture, deed, or writing, the plaintiff may assign as many breaches as he chooses. Damages shall be assessed for such breaches as he proves and judgment rendered for the whole penalty, but execution shall issue for as much only as is found in damages, with costs.

(b) In an action brought under subsection (a) of this section, upon judgment for the plaintiff on motion, default, or confession, the plaintiff may assign as many breaches as he chooses, the truth of which shall be determined. The damages shall be assessed and execution shall issue for such damages only, with costs.

(c) Payment into court, after entry of judgment and prior to the issuance of execution, of the amount of the damages and costs assessed, for the use of the plaintiff or his representatives, stays execution, and the stay shall be entered on the record. Payment to the plaintiff or his representatives, after execution, of the amount of the damages and costs assessed, together with all fees and other reasonable costs of execution, forthwith discharges the defendant's real and personal property from execution, and the discharge shall be entered on the record. However, the judgment shall remain as a security to the plaintiff or his representatives for any other breaches which he or they afterwards prove. From time to time, the plaintiff may, by motion and hearing, with reasonable notice to the defendant, assign other breaches, and damages shall be assessed for such breaches as he proves, with costs. Payment into court, before execution, or to the plaintiff or his representative, after execution, as herein described, has the same effect as hereinbefore directed.

(d) In proceedings under this section, the right of trial by jury, as to issues of fact and the amount of damages to be assessed, is preserved.

(e) This section is subject to section 28–2502 of this Code and to section 1874 of Title 28, United States Code. (Dec. 23, 1963, 77 Stat. 523, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; Aug. 30, 1964, 78 Stat. 677, Pub. L. 88–509, § 3(a).)

AMENDMENT

1964—Section 3(a) of act Aug. 30, 1964, amended subsection (e) by changing the reference from 28–2405 to 28–2502.

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 13–205, 15–111 (8 and 9 Wm. 3, ch. 11, § 8, 1697; Kilty Rep., p. 244; Alex Br. Stat., p. 604; Comp Stat. D.C., p. 69, § 14).

Section consolidates sections 13–205 and 15–111 of D.C. Code, 1961 ed., which respectively were derived from different parts of section 8 of the statute of 8 and 9 William III, chapter 11.

The statute of 8 and 9 William III was made applicable in the District of Columbia by section 1 of the Code of 1901 (act. Mar. 3, 1901, ch. 854, § 1, 31 Stat. 1189; D.C. Code, 1961 ed., § 49–301; see also, act Feb. 27, 1801, ch. 15, § 1, 2 Stat. 103). Prior to its enactment in 1697, in the common-law courts the plaintiff, if entitled to a recovery, was entitled to the penal sum, unless the amount was subsequently reduced in equity. The object of the statute was to empower, or perhaps require, common-law courts to limit recovery to the actual damages sustained, with costs, and thus obviate the necessity for the judgment debtor to go into equity for relief. In most jurisdictions, its principles have been generally adopted, either by statute or as a part of the common law; and, in some jurisdictions, as apparently in the District of Columbia, the provision of the British statute permitting judgment for the full amount of the penal sum (to remain as security to the plaintiff for further breaches) but limiting each execution to the amount of damages actually sustained, with costs, is retained. See (in addition to sections 13–205 and 15–111 of D.C. Code, 1961 ed.) Illinois Revised Statutes 1955, ch. 110, § 53, as amended by L. 1955 (approved July 19, 1955), p. 2238 (2261), H.B. No. 439; Vermont Statutes Annotated, Title 12, § 5242 et seq.

Section 13–205 of D.C. Code, 1961 ed., provided as follows:

"In all actions which shall be commenced or prosecuted in any courts of record, upon any bond or bonds, or on any penal sum for nonperformance of any covenants or agreements in any indenture, deed, or writing contained, the plaintiff or plaintiffs may assign as many breaches as he or they shall think fit, and the jury, upon trial of such action or actions, shall and may assess, not only such damages and costs of suit as have heretofore been usually done in such cases, but also damages for such of the said breaches so to be assigned, as the plaintiff upon the trial of the issues shall prove to have been broken, and that the like judgment shall be entered on such verdict as heretofore hath been usually done in such like actions; and if judgment shall be given for the plaintiff on a demurrer, or by confession, or nihil dicit, the plaintiff upon the roll may suggest as many breaches of the covenants and agreements as he shall think fit, upon which a jury shall inquire of the truth of every one of those breaches, and assess the damages that the plaintiff shall have sustained thereby."

Section 15–111 of the Code provided, as follows:

"In any action upon any bond or bonds, or on any penal sum for nonperformance of any covenants or agreements in any indenture, deed or writing contained in case the defendant or defendants, after judgment entered, and before any execution executed, shall pay unto the court where the action shall be brought, to the use of the plaintiff or plaintiffs, or his or their executors or administrators, such damages, so to be assessed, by reason of all or any of the breaches of such covenants, together with the costs of suit, a stay of execution of the said judgment shall be entered upon record; or if by reason of any execution executed, the plaintiff or plaintiffs, or his or their executors or administrators shall be fully paid or satisfied all such damages so to be assessed, together with his or their costs of suit, and all reasonable charges and expenses for executing the said execution, the lands, or goods of the defendant, shall be thereupon forthwith discharged from the said execution, which shall likewise be entered upon record; but notwithstanding in each case such judgment shall remain, continue, and be, as a further security to answer to the plaintiff or plaintiffs, and his or their executors or administrators, such damages as shall or may be sustained for further breach of any covenant or covenants in the same indenture, deed, or writing, contained, upon which the plaintiff or plaintiffs may have a scire facias upon the said judgment against the defendant, or against his heir, terre-tenants, or his executors or administrators suggesting other breaches of the said covenants, or agreements, and to summon him or them respectively to show cause why execution shall not be had or awarded upon the said judgment, upon which there shall be the like proceeding as was in the action of debt upon the said bond or obligation for assessing of damages upon trial of issues joined upon such breaches or inquiry thereof, upon a writ to be awarded in manner as aforesaid; and upon payment or satisfaction in manner as aforesaid, of such future damages, costs, and charges, as aforesaid, all further proceedings on the said judgment are again to be stayed and so toties quoties, and the defendant's lands or goods shall be discharged out of execution, as aforesaid.".

There may be a question as to how much of these old sections is still in force, considering later enactments. For example, section 28–2405 of D.C. Code, 1961 ed., provides, as follows: "A bond in a penal sum, containing a

condition that it shall be void on the payment of a certain sum of money, or the performance of an act, or of certain duties, shall have the same effect for the purpose of maintaining an action upon it as if it contained a covenant to pay the money or perform the act or duties specified in the condition. But the damages to be recovered for a breach, or successive breaches, of the condition, as against the sureties therein, shall not exceed the penalty of the bond.". Section 1874 of Title 28, United States Code, provides, as follows: "In all actions to recover the forfeiture annexed to any articles of agreement, covenant, bond, or other specialty, wherein the forfeiture, breach, or nonperformance appears by default or confession of the defendant, the court shall render judgment for the plaintiff for such amount as is due. If the sum is uncertain, it shall, upon request of either party, be assessed by a jury.". It will be noted that in those provisions the judgment, if it is by default or confession of the defendant, is for the amount found to be due, rather than for the entire penal sum. But it does not seem that those two sections, even when taken together, supersede or cover all the provisions of sections 13–205 and 15–111 of D.C. Code, 1961 ed., and accordingly they are consolidated and brought into this revised section.

In the consolidation, the language is modernized, all surplusage omitted, and some of the provisions are changed to conform, as nearly as can be determined, with modern practice and procedure as established by court rules. To this end, "civil action" is substituted for "action", to conform with Rule 2 of the Federal Rules of Civil Procedure, which provides that in district courts there shall be one form of action, to be known as a "civil action". See, also, Rule 2 of the civil rules of the District of Columbia Court of General Sessions, which contains a similar provision.

In subsec. (b), "motion" is substituted for "demurrer", as demurrers were abolished by Rule 7(c) of the Federal Rules of Civil Procedure and Rule 7(c) of the civil rules of the Court of General Sessions. Under other provisions of those rules, the procedure under demurrer was superseded by procedure by motion. See, for example, Rules 7 and 12.

In subsec. (c) of this section, words "motion and hearing, with reasonable notice to defendant," are substituted for the reference in section 15–111 of the D.C. Code, 1961 ed., to scire facias. Rule 81(b) of the Federal Rules of Civil Procedure abolished the writ of scire facias, and provides that the remedies theretofore available thereby may be obtained by appropriate action or appropriate motion under the practice prescribed in those rules. See, also, Rule 30 of the local rules of the United States District Court for the District of Columbia, providing that a judgment may be revived against a judgment debtor on motion, with service of notice.

Subsec. (d) of this section preserves the right of jury trial as to issues of fact and the amount of damages to be assessed, in cases where such right exists. Section 13–205 provides for jury trial in the original action, even if the judgment was rendered by demurrer, confession, or "nihil dicit"; and a jury trial to assess further damages, under scire facias, in case of additional breaches, was implied in section 15–111 of the Code ("upon which there shall be the like proceeding as was in the action of debt upon the said bond or obligation for assessing of damages upon trial of issues joined upon such breaches or inquiry thereof"). However, it appears that in cases under the above-quoted section 1874 of Title 28, United States Code, where the judgment is by default or confession, the damages are assessed by a jury only if the sum is uncertain and either party requests that procedure. This right to demand a jury assessment is preserved in Rule 55 of the Federal Rules of Civil Procedure, relating to default judgments. Rule 55 of the civil rules of the Court of General Sessions is similar to Rule 55 of the Federal Rules of Civil Procedure, except that it contains no reference to according a right of trial by jury (to assess damages) if required by statute.

Subsec. (e), while new, makes no change in substance. It is inserted to make it clear that this section does not affect section 28–2405 of D.C. Code, 1961 ed., and section 1874 of Title 28, United States Code (both quoted above), and that it is subject to the provisions of those sections.

§ 15–107. Setting off judgments

Where reciprocal claims between different parties have passed into judgments the court, on motion, may order that the judgments be set off against each other and satisfaction of both be entered to the amount of the smaller claim. (Dec. 23, 1963, 77 Stat. 524, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1909 (Mar. 3, 1901, ch. 854, § 1571, 31 Stat. 1424).

Words "in its discretion," are omitted as surplusage. A minor change is made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Authority discretionary

Where attorney was to be paid out of a judgment, his interest is in the nature of an equitable lien and the court ought not to exercise its discretionary authority and allow another judgment to be set off against it when the effect would be to absorb the fund out of which appellees are entitled to be paid. *Continental Casualty Co.* v. *Kelly* (1939, 106 F. 2d 841, 70 App. D.C. 320).

§ 15–108. Interest on judgment for liquidated debt

In an action in the United States District Court for the District of Columbia to recover a liquidated debt on which interest is payable by contract or by law or usage the judgment for the plaintiff shall include interest on the principal debt from the time when it was due and payable, at the rate fixed by the contract, if any, until paid. (As added Aug. 30, 1964, 78 Stat. 677, Pub. L. 88–509, § 3(b)(1).)

NOTES TO DECISIONS UNDER PRIOR LAW

Assessment by court

"We do not mean by this to rule that, in a case where no question is made by either the pleadings or evidence as to the payment of interest, the court would not be authorized, under the provisions of said section 1184 (this section), to direct the assessment of interest. In such a situation the finding of the jury would, under the statute, automatically carry interest." *Metzger* v. *Metzger* (1910, 35 App. D.C. 389).

Compensation of special auditor

It is the prevailing view that costs do not bear interest unless so provided by statute, and this section does not apply to special auditor upon decree of compensation. *Davis* v. *Fidelity & Deposit Co.* (1934, 73 F. 2d 118, 63 App. D.C. 395).

Interest before judgment

Where demurrage charges by railroad against consignee were substantially in excess of those ordinarily made for such charges and embodied penalty assessments designed to expedite release of railroad cars during period of car shortage, and railroad would be more than fully compensated by less even than demurrage charges themselves, and there was no finding that interest was necessary to fully compensate the railroad, District Court erred in allowing interest prior to date of judgment for demurrage charges, *National Trucking & Storage Co., Inc.* v. *Pennsylvania Railroad Co.* (1956, 228 F. 2d 23, 97 U.S. App. D.C. 52).

In action to recover for board, including room, pretrial stipulation that sum of $50 per month for two people was a fair and reasonable sum did not turn the action for breach of contract into an action to recover "liquidated debt", and therefore plaintiff was not entitled to interest before judgment. *Shima* v. *Brown* (1943, 133 F. 2d 48, 77 U.S. App. D.C. 115, certiorari denied 63 S. Ct. 982, 318 U.S. 787, 87 L. Ed. 1154).

In action to recover for board, including room, where court erred in adding interest to jury's verdict from time action was filed, case was remanded with directions to enter judgment for damages assessed by jury with interest from time of entry of judgment until paid. *Id.*

Interest not demanded

This section and § 28–2708 do not charge a surety of government contractor with interest on claims of materialmen when there was no request or demand made. *London & Lancashire Indem. Co.* v. *Smoot* (1923, 287, F. 952, 52 App. D.C. 378).

Interest on retainages

Where contract between prime contractor and subcontractor did not provide for interest on retainages, surety was not entitled, upon subcontractor's default, to interest on retainages on subcontracts it bonded. *Glassman Construction Co.* v. *Fidelity and Casualty of New York* (1966, 356 F. 2d 340, 123 U.S. App. D.C. 1).

Liquidated debt

Accommodation endorser's counterclaim against maker of note upon which endorser had incurred liability was for a liquidated amount and interest was payable by law and usage, and consequently under the District of Columbia statutes the interest should have been awarded from the date the obligation became due. *Rosden* v. *Leuthold* (1960, 274 F. 2d 747, 107 U.S. App. D.C. 89).

Section 28–2708, permitting interest when jury determines that it is necessary to fully compensate the plaintiff, is not applicable where action is to recover liquidated indebtedness, and in such case this section is applicable *Blustein* v. *Eugene Sobel Co., Inc.* (1959, 263 F. 2d 478 105 U.S. App. D.C. 32).

In action for damages for breach of warranty in contract for purchase by plaintiff of capital stock of corporation engaged in wholesale jewelry business that corporation's books of account included accurate and complete record of all liabilities of corporation for income taxes jury was properly directed to include interest on amount which plaintiff had paid for corporation's deficiency income taxes, penalty and interest from date tax was due, since indebtedness of defendant to plaintiff became a "liquidated debt" within meaning of this section providing for interest on judgments for a "liquidated debt," when settlement was entered into and payment was made by plaintiff in accordance with settlement. *Id.*

Rate of interest

Judgment for shipbuilder and ship company for balance due for construction of ship would include interest from date claims became due, and where rate was not fixed by contract, statutory six per cent rate would be applied. *Bethlehem Steel Co., Inc.* v. *Lykes Bros. Steamship Co. Inc.* (1964, 35 F.R.D. 344).

Reforming the verdict

Where in a suit on a promissory note for $2,500 (with interest at 6 per centum) the defendant files a plea of the general issue and the statute of limitations, and the jury returns a verdict for the plaintiff "in the sum of $2,500 and costs," the court, on appeal (in the absence of a bill of exceptions containing the evidence introduced), will reverse the action of the trial justice in reforming the verdict so as to include interest. *Metzger* v. *Metzger* (1910, 35 App. D.C. 389).

Termination of contract

All that the plaintiff was entitled to recover was the principal sum, with interest at the legal rate after the termination of the contract rate, less the credits which she had admitted. *Richards* v. *Bippus* (1901, 18 App. D.C. 293).

§ 15–109. Interest on judgment for damages in contract or tort

In an action to recover damages for breach of contract the judgment shall allow interest on the amount for which it is rendered from the date of the judgment only. This section does not preclude the jury, or the court, if the trial be by the court, from including interest as an element in the damages awarded, if necessary to fully compensate the plaintiff. In an action to recover damages for a wrong the judgment for the plaintiff shall bear interest. (As added Aug. 30, 1964, 78 Stat. 677, Pub. L. 88–509, § 3(b)(1).)

NOTES TO DECISIONS UNDER PRIOR LAW

In general

Under the statutory provision in this jurisdiction, vesting as it does a broad measure of discretion in the jury or trial court, the court should not lightly disturb the finding of the trial judge in allowing interest as an element of damage in action for breach of contract. *Flanaghan* v. *Charles T. Thompkins Co.* (1950, 182 F. 2d 92, 86 U.S. App. D.C. 307).

Neither an abuse of discretion by the trial court nor lack of compliance by it with the statutory standard govern the allowance of interest though uncertainties exist as to amounts due. The long delay of the special master in making his report is also an argument against awarding interest where these arguments are offset by other compensatory factors. *Dyker Bldg. Co., to Use of Parreco* v. *United States* (1950, 182 F. 2d 85, 86 U.S. App. D.C. 297).

Interest before judgment

Where demurrage charges by railroad against consignee were substantially in excess of those ordinarily made for such charges and embodied penalty assessments designed to expedite release of railroad cars during period of car shortage, and railroad would be more than fully compensated by less even than demurrage charges themselves, and there was no finding that interest was necessary to fully compensate the railroad, District Court erred in allowing interest prior to date of judgment for demurrage charges. *National Trucking & Storage Co., Inc.* v. *Pennsylvania Railroad Co.* (1956, 228 F. 2d 23, 97 U.S. App. D.C. 52).

Liquidated debt

Beneficiary recovering from insurer on life policy would be entitled to interest on face amount, and rate would be statutory 6% per annum, where policy specified no rate of interest. *J. Messina* v. *Mutual Benefit Health and Accident Ass'n* (D.C.D.C. 1964, 228 F. Supp. 865).

Accommodation endorser's counterclaim against maker of note upon which endorser had incurred liability was for a liquidated amount and interest was payable by law and usage, and consequently under the District of Columbia statutes the interest should have been awarded from the date the obligation became due. *Rosden* v. *Leuthold* (1960, 274 F. 2d 747, 107 U.S. App. D.C. 89).

This section is not applicable where action is to recover liquidated indebtedness, and in such case § 28–2707 dealing with interest on judgments for liquidated debt is applicable. *Blustein* v. *Eugene Sobel Co., Inc.* (1959, 263 F. 2d 478, 105 U.S. App. D.C. 32).

Special auditor

Special auditor cannot recover interest upon decree of compensation, as this section provides an action to recover damages for breach of contract. *Davis* v. *Fidelity & Deposit Co.* (1934, 73 F. 2d 118, 63 App. D.C. 395).

Trustee

A trustee who purchases a second trust deed note at discount and thereafter purchases at his own foreclosure sale, attempting to enforce his personal lien, is nevertheless acting as trustee and beneficiary is entitled to an accounting of all profits on the sale as well as of interest and principal payments to trustee; trustee is entitled to reimbursement for reasonable and lawful expenses incurred and to interest on unpaid loan to trust. *Earll* v. *Picken* (1940, 113 F. 2d 150, 72 App. D.C. 91).

§ 15–110. Interest on judgment on contracts made elsewhere

In an action on a contract for the payment of a higher rate of interest than is lawful in the District, made or to be performed in a State or territory of the United States where such a contract rate of interest is lawful, the judgment for the plaintiff shall include the contract interest to the date of the judgment and interest thereafter at the rate of 6 per cent per annum until paid. (As added Aug. 30, 1964, 78 Stat. 678, Pub. L. 88–509, § 3(b)(1).)

§ 15–111. Counsel fee in proceeding on bond or undertaking

In a proceeding in the United States District Court for the District of Columbia to recover damages upon a bond or undertaking given to obtain a restraining order or preliminary or pendente lite injunction, the Court, in assessing damages to be recovered thereunder, may include such reasonable counsel fees as the party damaged by the restraining order or injunction may have incurred in obtaining a dissolution thereof. (As added Aug. 30, 1964, 78 Stat. 678, Pub. L. 88–509, § 3(b)(1).)

AMENDMENT

1964—Section 3(b)(1) of act Aug. 30, 1964, amended subchapter I of chapter 1 of title 15, by adding sections 15–108 to 15–111.

NOTES TO DECISIONS UNDER PRIOR LAW

Attorney fees allowed

Attorney fees, incurred in procuring the dissolution of an injunction improperly issued, are recoverable as damages upon the injunction bond, whether the dissolution of the wrongful injunction be obtained by interlocutory or final decree. *Local Union No. 368* v. *Barker Painting Co.* (1928, 24 F. 2d 879, 58 App. D.C. 51).

Counsel fees are not allowed in action on injunction bond after successfully defending action on contract and defeating injunction. *Stanfield* v. *Vollbehr* (1932, 60 F. 2d 670, 61 App. D.C. 239).

Addition of $2,000 attorneys' fees as part of damages for wrongful injunction against sale of property under a trust deed was unauthorized under the circumstances. *Maiatico* v. *Mortgage Security Corp.* (1932, 60 F. 2d 1081, 61 App. D.C. 245).

Sureties

Interest in excess of maximum penalty of the undertaking may become due from surety but only because of surety's own default. *Cunningham* v. *Cunningham* (1947, 157 F. 2d 859, 81 U.S. App. D.C. 300).

SUBCHAPTER II.—COURT OF GENERAL SESSIONS

§ 15–131. Judgments and executions generally; interest

In civil cases within its jurisdiction, the District of Columbia Court of General Sessions may try, hear, and determine the matter in controversy between the parties upon their allegations and proofs, and give judgment according to law; and judgments for money rendered by it bear interest from their date until paid or satisfied, unless by the terms of the judgment interest runs from an earlier date. The court may issue writs of execution in cases in which it may render judgment. (Dec. 23, 1963, 77 Stat. 524, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–724, 11–751a (Mar. 3, 1901, ch. 854, § 12, 31 Stat. 1191; June 30, 1902, ch. 1329, 32 Stat. 521; Feb. 17, 1909, ch. 134, 35 Stat. 623; Mar. 3, 1921, ch. 125, § 6, 41 Stat. 1311; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11–751a, enacted by the act of Oct. 23, 1962, changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Liability for marshal's negligence

If United States Marshal, acting within order of Municipal Court for District of Columbia issuing writ of restitution, negligently damaged property of tenant in moving it to sidewalk, neither landlord nor landlord's agent would be liable for the results of this negligence unless landlord or its agent participated in the wrongful act. *O'Neill Wilson* v. *Bittinger et al.* (1958, 262 F. 2d 714, 104 U.S. App. D.C. 403).

Liens statutory

Competing judgment liens find their support in the statute and are governed by the statute without regard to equitable principles. *Ginder* v. *Guiffrida* (1933, 62 F. 2d 877, 61 App. D.C. 338).

Stay of judgment

Defendants, upon failing to present certain defense until after adverse decision by Municipal Court of Appeals, could not thereafter relitigate the issue upon their new theory in trial court by presenting motion for stay and for reconsideration. *Shay* v. *Randall H. Hagner & Co.* (D.C. Mun. App. 1944, 38 A. 2d 617).

Time limitation on judgment

It was provided by § 12, D.C. Code of 1901, as amended by act of Mar. 3, 1921 (41 Stat. 1311), that judgments of the municipal court of the District of Columbia remained in force for six years and no more after rendition unless docketed in the Supreme Court of the District. *Brown* v. *Allan E. Walker & Co.* (1928, 26 F. 2d 545, 58 App. D.C. 173).

§ 15–132. Enforceable period of unrecorded judgments; enforcement of judgments, etc., of the District of Columbia Court of General Sessions

(a) A judgment entered by the District of Columbia Court of General Sessions shall remain in force only during the six-year period beginning on the date such judgment is entered unless it is filed and recorded in the office of the Recorder of Deeds of the District of Columbia within such six-year period. The provisions of this title relating to enforcement of judgments, executions thereon, and writs and proceedings in aid of execution thereof, shall be applicable to judgments entered on or after November 1, 1966, in the District of Columbia Court of General Sessions.

(b) A judgment of the Domestic Relations Branch of the Court of General Sessions has the same legal status as a lien upon real property as a judgment of the District Court.

(c) Upon the payment of a fee of 50 cents, the clerk of the Court of General Sessions shall prepare a copy of any judgment of the civil division of the Court, that is in force. (Dec. 23, 1963, 77 Stat. 524, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; Nov. 2, 1966, 80 Stat. 1177, 1178, Pub. L. 89–745, §§ 3(a), 7.)

AMENDMENTS

Section 3(a), of act Nov. 2, 1966, amended subsec. (a) by substituting provision that judgment entered by the Court of General Sessions shall remain in force only during the six-year period beginning on date such judgment is entered unless it is filed and recorded in office of Recorder of Deeds within such period, for provision that such a judgment shall remain in force for only six years, unless it is docketed in the office of the clerk of the United States District Court for the District of Columbia"; and by substituting provision for applicability of provisions of this title relating to enforcement of judgments, executions thereon, etc., to judgments entered on or after Nov. 1, 1966, in such court, for the following: "Upon being so docketed, the judgment has the same force and effect for all purposes as if it were a judgment of the District Court, and, unless it is so docketed, it does not become a lien upon any real property in the District. The clerk of the District Court shall charge a fee of 50 cents for docketing the judgment."

EFFECTIVE DATE OF 1966 AMENDMENTS

Amendment by act Nov. 2, 1966, § 3, to this section, as applicable only with respect to judgment or decree

rendered, or recognizance declared forfeited, by U.S. District Court for District of Columbia or District of Columbia Court of General Sessions on and after Nov. 1, 1966, see § 8(a)(1) of such act, set out as a note under §15–101.

REPEAL OF PRIOR 1966 AMENDMENT

Section 7 of act Nov. 2, 1966, cited to the text, repealed act July 5, 1966, 80 Stat. 264, Pub. L. 89–493, § 10, which, effective on first day of first month which was at least 90 days after July 5, 1966, had designated the then existing paragraph of subsec. (a) of this section as par. (1) and inserted at the beginning an exception clause "Except as provided by section 15–101", and had added a par. (2) to subsec. (a), reading as follows:

"(2) A judgment entered on or after the effective date of this paragraph in the District of Columbia Court of General Sessions may not be docketed in the Office of the Clerk of the United States District Court for the District of Columbia. The provisions of this title relating to enforcement of judgments, executions thereon and writs and proceedings in aid of execution thereof, are applicable to judgments entered on or after the effective date of this paragraph in the District of Columbia Court of General Sessions."

For effective date of the repeal, see § 8(d) of such act Nov. 2, 1966, set out as a note under § 15–101.

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–755, 11–755 note, 11–763 (Mar. 3, 1921, ch. 125, § 6, 41 Stat. 1311; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Apr. 11, 1956, ch. 204, § 106, 70 Stat. 112; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171).

Section consolidates section 6 (41 Stat. 1311) of the act of Mar. 3, 1921, ch. 125, which was set out as a note under section 11–755 of D.C. Code, 1961 ed., and which related to the Municipal Court prior to its merger, by the act of Apr. 1, 1942, with the Police Court to form the second Municipal Court, with subsec. (c) of section 11–755 of D.C. Code, 1961 ed., which related to the second Municipal Court (formed from the 1942 merger), and with the second sentence of subsec. (b) of section 11–763 of the Code, which related to the Domestic Relations Branch of the second Municipal Court.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia (the second Municipal Court referred to above) to the District of Columbia Court of General Sessions.

Section 6 of the act of Mar. 3, 1921, referred to above, provided, as follows:

"All judgments hereafter entered by said Municipal Court shall remain in force for six years and no longer, unless the same shall have been docketed in the office of the clerk of the Supreme Court of the District of Columbia as provided by law, in which event they shall be liens as is provided by Chapter XXXVIII of the Code of Law for the District of Columbia [sections 15–101 to 15–111, 15–201 to 15–218, 15–301 to 15–313, and 15–401 to 15–403 of D.C. Code, 1961 ed.] for judgments of justices of the peace. No judgment shall become a lien upon any lands, tenements, or hereditaments until so docketed."

Subsec. (c) of section 11–755 of the D.C. Code, 1961 ed., referred to above, provided, as follows:

"(c) All judgments entered by the Municipal Court for the District of Columbia [now, the District of Columbia Court of General Sessions] on or after the effective date of this Act [Act of Apr. 1, 1942] shall remain in force for six years and no longer unless the same be docketed in the office of the clerk of the United States District Court for the District of Columbia. Upon payment of a fee of 50 cents the clerk of the Municipal Court for the District of Columbia shall prepare a copy of any judgment of the said court whether heretofore rendered and in force and effective on the effective date of this Act or hereafter rendered, and the same upon being docketed with the clerk of said District Court shall have the same force and effect for all purposes as if it had been a judgment of said District Court. For the docketing of the same the clerk of said District Court shall charge a fee of 50 cents."

It would seem that, actually, the above-quoted subsec. (c) of section 11–755 of D.C. Code, 1961 ed., which was enacted in 1942, superseded the above-quoted section 6 of the act of Mar. 3, 1921, but, for the purpose of clarity, the provision of the latter that no judgment of the Municipal Court (now, Court of General Sessions), becomes a lien upon any real property in the District until docketed in the clerk's office of the District Court is carried forward into this revised section.

Words "on or after the effective date of this Act", which followed "All judgments entered by the Municipal Court for the District of Columbia" at the beginning of section 11–755(c) of D.C. Code, 1961 ed.; and words "whether heretofore rendered and in force and effective on the effective date of this Act or hereafter rendered" which in section 11–755(c) followed "shall prepare a copy of any judgment of the said court", are omitted as obsolete and unnecessary, in view of the period of time that has elapsed since section 11–755 was enacted (in 1942).

Changes are made in phraseology.

For remainder of section 11–755, see tables.

CROSS REFERENCES

Enforceable period of judgments, expiration, see § 15–101.

Lien of judgment, decree, or forfeited recognizance, see § 15–102.

§ 15–133. Satisfaction of judgment; recordation

A judgment of the civil division of the District of Columbia Court of General Sessions, or execution thereon, may not be recorded as satisfied without the receipt of the plaintiff or his attorney annexed thereto. (Dec. 23, 1963, 77 Stat. 525, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–742, 11–751a (Mar. 3, 1901, ch. 854, § 28, 31 Stat. 1194; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Words "of the civil division of the Municipal Court" are inserted for the purpose of clarity. When enacted in 1901, section 28 of the act of Mar. 3, 1901, cited above, from which the above-cited section 11–742 of D.C. Code, 1961 ed., was derived, while it made no reference to any court, was in a group of sections relating to justices of the peace, who had civil jurisdiction only. In 1909, the justice of the peace courts became the Municipal Court. Since the merger of the Municipal Court with the Police Court in 1942, when the second Municipal Court was established, the court (now, Court of General Sessions) has had a civil division and a criminal division, and it also has several special branches.

Changes are made in phraseology.

Chapter 3.—ENFORCEMENT OF JUDGMENTS AND DECREES

Sec.

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§ 15–301. Definition and applicability

As used in sections 15–302, 15–303, 15–305 to 15–307, 15–309, 15–310, 15–317, and 15–318, "judgment" includes an unconditional decree for the payment of money, and sections 15–302 to 15–318 are applicable to such a decree. (Dec. 23, 1963, 77 Stat. 525, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–218 (Mar. 3, 1901, ch. 854, § 1104, 31 Stat. 1362).

Section 15–218 of D.C. Code, 1961 ed., provided as follows:

"The aforegoing provisions (this chapter) shall be applicable to an unconditional decree in equity for the payment of money. Such decree may be revived by scire facias, and the same writs of execution may be issued thereon within the same time and have the same effect as liens, and shall be executed and returned in the same manner as if issued upon a common-law judgment.".

In the above-quoted provisions, the parenthetical reference, "(this chapter)", refers to chapter 2 of Title 15 of D.C. Code, 1961 ed., which contained the provisions carried into this revised section and sections 15–302 to 15–317 herein. As other provisions are also carried into this revised chapter, the provisions of section 15–218 of D.C. Code, 1961 ed., as herein set out, are reworded to refer to the sections containing the provisions to which section 15–218 related in D.C. Code, 1961 ed.

The provision that the decree may be revived by scire facias is omitted as obsolete. Rule 81(b) of the Federal Rules of Civil Procedure abolished the writ of scire facias, and provides that the relief theretofore available by that writ may be obtained by appropriate action or by appropriate motion under the practice prescribed in those rules. See, also, rule 54(a) of those rules providing that, as used in the rules, "judgment" includes a decree and any order from which an appeals lies, and rule 30 of the local rules of the United States District Court for the District of Columbia, which provides for revival of a judgment by motion and hearing. See, also, section 15–101 of this revised Part relating to the enforceable period of judgments and final decrees for the payment of money, and rule 54(a) of the civil rules of the Court of General Sessions, which, like Rule 54(a) of the Federal Rules of Civil Procedure, provides that, as used in those rules, "judgment" includes a decree and any order from which an appeal lies.

The remaining provisions are rewritten, but without change of substance. By providing that, as used in the sections cited, "judgment" includes an unconditional decree for the payment of money, and by making sections 15–302 to 15–318 herein applicable to any such decree, it is not necessary to retain the provision "and the same writs of execution may be issued thereon within the same time and have the same effect as liens, and shall be executed and returned in the same manner as if issued upon a common-law judgment".

In the 1901 Code, section 1104 thereof, from which section 15–218 of D.C. Code, 1961 ed., was derived, also related to attachments after judgment and after the type of decree referred to in the section. Therefore, it is also carried into subchapter II of chapter 5 of Title 16 of this revised Part.

CROSS REFERENCE

Other provisions regarding decrees, see § 15–101 et seq.

§ 15–302. Period during which writ of execution may issue; returnable period

(a) A writ of execution on a judgment in a civil action may be issued within three years after:

(1) the expiration of any stay of execution agreed to by the parties; or

(2) it first might have been issued under applicable provisions of law or rules of court.

(b) A writ of execution shall be returnable on or before the sixtieth day after its date. (Dec. 23, 1963, 77 Stat. 525, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–201 (Mar. 3, 1901, ch. 854, § 1074, 31 Stat. 1358).

Section 15–201 of D.C. Code, 1961 ed., cited above, provided as follows:

"Where the right to issue an execution is not suspended by agreement or by an injunction or by an appeal operating as a supersedeas, a writ of execution may be issued immediately on the rendition of the judgment or at any time within three years thereafter; and where the right to issue the same is suspended by any of the causes aforesaid said writ may be issued within three years after the removal of the suspension, and every such writ shall be returnable on or before the sixtieth day after its date.".

In this revised section, the provisions are, for the most part, rewritten to omit obsolete or superseded matter, and to have them conform with rules of court adopted since section 15–201 was enacted in 1901.

Rule 58 of the Federal Rules of Civil Procedure (which rules apply in the District Court), and rule 58 of the civil rules of the District of Columbia Court of General Sessions, both of which relate to entry of judgment, both provide that the judgment is not effective before entry. Rule 62 of the Federal Rules of Civil Procedure, and the civil rules of the District of Columbia Court of General Sessions, respectively, provide for stay of proceedings to enforce a judgment; and Rule 73 of the rules, respectively, relate to supersedeas bond to stay proceedings on appeal. Under Rule 62 of the Federal rules, there is an automatic stay of 10 days after entry of judgment, and under Rule 62 of the Court of General Sessions rules, there is an automatic stay of 5 days after the entry. Those rules also cover such matters as stay on motion for new trial or for judgment, injunction pending appeal, stay upon appeal, stay in favor of the United States or an agency thereof, power of appellate court to say proceedings during pendency of an appeal, or to suspend, modify, restore or grant an injunction during the pendency, and stay of judgment upon multiple claims.

In view of these rules, it is only necessary to retain in subsec. (a) of this revised section the provision that a writ of execution on a judgment may be issued within 3 years after (1) the expiration of any stay of execution agreed to by the parties (which is not covered by said rules), and (2) the date on which it first might have been issued under applicable provisions of law or rules of court. Subsec. (a) is so reworded, accordingly. In clause (2), the reference to "law" is inserted for the purpose of covering cases of stay, if any, not covered by the rules referred to above.

CROSS REFERENCES

Disability insurance benefits, exemption from execution, see § 35–717.

Exemptions, see § 15–501 et seq.

Forfeited recognizance, execution on, see § 16–709.

Fraternal benefit association benefits not subject to execution, see § 35–911.

Group life insurance benefits, exemption from execution, see § 35–718.

Landlord's lien, execution to enforce, see §§ 45–916, 45–917.

Life insurance proceeds, exemption, see § 30–213.

Motor Vehicle Safety Responsibility Act, execution against money deposits in court, see § 40–480.

Public assistance not assignable or subject to execution, see § 3–215.

Rent, payment of before goods may be seized by execution, see § 45–918.

Teacher's retirement annuity not subject to execution, see § 31–718.

Unemployment Compensation Act benefits not subject to execution except for necessaries, see § 46–318.

Wrongful death recovery, exemption of, see § 16–2703.

NOTES TO DECISIONS UNDER PRIOR LAW

Appeal as a supersedeas

"Unless an appeal operates as a supersedeas, execution of the judgment may be had immediately" *Byrne* v. *Morrison* (1905, 25 App. D.C. 72). See, also, *Sechrist* v. *Bryant* (1924, 266 F. 456, 52 App. D.C. 286).

The appellant appealed from the decree entered in the equity suit; but filed no supersedeas bond for a stay of execution upon the decree, and consequently a writ of execution might have issued at any time thereafter. *Fletcher* v. *Kellogg* (1925, 2 F. 2d 315, 55 App. D.C. 97).

Construction with other laws

If this section regarding issuance of execution was in conflict with subsequently adopted District of Columbia Emergency Rent Act, § 45–1601 et seq., to the extent of the conflict this section was required to give way to said § 45–1601 et seq. *Myers* v. *H. L. Rust, Co.* (1943, 134 F. 2d 417, 77 U.S. App. D.C. 218).

Executors and administrators

The code provides expressly for actions and judgments against executors and administrators and for the issuance of writs of fieri facias thereon, and there is no reason to doubt that this contemplates the use of attachment and garnishment. *Fishel* v, *Kite* (1940, 101 F. 2d 685, 69 App. D.C. 360, certiorari denied 59 S. Ct. 645, 306 U.S. 656, 83 L. Ed. 1054).

Final judgment

Decree of the Supreme Court of the District of Columbia in general term was not a final decree in the sense that a writ of execution can be issued upon it. *Bieber* v. *Fechheimer* (1896, 9 App. D.C. 548).

Power of court to vacate sale

Until the sheriff or marshal makes return of the writ and of the manner of his service of it, and the court is enabled to judge of the propriety of such service, the debtor can not be barred of his right of objection and to have the sale vacated on the ground of irregularity and it is only required of him that he should act promptly before any rights of innocent parties have intervened. *Hart* v. *Hines* (1897, 10 App. D.C. 366).

There is a difference between an attempt by a court to revise one of its judgments, after the expiration of the term in which that judgment was entered, and the assertion by the court of power to set aside an execution sale and this is especially true when the sale had not been confirmed by judicial order. *Shipley* v. *Shamwell* (1914, 41 App. D.C. 267, Ann. Cas. 1915A, 1148).

Property subject to execution

No property but that in which the judgment debtor has a legal title is subject to execution at law. *Starr* v. *United States* (1896, 8 App. D.C. 552, reversed on other grounds 17 S. Ct. 223, 164 U.S. 627, 41 L. Ed. 577).

Satisfaction by garnishee

A garnishee who, in good faith, satisfied a claim of attaching creditor without waiting for judgment against him, is not liable on a subsequent attachment. *Smith* v. *Shapiro* (1932, 57 F. 2d 432, 61 App. D.C. 66).

§ 15–303. Alias writs

If a writ of execution is issued and returned unsatisfied, in whole or in part, within the period of three years provided by section 15–302, an alias writ may be issued during the life of the judgment. (Dec. 23, 1963, 77 Stat. 525, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–202 (Mar. 3, 1901, ch. 854, § 1075, 31 Stat. 1358).

Changes are made in phraseology.

§ 15–304. Return of writ

If the return of a writ of execution is not made on or before the return day expressed in the writ it may nevertheless be made afterwards as of that date. (Dec. 23, 1963, 77 Stat. 525, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–203 (Mar. 3, 1901, ch. 854, § 1076, 31 Stat. 1358).

Changes are made in phraseology.

§ 15–305. Issuance of writ after expiration of period

A writ of execution not issued within the time allowed therefor, may not be issued until the judgment has been revived. The same rule applies to the order of revival in relation to the issuance of a writ of execution as to the original judgment. (Dec. 23, 1963, 77 Stat. 525, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–204 (Mar. 3, 1901, ch. 854, § 1077, 31 Stat. 1359).

Section 15–204 of the D.C. Code, 1961 ed., cited above, provided, as follows:

"If said writ shall not be issued within the time allowed therefor, as aforesaid, it shall not be issued until a scire facias has been issued upon said judgment and a fiat shall be deemed a renewal of the judgment, and the same rule shall apply thereto in relation to the issuing of execution thereon as to the original judgment."

Rule 81(b) of the Federal Rules of Civil Procedure abolished the writ of scire facias, and provides that relief therefore available by scire facias may be obtained by appropriate action or by appropriate motion under the practice prescribed in those rules; and Rule 30 of the local rules of the United States District Court provides for revival of a judgment by motion and hearing. Therefore in this revised section the words "may not be issued until the judgment has been revived" are substituted for "it shall not be issued until a scire facias has been issued upon said judgment and a fiat has been rendered thereupon", and the words "The same rule applies to the order of revival in relation to the issuance of a writ of execution as to the original judgment" are substituted for "Said fiat shall be deemed a renewal of the judgment and the same rule shall apply thereto in relation to the issuing of execution thereon as to the original judgment".

Other changes are made in phraseology.

CROSS REFERENCES

Decrees in equity, see § 15–309.

Extension of time of lien, see § 15–103.

NOTES TO DECISIONS UNDER PRIOR LAW

Decisions under prior law

"Twelve years is fixed by statute as the life of a judgment * * * and at any time during that period the writ of scire facias may be issued by the creditor for the revival of the judgment by merely filing a praecipe with the clerk." *Simpson* v. *Minnix* (1908, 30 App. D.C. 582).

Defense

Bankruptcy of defendant may be pleaded as a defense, but such defense does not inure to the benefit of a co-defendant. *Simpson* v. *Minnix* (1908, 30 App. D.C. 582). See, also, *Otterback* v. *Patch* (1894, 5 App. D.C. 69); *Galt* v. *Todd* (1895, 5 App. D.C. 350); *Roller* v. *Caruthers* (1895, 5 App. D.C. 368); *Green* v. *Mann* (1902, 19 App. D.C. 243); *Moses* v. *United States* (1902, 19 App. D.C. 290).

Validity of extension order

Under District of Columbia law, where motion for renewal of money judgment was made within 12 years of date of judgment, order extending judgment was valid even though entered day after expiration of 12 year period. *Michael* v. *Smith* (1955, 221 F. 2d 59, 95 U.S. App. D.C. 186, 52 A.L.R. 2d 667).

A writ of scire facias, now replaced in District of Columbia by motion, may be contested. *Id.*

§ 15–306. Election to move for new judgment in lieu of execution

During the life of the original judgment the plaintiff, instead of issuing execution thereon within the time allowed therefor, may elect to obtain a new judgment by motion and hearing as provided by rules of court. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–205 (Mar. 3, 1901, ch. 854, § 1078, 31 Stat. 1359).

Words "to obtain a new judgment by motion and hearing as provided by rules of court" are substituted for "to issue a scire facias on the same and obtain a new judgment as aforesaid". See revision note under section 15–305 herein.

NOTES TO DECISIONS UNDER PRIOR LAW

Motion

A writ of scire facias, now replaced in District of Columbia by motion, may be contested. *Michael* v. *Smith* (1955, 221 F. 2d 59, 95 U.S. App. D.C. 186, 52 A.L.R. 2d 667).

Validity of extension order

Under District of Columbia law, where motion for renewal of money judgment was made within 12 years of date of judgment, order extending judgment was valid even though entered day after expiration of 12 year period. *Michael* v. *Smith* (1955, 221 F. 2d 59, 95 U.S. App. D.C. 186, 52 A.L.R. 2d 667).

§ 15–307. Lien of execution

A writ of fieri facias issued upon a judgment of the United States District Court for the District of Columbia is a lien from the time of its delivery to the marshal upon all the goods and chattels of the judgment defendant, except those that are exempted from levy and sale by express provision of law, and is also a lien upon the equitable interest of the judgment defendant in goods and chattels in his possession. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961, ed., § 15–206 (Mar. 3, 1901, ch. 854, § 1079, 31 Stat. 1359; June 30, 1902, ch. 1329, 32 Stat. 540; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646 § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Minor changes are made in phraseology.

§ 15–308. Endorsement, by marshal, of date of receipt of writ

Upon the receipt of any writ of fieri facias or other writ of execution, the marshal or his deputy shall, without fee, endorse upon the back of the writ the day of the month and year when he received it. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–207 (29 Car. II, 1676, ch. 3, § 16; Alex. Br. Stat., p. 511; Comp. Stat., D.C., p. 222, § 1).

The substance of this British statute is still preserved in a number of American States. See, for example, Code of Ala. 1940, Title 7, § 525; Vermont Statutes Annotated, Title 12, § 2688; Ill. Rev. Stat. 1955, ch. 77, § 9; ch. 79, § 126; Del. Code 1953, Title 10, § 5084.

Reference to the coroner and to agents are omitted as obsolete.

Changes are made in phraseology.

§ 15–309. Death of judgment debtor after delivery of execution

The death of the judgment debtor after the execution issued on the judgment has been delivered to the marshal does not affect his authority to proceed against the property bound by it. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–208 (Mar. 3, 1901, ch. 854, § 1080, 31 Stat. 1359).

A minor change was made in phraseology.

§ 15–310. Lien of execution on Court of General Sessions judgment; levy

(a) An execution issued on a judgment of the District of Columbia Court of General Sessions is not a lien on the personal property of the judgment debtor except from the time when it is actually levied, and then it has priority over any execution issued out of the United States District Court for the District of Columbia after the levy. Except as otherwise provided in subsection (b) of this section, it may not be levied on real estate.

(b) An execution issued on a judgment entered on or after the effective date of this subsection in the District of Columbia Court of General Sessions may be levied on real estate, but only after such judgment has been filed and recorded in the office of the Recorder of Deeds of the District of Columbia. (Dec. 23, 1966, 77 Stat. 526, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 5, 1966, 80 Stat. 264, Pub. L. 89–493, § 11; Nov. 2, 1966, 80 Stat. 1178, Pub. L. 89–745, § 4.)

REFERENCES IN TEXT

Words in subsec. (b), "effective date of this subsection", refer to effective date of act July 5, 1966, which added that subsection. See note headed "Effective Date of 1966 Amendment", below.

AMENDMENTS

1966—Act Nov. 2, 1966, amended subsec. (b), by adding thereto ", but only after such judgment has been filed and recorded in the office of the Recorder of Deeds of the District of Columbia".

1966—Act July 5, 1966, designated the then existing single paragraph as subsec. (a), and, in second sentence thereof, inserted exception clause; and added subsec. (b).

EFFECTIVE DATE OF 1966 AMENDMENT

Section 8(b) of act Nov. 2, 1966, provided: "The amendments made by sections 4 and 5 of this act [to subsec. (b) of this section and § 15–311(b)] shall apply only with respect to executions and writs of fieri facias issued on and after November 1, 1966."

Amendment of this section by act July 5, 1966, as effective on first day of first month which is at least ninety days after July 5, 1966, see § 21 of such act, set out in note under § 1–504.

APPROPRIATIONS

Appropriations authorized to carry out purposes of act July 5, 1966, which amended this section, see § 20 of such act, set out in note under § 1–504.

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 15–209 (Mar. 3, 1901, ch. 854, § 1081, 31 Stat. 1359; Feb. 17, 1909, ch. 134, 35 Stat. 623; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 23, 1962, Pub. L. 87–873; § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Superiority of liens

Principle that, as between federal and state courts, comity requires that the court which first obtains actual or constructive possession of property in exercise of its jurisdiction be permitted to retain control without interference from the other is equally applicable to two court jurisdictions in District of Columbia, federal court and municipal court *S. Herman, Receiver etc.* v. *A. M. Siney and M. K. Oney* (D.C. App. 1963, 190 A. 2d 650).

District of Columbia Municipal Court judgment creditors who had caused writs of garnishment to be served on bank account of their judgment debtor had superior right to possession of attached funds over claims of receiver subsequently appointed by United States District Court. *Id.*

United States District Court's appointment of receiver did not divest lien previously acquired by Municipal Court garnishment writs issued on behalf of judgment creditors of party in receivership who were not themselves parties to District Court proceeding. *Id.*

A lien of garnishment is superior to lien of subsequent attachment against the same property. *International Finance Corp.* v. *Jawish* (1934, 71 F. 2d 985, 63 App. D.C. 262).

§ 15–311. Property subject to levy

(a) The writ of fieri facias may be levied on all goods and chattels of the debtor not exempt from execution, and upon money, bills, checks, promissory notes, or bonds, or certificates of stock in corporations owned by the debtor, and upon his money in the hands of the marshal or his deputy or other officer or person charged with the execution of the writ. A writ of fieri facias issued from the United States District Court for the District of Columbia may be levied on all legal leasehold and freehold estates of the debtor in land.

(b) A writ of fieri facias issued from the District of Columbia Court of General Sessions upon a judgment entered in that court on or after the effective date of this subsection may be levied on legal leasehold or freehold estates of the debtor in land, but only after such judgment has been filed and recorded in the office of the Recorder of Deeds of the District of Columbia. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88–241, § 1, eff. Jan. 1, 1963; July 5, 1966, 80 Stat. 264, Pub. L. 89–493, § 12; Nov. 2, 1966, 80 Stat. 1178, Pub. L. 89–745, § 5.)

REFERENCES IN TEXT

Words in subsec. (b), "effective date of this subsection", refer to effective date of act July 5, 1966, which added that subsection. See note headed "Effective Date of 1966 Amendments", below.

AMENDMENTS

1966—Act Nov. 2, 1966, amended subsec. (b) by adding thereto ", but only after such judgment has been filed and recorded in the office of the Recorder of Deeds of the District of Columbia."

1966—Act July 5, 1966, designated the then existing single paragraph as subsec. (a), and added subsec. (b).

EFFECTIVE DATE OF 1966 AMENDMENTS

Amendment of this section by act Nov. 2, 1966, as applicable only with respect to executions and writs of fieri facias issued on and after Nov. 1, 1966, see § 8(b) of such act, set out as a note under § 15–310.

Amendment of this section by act July 5, 1966, as effective on first day of first month which is at least ninety days after July 5, 1966, see § 21 of such act, set out in note under § 1–504.

APPROPRIATIONS

Appropriations authorized to carry out purposes of act July 5, 1966, which amended this section, see § 20 of such act, set out in note under § 1–504.

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–210 (Mar. 3, 1901, ch. 854, § 1082, 31 Stat. 1359; June 30, 1902, ch. 1329, 32 Stat. 540; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Reference to the "constable (coroner)" is omitted as obsolete, and in lieu thereof words "his deputy [deputy of the marshal] or other officer or person" are inserted.

Reference to "gold and silver coin" is omitted as covered by "money".

Changes are made in phraseology.

CROSS REFERENCES

Decedent's estate, exception to inventory of, see § 20–706.

Disability insurance benefits, exemption from execution, see § 35–717.

Exemptions generally, see § 15–501 et seq.

Fraternal benefit association benefits not subject to execution, see § 35–911.

Group life insurance benefits, exemption from execution, see § 35–718.

Life insurance proceeds, exemption, see § 30–213.

Notary's seal and official documents exempt from execution, see § 1–507.

Public assistance not assignable or subject to execution, see § 3–215.

Rent, payment of before goods may be seized by execution, see § 45–918.

Teacher's retirement annuity not subject to execution, see § 31–718.

Unemployment Compensation Act benefits not subject to execution except for necessaries, see § 46–318.

Wrongful death recovery, exemption of, see § 16–2703.

NOTES TO DECISIONS UNDER PRIOR LAW

Licenses

Where §§ 25–106 and 25–107 providing for issuance of license to sell alcoholic beverages also provided for transfer and assignment of such license, the license was a "property right" subject to levy, under execution, to satisfy a judgment of Municipal Court. *Rowe* v. *Colpoys* (1943, 137 F. 2d 249, 78 U.S. App. D.C. 75, 148 A.L.R. 488, certiorari denied 64 S. Ct. 190, 320 U.S. 783, 88 L. Ed. 470).

§ 15–312. Levy on money and evidences of debt

When the fieri facias is levied on money belonging to the judgment debtor the marshal may not expose the money to sale, but shall account for it as money collected. Bills or other evidences of debt levied upon shall be sold as other personal property is sold, and the marshal may indorse them to pass title to the purchaser. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–211 (Mar. 3, 1901, ch. 854, § 1083, 31 Stat. 1359).

Changes are made in phraseology.

§ 15–313. Levy on equitable interest in chattels pledged

The interest of the debtor in personal chattels lawfully pledged for the payment of a debt or performance of a contract, or held by a trustee, and in which the debtor's interest is only equitable, may be levied upon in the hands of the pledgee or trustee without disturbing the possession of the latter, and the lien thus obtained may be enforced by civil action. In other cases of equitable interest of the judgment debtor in personal chattels execution may also be levied thereon and the lien thus obtained may be enforced by civil action. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–212 (Mar. 3, 1901, ch. 854, § 1084, 31 Stat. 1359; June 30, 1902, ch. 1329, 32 Stat. 541.)

Words "civil action" are substituted for "proceedings in equity" in two places, in view of the merger of law and equity procedure by the Federal Rules of Civil Procedure. Rule 2 thereof (as well as Rule 2 of the civil rules of the Court of General Sessions) provides that in civil cases there shall be only one form of action, to be known as a "civil action".

§ 15–314. Appraisement; notice of sale

Where not herein otherwise provided, all property levied upon, except money, shall be appraised by two sworn appraisers and sold at public auction for cash.

Personal property may be sold after ten days' notice by advertisement, containing a description sufficiently definite to be embodied in a conveyance of title.

Leasehold and freehold estates in land may be sold after notice has been made in the manner provided by section 2002 of Title 28, United States Code. (Dec. 23, 1963, 77 Stat. 527, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–214 (Mar. 3, 1901, ch. 854, § 1085, 31 Stat. 1359; June 30, 1902, ch. 1329, 32 Stat. 541).

The provision that estates in land may be sold after notice has been made in the manner provided by section 2002 of Title 28, United States Code, is substituted for the provision that such estates may be sold after 20 days' notice by advertisement, containing a description sufficiently definite to be embodied in a conveyance of title. Section 2002 of Title 28, United States Code, which applies to all district courts, including the United States District Court for the District of Columbia, prescribes the manner of notice of the sale of realty under order, judgment, or decree of court. Sections 2001 and 2004 of that title (and Rule 31 of the local rules of the U.S. District Court for the District of Columbia) relate, respectively, to the sale of realty, and the sale of personalty, but only to sales under order or decree of court (judicial sales). They do not relate to sales under execution. Section 2005 thereof provides in part that whenever State law (which, as used therein, includes law of the District of Columbia) requires that goods taken on execution be appraised before sale, goods taken under execution issued from a court of the United States (which term, under sections 88, 132, and 451 thereof, includes the U.S. District Court, for the District of Columbia) shall be appraised in like manner. It also provides for the summoning of appraisers by the marshal, for sale of the goods by the marshal without an appraisal, if the appraisers fail to attend and perform their required duties, and for the payment of appraisers' fees according to "State" law.

For additional provisions relating to executions on judgments, see Rules 69, respectively, of the Federal Rules of Civil Procedure, and the civil rules of the Court of General Sessions.

Changes are made in phraseology.

§ 15–315. Death, removal, or disqualification of marshal

When the marshal dies, or is removed from office, or becomes otherwise disqualified from executing a writ of execution received by him, the writ may be executed and returned by his deputy or successor in office. (Dec. 23, 1963, 77 Stat. 527, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–215 (Mar. 3, 1901, ch. 854, § 1101, 31 Stat. 1361; June 30, 1902, ch. 1329, 32 Stat. 541).

Reference to the coroner is omitted as obsolete.

For provisions relating to death, removal, or incapacity of marshal after levy on real property but before sale, or after levy thereon and sale thereof, but before execution of a deed, see section 2003 of Title 28, United States Code.

Changes are made in phraseology.

§ 15–316. Subrogation of purchaser after defective sale; no refund

When, upon the sale of property under execution, the title of the purchaser is invalid by reason of a defect in the proceedings, the purchaser may be subrogated to the rights of the creditor against the debtor to the extent of the money paid by him and applied to the debtor's benefit, and to that extent has a lien on the property sold against all persons except bona fide purchasers without notice; but the creditor may not be required to refund the purchase money on account of the invalidity of the sale. (Dec. 23, 1963, 77 Stat. 527, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–216 (Mar. 3, 1901, ch. 854, § 1102, 31 Stat. 1361).

Minor changes are made in phraseology.

§ 15–317. Remedy of marshal for erroneous sale made in good faith

When the marshal or any other officer to whom execution has been delivered levies upon and sells in good faith property not subject thereto and applies the proceeds thereof toward the satisfaction of the judgment, and a recovery is had against him for its value, the officer, on payment of the value, may, on motion and due notice thereof to the defendant, have the satisfaction of the judgment vacated, and execution shall issue thereon for his use as if the levy and sale had not been made. (Dec. 23, 1963, 77 Stat. 527, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–217 (Mar. 3, 1901, ch. 854, § 1103, 31 Stat. 1362).

Minor changes are made in phraseology.

§ 15–318. Remedies of purchaser upon refusal to deliver possession

When real property is sold by virtue of an execution, and the judgment debtor or a person claiming under him since the rendition of the judgment is in actual possession of the property and refuses to deliver possession thereof to the purchaser upon demand made therefor, the court, on the application of the purchaser, may:

(1) require the person so in possession to show cause why possession should not be delivered according to the demand; and

(2) if good cause is not shown, issue a writ of habere facias possessionem, requiring the marshal to put the purchaser in possession.

If the party in possession alleges under oath a title derived from the judgment debtor prior to the judgment or a title superior to that of the defendant, the writ may not issue, but the purchaser may have his remedy by an action of ejectment or the summary remedy in the District of Columbia Court of General Sessions provided for in sections 16–1501 to 16–1505. (Dec. 23, 1963, 77 Stat. 527, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 15–313 (Mar. 3, 1901, ch. 854, § 1100, 31 Stat. 1361; Feb. 17, 1909, ch. 134, 35 Stat. 623; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1962, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology and arrangement.

§ 15–319. Execution of final decree after death; other appropriate proceedings

When a party to an action dies after final decree, the court may order execution of the decree as if death had not occurred, or the court, after motion and hearing, may order the decree revived against the proper representatives of the deceased party, or make such other order or direct such other proceedings as seems best calculated to advance the purposes of justice. The heir or other proper representative may appear at any time before execution of the decree and be admitted as a party to the action, on such terms as the court prescribes, and such further proceeding may be had as may be appropriate to the merits of the cause. (Dec. 23, 1963, 77 Stat. 527, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 12–113 (Mar 3, 1901, ch. 854, § 248, 31 Stat. 1229).

Words "the court, after motion and hearing, may order the decree revived against the proper representatives" are substituted for "the court may order a subpoena scire facias to be issued, or a bill of revivor to be filed against the proper representatives". Rule 81(b) of the Federal Rules of Civil Procedure abolished the writ of scire facias, and provides that the relief theretofore available by scire facias may be obtained by appropriate action or by appropprite motion under the practice prescribed in those rules. See, also Rule 30 of the local rules of the United States District Court for the District of Columbia relating to revival of judgment against a judgment debtor (by motion and hearing), and Moore's Federal Practice, 2d ed., vol. 4, § 25.03. The reference to "bill of revivor" in the words quoted above from section 12–113 of the D.C. Code, 1961 ed., is omitted. This term was used in equity practice and has been obsolete since the merger of law and equity practice by the Federal Rules of Civil Procedure.

Changes are made in phraseology.

§ 15–320. Enforcement of decrees

(a) For the purpose of executing a decree, or compelling obedience to it, the United States District Court for the District of Columbia or the District of Columbia Court of General Sessions, in addition to the other procedures provided for by this chapter and chapter 5 of Title 16, may:

(1) issue an attachment against the person of the defendant;

(2) order an immediate sequestration of his real and personal estate, or such part thereof as may be necessary to satisfy the decree; or

(3) by order and injunction, cause the possession of the estate and effects whereof the possession or a sale is decreed to be delivered to the complainant, or otherwise, according to the tenor and import of the decree and as the nature of the case requires.

In case of sequestration, the court may order payment and satisfaction to be made out of the estate and effects so sequestrated, according to the true intent and meaning of the decree.

(b) When a defendant is arrested and brought into court upon any process of contempt issued to compel the performance of a decree, the court may, upon motion, order:

(1) the defendant to stand committed; or

(2) his estates and effects to be sequestrated and payment made, as directed by subsection (a) of this section; or

(3) possession of his estate and effects to be delivered by order and injunction, as directed by subsection (a) of this section—

until the decree or order is fully performed and executed, according to the tenor and true meaning thereof, and the contempt cleared.

(c) Where a decree only directs the payment of money, the defendant may not be imprisoned except in those cases especially provided for. (Dec. 23, 1963, 77 Stat. 528, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–326 (Mar. 3, 1901, ch. 854, § 113, 31 Stat. 1208).

"United States District Court for the District of Columbia" is substituted for "said court". The latter referred, in the original (Code of 1901), to the "equity court", which, under the provisions of that Code, was the Supreme Court of the District of Columbia (now the District Court) when exercising its equity jurisdiction at the special term provided therein for such purpose. The term "equity court" has been obsolete since the enactment, in 1948, of Title 28, United States Code. See revision note under section 11–502 herein.

The reference, in subsec. (a), to the District of Columbia Court of General Sessions, is new, and merely conforms the section with the present jurisdiction and powers of that court, and does not effect a change in substance. After the merger, in 1942, of the Municipal Court *of* the District of Columbia, and the Police Court, to form the Municipal Court *for* the District of Columbia, at which time the civil jurisdiction of the Municipal Court was enlarged, the Municipal Court had equitable jurisdiction. See the cases of *Klepinger* v. *Rhodes,* C.A. Dist. Col. 1944, 140 F. 2d 697, 78 U.S. App. D.C. 340, cert. denied 64 S. Ct. 1047, 322, U.S. 734, 88 L. Ed. 1568; *Ridgley* v. *U.S.,* D.C. Mun. App. 1945, 45 A. 2d 475. In 1962, the name of the court was changed to District of Columbia Court of General Sessions. See section 11–901 herein.

The phrase "or may issue a fieri facias and attachment by way of execution against lands tenements, chattels, and credits, or other incorporeal property, to satisfy the decree" is omitted as covered by other provisions of this chapter and chapter 5 of Title 16 herein, which relate to "decrees" as well as judgments. However, for the purpose of completeness, the phrase "in addition to the other procedures provided for by this chapter and chapter 5 of Title 16" is inserted near the beginning of subsec. (a).

For additional provisions relating to the enforcement of judgments and decrees for the performance of specific acts, see Rules 54(a) and 70, respectively, of the Federal Rules of Civil Procedure and the civil rules of the Court of General Sessions.

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS

I. UNDER PRIOR LAW

Authority of reviewing court

Reviewing court may not supply a finding required for validity of commitment for contempt for nonpayment of money judgment. *Lundregan* v. *Lundregan* (1958, 252 F. 2d 823, 102 U.S. App. D.C. 259).

Basis for commitment

When validity of commitment for contempt for nonpayment of money judgment is questioned, court will

look behind commitment order to money judgment itself, and if that judgment is invalid on its face as a basis for commitment then commitment will not be sustained, and rule that decree of court, assuming jurisdictional basis, must be obeyed until set aside by judicial process, is not applicable. *Lundregan* v. *Lundregan* (1958, 252 F. 2d 823, 102 U.S. App. D.C. 259).

Where neither underlying order for payment of money for maintenance of minor children nor order adjudging defendant to be in contempt for failure to obey underlying order and committing defendant to jail rested upon necessary finding that defendant had failed or refused to maintain his wife and minor children although able to do so, order of commitment was invalid. *Id.*

—— Contempt adjudication

In proceeding on motion to adjudicate respondent in contempt for failure to comply with order of court, wherein record showed that respondent did not have possession or control of money received from sale of estate stocks and that conservator had attached his interest in certain other property which, when liquidated, would satisfy money judgment against him in substantial part and probably in full and that he had no other known assets, District of Columbia Code barred imprisonment under contempt order entered against him and contempt adjudication was unwarranted. *Blackwelder* v. *Collins, Collector, etc.* (1958, 252 F. 2d 854, 102 U.S. App. D.C. 290).

Contempt

Statute precluding imprisonment for mere failure to pay money had no application to contempt proceeding. *In re E. L. Ferrell and N. A. Perry* (D.C. Mun. App. 1961, 172 A. 2d 555).

Where first order required husband to pay wife for maintenance of children, and second order after husband and wife were divorced replaced earlier order and required husband to pay a greater amount for such maintenance, husband failing to pay the amount provided for in the second order was in contempt, but husband could not be imprisoned inasmuch as the second order was entered after the divorce. *Queen* v. *Queen* (1951, 188 F. 2d. 624, 88 U.S. App. D.C. 157).

Decree awarding attorney's fee

Where husband had been ordered to pay support money and attorney's fees, contempt order committing husband until he paid an amount greater than that due for support alone was erroneous in so far as it committed husband for failure to pay attorney's fees. *Berman* v. *Berman* (1953, 202 F. 2d 812, 92 U.S. App. D.C. 77).

Decree awarding custody

A divorce decree awarding custody of children to wife and directing payment by husband of a specified sum monthly for their maintenance does not only direct payment of money within this section, and husband who failed to make the required monthly payments could be imprisoned for contempt, notwithstanding that the divorce was granted to husband on his application. *Evans* v. *Evans* (D.C.D.C. 1941, 36 F. Supp. 12).

Final orders

An order requiring the payment of maintenance, even pendente lite, is a "final order" and not an "interlocutory order", for purpose of determining court's jurisdiction to imprison for contempt for noncompliance with the order. *Bates* v. *Bates* (1944, 141 F. 2d 723, 79 U.S. App. D.C. 14).

Grounds for imprisonment

Where judgments did not require payment of any specifically identified or identifiable money, and would be satisfied by payment of amount in legal tender from any source, judgment debtor could not be imprisoned for failure to pay since District of Columbia Code forbids imprisonment for contempt of a decree which only directs payment of money except in cases where imprisonment is "especially provided for". *Blackwelder* v. *Collins, Collector, etc.* (1958, 252 F. 2d 854, 102 U.S. App. D.C. 290).

Imprisonment

One may not be imprisoned to compel obedience to court order directing payment of money except in those cases especially provided for. *Lundregan* v. *Lundregan* (1958, 252 F. 2d 823, 102 U.S. App. D.C. 259).

Order directing government employee, whose salary was not subject to attachment or garnishment, to pay over a certain amount of his salary each month to a receiver in satisfaction of a judgment was a violation of the provisions of this section forbidding imprisonment for debt, for necessarily it threatened defendant with punishment as for contempt of court if he failed to pay. *McGrew* v. *McGrew* (1930, 38 F. 2d 541, 59 App. D.C. 230, certiorari denied 50 S. Ct. 349, 281 U.S. 739, 74 L. Ed. 1153).

The provision that no defendant shall be imprisoned, where decree is for fine, is a limitation on the fundamental power of the court. *Rapeer* v. *Colpoys* (1936, 85 F. 2d 715, 66 App. D.C. 216).

Under this section providing that where a decree directs only payment of money no defendant shall be imprisoned except in those cases especially provided for, court has no power to overstep that limitation. *Bates* v. *Bates* (1944, 141 F. 2d 723, 79 U.S. App. D.C. 14).

After final decree was entered dismissing divorce suit but containing no reference to unpaid installments of alimony which had accrued under pendente order, this section forbidding imprisonment for violation of decree ordering only payment of money came into play. *Cole* v. *Cole* (1947, 161 F. 2d 883, 82 U.S. App. D.C. 155).

Mandatory injunctions

Where plaintiffs sought injunction requiring defendants to restore to plaintiffs possession of an apartment, mandatory injunction was properly denied on ground that plaintiffs had an adequate remedy at law. *Leonardo* v. *Leonardo* (1944, 145 F. 2d 849, 79 U.S. App. D.C. 258).

A mandatory injunction should be denied when its issuance will cause injury to defendant and no benefit or very little benefit to plaintiff, especially when money damages will afford compensation. *Id.*

Parentage proceedings

Part of Juvenile Court Act establishing procedures to determine parentage in order to insure support for unacknowledged illegitimate children did not pre-empt jurisdiction of Domestic Relations Branch of Municipal Court over suit by or on behalf of acknowledge, though illegitimate, child against his natural father. *C. Johnson* v. *E. Johnson et al.* (D.C. Mun. App. 1962, 183 A. 2d 916).

Proceeding to determine parentage as primary basis of establishing duty to support illegitimate child is quasi-criminal in some of its aspects and lies exclusively in juvenile court. *Id.*

II. Under Present Law

Decree awarding attorney's fee

Statute providing for imprisonment for nonpayment of counsel fees granted during pendency of divorce suit applied, and facts that divorce sought by husband was denied and that judgment provided for separate maintenance and support payments and for payment of wife's counsel fees by husband did not prevent enforcement of award of counsel fees. *L. B. Edmonds* v. *L. M. Edmonds* (D.C. App. 1965, 212 A. 2d 534).

§ 15–321. Enforcement of interlocutory decrees

An interlocutory order may be enforced by such process as might be had upon a final judgment or decree to the like effect, and the payment of costs adjudged to a party may be enforced in like manner. (Dec. 23, 1963, 77 Stat. 528, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–327 (Mar. 3, 1901, ch. 854, § 114, 31 Stat. 1208).

Minor changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

In general

This section provided that interlocutory orders might be enforced by the same process that might be had upon a final judgment or decree to the like effect, and payment

of costs adjudged to any party might be enforced in like manner. *Karrick* v. *Edes* (1927, 19 F. 2d 693, 57 App. D.C. 219).

Nonpayment of maintenance pendente lite

Under § 16–415 authorizing imprisonment for enforcement of permanent maintenance and §§ 16–410, 16–411, for enforcement of alimony during pendency of divorce suit and this section, permitting enforcement of interlocutory orders by same process as final decrees, court had no power to imprison husband for failure to pay awards of maintenance pendente lite and suit money, in wife's suit for maintenance. *Bates* v. *Bates* (1944, 141 F. 2d 723, 79 U.S. App. D.C. 14).

§ 15–322. Enforcement of decrees for delivery of chattels

In addition to the procedures for enforcement of judgments or decrees otherwise provided for, an order or decree for the delivery of chattels may be enforced by the same writs as are used in the action of replevin at common law. (Dec. 23, 1963, 77 Stat. 528, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–328 (Mar. 3, 1901, ch. 854, § 115, 31 Stat. 1208).

Words ", as well as those heretofore used for its enforcement in equity practice", which followed "common law", are omitted as obsolete, or in any event unnecessary, in view of the other provisions of this chapter, the Federal Rules of Civil Procedure, adopted in 1938, which merged law and equity practice, and the civil rules of the District of Columbia Court of General Sessions, which are patterned to some extent upon the Federal Rules of Civil Procedure. See particularly, rules 54(a), 64, and 70 of the Federal Rules of Civil Procedure, and rules 54(a) and 70(b) of the civil rules of the Court of General Sessions. However, to make it clear that the type of decree referred to is enforceable in other ways, words "In addition to the procedures for enforcement of judgments or decrees otherwise provided for," are inserted at the beginning.

§ 15–323. Limitation on seizure of real property

Real property or rent shall not be seized for a debt, as long as the present goods and chattels of the debtor are sufficient to pay it, and the debtor himself is ready to satisfy the debt. (Dec. 23, 1963, 77 Stat. 528, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–213 (9 Hen. 3, ch. 8, § 1, 1225; Kilty's Rep., p. 205; Alex. Br. Stat., p. 12; Comp. Stat., D.C., p. 223, § 4).

This British statute is still being applied in the District of Columbia. See *Encyclopaedia* v. *Jones,* D.C.D.C. 1951, 101 F. Supp. 521.

Changes are made in phraseology.

Chapter 5.—EXEMPTIONS AND TRIAL OF RIGHT TO SEIZED PROPERTY

SUBCHAPTER I.—EXEMPTIONS

Sec.

15–501. Exempt property of householder; property in transitu; debt for wages.
15–502. Mortgage or other instrument affecting exempt property.
15–503. Earnings and other income; wearing apparel and tools of certain persons.

SUBCHAPTER II.—TRIAL OF RIGHT TO PROPERTY SEIZED ON PROCESS OF COURT OF GENERAL SESSIONS

15–521. Notice of claim or exemption; trial.
15–522. Docketing of claim; manner of trial.
15–523. Judgment.
15–524. Replevin against officer.

SUBCHAPTER I.—EXEMPTIONS

§ 15–501. Exempt property of householder; property in transitu; debt for wages

(a) The following property of the head of a family or householder residing in the District of Columbia, or of a person who earns the major portion of his livelihood in the District of Columbia, being the head of a family or householder, regardless of his place of residence, is free and exempt from distraint, attachment, levy, or seizure and sale on execution or decree of any court in the District of Columbia:

(1) all wearing apparel provided for all persons within the household, being members of the immediate family of the household, not exceeding $300 per person in value;

(2) all beds, bedding, household furniture and furnishings, sewing machines, radios, stoves, cooking utensils, not exceeding $300 in value;

(3) provisions for three months' support, whether provided or growing;

(4) fuel for three months;

(5) mechanics' tools and implements of the debtor's trade or business amounting to $200 in value, with $200 worth of stock or materials for carrying on the business or trade of the debtor;

(6) the library, office furniture, and implements of a professional man or artist, not exceeding $300 in value;

(7) one horse or mule; one cart, wagon, or dray and harness, or one automobile or motor-controlled vehicle not exceeding $500 in value if used principally by the debtor in his trade or business; and

(8) all family pictures; and all the family library, not exceeding $400 in value.

The exemption provided for by clause (5) of this subsection also applies to merchants.

(b) The exemptions provided for by subsection (a) of this section are valid when the property is in transit, the same as if at rest; but property named and exempted in this section is not exempt from attachment or execution for a debt due for the wages of servants, common laborers, or clerks, except the wearing apparel, beds, and bedding and household furniture for the debtor and family.

(c) For the purpose of this section, the person who is the principal provider for the family is the head thereof. (Dec. 23, 1963, 77 Stat. 529, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–401 (Mar. 3, 1901, ch. 854, § 1105, 31 Stat. 1362; Dec. 20, 1944, ch. 610, § 1, 58 Stat. 817).

Minor changes are made in phraseology and arrangement.

CROSS REFERENCES

Decedent's estate, exceptions to inventory of, see § 20–706.

Disability insurance benefits, exemption from execution, see § 35–717.

Fraternal benefits association benefits not subject to execution, see § 35–911.

Group life insurance benefits, exemption from execution, see § 35–718.

Life insurance proceeds, exemption, see § 30–213.

Notary's seal and official documents exempt from execution, see § 1–507.

Public assistance not assignable or subject to execution, see § 3–215.

Rent, payment of before goods may be seized by execution, see § 45–918.

Teacher's retirement annuity not subject to execution, see § 31–718.

Unemployment Compensation Act benefits not subject to execution except for necessaries, see § 46–318.

Wrongful death recovery, exemption of, see § 16–2703.

NOTES TO DECISIONS UNDER PRIOR LAW

Actual residence

Under this section, the requirement as to actual residence relates to the time of the issuance of the writ, and if a wage earner then is an actual resident, he is entitled to the protection of the statute. *Fidelity Sav. Co.* v. *Fawcett* (1928, 22 F. 2d 591, 57 App. D.C. 285).

Construction

A liberal construction is to be given to this section exempting property from assets that would be set aside to satisfy creditors. *Frank* v. *Hyman, etc.* (1958, 260 F. 2d 721, 104 U.S. App. D.C. 203).

Householder

Bankrupt, a widow living alone in an apartment of several rooms furnished with her household furniture, was a "householder" within this section granting to householder residing in District of Columbia exemption of furnishings not exceeding $300 in value and bankrupt was entitled to exemption of her household furnishings, which did not exceed $300 in value, from assets that would be set aside to satisfy her creditors. *Frank* v. *Hyman Trustee, etc.* (1958, 260 F. 2d 721, 104 U.S. App. D.C. 203).

Unlawful seizure

In action for damages for unlawful seizure of plaintiff's truck on writ of fieri facias, that court had quashed the levy, deciding that truck was exempt from seizure was not res judicata of existence of malice or want of probable cause, nor was it competent evidence for plaintiff on such issues. *Lee* v. *Dunbar* (D.C. Mun. App. 1944, 37 A. 2d 178).

Where question whether this section comprehended a motor vehicle had not been authoritatively decided, and there was substantial authority for view that motor vehicles were not exempt, "probable cause" existed for judgment creditor to seize a motor dump truck on writ of fieri facias, so as to preclude recovery of damages, notwithstanding return of truck was ordered by court which decided that truck was exempt from seizure and sale under this section. *Id.*

Where only evidence of actual damages was loss of use of truck wrongfully attached during 5-day period, judgment had remained unpaid more than 30 days and truck owner's operator's permit and registration certificate had been suspended so that operation of truck during 5-day period would have constituted a criminal offense, recovery would be limited to nominal damages, if any. *Id.*

§ 15–502. Mortgage or other instrument affecting exempt property

A mortgage, deed of trust, assignment for the benefit of creditors, or bill of sale upon exempted articles is not binding or valid unless it is signed by the wife of a debtor who is married and living with his wife. (Dec. 23, 1963, 77 Stat. 530, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–402 (Mar. 3, 1901, ch. 854, § 1106, 31 Stat. 1362).

Minor changes are made in phraseology.

§ 15–503. Earnings and other income; wearing apparel and tools of certain persons

(a) The earnings (other than wages, as defined in subchapter III of chapter 5 of Title 16), insurance, annuities, or pension or retirement payments, not otherwise exempted, not to exceed $200 each month, of a person residing in the District of Columbia, or of a person who earns the major portions of his livelihood in the District of Columbia, regardless of place of residence, who provides the principal support of a family, for two months next preceding the issuing of any writ or process against him, from any court or officer of and in the District, are exempt from attachment, levy, seizure, or sale upon the process, and may not be seized, levied on, taken, reached, or sold by process or proceedings of any court, judge, or other officer of and in the District. Where husband and wife are living together, the aggregate of the earnings, insurance, annuities, and pension or retirement payments of the husband and wife is the amount which shall be determinative of the exemption of either in cases arising ex contractu.

(b) The earnings (other than wages, as defined in subchapter III of chapter 5 of Title 16), insurance, annuities, or pension or retirement payments, not otherwise exempt, not to exceed $60 each month for two months preceding the date of attachment of persons residing in the District of Columbia, or of persons who earn the major portions of their livelihood in the District of Columbia, regardless of place of residence, who do not provide for the support of a family, are entitled to like exemption from attachment, levy, seizure, or sale. All wearing apparel belonging to such persons, not exceeding $300 in value, and mechanic's tools not exceeding $200 in value, are also exempt.

(c) A notice of claim of exemption, or motion to quash attachment or other process against exempt property or money, may be filed in the office of the clerk of the court either by the debtor, his spouse, or a garnishee. Thereupon, the court, after due notice, shall promptly act upon the notice, motion, or other claim of exemption. (Dec. 23, 1963, 77 Stat. 530, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–403 (Mar. 3, 1901, ch. 854, § 1107, 31 Stat. 1363; Dec. 20, 1944, ch. 610, § 2, 58 Stat. 818; Apr. 15, 1952, ch. 206, § 1, 66 Stat. 59; Aug. 4, 1959, Pub. L. 86–130, § 4, 73 Stat. 277).

Minor changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Discretion of court

Creditor's motion to rehear a claim of exemption in garnishment suit granted by default was within discretion of the court which could prescribe such terms as were just. *Marvins Credit, Inc.* v. *Westinghouse Electric Supply, Inc., et al.* (D.C. Mun. App. 1957, 130 A. 2d 777).

In garnishment proceedings, where garnishee appeared and showed several reasons why no judgment of condemnation or recovery should be entered, including garnishee's failure to understand nature of proceedings, his lack of indebtedness to judgment defendant, and right of judgment defendant to claim exemptions, there was no error in municipal court's use of judicial discretion in refusing to grant judgment of recovery against garnishee. *Horad* v. *Yee* (D.C. Mun. App. 1951, 82 A. 2d 916).

Householder

Bankrupt, a widow living alone in an apartment of several rooms furnished with her household furniture, was a "householder" within section of District of Columbia Code granting to householder residing in District of Columbia exemption of furnishings not exceeding $300 in value and bankrupt was entitled to exemption of her household furnishings, which did not exceed $300 in

value, from assets that would be set aside to satisfy her creditors. *Frank* v. *Hyman Trustee, etc.* (1958, 260 F. 2d 721, 104 U.S. App. 203).

Rehearing

Where creditor attached wages of judgment debtor and during pendency of judgment debtor's claim for exemption which was subsequently established by default, creditor through fraud obtained possession of attached wages from employer, a court could properly refuse to entertain creditor's motion for rehearing on exemption claim until creditor had restored money to employer. *Marvins Credit, Inc.* v. *Westinghouse Electric Supply, Inc. et al.* (D.C. Mun. App. 1957, 130 A. 2d 777).

Room and board

Value of room and meals furnished by employer to domestic servants were properly excluded from salary or earnings under wage exemption statute. *Hollywood Credit Clothing Co., Inc.* v. *Jones* (D.C. Mun. App. 1955, 117 A. 2d 226).

Unemployment compensation

Court properly refused to aggregate unemployment compensation benefits of husband with wife's wages in determining wife's exemption from attachment, in absence of showing that benefits were mingled with wages or that debt was for necessaries furnished during unemployment. *Washington Telephone Federal Credit Union* v. *Breeden* (D.C. Mun. App. 1959, 151 A. 2d 774).

SUBCHAPTER II.—TRIAL OF RIGHT TO PROPERTY SEIZED ON PROCESS OF COURT OF GENERAL SESSIONS

§ 15–521. Notice of claim or exemption; trial

When personal property taken on execution or other process issued by the District of Columbia Court of General Sessions is claimed by a person other than the defendant therein, or is claimed by the defendant to be property exempt from execution, and the claimant gives written notice to the marshal of his claim, or the defendant gives notice, in writing, that the property is exempt, the marshal shall notify the plantiff of the claim and return the notice to the court, and a trial of the right of property, or the question of exemption, shall be had before the court. (Dec. 23, 1963, 77 Stat. 530, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–744, 11–751a (Mar. 3, 1901, ch. 854, § 33, 31 Stat. 1194; June 30, 1902, ch. 1329, 32 Stat. 521; Feb. 17, 1909, ch. 134, 35 Stat. 623; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

In general

This section "provides summary statutory method, unknown to the common law, of determining the right of property and restoring possession thereof to the rightful owner. * * * It makes no provision for the recovery of damages." *Tribby* v. *O'Neal* (1912, 39 App. D.C. 467).

Conclusiveness of findings

Where evidence was such that in statutory proceeding for trial of right of property either one of two different conclusions might reasonably be drawn therefrom, trial court's judgment could not be disturbed by Municipal Court of Appeals. *Perlman* v. *Chal-Bro., Inc.* (D.C. Mun. App. 1945, 43 A. 2d 755).

Judgment

Judgment for third-party claimant on trial of right of property in good seized was not res judicata against United States marshal and his surety, as they were not parties to the action and may defend on ground of fraudulent transfer prior to levy made by the marshal thereon. *Snyder* v. *Charles Levine, Inc.* (1936, 80 F. 2d 382, 65 App. D.C. 81).

Jurisdiction to enjoin

The District Court of the District of Columbia has jurisdiction to enjoin sale of chattels under execution writ from municipal court of the District as the District Court, similar to nisi prius courts in the States, is the first court of general equity powers. *Palais Royal* v. *Calhoun* (1937, 92 F. 2d 515, 67 App. D.C. 364).

Notice to marshal

Notice to marshal of company's claim to chattels was given as provided by this section. *Stern Co. of Washington* v. *Rosenberg* (1937, 89 F. 2d 843, 67 App. D.C. 99).

Possession under lien

Person in possession of property under lien may claim benefit of section and does not waive his right to maintain action thereunder by becoming purchaser at marshal's sale. *Brown* v. *Petersen* (1905, 25 App. D.C. 359). See, also, *Bond* v. *Carter Hdw. Co.* (1899, 15 App. D.C. 72).

Priorities of liens

Where four dump trucks were sold by motor company to contractor for use in hauling topsoil to be purchased in Virginia, and on back of conditional sales contract was a purported assignment for value by motor company to a credit corporation, but conditional sales agreement was never actually assigned to credit corporation, and contractor registered trucks with Division of Motor Vehicles in Virginia, and owner of realty, who had contracted to sell topsoil, had no knowledge that motor company reserved liens on trucks, but he learned of recordation of conditional sales agreement in favor of credit corporation, and he then wrote to credit corporation and inquired as to status of recorded liens, and was informed by credit corporation that it had not financed conditional sale, and when owner of realty was not paid for topsoil he brought suit against contractor, and three of the trucks were seized under writ of attachment, lien of owner of realty was superior to that of motor company under Virginia law. *Davis* v. *Sheriff* (D.C. Mun. App. 1951, 81 A. 2d 344).

Subsequent action for damages

A proceeding under this section is no bar to subsequent action for damages. *Tribby* v. *O'Neal* (1912, 39 App. D.C. 467).

§ 15–522. Docketing of claim; manner of trial

The case made by the claim referred to in section 15–521 shall be entered on the docket as an action by the claimant or the defendant against the plaintiff and tried in the same manner as other cases before the District of Columbia Court of General Sessions. (Dec. 23, 1963, 77 Stat. 530, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–745 (Mar. 3, 1901, ch. 854, § 34, 31 Stat. 1194; Feb. 17, 1909, ch. 134, 35 Stat. 623; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Minor changes are made in phraseology.

§ 15–523. Judgment

If the property referred to in section 15–521 appears to belong to the claimant or to be exempt from the process, judgment shall be entered against the plaintiff for costs, and the property levied upon shall

be released. If the property does not appear to belong to the claimant or to be exempt, judgment shall be entered against the claimant or the defendant as the case may be, for costs, including additional costs occasioned by the delay in the execution of the writ. (Dec. 23, 1963, 77 Stat. 531, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–746 (Mar. 3, 1901, ch. 854, § 35, 31 Stat. 1195; June 30, 1902, ch. 1329, 32 Stat. 521; Apr. 19, 1920, ch. 153, 41 Stat. 555).

Minor changes are made in phraseology.

§ 15–524. Replevin against officer

This subchapter does not prevent a claimant other than the defendant from bringing an action of replevin against the officer levying upon the property claimed as described in this subchapter. (Dec. 23, 1963, 77 Stat. 531, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–747 (Mar. 3, 1901, ch. 854, § 37, 31 Stat. 1195).

Minor changes are made in phraseology.

CROSS REFERENCE

Certain income and benefits not subject to execution, see notes to § 15–302.

NOTES TO DECISIONS UNDER PRIOR LAW

Legislative intention

This section is mainly intended, by summary means, to indemnify and save harmless the officer charged with the execution of the writ or process, and to protect plaintiff who may direct the levy upon or seizure of the property, and also to uphold and maintain power and jurisdiction of the justice, in making his process effective, but at same time to avoid injury to third persons. *Snyder* v. *Charles Levine, Inc.* (1936, 80 F. 2d 382, 65 App. D.C. 81).

Chapter 7.—FEES AND COSTS

Sec.

15–701. Compensation taxed as costs; attorneys' compensation from clients.
15–702. Docket fees of attorneys and proctors.
15–703. Deposit for costs; security for costs by nonresidents.
15–704. Advance payment of costs and fees.
15–705. Exemption of District of Columbia and United States from fees, costs, and bonds.
15–706. Clerk's fees in United States District Court for the District of Columbia.
15–707. Probate Court fees.
15–708. Deposit for probate court fees.
15–709. Fees and costs in Court of General Sessions in civil and criminal cases.
15–710. Fees and costs in Domestic Relations Branch of Court of General Sessions.
15–711. Deposit or security for costs in Court of General Sessions.
15–712. Waiver of prepayment of costs in Court of General Sessions.
15–713. Deposits for jury trials in Court of General Sessions.
15–714. Witness fees for attendance in Court of General Sessions.
15–715. Witness fees in prosecutions for cruelty to children or animals.
15–716. Advances to Court of General Sessions clerk for witness fees.
15–717. Marriage license and related fees.

AMENDMENTS

1966—Act July 5, 1966, 80 Stat. 265, Pub. L. 89–493, § 13(d)(3), effective on first day of first month which was at least ninety days after July 5, 1966, added the item "15–717. Marriage license and related fees.".

§ 15–701. Compensation taxed as costs; attorneys' compensation from clients

(a) Except as otherwise provided by law, only the compensation specified in this chapter may be taxed and allowed to attorneys, proctors, United States attorney, clerk of the United States District Court for the District of Columbia, marshal, witnesses, and jurors.

(b) This chapter does not prohibit attorneys and proctors from charging or receiving from their clients other than the government such reasonable compensation for their services, in addition to the taxable costs, as may be in accordance with general usage or may be agreed upon. (Dec. 23, 1963, 77 Stat. 531, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–1501 (Mar. 3, 1901, ch. 854, § 1108, 31 Stat. 1363; June 25, 1948, ch. 646, §§ 16, 32(b), 62 Stat. 989, 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Reference to "solicitors" is omitted as covered by "attorneys", and "district attorney" is changed to "United States attorney" pursuant to Title 28 U.S.C.

The taxation of costs in the United States District Court is also governed by 28 U.S.C. § 1920.

Changes are made in phraseology.

CROSS REFERENCE

Notary fee, see §§ 1–514, 1–515.

NOTES TO DECISIONS

I. UNDER PRIOR LAW

Allowance discretionary

Costs section of District of Columbia Code is not a "statute of United States" within federal rule providing that except when express provision is made, either in a statute of the United States or in federal rules, costs shall be allowed to prevailing party unless court otherwise directs, and court has discretion in District of Columbia in awarding of costs. *Riss & Company, Inc.* v. *Association of American Railroads et al.* (D.C.D.C. 1962, 217 F. Supp. 376).

Attorney's fees

In action on notes payable in District of Columbia, successful plaintiff was not entitled to attorney fees where District of Columbia Code did not provide for attorney fees in such a case and parties had not agreed that maker should bear such costs. *Rosden* v. *Leuthold* (1960, 274 F. 2d 747, 107 U.S. App. D.C. 89).

Where bailee of china for hire misplaced it through carelessness, deprived bailor of its use for over two years, unjustifiably refused to deliver it to bailor for four or five months more after discovering its whereabouts in bailee's warehouse, and finally delivered china to bailee only when about to be ordered to do so by court after trial of bailee's action to recover damages from bailee for wrongful detention thereof, bailor was entitled to recover for his reasonable expenses and time lost on trip, made by him at time of trial because of bailee's refusal to deliver china to bailor unconditionally, and such part of his counsel fees as could be allocated to counsel's efforts to regain possession of china before trial, if such trip and efforts were reasonably necessary to regain property. *Boiseau* v. *Morrissette* (D.C. Mun. App. 1951, 78 A. 2d 777).

Breach of contract

An attorney was not entitled to recover on a contract to render professional services to clients for balance of their lives without receiving any compensation therefor until the death of the survivor, where attorney breached the contract by accepting payments for his services during the lifetime of the client. *Hoover* v. *Lacey* (D.C.D.C. 1948, 80 F. Supp. 691).

Collection of fees

Where attorney wrote client threatening to sue for fee, it was not wrongful and hence not duress. What con-

stitutes duress is a matter of law though whether it existed is a question of fact. *Rizzi* v. *Fanelli* (D.C. Mun. App. 1949, 63 A. 2d 872).

Costs in probate proceedings

Commission of Collector of assets of estate, who was appointed on request of unsuccessful caveators in will contest, was not chargeable against the caveators as part of the collectible costs, in absence of fraud or unconscionable conduct on part of caveators. *Adlung, Executors, etc.* v. *Gotthardt et al.* (1958, 257 F. 2d 199, 103 U.S. App. D.C. 195).

Assessment of costs is, in part, a matter governed by statute and, in part, a matter governed by usage. *Id.*

Divorce

As statute does not expressly make provision therefor, a husband can not collect attorney fees from wife when he is plaintiff in a divorce action against her. *Eichelberger* v. *Symons* (1923, 288 F. 654, 53 App. D.C. 116).

Equity actions

In equitable actions, costs may be charged to either party in the discretion of the court, but the District Code specifies the compensation which may be taxed as costs and provides that no other costs may be so taxed unless provided by law. Since no fraud was found, attorneys' fees are not allowable as damages. *Cahill* v. *Bryan* (1950, 184 F. 2d 277, 87 U.S. App. D.C. 271).

Evidence

Member of the Bar of the District of Columbia was qualified to testify as an expert with respect to legal services rendered in neighboring jurisdiction of Virginia though he was not a member of the Virginia Bar, and had only a limited experience there, and had only slight knowledge of the fees customarily charged there, such facts going only to the weight of his testimony. *Fraser* v. *Crounse* (D.C. Mun. App. 1948, 56 A. 2d 54).

Fees part of costs

Fees to special auditor may be taxed as part of the costs of the cause. *Davis* v. *Fidelity & Deposit Co. of Maryland* (1934, 73 F. 2d 118, 63 App. D.C. 395).

Jurisdiction

The bankruptcy court had exclusive jurisdiction to determine title to decedent's liquor store which administratrix had allowed bankrupt to control and operate, and such determination would not interfere with jurisdiction of probate court. *N. M. White, personally etc.* v. *M. F. Schwartz, Trustee etc.* (1962, 302 F. 2d 916, 112 U.S. App. D.C. 331).

Partition suit

Attorney's fees in partition suit can not be taxed as costs. *Fletcher* v. *Coomes* (1923, 285 F. 893, 52 App D.C. 159, certiorari denied 43 S. Ct. 363, 261 U.S. 619, 67 L. Ed. 830).

Pleading

An attorney seeking cancellation of release of claims against clients based on a payment of $1,200 failed to plead fraud with sufficient particularity as required by Federal Rule 9b, 28 U.S.C., based on the statement that at time he executed the release he was in financial straits and that such was known to the client. *Hoover* v. *Lacey* (D.C.D.C. 1948, 80 F. Supp. 691).

Presumption

There is a presumption of over-reaching or duress in a contract regarding compensation between attorney and client, once the fiduciary relationship has been established, *Rizzi* v. *Fanelli* (D.C. Mun. App. 1949, 63 A. 2d 872).

Release

A release executed by attorney to clients under contract for the performance of professional services for clients during balance of their lives in the consideration of $1,200 would not be set aside on the ground of gross inadequacy of consideration, where if any disparity existed between the parties, it was in favor of the attorney, and he was familiar with the size of the estate of the clients. *Hoover* v. *Lacey,* (D.C.D.C. 1948, 80 F. Supp. 691).

Rent actions

Where landlord in his suit for possession of leased premises on ground of nonpayment of rent made no claim in his complaint for a money judgment, trial court was justified in denying landlord's claim for attorney's fee pursuant to provision in lease. *Shipley* v. *Major* (D.C. Mun. App. 1945, 44 A. 2d 540).

Attorney's fees were not taxable as costs in landlord's action to recover possession of leased premises on ground of nonpayment of rent. *Id.*

Repeal

Section of District of Columbia Code providing for allowance of costs to defendant in an action in which verdict is against plaintiff has been repealed either by usage or implication. *Riss & Company, Inc.* v. *Association of American R.R. et al.* (D.C.D.C. 1962, 217 F. Supp. 376).

Representing conflicting interests

Good faith and honesty of motive and intention will not justify a lawyer in representing conflicting interests, and in that connection knowledge on part of attorney is material only on question of his good faith. *Fraser* v. *Crounse* (D.C. Mun. App. 1948, 56 A. 2d 54).

Statutory authorization required

In absence of express statutory authority, attorney's fees are not taxable as "costs". *Shipley* v. *Major* (D.C. Mun. App. 1945, 44 A. 2d 540).

Statute of the United States

Section of the District of Columbia Code providing for an award of costs to the prevailing party was not a "statute of the United States" within Rule of Civil Procedure conferring discretion on a trial judge in allowing costs except when an express provision therefore is made in a statute of the United States, and therefore judges of the federal District Court of the District of Columbia have discretion as to whether to allow costs to the prevailing party. *Association of Western Railways et al.* v. *Riss & Company, Inc.* (1963, 320 F. 2d 785, 116 U.S. App. D.C. 63).

Attorneys' fees may not be taxed to either party unless provided for either by law or by agreement between parties *Moses-Ecco Company, Inc.* v. *Roscoe-Ajax Corporation; Roscoe-Ajax Corporation* v. *C. Detwiler* (1963, 320 F. 2d 685, 115 U.S. App. D.C. 366).

Vacating judgment

Counsel fees may be awarded as a condition of the vacating of the judgment on payment of the garnishee. The rule that, in the absence of statutory authority, attorneys' fees are not taxable as costs has no application since the payment for counsel fees is not imposed as costs but as a condition to obtaining relief to which the party is not entitled as a matter of right. *Bridgett* v. *Perpetual Building Association* (D.C. Mun. App. 1950, 75 A. 2d 780).

II. Under Present Law

Attorney's fees

Wife's counsel was entitled to an award of $150 for services performed on appeal from judgment denying wife a limited divorce and separate maintenance. *Hannon* v. *Hannon* (D.C. App. 1966, 220 A. 2d 94).

§ 15–702. Docket fees of attorneys and proctors

(a) Attorney's and proctor's docket fees may be taxed in the amounts fixed by section 1923 of Title 28, United States Code.

(b) An attorney for the District of Columbia may not retain attorney fees taxed as costs in litigation in which the District of Columbia is a party. (Dec. 23, 1963, 77 Stat. 531, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–1502, 11–1516 (Mar. 3, 1901, ch. 854, § 1109, 31 Stat. 1363; Sept. 1, 1916, ch. 433, 39 Stat. 678; May 24, 1949, ch. 139, § 140, 63 Stat. 109).

Word "solicitor's" is omitted as covered by "attorney's".

Docket fees of United States attorneys are covered by 28 U.S.C. § 1923.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Partition suit

As taxation and allowance for attorney's fees must be limited to the matters enumerated in the Code, there could be no allowance made when it is in a partition suit. *Fletcher* v. *Coomes* (1923, 285, F. 893, 52 App. D.C. 159).

§ 15–703. Deposit for costs; security for costs by non-residents

(a) At the commencement of every suit in the United States District Court for the District of Columbia the plaintiff shall deposit at least ten dollars with the clerk, to be appropriated toward the costs of the suit. The court may prescribe rules as to any further costs to be paid by either the plaintiff or defendant during the progress of the case, and as to the collection thereof. Upon the termination of the case any surplus of costs shall be refunded by the clerk.

(b) The defendant in a suit instituted by a non-resident of the District of Columbia, or by one who becomes a non-resident after the suit is commenced, upon notice served on the plaintiff or his attorney after service of process on the defendant, may require the plaintiff to give security for costs and charges that may be adjudged against him on the final disposition of the cause. This right of the defendant does not entitle him to delay in pleading, and his pleading before the giving of the security is not a waiver of his right to require security for costs. In case of noncompliance with these requirements, within a time fixed by the court, judgment of non-suit or dismissal shall be entered. The security required may be by an undertaking, with security, to be approved by the court, or by a deposit of money in an amount fixed by the court.

A nonresident, at the commencement of his suit, may deposit with the clerk such sum as the court deems sufficient as security for all costs that may accrue in the cause, which deposit may afterwards be increased on application, in the discretion of the court. (Dec. 23, 1963, 77 Stat. 531, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–1506 (Mar 3, 1901, ch. 854, § 175, 31 Stat. 1219; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Changes are made in phraseology.

CROSS REFERENCES

Costs in Court of General Sessions, see §§ 15–709 to 15–712.

Fees and costs in small claims court, see §§ 16–3903, 16–3909.

NOTES TO DECISIONS UNDER PRIOR LAW

Nonresident plaintiff

Where jurisdiction did not depend upon diversity of citizenship, defendant was entitled to security for costs from nonresident plaintiff in the form of an undertaking in the amount of $100 with surety approved by court, or a cash deposit of $50. *Moyers* v. *Leoffler* (D.C.D.C. 1948, 80 F. Supp. 221).

Security for costs

Where more than four months had elapsed between filing of defendants' motion for security for costs and final denial of plaintiff's motion for reconsideration of order dismissing the action during which no bonds for security were tendered by plaintiff, dismissal of the action was not an abuse of discretion. *Carpenter* v. *Carpenter* (1946, 156 F. 2d 857, 81 U.S. App. D.C. 214).

§ 15–704. Advance payment of costs and fees

(a) Costs and fees for services rendered by the clerk of the United States District Court for the District of Columbia and the Register of Wills and chargeable to others than the United States or the District of Columbia are payable in advance and shall be collected pursuant to such rules and regulations, not incompatible with law, as are prescribed by the court.

(b) Section 15–706 does not prohibit the court from directing, by rule or standing order, the collection, at the time the services are rendered, of the fees enumerated in that section from either party, but all such fees shall be taxed as costs in the respective cases. (Dec. 23, 1963, 77 Stat. 532, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on the D.C. Code, 1961 ed., §§ 11–1507, 11–1509 (Mar. 3, 1901, ch. 854, §§ 177, 1110, 31 Stat. 1219, 1363; June 30, 1902, ch. 1329, 32 Stat. 527; June 9. 1910, ch. 277, 36 Stat. 464; Aug. 23, 1912, ch. 350, 37 Stat. 412; Feb. 22, 1921, ch. 70, § 7, 41 Stat. 1144; Apr. 6, 1928, ch. 325, 45 Stat. 410; Mar. 14, 1952, ch. 104, § 1, 66 Stat. 24; Oct. 4, 1961, Pub. L. 87–349, § 1, 75 Stat. 769).

Section consolidates parts of section 11–1507 and 11–1509 of D.C. Code, 1961 ed. For remainder of those sections, see tables.

The exception as to fees chargeable to the District of Columbia is inserted pursuant to the section of this chapter exempting the District from the payment of court costs.

The provision of 28 U.S.C. § 1914(c) that each district court by rule or standing order may require advance payment of fees does not apply to the District of Columbia under subsection (d) of that section.

Changes are made in phraseology.

CROSS REFERENCE

Liability for costs in suits against Board of Education, see § 31–101.

NOTES TO DECISIONS UNDER PRIOR LAW

Duty of clerk

Fees and emoluments of the office belong to the government, subject only to the payment of the annual salary of the clerk, necessary clerk hire, and incidental expenses, and the clerk is the collecting agent of the government. *Bean* v. *Patterson* (1884, 4 S. Ct. 23, 110 U.S. 401, 28 L. Ed. 190).

Clerk should account to United States for fees received in civil actions and from the territory on account of territorial business, but not for services in naturalization proceedings. *United States* v. *McMillan* (1897, 17 S. Ct. 395, 165 U.S. 504, 41 L. Ed. 805).

Former rule

Liability of District of Columbia Commissioners for costs prior to act of June 9, 1910. *Brown* v. *Macfarland* (1903, 22 App. D.C. 412).

Printing record

Practice under this section has been for parties to deposit the sum of $25 in lieu of a fee bond, and the rule provides for the subsequent advance of the cost of printing the record and the fee for its preparation. *Green* v. *Elbert* (1890, 11 S. Ct. 188, 137 U.S. 615, 34 L. Ed. 792).

Reason for the rule

Clerk is required to pay into the treasury the fees and emoluments of his office over and above his own compensation as fixed by law, and his necessary clerk hire and incidental expenses. It is proper, therefore, that for his protection his fees should be paid in advance, if demanded. *Steever* v. *Rickman* (1883, 3 S. Ct. 67, 343, 109 U.S. 74, 27 L. Ed. 861).

§ 15–705. Exemption of District of Columbia and United States from fees, costs, and bonds

(a) The District of Columbia or any officer thereof acting therefor may not be required to pay court costs or fees in any court in and for the District of Columbia.

(b) The District of Columbia may not be required to pay fees to the clerk of the United States Court of Appeals for the District of Columbia, or to the marshal of the District, and is entitled to the services of the marshal in the service of all civil process.

(c) The United States and the District of Columbia may not be required to pay fees and costs for services rendered by the clerk of the United States District Court for the District of Columbia and the Register of Wills.

(d) Neither the United States nor the District of Columbia, nor any officer of either acting in his official capacity, may be required to give bond or enter into undertaking to perfect an appeal or to obtain an injunction or other writ, process, or order in or of any court in the District of Columbia for which a bond or undertaking is required by law or rule of court. (Dec. 23, 1963, 77 Stat. 532, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–1507, 11–1519, (Mar. 3, 1901, ch. 854, § 177, 31 Stat. 1219; June 30, 1902, ch. 1329, 32 Stat. 527; June 9, 1910, ch. 277, 36 Stat. 464; July 15, 1939, ch. 281, 53 Stat. 1009; June 12, 1940, ch. 333, § 1, 54 Stat. 307; June 28, 1944, ch. 300, § 16, 58 Stat. 533; Oct. 4, 1961, Pub. L. 87–349, § 1, 75 Stat. 769).

Section consolidates part of section 11–1507 of D.C. Code, 1961 ed., with section 11–1519 of the Code. For remainder of section 11–1507, see tables.

Subsection (a) is from section 11–1519 of D.C. Code, 1961 ed., which first appeared in an appropriation act in 1939 and was made permanent in 1944.

Subsections (b)—(d) are from section 11–1507 of D.C. Code, 1961 ed. A provision of that section that the United States shall not be required to pay fees and costs for services rendered by the clerk of the District Court is omitted as superseded by 28 U.S.C. § 2412.

A provision similar to subsection (d) of this section, exempting the United States from giving security for damages or costs, is found in 28 U.S.C. § 2048. See also Rules 62(e) of the Federal Rules of Civil Procedure.

Changes are made in phraseology.

§ 15–706. Clerk's fees in United States District Court for the District of Columbia

(a) For filing the following-named cases and for all services to be performed therein, except as otherwise provided by law, the clerk of the United States District Court for the District of Columbia shall charge and collect the following fees:

(1) civil actions, $10;
(2) lunacy cases, $10;
(3) deportation cases, $10;
(4) requisition cases, $10;
(5) habeas corpus cases, $10;
(6) plea of title cases, $10;
(7) District court cases, $15;
(8) condemnation cases, $15;
(9) libel cases, $15;
(10) feeble-minded cases, $7.50;
(11) change of name cases, $5;
(12) intervening petitions in any case, $5;
(13) cases substituting trustees, $4;
(14) docketing judgments of the District of Columbia Court of General Sessions, as provided in section 15–132; and
(15) limited partnership cases, $3.

(b) Upon the perfecting of an appeal to the United States Court of Appeals for the District of Columbia Circuit, the clerk shall charge and collect from the party or parties prosecuting the appeal an additional fee of $5 in the action or proceeding.

(c) For each additional trial or final hearing, upon a reversal by the United States Court of Appeals for the District of Columbia Circuit, or following a disagreement by a jury or the granting of a new trial or rehearing by the court, the clerk shall charge and collect from the party or parties securing the reversal, new trial, or rehearing, the further sum of $5.

(d) In a case where attachments, executions, or rules are issued, the clerk shall charge and collect the following fees in addition to the fees otherwise provided:

(1) for each writ of attachment, $1, and each copy, $1;
(2) for each writ of execution, $1.50;
(3) for each rule 50 cents, and each copy certified, 50 cents;
(4) for each writ of ne exeat, $1;
(5) for each bench warrant, $1;
(6) for each warrant of arrest, $1.

(e) In addition to the fees for services rendered in cases hereinbefore enumerated the clerk shall charge and collect, for miscellaneous services performed by him and his assistants, except when on behalf of the United States, the following fees:

(1) for issuing a writ or subpoena for a witness not in a case instituted or pending in the court from which it is issued, 50 cents for each writ and copy or subpoena and copy;

(2) for filing and indexing any paper not in a case or proceeding, 25 cents;

(3) for administering an oath or affirmation, not in a case or proceeding pending in the court where the oath is administered, 50 cents;

(4) for an acknowledgment, certificate, affidavit, or countersignature, with seal, 50 cents;

(5) for taking and certifying depositions to file, 20 cents for each folio of one hundred words, and if taken stenographically, 15 cents per folio additional for the stenographer;

(6) for copy of a record, entry, or other paper and the comparison thereof, 15 cents for each folio of one hundred words;

(7) for searching the records of the court for judgments, decrees, or other instruments, or marriage records, 50 cents for each year covered by the search and for certifying the result, 50 cents;

(8) for making and comparing a transcript of record on appeal, 15 cents for each folio of one hundred words;

(9) for comparing a transcript, copy of record, or other paper not made by the clerk with the original thereof, 5 cents for each folio of one hundred words;

(10) for administering oath of admission of attorneys to practice, $2 each; for certificate of admission to be furnished upon request, $2 additional;

(11) (12) (13) (14). Repealed. July 5, 1966, 80 Stat. 265, Pub. L. 89–493, § 13(d)(1).

(15) for each certificate of official character, including the seal, 50 cents;

(16) Repealed. July 5, 1966, 80 Stat. 266, Pub. L. 89–493, § 19.

(17) for entering release of mechanic's lien, 50 cents for each order of lienor; 75 cents for each undertaking of lienee;

(18) Repealed. July 5, 1966, 80 Stat. 266, Pub. L. 89–493, § 19.

(19) for the clerks' attendance on the court while actually in session, $5 per day;

(20) for all services rendered to the United States in cases in which the United States is a party of record, $5.

(Dec. 23, 1963, 77 Stat. 532, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 5, 1966, 80 Stat. 265, 266, Pub. L. 89–493, §§ 13(d)(1), 19.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–1509 (Mar. 3, 1901, ch. 854, § 1110, 31 Stat. 1363; Aug. 23, 1912, ch. 350, 37 Stat. 412; Feb. 22, 1921, ch. 70, § 7, 41 Stat. 1144; Apr. 6, 1928, ch. 325, 45 Stat. 410; Mar. 14, 1952, ch. 104, § 1, 66 Stat. 24).

In subsection (a) "civil actions, $10" is substituted for "Actions at law, $10; suits in equity, $10" because of Rule 2 of the Federal Rules of Civil Procedure providing for one form of action known as a "civil action".

The phrase "adoption cases, $5" is omitted because these cases are now brought in the Domestic Relations Branch of the Court of General Sessions.

In lieu of the fee of $2.50 for docketing judgments of the Court of General Sessions a reference is inserted to section 15–132 herein which fixes this fee at 50 cents.

Subsection (b) of this section is similar to 28 U.S.C. § 1917, and may be superseded by that section, which also fixes the fee at $5.

In subsection (d), "scire facias proceedings" and "for each writ of scire facias, $1, and each copy $1" are omitted because Rule 81(b) of the Federal Rules of Civil Procedure abolished the writ of scire facias and provided that relief theretofore available by that writ may be obtained by appropriate action or motion.

Provisions of section 11–1509 of D.C. Code, 1961 ed., that the clerk of the United States District Court is not required to account for fees not collected by him in criminal cases, and that surplus fees collected by the clerk shall be deposited in the treasury to the credit of the District of Columbia and the United States in the proportions required by law are omitted as covered by 28 U.S.C. § 751, which governs payment in the Treasury, and by section 11–330 of D.C. Code, 1961 ed., which is being transferred to Title 47 thereof, and which governs the crediting of fees to the District of Columbia and the United States.

For provisions of section 11–1509 on advance payment of fees, see tables.

Changes are made in phraseology.

AMENDMENTS

1966—Section 13(d)(1) of act July 5, 1966, amended subsec. (e) by repealing pars. (11), (12), (13) and (14), which related to fees for marriage license, certified copy of marriage license and return, certified copy of application for marriage license, and registering clergymen's authorizations to perform marriages and issuing certificate, and which are now covered by § 15–717.

Section 19 of such act amended section by repealing pars. (16) and (18) of subsec. (e), which related to fees for filing and recording each notice of mechanic's lien, and recording physicians', optometrists', and midwives' licenses. See §§ 2–106 et seq., 2–118, 2–513 and 45–708.

EFFECTIVE DATE OF 1966 AMENDMENTS

Amendments of this section by act July 5, 1966 (repealing pars. (11), (12), (13), (14), (16) and (18) of subsec. (e)), as effective on first day of first month which is at least ninety days after July 5, 1966, see § 21 of such act, set out in note under § 1–504.

FEES FOR ENTERING RELEASE OF MECHANIC'S LIEN, ETC.

Although not repealed by act July 5, 1966, which repealed certain paragraphs of subsec. (e) of this section, par. (17) of such subsection, relating, with respect to entering release of mechanic's lien, to fees to be collected by the clerk of the U.S. District Court for each order of lienor, and each undertaking of lienee, contains provisions substantially identical with the last paragraph of § 45–708, which is from said act of July 5, 1966, except that, under that section, such fees are now to be collected by the Recorder of Deeds in performing such acts.

CROSS REFERENCE

Payment of fees by District of Columbia or officers, see, § 15–705.

NOTES TO DECISIONS UNDER PRIOR LAW

Necessity for clerk's certificate

In order that the printed transcript should become the record upon appeal, it was necessary that it should be made so by the certificate of the clerk as to its correctness in form and substance in accordance with his examination and comparison of the printed transcript with that which remained in the lower court. *Sarfert Co.* v. *Chipman* (D.C. Pa. 1913, 205 F. 937).

Taxing costs

Questions of costs ordinarily do not properly arise before the taxation, and are not determined by a court in advance, without allowing parties an opportunity to be heard. *Ferguson* v. *Dent* (C.C. Tenn. 1891, 46 F. 88).

§ 15–707. Probate Court fees

(a) The Register of Wills, clerk of the Probate Court, may demand and receive in advance, for services performed by him, the following fees:

(1) for filing petition or caveat, 50 cents;

(2) for filing other papers, each 5 cents;

(3) for making docket and indexes and taxing costs in each case, $2.50;

(4) for additional docket entries, each 25 cents;

(5) for issuing subpoena to witness and copies, each, 25 cents;

(6) for issuing subpoena duces tecum, 50 cents;

(7) for issuing summons, citation, commission, rule, warrant, notice of trial, process, execution, attachement, or writ, each $1;

(8) for issuing notices to creditors, distributees, and legatees, each 50 cents;

(9) for copies of summons, citation, rule, warrant, or other process, order of publication, notice to creditors, legatees, and distributees, attested under seal and delivered for service or publication, each 50 cents;

(10) for taking and recording every bond, $1.50;

(11) for a probate of will, inventory, or account, $1;

(12) for issuing letters testamentary or of administration, collection, or guardianship, $1;

(13) for issuing certificate of appointment of executor, administrator, collector, or guardian, $1;

(14) for entering panel of jury and swearing them, 50 cents;

(15) for administering an oath or affirmation, 15 cents;

(16) for passing a claim against an estate and entering in docket of claims, 30 cents;

(17) for drawing depositions of witnesses, per folio, 15 cents;

(18) for every search of the files or records outside of a regular proceeding, where no other service is performed for which a fee is allowed, $1;

(19) for examining or stating an account of executor, administrator, collector, guardian, receiver, or trustee, not exceeding one hundred items, $5;

(20) for each additional item, 2 cents;

(21) for stating the distribution of an estate, for each distributee, $1;

(22) for a copy of an account, not exceeding one hundred items, $1.50;

(23) for each additional item, 2 cents;

(24) for recording all papers, per folio, 15 cents;

(25) for copies of all papers not otherwise specified, per folio, 12 cents;

(26) for every certificate under seal, not otherwise specified, 50 cents.

(b) Where the estate does not exceed two hundred dollars in value the Register of Wills shall receive no fees, and where the estate does not exceed five hundred dollars in value the fees may not exceed ten dollars.

(c) The court may allow to the Register reasonable fees for any service he may render not specified by section 15–706. (Dec. 23, 1963, 77 Stat. 534, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–1503 (Mar. 3, 1901, ch. 854, § 1111, 31 Stat. 1364; June 30, 1902, ch. 1329, 32 Stat. 541).

Changes are made in arrangement and phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Generally

Commission of Collector of assets of estate, who was appointed on request of unsuccesful caveators in will contest, was not chargeable against the caveators as part of the collectible costs, in absence of fraud or unconscionable conduct on part of caveators. *Adlung, Executors, etc.* v. *Gotthardt et al.* (1958, 257 F. 2d 199, 103 U.S. App. D.C. 195).

Assessment of costs is, in part, a matter governed by statute and, in part, a matter governed by usage. *Id.*

§ 15–708. Deposit for probate court fees

For proceedings in the probate court deposits and fees shall be paid to the Register of Wills.

Upon the presentation for filing of a petition or a caveat to a will, he may require a deposit for his fees to be charged for the proceedings under the petition or caveat. Upon the deposit becoming exhausted in the liquidation of his fees so charged, he may require a further deposit from the original petitioner or caveator. The deposits may not be required in excess of fifteen dollars at any one time. (Dec. 23, 1963, 77 Stat. 535, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–1505 (Mar. 3, 1901, ch. 854, § 175, 31 Stat. 1219; June 30, 1902, ch. 1329, 32 Stat. 527).

Changes are made in phraseology.

§ 15–709. Fees and costs in Court of General Sessions in civil and criminal cases

(a) The District of Columbia Court of General Sessions may prescribe fees and costs, including the fee to be paid for a jury trial. Section 15–702(a), relating to docket fees of attorneys and proctors, does not apply to the Court of General Sessions.

(b) Fees for service by the United States marshal of process issued by the Court of General Sessions shall be:

(1) in civil actions, as prescribed by rule of the United States District Court for the District of Columbia; and

(2) in criminal actions, the same as fees prescribed for like service in the District Court.

(Dec. 23, 1963, 77 Stat. 535, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–748, 11–748e, 11–751a, 11–755, 11–756 note (R.S.D.C., § 1068; Mar. 3, 1901, ch. 854, § 41, 31 Stat. 1195; Feb. 17, 1909, ch. 134, 55 Stat. 623; Mar. 3, 1921, ch. 125, § 11, 41 Stat. 1312; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates part of section 11–748 of D.C. Code, 1961 ed., section 11–748e thereof, and act Mar. 3, 1921, ch. 125, § 11, 41 Stat. 1312 (D.C. Code 1961 ed., § 11–756 note).

Subsection (a) is from act Mar. 3, 1921, ch. 125, § 11, 41 Stat. 1312, cited above, which related to the Municipal Court prior to its merger with the Police Court in 1942 to form the second Municipal Court. Section 11–755 of D.C. Code, 1961 ed., is also cited as one of the sources of this section because, in connection with the 1942 merger, subsec. (a) provided, prior to its amendment by the act of Oct. 23, 1962, that the court thus formed and the judges thereof should have the same jurisdiction and powers as those previously vested in the two former courts. The remainder of above-cited section 11 of the 1921 act, authorizing rules of practice, pleading, and procedure, is omitted as superseded by that part of section 11–756 of D.C. Code, 1961 ed., which is carried into section 13–101 herein.

Subsection (b) of this section is from section 11–748e of D.C. Code, 1961 ed., which, until the above-mentioned 1942 merger, related to the Police Court, and section 11–748 thereof, which related to justices of the peace, as enacted in 1901, and was changed to refer to the first Municipal Court in 1909.

In these consolidated and revised provisions, the name of the court is changed to the District of Columbia Court of General Sessions, to conform with section 11–751a of D.C. Code, 1961 ed., enacted by section 1 of the act of Oct. 23, 1962, cited above. Section 11–751a, which is also cited as one of the sources of this section, so changed the name of the court.

The provisions of section 11–748 of D.C. Code, 1961 ed., relating to supersedeas or stay of judgment of the Municipal Court is omitted as covered by Rules 62 and 73 of the Civil Rules of the court (now, Court of General Sessions). For remainder of section 11–748, see tables.

Changes are made in phraseology.

§ 15–710. Fees and costs in Domestic Relations Branch of Court of General Sessions

The judges of the Domestic Relations Branch of the District of Columbia Court of General Sessions, with the approval of the chief judge of the court, shall prescribe, by rules, the fees, charges, and costs in actions and proceedings in the Domestic Relations Branch. (Dec. 23, 1963, 77 Stat. 535, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–766 (Apr. 11, 1956, ch. 204, § 110, 70 Stat. 113; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section is from part of section 11–766 of D.C. Code, 1961 ed. For remainder of the section, see tables.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the

Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

§ 15–711. Deposit or security for costs in Court of General Sessions

Nonresidents of the District of Columbia may commence suits in the District of Columbia Court of General Sessions without first giving security for costs, but upon motion may be required to give security pursuant to section 15–703. (Dec. 23, 1963, 77 Stat. 535, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–719, 11–751a, 11–755 (Mar. 3, 1921, ch. 125, § 7, 41 Stat. 1131; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 514; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from section 11–719 of D.C. Code, 1961 ed., which related to the Municipal Court prior to its merger, by the act of Apr. 1, 1942, with the Police Court to form the second Municipal Court. Section 11–755 is also cited as one of the sources of this section because, in connection with the 1942 merger, subsec. (a) thereof provided, prior to its amendment by the act of Oct. 23, 1962, that the court thus formed and the judges thereof should have the same powers and jurisdiction that were vested in the two former courts and the judges thereof. After the 1962 amendment, subsec. (a) of section 11–755 provided that the District of Columbia Court of General Sessions and the judges thereof should have the same powers and jurisdiction that were vested in the Municipal Court for the District of Columbia and the judges thereof. For remainder of section 11–755, see tables.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia (the second Municipal Court referred to above) to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

NOTES TO DECISIONS

Suit by nonresident

Generally, there is no restriction on right of nonresident to file suit in the Municipal Court for the District of Columbia. *Rice* v. *Salnier* (D.C. Mun. App. 1952, 86 A. 2d 175).

§ 15–712. Waiver of prepayment of costs in Court of General Sessions

When satisfactory evidence is presented to the District of Columbia Court of General Sessions or one of the judges thereof that the plaintiff in a suit is indigent and unable to make deposit of costs, the court or judge may permit the prosecution of the suit without the prepayment or deposit of costs. (Dec. 23, 1963, 77 Stat. 536, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–720, 11–751a, 11–755 (Mar. 3, 1921, ch. 125, § 8, 41 Stat. 1311; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from section 11–720 of D.C. Code, 1961 ed., which related to the Municipal Court prior to its merger with the Police Court in 1942 to form the second Municipal Court. Sections 11–751a and 11–755 are also cited as sources of this section for the same reasons given in revision note to section 15–711.

The provisions, as herein revised, relate to the District of Columbia Court of General Sessions.

Provisions or waiver of prepayment of costs in the Small Claims and Conciliation Branch of the Court of General Sessions are found in section 16–3903 herein. Proceedings in forma pauperis in the District Court are covered by 28 U.S.C. § 1915.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Affidavit required

Suit can not be allowed to proceed in forma pauperis unless plaintiff's attorney makes the statutory affidavit. *Ex parte Saunders* (1928, 48 S. Ct. 158, 275 U.S. 507, 72 L. Ed. 397). See, also, *United States* v. *Ross* (C.C.A. 6, 1924, 298 F. 64).

Citizens

Privileges of the forma pauperis statute are extended only to citizens of the United States. *The Memphian* (D.C. Mass. 1917, 245 F. 484). See, also, *Johnson* v. *Nickloff* (C.C.A. 9, 1931, 52 F. 2d 1074).

Clerk to pay costs

In forma pauperis action which is denied the clerk shall pay the costs. *Aldridge* v. *United States* (1931, 51 S. Ct. 333, 282 U.S. 836, 75 L. Ed. 743). See, also, *Drazich* v. *Archer* (1931, 51 S. Ct. 180, 282 U.S. 893, 75 L. Ed. 787).

Courts included

Right to prosecute in forma pauperis suits without paying fees or costs does not extend to appellate courts *In re Abdu* (1918, 38 S. Ct. 447, 247, 62 L. Ed. 966).

Jurisdiction of court

To prosecute an appeal or writ of error to the Supreme Court in forma pauperis, it must appear from the record that the court has jurisdiction. *Kinney* v. *Plymouth Rock Squab Co.* (1915, 35 S. Ct. 236, 236 U.S. 43, 59 L. Ed. 457). See, also, *Pothier* v. *Rodman* (1923, 43 S. Ct. 374, 261 U.S. 307, 67 L. Ed. 670).

Proceedings in admiralty

Congress did not intend to deny to poor persons of the United States the right to proceed in admiralty. *Washington-Southern Nav. Co.* v. *Baltimore & P. Steamboat Co.* (1924, 44 S. Ct. 220, 263 U.S. 629, 68 L. Ed. 480).

Transcripts

As Congress did not grant to the court the power to authorize payment for transcripts of testimony for poor persons, the court has no such authority. *United States ex rel. Estabrook* v. *Otis* (C.C.A. 8, 1927, 18 F. 2d 689).

United States not liable

Congress did not intend that the United States should be liable for any of the costs incured under the provisions of this act. *United States* v. *Fair* (D.C. Cal. 1916, 235 F. 1015).

§ 15–713. Deposits for jury trials in Court of General Sessions

Deposits made on demands for jury trials in accordance with rules prescribed by the District of Columbia Court of General Sessions under authority granted in section 15–709 shall be earned unless, prior to three days before the time set for trial, including Sundays and legal holidays, a new date for trial is set by the court, cases are discontinued or settled, or demands for jury trials are waived. (Dec. 23, 1963, 77 Stat. 536, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–749, 11–751a (June 7, 1924, ch. 292, 42 Stat. 564, and certain provisions from subsequent appropriation acts, including act Apr. 8, 1960, Pub. L. 86–412, § 1, 74 Stat. 21, the 1960 act having been continued for the 1962 and 1963 fiscal years by acts Sept. 21, 1961, Pub. L. 87–265, § 15, 75 Stat. 564, and Oct. 23, 1962, Pub. L. 87–867, § 15, 76 Stat. 1155, respectively; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

The provisions are taken from section 11–749 of D.C. Code, 1961 ed. Section 11–751a of the Code, enacted by the act of Oct. 23, 1962, Pub. L. 87–873, is also cited as one

of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

§ 15–714. Witness fees for attendance in Court of General Sessions

(a) There shall be paid to witnesses in criminal cases in the District of Columbia Court of General Sessions, not exceeding seventy-five cents per diem for each day of attendance, to be allowed only in the discretion of the court.

(b) The fees and travel allowances to be paid any witness compelled by subpoena to attend any branch of the District of Columbia Court of General Sessions other than the criminal division shall be the same amount as paid a witness compelled to attend before the United States District Court for the District of Columbia. (Dec. 23, 1963, 77 Stat. 536, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., 11–1520a (July 1, 1902, ch. 1351, 32 Stat. 561; Oct. 23, 1962, Pub. L. 87–873, §5(b)(c), 76 Stat. 1172; July 8, 1963, Pub. L. 88–60, § 5(b)(c), 77 Stat. 78).

In Subsec. (b), "criminal division" is substituted for "criminal branch". See section 11–901 herein and revision note thereunder.

CROSS REFERENCES

Fees of jurors and witnesses at inquests, see § 11–1906.

Per diem and mileage for witnesses in courts of the United States, see 28 U.S.C. § 1821 et seq.

§ 15–715. Witness fees in prosecutions for cruelty to children or animals

An officer or member of the Humane Society is not entitled to any fee as a witness in the prosecution of a case of cruelty to children or animals. (Dec. 23, 1963, 77 Stat. 536, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–755b (June 25, 1892, ch. 135, § 1, 27 Stat. 60; Apr. 1, 1942, ch. 207, § 1, 56 Stat. 190).

Section is from the last clause of section 11–755b of D.C. Code, 1961 ed.

The provision of section 11–755b that the municipal courts (now Court of General Sessions) have jurisdiction in all cases arising under section 32–209 is omitted as obsolete, since section 32–209 now refers to the juvenile court under a 1906 act.

The provision of section 11–755b that witnesses in case of cruelty to children or animals in the District of Columbia be allowed the same witness fees as allowed in other cases by law is omitted as unnecessary.

Changes are made in phraseology.

§ 15–716. Advances to Court of General Sessions clerk for witness fees

The Board of Commissioners or its authorized representative may advance to the clerk of the District of Columbia Court of General Sessions upon requisition previously approved by the Board of Commissioners or its authorized representative, sums of money not exceeding $500 at any one time, to be used for the payment of witness fees. (Dec. 23, 1963, 77 Stat. 536, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–1521 (June 30, 1945, ch. 209, § 1, 59 Stat. 281; July 9, 1946, ch. 544, § 1, 60 Stat. 510).

"Board of Commissioners or its authorized representative" is substituted for "disbursing officer of the District of Columbia" and for "Auditor of the District of Columbia" pursuant to Presidential Reorganization Plan No. 5 of 1952 and the Board's Reorganization Order No. 121, 57–3276, dated Dec. 12, 1957, as amended. See revision note under section 11–984 herein.

Changes are made in phraseology.

CROSS REFERENCE

General provisions for advancement of money by disbursing officers, see § 1–263.

§ 15–717. Marriage license and related fees

For each marriage license, the fee shall be $2; for each certified copy of a marriage license return, the fee shall be $1; for each certified copy of application for marriage license the fee shall be $1; and for registering authorizations to perform marriages and issuing certificate, the fee shall be $1.

The District of Columbia Court of General Sessions may, by rule of court, increase or decrease fees provided by this section. (As added July 5, 1966, 80 Stat. 265, Pub. L. 89–493, § 13(d)(2).)

EFFECTIVE DATE

This section as effective on first day of first month which is at least ninety days after July 5, 1966, see § 21 of act July 5, 1966, Pub. L. 89–493, set out in note under § 1–504.

APPROPRIATIONS

Appropriations authorized to carry out purposes of act July 5, 1966, which added this section, see § 20 of such act, set out in note under § 1–504.

TITLE 16.—PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

Title 16 was enacted by Pub. L. 88–241

For disposition of former sections of this title, see table following Title 49

Chap.		Sec.
1.	Account	16–101
3.	Adoption	16–301
5.	Attachment and Garnishment	16–501
6.	Bonds and Undertakings	16–601
7.	Criminal Proceedings in the Court of General Sessions	16–701
9.	Divorce, Annulment, Separation, Support, Etc	16–901
11.	Ejectment and Other Real Property Actions	16–1101
13.	Eminent Domain	16–1301
15.	Forcible Entry and Detainer	16–1501
17.	Gaming Transactions	16–1701
19.	Habeas Corpus	16–1901
21.	Joint Contracts	16–2101
23.	Juvenile Court Proceedings	16–2301
25.	Change of Name	16–2501
27.	Negligence Causing Death	16–2701
29.	Partition and Assignment of Dower	16–2901
31.	Probate Court Proceedings	16–3101
33.	Quieting Title Obtained by Adverse Possession	16–3301
35.	Quo Warranto	16–3501
37.	Replevin	16–3701
39.	Small Claims and Conciliation Procedure in Court of General Sessions	16–3901
41.	Sureties	16–4101

AMENDMENT

1964—Section 3(c)(2) of Pub. L. 88–509, amended the chapter analysis of title 16 by inserting chapter 6 therein.

Chapter 1.—ACCOUNT

Sec.
16–101. Parties.

§ 16–101. Parties

An action of account shall and may be brought against the executor and administrator of every guardian, bailiff and receiver; and by one joint-tenant and tenant in common, his executors and administrators, against the other, as bailiff for receiving more than comes to his just share or proportion, and against the executor and administrator of such a joint-tenant or tenant in common. (Dec. 23, 1963, 77 Stat. 537, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–101 (4 Ann. ch. 16, § 27, 1705; Kilty Rep., p. 247; Alex. Br. Stat. p. 664; Comp. Stat. D.C., p. 447, § 34).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

In general

This chapter of the code does not deprive a party, in a proper case, of a trial by the common law triers of fact, but provides a simple and workable method by which he may secure it. *Lincoln* v. *Virginia Portland Cement Co.* (1919, 258 F. 505, 49 App. D.C. 33). See, also, *Simmons* v. *Morrison* (1898, 13 App. D.C. 161).

Application of statute

The statute applies only to actions at law wherein a mutual accounting between the parties is involved. *Eichberg* v. *United States Shipping Bd.* (1921, 273 F. 886, 51 App. D.C. 44).

Consent to reference

A failure to object to an order of reference is equivalent to a consent thereto. *Eichberg* v. *United States Shipping Bd.* (1921, 273 F. 886, 51 App. D.C. 44).

Consent to a common-law reference, however, which does not amount to a stipulation of reference for a finding of law and fact, does not amount to a waiver of a trial by jury, if by proper exception issues of fact can be framed for submission to a jury. *Eichberg* v. *United States Shipping Bd.* (1923, 285 F. 928, 52 App. D.C. 194).

Construction with Federal Court Rules

Rule 53 of Federal Rules of Civil Procedure, U.S. Code, Title 28, Appendix, under which absence of exceptions to auditor's report does not make auditor's findings conclusive, invalidates contrary provision of this section. *Shima* v. *Brown* (1943, 133 F. 2d 48, 77 U.S. App. D.C. 115, certiorari denied 63 S. Ct. 982, 318 U.S. 787, 87 L. Ed. 1154).

Exceptions

"It is the right of parties who file exceptions to withdraw them. They are not bound to let them stand because other parties may find it to their advantage to have them retained." Other parties could have taken their own exceptions. *Gilbert* v. *Washington Beneficial Endowment Assn.* (1903, 21 App. D.C. 344). See, also, *United States* v. *Groome* (1898, 13 App. D.C. 460); *American Ice Co.* v. *Eastern Trust & Banking Co.* (1901, 17 App. D.C. 422, affirmed 23 S. Ct. 432, 188 U.S. 626, 47 L. Ed. 623).

The allowance of amendments to exceptions is also within the court's discretion. *Lincoln* v. *Virginia Portland Cement Co.* (1919, 258 F. 505, 49 App. D.C. 33).

If there are no disputed facts, it is not error to refuse to submit an exception to the jury. *Id.*

"The exceptions, to be sufficient to avoid judgment on the report, must respond to the original issues made by the pleadings, as further defined and limited by the approved findings of the auditor. If proper exceptions are filed, in so far as they dispute the findings of fact by the auditor, they created issues to be submitted to the jury, and, upon the issues so defined, the trial will proceed in all respects as if no reference or report had been made." *Eichberg* v. *United States Shipping Bd.* (1921, 273 F. 886, 51 App. D.C. 44).

"Failure to except to a finding (of the auditor), as we understand the statute, is equivalent to an admission that it is correct." *Weinstein* v. *Julius Lansburgh Furn. & Carpet Co.* (1922, 278 F. 580, 51 App. D.C. 271).

"As we understand chapter 4 of the Code (§§ 16–102 to 16–106), the party defeated before the auditor must except to his ultimate finding, and to every other finding which he believes prejudicially affects that finding, and must state with particularity the grounds of each exception. In other words, he must show the relation between the subordinate finding and the ultimate one, and that, if his theory is correct, the ultimate one is wrong in whole or in part." *Id.*

Exceptions cannot be to matters de hors the report. *Id.*

Findings of auditor

"The findings of a master or an auditor, concurred in by the court below, are to be taken as presumptively correct, and will be permitted to stand unless some obvious error has intervened in the application of the law or the principles of the decree under which he acts, or some important mistake has been made in the evidence, and which has been clearly pointed out and made manifest." *France* v. *Coleman* (1907, 29 App. D.C. 286, dismissed 28 S. Ct. 258, 207 U.S. 601, 52 L. Ed. 359). See, also, *Richardson* v. *Van Auken* (1895, 5 App. D.C. 209; *Grafton* v. *Paine* (1895, 7 App. D.C. 255, appeal dismissed 18 S. Ct. 942, 168 U.S. 704, 42 L. Ed. 1212); *Smith* v. *American Bonding & Trust Co.* (1898, 12 App. D.C. 192); *Hutchins* v. *Munn* (1906, 28 App. D.C. 271, affirmed 28 S. Ct. 504, 209 U.S. 246, 52 L. Ed. 776); *Consaul* v. *Cummings* (1904, 24 App. D.C. 36).

In the absence of exceptions under a general submission, the auditor's report when admitted on trial before a jury is prima facie evidence both of the facts and conclusions of fact therein contained. *Eichberg* v. *United States Shipping Bd.* (1921, 273 F. 886, 51 App. D.C. 44).

Form of auditor's report

As to modification by Court of Appeals of decree approving auditor's report, because defective in form, see *Eclipse Bicycle Co.* v. *Farrow* (1904, 24 App. D.C. 311 reversed on other grounds 26 S. Ct. 150, 199 U.S. 581, 50 L. Ed. 317).

Law governing

Under Rule 53 of Federal Rules of Civil Procedure, U.S. Code, Title 28, Appendix, the absence of exceptions to a master's report in jury action does not make the master's findings conclusive. *Shima* v. *Brown* (1943, 133 F. 2d 48, 77 U.S. App. D.C. 115, certiorari denied 63 S. Ct. 982, 318 U.S. 787, 87 L. Ed. 1154).

In jury action to recover for board including room, defendant was not prejudiced by district court's refusal to let defendant withdraw exceptions to auditor's report, since presence or absence of exceptions was immaterial under Rule 53 of Federal Rules of Civil Procedure, U.S. Code, Title 28, Appendix, which makes auditor's findings mere evidence unless parties stipulate that they shall be final. *Id.*

In jury action to recover for board including room, the district court was bound by Rule 53 of Federal Rules of Civil Procedure, 28 U.S.C. App., under which absence of exceptions to auditor's report does not make his findings conclusive, and properly refused to confirm the auditor's report. *Id.*

Power to make reference

Court has inherent power to make references in actions at law to the same extent as in equity. A compulsory reference with power to determine issue is impossible in view of constitutional provisions. But no reason exists why a compulsory reference to simplify and clarify the issues and to make tentative findings cannot be made at law, when occasion arises, as freely as in equity. *Eichberg* v. *United States Shipping Bd.* (1921, 273 F. 886, 51 App. D.C. 44).

Reference of complicated questions of fact to an auditor to hear the evidence and make findings of fact has long been recognized as an appropriate proceeding in an action at law, and, in this case, no reason is shown why it should be transferred from law to equity side. *United States Shipping Bd. Merchant Fleet Corp.* v. *United States Fidelity & Guar. Co.* (1935, 77 F. 2d 370, 64 App. D.C. 247).

Selection of auditor

The selection of a special auditor is within the discretion of the trial court. *Lincoln* v. *Virginia Portland Cement Co.* (1919, 258 F. 505, 49 App. D.C. 33).

Chapter 3.—ADOPTION

Sec.
16–301. Jurisdiction; rules.
16–302. Persons who may adopt.
16–303. Persons adopted.
16–304. Consent.
16–305. Petition for adoption.
16–306. Notice of adoption proceedings.
16–307. Investigation, report, and recommendation.
16–308. Investigations when prospective adoptee is adult or petitioner is spouse of natural parent.
16–309. Adoption proceedings.
16–310. Finality of decrees of adoption.
16–311. Sealing and inspection of records and papers.
16–312. Legal effects of adoption.
16–313. Child as including adopted person.
16–314. Birth certificates.
16–315. Prior proceedings.

§ 16–301. Jurisdiction; rules

(a) Subject to subsection (b) of this section, the Domestic Relations Branch of the District of Columbia Court of General Sessions has jurisdiction to hear and determine petitions and decrees of adoption of any adult or child with authority to make such rules, not inconsistent with this chapter, as shall bring fully before the court for consideration the interests of the prospective adoptee, the natural parents, the petitioner, and any other properly interested party.

(b) Jurisdiction shall be conferred when any of the following circumstances exist:

(1) petitioner is a legal resident of the District of Columbia;

(2) petitioner has actually resided in the District for at least one year next preceding the filing of the petition; or

(3) the child to be adopted is in the legal care, custody, or control of the Commissioners or a child-placing agency licensed under the laws of the District.

(Dec. 23, 1963, 77 Stat. 537, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 16–210 (June 8, 1954, ch. 272, § 3, 68 Stat. 241; Apr. 11, 1956, ch. 204, § 107(b), 70 Stat. 113; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Section 2 of act June 8, 1954, ch. 272 (68 Stat. 241), cited above, which was classified to section 16–209 of D.C. Code, 1961 ed., contained provisions defining four terms as used in the other provisions of chapter 2 of Title 16 of the Code (carried into this chapter), as follows: "Commissioners", as meaning the Board of Commissioners of the District of Columbia, or their designated agents; "District", as meaning the District of Columbia; "licensed child-placing agency", as meaning a child-placing agency licensed under the laws of the District of Columbia; and "adoptee", as meaning a person with respect to whose adoption a petition had been filed under the above-mentioned Act or with respect to whom an interlocutory or final decree of adoption was in effect. The section is omitted from this revised Part as unnecessary in view of the rewording of the other provisions of chapter 2 of Title 16 of D.C. Code, 1961 ed., that are carried into this chapter. It should be perfectly clear that "Board of Commissioners", or "Board", as used in the revised provisions, means only the Board of Commissioners of the District of Columbia or the Board's designated agents; that "District", as used in this chapter, means only the District of Columbia; and that "licensed child-placing agency" means only a child-placing agency licensed under the laws of the District of Columbia. With respect to "adoptee", the word "prospective" is inserted before that term whenever it is necessary to designate a person whose adoption is proposed but who has not reached the status of an adoptee by interlocutory or final decree.

Changes are made in phraseology.

CROSS REFERENCE

Domestic Relations Branch, see § 11–1101, et seq.

NOTES TO DECISIONS UNDER PRIOR LAW

Control of child by court

The court was without jurisdiction of adoption proceeding where both the child and the child's custodian were in Virginia and so not in court's control. *Wathen* v. *Ugast* (1944, 143 F. 2d 160, 79 U.S. App. D.C. 162).

Court's authority measured by statute

Adoption is a creature of statute, and the court's authority must necessarily be measured by the statutory law. *Cooley* v. *Washington* (D.C. Mun. App. 1957, 136 A. 2d 583).

Function of court

The provision of former § 16–201 that the court insure by special rules that the interests of natural parents be fully before it, meant that the court was to insure, to the fullest practicable extent, that the failure of the father of an adoptee born out of wedlock to acknowledge the adoptee was a definitive act. *In re Adoption of a Minor* (1946, 155 F. 2d 870, 81 U.S. App. D.C. 138).

In adoption proceeding, it is function of District Court, not of appellate court, to determine the best interest of the infant. *In re Adoption of a Minor* (1944, 144 F. 2d 644, 79 U.S. App. D.C. 191, 156 A.L.R. 1001).

Interracial adoptions

In proceeding on petition for adoption of white child filed by natural mother and stepfather, who was a Negro, refusal of petitioners, who lived in government housing project, to sign loyalty declaration, and distinction between "social status" of whites and Negroes did not justify denial of adoption. *In re Adoption of a Minor* (1956, 228 F. 2d 446, 97 U.S. App. D.C. 99).

Difference in race or religion may have relevance in an adoption proceeding but that factor alone cannot be decisive in determining the child's welfare. *Id.*

Notice

Former § 16–201 required that known natural father receive official notice unless he voluntarily appeared and consented pursuant to some unofficial notice or knowledge. *In re Adoption of a Minor* (1947, 160 F. 2d 928, 82 U.S. App. D.C. 110).

In proceeding for adoption of illegitimate child, notice to the father is not jurisdictional but requirement is one of procedure and of essential fact; the father's name and location being known and he having been afforded no opportunity to present to the court an acknowledgment of the adoptee. *In re Adoption of a Minor* (1946, 155 F. 2d 870, 81 U.S. App. D.C. 138).

Proceeding as statutory

Adoption proceedings are statutory in character. *In re Adoption of a Minor* (1944, 144 F. 2d 644, 79 U.S. App. D.C. 191, 156 A.L.R. 1001).

Purpose of statute

The process of adoption is for the protection of the child when the natural parents, if living, either repudiate, in the case of the mother, or fail to admit, in the case of the father, their responsibilities. *In re Adoption of a Minor* (1946, 155 F. 2d 870, 81 U.S. App. D.C. 138).

Protection of adoptees and their interests is a dominant purpose of the adoption act. *Barnes* v. *Paanakker* (1940, 111 F. 2d 193, 72 App. D.C. 39).

Report of Board of Public Welfare

An investigation by and the report of the Board of Public Welfare may not, in all cases, satisfy the statutory requirement that the interests of the adoptee be fully protected, as where no report was made as to the character of an absentee natural parent when this was a vital issue, assuming that the board was authorized to make such an investigation. *Barnes* v. *Paanakker* (1940, 111 F. 2d 193, 72 App. D.C. 39).

§ 16–302. Persons who may adopt

Any person may petition the court for a decree of adoption. A petition may not be considered by the court unless petitioner's spouse, if he has one, joins in the petition, except that if either the husband or wife is a natural parent of the prospective adoptee, the natural parent need not join in the petition with the adopting parent, but need only give his or her consent to the adoption. If the marital status of the petitioner changes after the time of filing the petition and before the time the decree of adoption is final, the petition must be amended accordingly. (Dec. 23, 1963, 77 Stat. 537, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–211 (June 8, 1954, ch. 272, § 4, 68 Stat. 241).

Word "prospective" is inserted before "adoptee". See revision note under section 16–301 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Interracial adoptions

In proceeding on petition for adoption of white child filed by natural mother and stepfather, who was a Negro, refusal of petitioners, who lived in government housing project, to sign loyalty declaration, and distinction between "social status" of whites and Negroes did not justify denial of adoption. *In re Adoption of a Minor* (1956, 228 F. 2d 446, 97 U.S. App. D.C. 99).

Difference in race or religion may have relevance in an adoption proceeding but that factor alone cannot be decisive in determining the child's welfare. *Id.*

§ 16–303. Persons adopted

A person, whether a minor or an adult, may be adopted. (Dec. 23, 1963, 77 Stat. 537, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–212 (June 8, 1954, ch. 272, § 5, 68 Stat. 241).

A minor change is made in phraseology.

§ 16–304. Consent

(a) A petition for adoption may not be granted by the court unless there is filed with the petition a written statement of consent, as provided by this section, signed and acknowledged before an officer authorized by law to take acknowledgments, before a representative of a licensed child-placing agency, or before the Board of Commissioners of the District, or unless a relinquishment of parental rights with respect to the prospective adoptee has been recorded and filed as provided by section 32–786.

(b) Consent to a proposed adoption of a person under twenty-one years of age is necessary:

(1) from the prospective adoptee, if he is fourteen years of age or over; and also,

(2) in accordance with the provisions of any one of the following paragraphs:

(A) from both parents, if they are or were married and are both alive; or

(B) from the living parent of the prospective adoptee, if one of the parents is dead; or

(C) from the mother in the case of a prospective adoptee born out of wedlock, unless the prospective adoptee has been legitimated according to the laws of any jurisdiction, in which case the consent of the father is also required if he is alive; or

(D) from the mother of a prospective adoptee born in wedlock, if the illegitimacy of the prospective adoptee has been established to the satisfaction of the court; or

(E) from the court-appointed guardian of the prospective adoptee; or

(F) from a licensed child-placing agency or the Board of Commissioners in case the parental rights of the parent or parents have been terminated by a court of competent jurisdiction or by a release of parental rights to the Board or licensed child-placing agency, based upon consents obtained in accordance with paragraphs (A) through (E) of this subdivision, and the prospective adoptee has been lawfully placed under the care and custody of the agency or the Board; or

(G) from the Board of Commissioners in any situation not otherwise provided for by this subsection.

(c) Minority of a natural parent is not a bar to that parent's consent to adoption.

(d) When a parent whose consent is hereinbefore required, after such notice as the court directs, cannot be located, or has abandoned the prospective adoptee and voluntarily failed to contribute to his support for a period of at least six months next preceding the date of the filing of the petition, the consent of that parent is not required.

(e) The court may grant a petition for adoption without any of the consents specified in this section, when the court finds, after a hearing, that the consent or consents are withheld contrary to the best interests of the child.

(f) A person over twenty-one years of age may be adopted, on the petition of the adopting parent or parents and with the consent of the prospective adoptee, if the court is satisfied that the adoption should be granted. (Dec. 23, 1963, 77 Stat. 538, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–213 (June 8, 1954, ch. 272, § 6, 68 Stat. 241).

"Board of Commissioners of the District", "Board of Commissioners", or "Board", is substituted for "Commissioners", and "prospective" is inserted before "adoptee" in a number of places. See revision note under section 16–301 herein.

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS UNDER PRIOR LAW

Abuse of discretion

In habeas corpus proceeding brought by illegitimate child's mother who sought control and custody of child who was in control of nonparent, awarding of custody of child to mother was not an abuse of discretion, where mother had made persistent efforts to obtain child and evidence indicated that she was a presently fit mother. *Bell et al.* v. *Leonard* (1958, 251 F. 2d 890, 102 U.S. App. D.C. 179).

Acknowledgment

Natural father's acknowledgment of child, making it necessary to obtain his consent to adoption, must be established by definitive act and not by testimony concerning his actions and attitude from his initial knowledge of probable birth of child until the hearing *In re Adoption of a Minor* (1947, 160 F. 2d 928, 82 U.S. App. D.C. 110).

A natural father's failure to acknowledge child need not be affirmatively registered with the court to permit adoption of child without his consent, but father cannot be concluded thereby if he is unaware that occasion for action has arisen. *Id.*

"Acknowledgment," within this section is a definitive acknowledgment. *In re Adoption of a Minor* (1946, 155 F. 2d 870, 81 U.S. App. D.C. 138).

Appearance of adoptees

Boys 12 and 14 years old, respectively, in proceedings to adopt them, should appear for examination by the court in order to bring their interests before it, when no one legally capable of representing them appears. *Barnes* v. *Paanakker* (1940, 111 F. 2d 193, 72 App. D.C. 39).

Application for stay

In proceeding for adoption of minor, where father's application for stay on ground that his ability to defend was seriously affected by reason of his military service, was supported by uncontested affidavits, denial of the application without finding whether father's ability to conduct defense was materially affected by reason of his military service was error. *In re Adoption of a Minor* (1943, 136 F. 2d 790, 78 U.S. App. D.C. 48).

Conclusiveness of agreement

Where full consents to adoption of minor child were signed by natural parents and contained acknowledgment of parental status, name of infant, where it was born and date thereof and were accompanied by statement demonstrating that both parties fully understood their legal rights respecting child and that they surrendered her to others unknown for purpose of adoption as prescribed by laws of state of place in which adoption was to be effected and that they were to remain unknown to infant and adopting parents, such consents were clear, unequivocal, and, having been made voluntarily, were binding upon signatories. *In re Adoption of a Minor Child* (D.C.D.C. 1955, 127 F. Supp. 256).

Decree, requirements of

Where court granted petition for adoption of infant although natural father of infant did not consent to adoption, and trial court made no finding or ruling as to any of the permissive statutory grounds for granting of such petition when natural parent refuses to consent to adoption, decree was not in form or in context which would give it requisite legal basis. *In re Adoption of a Minor* (1952, 194 F. 2d 325, 90 U.S. App. D.C. 107).

Discretionary power of court

Since "extraordinary cause" must be established to the satisfaction of the court, a broad measure of discretion is vested in the District Court, and its decision on "this question" will be disturbed only on a showing that there has been a grave abuse of this discretion. *Barnes* v. *Paanakker* (1940, 111 F. 2d 193, 72 App. D.C. 39).

Father's rights

Where decree granting petition for adoption of infant daughter of petitioner's wife by her former husband is supported by sufficient fact findings, which evidence supported, and conclusions of law, and recites that natural father's consent to adoption should be dispensed with for extraordinary cause, which constitutes one of statutory grounds, decree should not be set aside by Court of Appeals. *In re Adoption of a Minor* (1953, 204 F. 2d 55, 92 U.S. App. D.C. 163).

Under former § 16–202, the rights of the father of an illegitimate child in respect to adoption are the same as if the child were legitimate, if the father chooses to assert those rights *In re Adoption of a Minor* (1946, 155 F. 2d 870, 81 U.S. App. D.C. 138).

The father of an illegitimate child, if he had been formally notified of adoption proceedings, would have had rights under the Soldiers' and Sailors' Civil Relief Act of 1940, title 50 Appendix, U.S. Code § 521. *Id.*

Federal laws staying proceedings

50 Appendix, U.S. Code, § 521, making mandatory the staying of proceeding when application is made on behalf of one in military service unless in court's opinion ability of "defendant" to conduct defense is not materially affected by reason of his military service, includes proceeding for adoption of minor child of person in military service. *In re Adoption of a Minor* (1943, 136 F. 2d 790, 78 U.S. App. D.C. 48).

In proceeding for adoption of a minor wherein the minor's father filed application for stay on ground that his ability to defend was seriously affected by reason of his military service, the Soldiers' and Sailors' Civil Relief Act, title 50 Appendix, U.S. Code, §§ 501 et seq., and 521, made it trial judge's duty to find whether the father's

ability to conduct defense was materially affected by reason of his military service. *Id.*

Guardian ad litem

A request for the appointment of a guardian ad litem made by an absentee natural parent should be granted, in the absence of a rule otherwise providing. *Barnes* v. *Paanakker* (1940, 111 F. 2d 193, 72 App. D.C. 39).

Law of forum

Even though natural mother signed consent for adoption of her minor child in state of Pennsylvania, where petition for adoption was filed in District of Columbia, District of Columbia law was controlling, and natural mother could not withdraw written consent as late as time of hearing on petition for adoption, as allowed by Pennsylvania law. *In re Adoption of a Minor Child* (D.C.D.C. 1954, 127 F. Supp. 256).

Under District of Columbia law, consent for adoption of minor child, signed by natural mother, where otherwise legally sufficient, is not subject to objection that it does not reveal identity of adoptive parents. *Id.*

Natural parents

A non-parent may not obtain possession of a child and thereafter invoke processes of court to consummate its adoption against wishes and without consent of child's mother. *Bell et al.* v. *Leonard* (1958, 251 F. 2d 890, 102 U.S. App. D.C. 179).

Where property settlement agreement of husband and wife included provision relative to custody of child, and creation of trust for support, incorporation of that agreement in Florida divorce decree, without a limitation as to any part thereof, was an incorporation of the custody provisions for purpose of former § 16–202 declaring that consent of natural parent to adoption is not necessary where parent has been permanently deprived of custody of the adoptee by court order. *In re Adoption of a Minor* (1954, 214 F. 2d 844, 94 U.S. App. D.C. 131).

In former § 16–202 prohibiting adoption decree unless court finds that natural parents have consented, use of plural "parents" conferred basic right of consent upon natural father. *In re Adoption of a Minor* (1947, 160 F. 2d 928, 82 U.S. App. D.C. 110).

"Natural parents" includes the father of an illegitimate child particularly in view of provision of former § 16–202 specifying circumstances under which consent of father need not be secured. *In re Adoption of a Minor* (1946, 155 F. 2d 870, 81 U.S. App. D.C. 138).

Notice

In proceeding for adoption of illegitimate child, notice to the father is not jurisdictional but requirement is one of procedure and of essential fact; the father's name and location being known and he having been afforded no opportunity to present to the court an acknowledgment of the adoptee. *In re Adoption of a Minor* (1946, 155 F. 2d 870, 81 U.S. App. D.C. 138).

Permanent deprivation of custody

Under former § 16–202, dispensing with necessity of consent of natural parent to adoption where parent has been permanently deprived of custody of the adoptee by court order, father who, by Florida divorce decree incorporating by reference a property settlement agreement including custody provision, had been deprived of even his right of visitation in that decree gave entire control and custody to mother, with right being in child to visit and see father, was "permanently deprived of custody", and could not object to adoption because his consent was not given. *In re Adoption of a Minor* (1954, 214 F. 2d 844, 94 U.S. App. D.C. 131).

Procedure generally

In adoption proceedings, the existence of consents of the parents, facts which justify failure to secure them and circumstances which permit their being dispensed with, are part of the procedure of reaching a just judgment. *In re Adoption of a Minor* (1946, 155 F. 2d 870, 81 U.S. App. D.C. 138).

Questions of fact

Whether natural father acknowledged child and contributed voluntarily to its support, so as to require his consent to adoption, are questions of fact. *In re Adoption of a Minor* (1947, 160 F. 2d 928, 82 U.S. App. D.C. 110).

Statutory ground, establishment of

If petition for adoption of infant without consent of natural father of infant is granted on permissive statutory ground, decree should so state, and basis for such conclusion, though not necessary to be recited in decree itself, should appear in findings, or in some other matter, such as in opinion of court, with adequate evidentiary support in record, and Court of Appeals could not make such determination in first instance. *In re Adoption of a Minor* (1952, 194 F. 2d 325, 90 U.S. App. D.C. 107).

Sufficiency of consent

Where, two months prior to birth of illegitimate child, mother signed paper consenting to adoption after having obtained advice of her family physician and the mother acknowledged execution of the consent the day after the birth of the child, the consent was sufficient to satisfy statutory requirements. *In re Adoption of a Minor* (1944, 144 F. 2d 644, 79 U.S. App. D.C. 191, 156 A.L.R. 1001).

In adoption proceeding, record established that consent of natural mother was voluntarily given and was given with knowledge of its consequences. *Id.*

Under this chapter, consent of natural mother accompanying petition for adoption of an illegitimate infant is sufficient, and she need not be actually present, consenting at time of hearing. *Id.*

Evidence

Evidence warranted refusal to permit adoption of illegitimate child whose natural father was in naval service when child was born and when mother consented to adoption, on ground that he acknowledged child, contributed to its support and definitely refused to consent to adoption when official opportunity was offered. *In re Adoption of a Minor* (1947, 160 F. 2d 928, 82 U.S. App. D.C. 110).

Voluntary contributions

Payments which father voluntarily sent to mother of child born out of wedlock, which were large in proportion to his pay, and which were sent during period from beginning of his receipt of pay until after child had been placed in custody of proposed adopters, were "voluntary contributions." *In re Adoption of a Minor* (1946, 155 F. 2d 870, 81 U.S. App. D.C. 138).

The provision, in former § 16–202, that consent of the father of an adoptee born out of wedlock shall not be necessary unless he has both acknowledged the adoptee and contributed voluntarily to its support, does not require that the contribution occur after birth of the child. *Id.*

In proceeding for adoption of illegitimate child, whether payments by father were voluntary contributions to support of the child was a question of law. *Id.*

Withdrawal of consent

A natural mother, who has freely and voluntarily given consent to adoption of her illegitimate child, cannot, without cause, withdraw that consent and thus prevent the adoption when the adoptive parents have accepted the child, paid expenses of pre-natal and post-natal care, made a home for the child, and in all respects satisfied requirements of this chapter governing adoption. *In re Adoption of a Minor* (1944, 144 F. 2d 644, 79 U.S. App. D.C. 191, 156 A.L.R. 1001).

In adoption proceeding involving question whether natural mother, who had freely and voluntarily given consent to adoption of her illegitimate child, could withdraw that consent, the fact that Board of Public Welfare and guardian ad litem appointed to represent the interest of the infant recommended against adoption was not controlling where both recommendations were made on assumption that the natural mother, as a matter of law, rightfully withdrew her consent. *Id.*

§ 16–305. Petition for adoption

A petition filed for the adoption of a person shall be under oath or affirmation of the petitioner and the titling thereof shall be substantially as follows: "Ex parte in the matter of the petition of _____ _____ for adoption." The petition

or the exhibits annexed thereto shall contain the following information:

(1) the name, sex, date, and place of birth of the prospective adoptee, and the names, addresses and residences of the natural parents, if known to the petitioner, except that in an adoption proceeding that is consented to by the Board of Commissioners or a licensed child-placing agency, the names, addresses and residences of the natural parents may not be set forth;

(2) the name, address, age, business or employment of the petitioner, and the name of the employer, if any, of the petitioner;

(3) the relationship, if any, of the prospective adoptee to the petitioner;

(4) the race and religion of the prospective adoptee, or his natural parent or parents;

(5) the race and religion of the petitioner;

(6) the date that the prospective adoptee commenced residing with petitioner; and

(7) any change of name which may be desired.

When any of the above facts is unknown to the petitioner, the petitioner shall state this fact. When any of the above facts is known to the Board of Commissioners, or a licensed child-placing agency that as a matter of social policy declines to disclose them to the petitioner, the facts may be disclosed to the court in an exhibit filed by the Board or the agency with the court. If more than one petitioner joins in a petition, the requirements of this section apply to each. (Dec. 23, 1963, 77 Stat. 538, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–214 (June 8, 1954, ch. 272, § 7, 68 Stat. 242).

Word "prospective" is inserted before "adoptee" in a number of places, and "Board of Commissioners", or "Board", is substituted for "Commissioners". See revision note under section 16–305 herein.

Changes are made in phraseology.

§ 16–306. Notice of adoption proceedings

(a) Except as provided by subsection (b) of this section, due notice of pending adoption proceedings shall be given to each person whose consent is necessary thereto, immediately upon the filing of a petition. The notice shall be given by summons, by registered letter sent to the addressee only, or otherwise as ordered by the court.

(b) A party who formally gives his consent to the proposed adoption, as provided by this chapter, thereby waives the requirement of notice to him pursuant to this section. (Dec. 23, 1963, 77 Stat. 539, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–215 (June 8, 1954, ch. 272, § 8, 68 Stat. 243).

Changes are made in phraseology.

§16–307. Investigation, report, and recommendation

(a) Except as provided by section 16–308, upon the filing of a petition the court shall refer the petition for investigation, report, and recommendation to:

(1) the licensed child-placing agency by which the case is supervised; or

(2) the Board of Commissioners, if the case is not supervised by a licensed child-placing agency.

(b) The investigation, report, and recommendation shall include:

(1) an investigation of:

(A) the truth of the allegations of the petition;

(B) the environment, antecendents, and assets, if any, of the prospective adoptee, to determine whether he is a proper subject for adoption;

(C) the home of the petitioner, to determine whether the home is a suitable one for the prospective adoptee; and

(D) any other circumstances and conditions that may have a bearing on the proposed adoption and of which the court should have knowledge;

(2) a written report to the court of the findings of the investigation; and

(3) a recommendation to the court whether a final decree declaring the adoption prayed for in the petition should be immediately granted, or whether the court should grant an interlocutory decree granting temporary custody of the prospective adoptee to the petitioner, as hereinafter set forth.

(c) The written report submitted to the court shall be filed with, and become part of, the records in the case. (Dec. 23, 1963, 77 Stat. 539, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–216 (June 8, 1954, ch. 272, § 9, 68 Stat. 243).

"Board of Commissioners" is substituted for "Commissioners", and, in several places "prospective" is inserted before "adoptee". See revision note under section 16–301 herein.

Changes are made in phraseology and arrangement.

§ 16–308. Investigations when prospective adoptee is adult or petitioner is spouse of natural parent

The court may dispense with the investigation, report, and interlocutory decree provided for by this chapter when:

(1) the prospective adoptee is an adult; or

(2) the petitioner is a spouse of the natural parent of the prospective adoptee and the natural parent consents to the adoption or joins in the petition for adoption.

(Dec. 23, 1963, 77 Stat. 539, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–217 (June 8, 1954, ch. 272, § 10, 68 Stat. 244).

Word "prospective" is inserted before "adoptee". See revision note under section 16–301 herein.

Changes are made in phraseology and arrangement.

§ 16–309. Adoption proceedings

(a) Within a period of ninety days, or such time as extended by the court, after a copy of the petition and the order providing for the report is served upon the agency directed to make the investigation, the agency shall make the report and recommendation required by section 16–307 to the court and thereupon the court shall proceed to act upon the petition.

(b) After considering the petition, the consents, and such evidence as the parties and any other properly interested person may present, the court

may enter a final or interlocutory decree of adoption when it is satisfied that:

(1) the prospective adoptee is physically, mentally, and otherwise suitable for adoption by the petitioner;

(2) the petitioner is fit and able to give the prospective adoptee a proper home and education; and

(3) the adoption will be for the best interests of the prospective adoptee.

(c) A final decree of adoption may not be entered unless the prospective adoptee has been living with the petitioner for at least six months.

(d) If it appears to be in the interest of the prospective adoptee, the court may enter an interlocutory degree of adoption, which shall by its terms automatically become a final decree of adoption on a day therein named, not less than six months nor more than one year, from the date of entry of the interlocutory decree, unless in the interim the decree shall have been set aside for cause shown. The supervising agency shall be permitted to visit the adoptee during the period of the interlocutory decree.

(e) The court may revoke its interlocutory decree for good cause shown at any time before it becomes a final decree, either on its own motion or on the motion of one of the parties to the adoption. Before the revocation, notice shall be given thereof to all those persons or parties who were given notice of the original petition for adoption, and an opportunity for all of them to be heard.

(f) All proceedings with reference to adoption shall be of a confidential nature and shall be held in chambers or in a sealed courtroom with as little publicity as the court deems appropriate. (Dec. 23, 1963, 77 Stat. 540, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–218 (June 8, 1954, ch. 272, § 11, 68 Stat. 244).

In subsec. (a) of this section, a reference to section 16–215 of D.C. Code, 1961 ed., is changed to refer to section 16–307 herein, which is based on section 16–216 of the Code, to correct an apparent error in the 1954 act.

Word "prospective" is inserted before "adoptee" in a number of places. See revision note under section 16–301 herein.

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS UNDER PRIOR LAW

Appeals

An aggrieved party may appeal from a final order of the District Court in an adoption proceeding. *Barnes* v. *Paanakker* (1940, 111 F. 2d 193, 72 App. D.C. 39).

Appearance

Where summons in adoption proceeding was delivered to child's legal custodian in another jurisdiction, his letter to clerk of court stating that he was not interested in outcome of suit and that letter was to be treated as his answer to the summons was not an "appearance," but a mere acknowledgment of summons. *Wathen* v. *Ugast* (1944, 143 F. 2d 160, 79 U.S. App. D.C. 162).

Best interests of infant

Under former § 16–203, providing that after considering adoption petition, the consents, and evidence presented an adoption decree may be entered if court is satisfied that adoptee is physically, mentally, and otherwise suitable for adoption and that petitioner is fit and a change will be for best interests of adoptee, primary duty of District Court is to determine the best interests of the infant. *In re Adoption of a Minor* (1956, 228 F. 2d 446, 97 U.S. App. D.C. 99).

Control of child by court

The provision of former § 16–203 that no final decree in adoption proceedings shall be entered unless child has lived for at least six months with adopting parents, and that an interlocutory decree may become final at the end of six months, contemplates placing child in custody of adopting parents at time of interlocutory decree, and indicates intent that child must be within the court's control. *Wathen* v. *Ugast* (1944, 143 F. 2d 160, 79 U.S. App. D.C. 162).

The court was without jurisdiction of adoption proceeding where both the child and the child's custodian were in Virginia and so not in court's control. *Id.*

Entry of final decree

Filing of foreign decree with Bureau of Vital Statistics and consequent issuance of new birth certificate is not an "entry of final decree" of adoption. *Hall et al.* v. *Scarlett et al.* (1951, 188 F. 2d 990, 88 U.S. App. D.C. 201, certiorari denied 71 S. Ct. 796, 341 U.S. 925, 95 L. Ed. 1357).

Evidence, admissibility

In adoption proceeding, reports from guardian ad litem appointed to represent interest of infant and from Board of Public Welfare, and such other information and advice as might be available, were admissible on issue of best interests of infant. *In re Adoption of a Minor* (1944, 144 F. 2d 644, 79 U.S. App. D.C. 191, 156 A.L.R. 1001).

Interracial adopttions

In proceeding on petition for adoption of white child filed by natural mother and stepfather, who was a Negro, refusal of petitioners, who lived in government housing project, to sign loyalty declaration, and distinction between "social status" of whites and Negroes did not justify denial of adoption. *In re Adoption of a Minor* (1956, 228 F. 2d 446, 97 U.S. App. D.C. 99).

Difference in race or religion may have relevance in an adoption proceeding but that factor alone cannot be decisive in determining the child's welfare. *Id.*

§ 16–310. Finality of decrees of adoption

An attempt to invalidate a final decree of adoption by reason of a jurdisdictional or procedural defect may not be received by any court of the District, unless regularly filed with the court within one year following the date the final decree became effective. (Dec. 23, 1963, 77 Stat. 540, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–219 (June 8, 1954, ch. 272, § 12, 68 Stat. 244).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

In general

This section providing that no attempt to invalidate final decree of adoption by reason of any jurisdictional or procedural defect shall be received by any court unless regularly filed within one year following time final decree became effective would preclude any attack, made more than three years thereafter, by mother averring that she had never consented to adoption of child who was born to her, out of wedlock, when she was 16 years old and was committed to Department of Public Welfare, and expressed belief that neither her mother nor putative father had consented, and whose counsel admitted that it was a distinct possibility that adoption would be contested. *In re Wells* (C.A.D.C. 1960, 281 F. 2d 68).

§ 16–311. Sealing and inspection of records and papers

From and after the filing of the petition, records and papers in adoption proceedings shall be sealed. They may not be inspected by any person, including the parties to the proceeding, except upon order of the court, and only then when the court is satisfied that the welfare of the child will thereby be promoted or protected. The clerk of the court shall

keep a separate docket for adoption proceedings. (Dec. 23, 1963, 77 Stat. 541, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–221 (June 8, 1954, ch. 272, § 14, 68 Stat. 245).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

In general

This section providing that records and papers in adoption proceedings shall, from and after filing of petition, be sealed and not be inspected by any person except on order of court when satisfied that welfare of child will be thereby promoted, precluded inspection by mother who made no showing how welfare of child would be served by inspection but who sought inspection averring that she had never consented to adoption of her child who was born out of wedlock and was committed to Department of Public Welfare and that she sought inspection so that she might know status of her first-born and whose counsel admitted that contesting adoption decree was a distinct possibility. *In re Wells* (C.A.D.C. 1960, 281 F. 2d 68).

§ 16–312. Legal effects of adoption

(a) A final decree of adoption establishes the relationship of natural parent and natural child between adoptor and adoptee for all purposes, including mutual rights of inheritance and succession as if adoptee were born to adoptor. The adoptee takes from, through, and as a representative of his adoptive parent or parents in the same manner as a child by birth, and upon the death of an adoptee intestate, his property shall pass and be distributed in the same manner as if the adoptee had been born to the adopting parent or parents in lawful wedlock. All rights and duties including those of inheritance and succession between the adoptee, his natural parents, their issue, collateral relatives, and so forth, are cut off, except that when one of the natural parents is the spouse of the adoptor, the rights and relations as between adoptee, that natural parent, and his parents and collateral relatives, including mutual rights of inheritance and succession, are in no wise altered.

(b) While it is in force, an interlocutory decree of adoption has the same legal effect as a final decree of adoption. Upon the revocation of an interlocutory decree of adoption, the status of the adoptee, the natural parents of the adoptee, and the petitioners are as though the interlocutory decree were null and void ab initio.

(c) The family name of the adoptee shall be changed to that of the adopter unless the decree otherwise provides, and the given name of the adoptee may be fixed or changed at the same time. (Dec. 23, 1963, 77 Stat. 541, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–222 (June 8, 1954, ch. 272, § 15, 68 Stat. 245).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Construction

The question of the right of petitioner to inherit from her natural aunt, through her relationship to her natural father was cut off by former §§ 16–201 to 16–207, was governed by provisions of former § 16–205, which by its very terms was prospective. *Hall* v. *Scarlett* (1950, 181 F. 2d 277, 86 U.S. App. D.C. 165, certiorari denied 71 S. Ct. 796, 341 U.S. 925, 95 L. Ed. 1357, rehearing denied 188 F. 2d 990, 88 U.S. App. D.C. 201).

Under this section providing that a final decree of adoption shall establish relationship of natural parent and natural child between adoptor and adoptee for all purposes, including mutual rights of inheritance and succession the same as if adoptee was born to adoptor, and that adoptee shall take from, through, and as representative of his adoptive parents in same manner as a child by birth, adopted child of testatrix' daughter acquired a right to inherit from testatrix, who died in 1958, notwithstanding fact that adopting parent died prior to enactment of such statute, and adopted child had standing to file a caveat to the will. *In re Estate of Gray, etc., deceased* (D.C.D.C. 1958, 168 F. Supp. 124).

Former § 16–205 providing that entry of a final decree of adoption shall establish relation of natural parent and natural child between adopter and adoptee for all purposes including mutual rights of inheritance and succession the same as if adoptee was born of adopter, except that adoptee shall not inherit from collateral relatives or parents of adopter though such collateral relatives and parents of adopter shall have right of inheritance from adoptee, did not entitle adopted children of beneficiary of testamentary trust created by aunt of beneficiary to take that share which natural children of beneficiary would take under will on death of beneficiary, where it was obvious from will that testatrix definitely had in mind descent of her property through blood relatives to persons of her own blood. *Noreen et al* v. *Sparks et al.* (D.C.D.C. 1952, 103 F. Supp. 588, motion denied 104 F. Supp. 675, cause remanded 204 F. 2d 56, 92 U.S. App. D.C. 164).

Former § 16–205 did not preclude adopted children from taking property devised to them by will of collateral relative of their adopting mother, if it clearly appears that such was intent of testatrix, but affords no basis for conclusion that such was the intent. *Id.*

Although the petitioner was an adopted child of decedent, her maternal grandmother, and was such at the time of decedent's death, the adoption decree being prior to August 25, 1937, former § 16–205 did not cut off her right of distribution from the estate of the decedent and she was entitled to the sole distribution. *In re Penfield's Estate* (D.C.D.C. 1949, 81 F. Supp. 622).

Entry of final decree

In former § 16–205, provision that "entry of final decree" of adoption shall establish relation of natural parent and natural child between adopter and adoptee for all purposes, referred to entry of final decree under or in view of former §§ 16–201 to 16–207 either within or without District of Columbia, but filing of foreign decree with Bureau of Vital Statistics and consequent issuance of new birth certificate is not an "entry of final decree" of adoption. *Hall et al.* v. *Scarlett et al.* (1951, 188 F. 2d 990, 88 U.S. App. D.C. 201, certiorari denied 71 S. Ct. 796, 341 U.S. 925, 95 L. Ed. 1357).

Foreign decree

Validly acquired status of adopted child in Maryland will be recognized in District of Columbia with respect to inheritance of property located therein. *In re Estate of T. R. Jarboe, deceased* (D.C.D.C. 1964, 235 F. Supp. 505).

Natural parents rights after decree

Under former § 16–205, final decree of adoption terminated former relationship of natural parent and natural child, and on death of adopters the right of natural mother to custody of child was not revived. *Cooley* v. *Washington* (D.C. Mun. App. 1957, 136 A. 2d 583).

§ 16–313. Child as including adopted person

In the District, "child" or its equivalent in a deed, grant, will, or other written instrument includes an adopted person, unless the contrary plainly appears by the terms thereof, whether the instrument was executed before or after the entry of the interlocutory decree of adoption, if any, or before or after the final decree of adoption became effective. (Dec. 23, 1963, 77 Stat. 541, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–224 (June 8, 1954, ch. 272, § 17, 68 Stat. 246).

Changes are made in phraseology.

§ 16–314. Birth certificates

(a) Notice of a final decree of adoption shall be sent to the Board of Commissioners. Unless otherwise requested in the petition by the adopters, the Board shall cause to be made a new record of the birth in the new name and with the names of the adopters and shall then cause to be sealed and filed the original birth certificate with the order of the court. The sealed package may be opened only by order of the court.

(b) If the adoption occurred outside the District either before or after August 25, 1937, upon filing with the Board of Commissioners a certified copy of the final decree of adoption, the Board shall cause to be made a new record of the birth in the new name and with the names of the adopters and shall then cause to be sealed and filed the original birth certificate with the certified copy of the final decree of adoption. The sealed package may be opened only by order of a court of competent jurisdiction.

(c) If the birth of the adoptee occurred outside the District the clerk of the court shall, upon petition by the adopter, furnish him with a certified copy of the final decree of adoption.

(d) When an adoption in the District occurred prior to August 25, 1937, the court shall, upon presentation of a motion by a party to the proceedings, order the clerk of the court to seal the records in the proceeding. Upon presentation of a certified copy of the order the Board of Commissioners shall cause to be made a new record of the birth in the new name and with the names of the adopters and shall then cause to be sealed and filed the original birth certificate with the order of the court. The sealed package may be opened only by order of the court. (Dec. 23, 1963, 77 Stat. 541, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–223 (June 8, 1954, ch. 272 § 16, 68 Stat. 245).

"Board of Commissioners", or "Board", is substituted for "Commissioners". See revision note under section 16–301 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Entry of final decree

In former § 16–205, provision that "entry of final decree" of adoption shall establish relation of natural parent and natural child between adopter and adoptee for all purposes, referred to entry of final decree under or in view of former §§ 16–201 to 16–207 either within or without District of Columbia, but filing of foreign decree with Bureau of Vital Statistics and consequent issuance of new birth certificate is not an "entry of final decree" of adoption. *Hall et al.* v. *Scarlett et al.* (1951, 188 F. 2d 990, 88 U.S. App. D.C. 201, certiorari denied 71 S. Ct. 796, 341 U.S. 925, 95 L. Ed. 1357).

§ 16–315. Prior proceedings

The provisions of this chapter have no effect prior to June 8, 1954, except to the extent that they specifically so provide. They do not affect in any way the rights and relations obtained by any decree of adoption entered prior to June 8, 1954. (Dec. 23, 1963, 77 Stat. 542, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–225 (June 8, 1954, ch. 272, § 18(b), 68 Stat. 246).

Section is from subsec. (b) of section 18 of act June 8, 1954. Subsec. (a) of that section repealed act August 25, 1937, ch. 774, 50 Stat. 806, which was classified to former sections 16–201 to 16–207 of D.C. Code, 1961 ed.

In the first sentence, words "shall have no retroactive effect" are changed to "have no effect prior to June 8, 1954" so that this section will continue to apply as of the date of its original enactment in 1954.

The remaining provisions of section 16–225 are retained in this section to preclude any question as to inheritance rights of an adopted child. These rights were changed (for future adoptees), first, by the act of August 25, 1937, referred to above, and second, by the act of June 8, 1954. Provisions of the latter act are carried into this chapter.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Construction

The question of the right of petitioner to inherit from her natural aunt, though her relationship to her natural father was cut off by former §§ 16–201 to 16–205, was governed by provisions of former section 16–205 which by its very terms was prospective. *Hall* v. *Scarlett* (1950, 181 F. 2d 277, 86 U.S. App. D.C. 165, certiorari denied 71 S. Ct. 796, 341 U.S. 925, 95 L. Ed. 1357, rehearing denied 188 F. 2d 990, 88 U.S. App. D.C. 201).

The non-retroactive provisions of former § 16–207 had application only to proceedings in the District under Act Mar. 3, 1901, 31 Stat. 1252, ch. 854, § 395, completed before or pending August 25, 1937, but they clearly evidenced its policy that other provisions including those cutting off the rights of the adoptee to inherit from natural parents and collateral relatives, should not be construed as having application contrary to such policy. *In re Penfield's Estate* (D.C.D.C. 1949, 81 F. Supp. 622).

Chapter 5.—ATTACHMENT AND GARNISHMENT

SUBCHAPTER I.—ATTACHMENT AND GARNISHMENT GENERALLY

Sec.

16–501. Attachment before judgment; affidavit and bond.
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SUBCHAPTER I.—ATTACHMENT AND GARNISHMENT GENERALLY

§ 16-501. Attachment before judgment; affidavit and bond

(a) This section applies to any civil action in the United States District Court of the District of Columbia or the District of Columbia Court of General Sessions, for the recovery of:

(1) specific personal property;

(2) a debt; or

(3) damages for the breach of a contract, express or implied.

(b) In an action specified by subsection (a) of this section, the plaintiff, his agent, or attorney, may file an affidavit as provided by subsections (c) and (d) of this section either at the commencement of the action or pending the action.

(c) The affidavit shall comply with the following requirements:

(1) show the grounds of plaintiffs' claim;

(2) set forth that plaintiff has a just right to recover what is claimed in his complaint;

(3) where the action is to recover specific personal property, state the nature and, according to affiant's belief, the value of the property and the probable amount of damages to which plaintiff is entitled for the detention thereof;

(4) where the action is to recover a debt, state the amount thereof; and

(5) where the action is to recover damages for breach of a contract set out, specifically and in detail, the breach complained of and the actual damage resulting therefrom.

(d) The affidavit shall also state one of the following facts with respect to defendant:

(1) defendant is a foreign corporation or is not a resident of the District, or has been absent therefrom for at least six months;

(2) he evades the service of ordinary process by concealing himself or temporarily withdrawing himself from the District;

(3) he has removed or is about to remove some or all of his property from the District, so as to defeat just demands against him;

(4) he has assigned, conveyed, disposed of, or secreted, or is about to assign, convey, dispose of, or secrete his property with intent to hinder, delay, or defraud his creditors; or

(5) he fraudulently contracted the debt or incurred the obligation respecting which the action is brought.

(e) Before a writ of attachment and garnishment is issued, the plaintiff shall first file in the clerk's office a bond, executed by himself or his agent, with security to be approved by the clerk, in twice the amount of his claim, conditioned to make good to the defendant all costs and damages which he may sustain by reason of the wrongful suing out of the attachment; except that in any case in which the plaintiff states in his affidavit that the value of specified property to be levied upon is less than the amount of his claim, the court may set the amount of such bond in an amount twice the value of the property being attached, and, notwithstanding the provisions of subsection (f) of this section, only the property so specified shall be levied upon: *Provided,* That the United States marshal may, in his discretion, when levying upon such property, have the same appraised by an independent appraiser retained by the marshal at the expense of the plaintiff. Any such appraisal shall be made at the time the marshal levies upon the property, and the appraiser shall accompany him for such purpose. If such appraisal has been made, then only such property as may have a value not exceeding one-half of the amount of the bond shall be attached. In the event the appraised value of the property shall be

more than one-half of the amount of the bond, the marshal may refuse to execute the writ unless and until the amount of the bond is increased so as to be at least twice the value of the property to be attached.

(f) If the plaintiff files an affidavit and bond as provided by this section, the clerk shall issue a writ of attachment and garnishment, to be levied upon as much of the lands, tenements, goods, chattels, and credits of the defendant as may be necessary to satisfy the claim of the plaintiff. (Dec. 23, 1963, 77 Stat. 543, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; Aug. 6, 1965, 79 Stat. 447, Pub. L. 89–113, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 16–301 (Mar. 3, 1901, ch. 854, § 445, 31 Stat. 1258; Apr. 19, 1920, ch. 153, 41 Stat. 563; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

References to "any action at law" and "his declaration" are changed to "any civil action" and "his complaint" to comply with present procedure under the rules.

In the 1901 Code, as continued in D.C. Code, 1961 ed., there were two groups of sections relating to attachment and garnishment. One group was Chapter 13, Attachments, of the 1901 Code and Chapter 3, Attachment and Garnishment, of Title 16 of the 1961 edition and is set out in this subchapter. The other group was in Chapter 26, Execution, of the 1901 Code and Chapter 3, Proceedings in Aid of Execution, of Title 15 of the 1961 edition, and is set out as subchapter II of this chapter, relating to attachment and garnishment after judgment in aid of execution.

Logically it would seem that, except for provisions governing the grounds for issuance of the writ and its relationship to the proceedings in the action in which it is issued, the procedure in attachment should be the same whether it is the usual attachment issued before judgment or an attachment issued after judgment in aid of execution, and therefore, that the provisions of subchapter I of this chapter would apply to attachment after judgment unless an inconsistent provision appears in subchapter II. But subchapter II, as enacted in 1901, contains a number of sections that repeat the provisions of sections of subchapter I, which would lead to the contrary assumption that subchapter II, relating to attachment after judgment, was intended to be complete in itself without reference to subchapter I. The difficulty is that some sections in subchapter I which would be expected to apply to attachment either before or after judgment are not repeated in subchapter II. For example, see section 16–528 of subchapter I which is from section 16–325 of D.C. Code, 1961 ed., and provides that a judgment of condemnation against the garnishee protects him against a claim by the defendant for the property or credits condemned.

If these two subchapters were originally intended to be independent of each other, additional problems arise with respect to subsequent acts which amend one subchapter without amending the corresponding section of the other, and acts which do not specify whether they apply to attachments before or after judgment or both. For examples, see sections 16–513, 16–514, 16–521, 16–533, and 16–551 herein.

Since the scope of this revision is limited to improvements in arrangement and phraseology, without changing the substance of the law, it is not possible to resolve these questions here. However, the provisions relating to the two types of attachments have been carried into this one chapter so that the corresponding provisions and the court decisions under them may be more easily read together.

Subchapter III of this chapter is derived from a 1959 act, as indicated in the notes under the individual sections therein.

The provisions of this chapter are continued in force by rule 64 of the Federal Rules of Civil Procedure under which certain provisional and final remedies, including attachment and garnishment are available under the circumstances and in the manner provided by the law of the "state" in which the district court is held, subject to certain qualifications.

Changes are made in the arrangement and phraseology of this section.

AMENDMENT

1965—Act Aug. 6, 1965, amended subsection (e) by inserting the matter following the semicolon beginning with the word "except" to the end of the subsection.

CROSS REFERENCES

Attachment and garnishment after judgment, see §§ 16–541 to 16–555.

Attachment to enforce landlord's lien, see § 45–916.

Benefits from fraternal benefit association not subject to attachment or garnishment, see § 35–911.

Benefits payable under unemployment compensation law not subject to levy or attachment, see § 46–318.

Bonds generally, see § 28–2501 et seq.

Exemption of insurance benefits from attachments and garnishment, see §§ 35–717, 35–718.

Exemption of proceeds from life insurance, see § 30–213.

Exemption of sums recovered for wrongful death, see § 16–2703.

Garnishment of goods in possession of warehouseman, surrender of receipt, see § 28:7–602.

Public assistance not assignable or subject to execution, see § 3–215.

Teacher's retirement annuity not subject to attachment, see § 31–718.

The provisions of this chapter relating to attachment apply to proceedings in the Court of General Sessions, see § 16–533.

NOTES TO DECISIONS

I. UNDER PRIOR LAW

Affidavits

Attachment affidavit fully complies with statute, where affidavit states ultimate facts substantially in terms of statute, without stating in connection therewith probative facts which may be necessary to be shown in case of traverse. *Washington Building Services* v. *United Janitorial Services* (1965, 352 F. 2d 678, 122 U.S. App. D.C. 202).

Affidavit which was filed after motion to quash attachment and which stated that the defendant was foreign corporation did not cure defect in original affidavit on which attachment before judgment was issued and which contained no averment that defendant was foreign corporation. *Graham Associates, Inc., etc.* v. *B. J. Fell* (D.C. App. 1963, 192 A. 2d 129).

Affidavit is basis for issuing attachment before judgment and cannot be supplied after the attachment has been issued. *Id.*

Verification of complaint describing defendant as Maryland corporation was not so fatally defective as to require quashing of attachment issued against defendant before judgment. *Id.*

Requirement that party seeking attachment before judgment must file an affidavit showing grounds of claim and setting forth that he has a just right to recover that which is claimed is not complied with by statement of a conclusion, but affidavit must state facts out of which claim arises and method of computing amounts said to be due must be set forth in detail. *Petroni* v. *Bass et ano.* (D.C.D.C. 1960, 186 F. Supp. 759).

In action for debt for work, labor, and material furnished by plaintiff to defendants in repair and improvement of building, affidavit of plaintiff, who sought remedy of attachment before judgment, that plaintiff had a just right to recover on such cause of action did not sufficiently allege details of the claim, and, therefore, it was not sufficient to warrant such attachment. *Id.*

Affidavit preliminary to attachment before judgement, which stated the grounds for plaintiff's claim, a just right

to recover, a prescribed type of action, and that defendant was a nonresident, was sufficient. *Morfessis* v. *Thomas* (D.C. Mun. App. 1952, 91 A. 2d 833).

In action by nonresident plaintiff to recover debt wherein nonresident defendant claimed that situs of debt was in Maryland but made no affidavit and submitted no proof in support thereof, Municipal Court for the District of Columbia did not abuse its discretion in refusing to quash writ of attachment before judgment under the rule of forum non conveniens. *Rice* v. *Salnier* (D.C. Mun. App. 1952, 86 A. 2d 175).

Affidavits in an attachment proceeding become a part of the record on appeal. *Barbour* v. *Paige Hotel Co.* (1894, 2 App. D.C. 174).

An affidavit fully complies with the statute which states the ultimate fact substantially in its terms, without stating in connection therewith the probative facts which may be necessary to be shown in case of traverse. The same rule applies also to the allegation of the intent with which the act may have been done. *Wielar* v. *Garner* (1894, 4 App. D.C. 329).

It is ordinarily sufficient in an affidavit for attachment to follow the words of the statute substantially without stating the probative facts which go to show the ultimate conclusion. *Cissell* v. *Johnston* (1894, 4 App. D.C. 335).

Though the affidavit preceding the issuance of the writ may be so defective as to warrant a reversal of the judgment by an appellate court, such defect will not deprive the court of the jurisdiction acquired by the writ levied upon defendant's property. The proceeding being in rem, the levy of the writ "is the one essential requisite to jurisdiction." *Moses* v. *Hayes* (1911, 36 App. D.C. 194).

Affidavit in attachment before judgment required need not employ the precise language of this section, but words must be sufficiently similar to those of this section to allow drawing of conclusion which is called for by the exact language of this section. *Rieffer* v. *Home Indem. Co.* (D.C. Mun. App. 1948, 61 A. 2d 26, modified on other grounds 62 A. 2d 371).

Affidavit in support of attachment before judgment alleging that defendant left the District of Columbia at a time shown by affidavit to be within six months before filing of affidavit, that defendant's present whereabouts were unknown, and that defendant had temporarily withdrawn himself from district, was fatally defective for not alleging that defendant was evading the service of ordinary process by his withdrawal. *Id.*

Amendment of garnishment

It was proper for court to allow amendment of garnishments so as to correctly designate corporate name of garnishee where use of incorrect name had neither prejudiced nor mislead it. *Hotel Windsor Park, Inc.* v. *Arco Contractors, Inc.* (D.C. Mun. App. 1957, 134 A. 2d 322).

Amount of recovery

Where plaintiffs in attachment filed bond in accordance with the statute and after dismissal of action defendant in attachment brought suit to recover on bond which provided that surety should make good to defendant all costs and damages which he might sustain by reason of wrongful suing out of said attachment, defendant in attachment was not automatically entitled to recover full penal sum therein named but was limited to such costs and damages as he could show were sustained because of detention of property. *Davis* v. *Peerless Ins. Co. et al.* (1958, 255 F. 2d 534, 103 U.S. App. D.C. 125).

Appealable decision

Where Federal District Court entered judgment against defendant on claim for declaratory judgment but remanded for determination by auditor of damages of third-party defendant, there was no appealable final decision. *Washington Building Services* v. *United Janitorial Services* (1965, 352 F. 2d 678, 122 U.S. App. D.C. 202).

Appealable orders

Under statute limiting jurisdiction of Municipal Court of Appeals for District of Columbia to hear appeals from interlocutory order to orders whereby possession of property is changed or affected, order denying motion to quash writ of attachment is not appealable. *Clark* v. *District Discount Co.* (D.C. Mun. App. 1959, 151 A. 2d 198).

To be appealable, an interlocutory order must be one which, if carried into effect, would change or affect possession by changing the status quo ante the order, under statute limiting jurisdiction of Municipal Court of Appeals for District of Columbia to review interlocutory orders to those orders whereby possession of property is changed or affected. *Id.*

Order overruling motion to quash service is not final and not appealable. *Id.*

Application for judgment against garnishee

The rule requiring applications for judgment against garnishees to be filed within four weeks after their answers relates to garnishment after judgment and had no application to garnishments served before judgment where action was not determined within such period, in view of statute forbidding judgment against garnishee until determination of action. *Hotel Windsor Park, Inc.* v. *Arco Contractors, Inc.* (D.C. Mun. App. 1957, 134 A. 2d 322).

Bonds

Where an attachment is issued against the property of one of several defendants, the bond properly runs to him and not to the other defendants against whom attachment did not issue. *Bradford* v. *Brown* (1903, 22 App. D.C. 455).

If the bond is defective, the defendant may move to quash the attachment. *Moses* v. *Hayes* (1911, 36 App. D.C. 194). See, also, *Hayes* v. *Conger* (1911, 36 App. D.C. 202).

Bond is sufficient if it is twice the amount sued upon; "uncertain costs and interest which may accrue during litigation are no part of a plaintiff's claim at the date of suit." *Rhodes* v. *Bowling Green White Stone Co.* (1915, 43 App. D.C. 298).

A surety on a bond given under section 454 of the Code (§ 16–310) can not object, except in case of fraud, to defects in original affidavits which render the attachment merely voidable. *National Surety Co.* v. *Poates* (1915, 43 App. D.C. 334).

The requirements of this section as to the filing of a bond are not superseded by the act of April 19, 1920 (41 Stat. 564), section 479a of the Code (§ 28–2403). *Tri-State Motor Corp.* v. *Standard Steel Car Co.* (1922, 276 F. 631, 51 App. D.C. 109).

Breach of contract

Where defendant did not sound his case in tort, as he might have done, but sued specifically for breach of the lease agreement, charging that defendant had damaged the premises in breach of the lease agreement, such allegations brought his claim within the provisions of the attachment statute. *Fink* v. *Katz* (D.C. Mun. App. 1949, 68 A. 2d 813).

Burden of proof

To sustain writ of attachment, plaintiff had burden of proving that defendant was a nonresident. *D'Elia & Marks Co.* v. *Lyon* (D.C. Mun. App. 1943, 31 A. 2d 647).

Construction

Remedy of attachment before judgment is purely statutory, is in derogation of the common law, and is a very drastic proceeding, and, therefore, this section permitting such an attachment should not receive a liberal construction, and strict compliance therewith should be required. *Petroni* v. *Bass et ano.* (D.C.D.C. 1960, 186 F. Supp. 759).

In order for an attachment before judgment to be issued, the defendant must not be a resident of the District. The statute clearly prescribes residence, as distinguished from domicile, as the controlling factor. A man's residence is where he actually dwells and must be a fixed and permanent abode. *Fink* v. *Katz* (D.C. Mun. App. 1949, 68 A. 2d 813).

Evidence of indebtedness

In proceeding wherein company which had installed rink in hotel, at request of non-resident entertainers engaged by hotel, garnished hotel to attach sums allegedly due entertainers so as to acquire jurisdiction of them to recover for services in installing rink, and wherein hotel disclaimed that it was indebted to entertainers on date of service of garnishment though it later made payments to them, evidence on whether it was so indebted sustained trial court's ruling against it. *Hotel Windsor Park, Inc.* v. *Arco Contractors, Inc.* (D.C. Mun. App. 1957, 134 A. 2d 322).

Executors and administrators

"Neither executors nor administrators are named in the section as subject to attachment, and as the attachment of the property of an estate is obviously inconsistent with the law of administration, nothing less, we think, than express authorization would warrant." *Jordan* v. *Landram* (1910, 35 App. D.C. 89).

Foreign corporation

Corporation, which had an office in the District of Columbia, was subject in the District of Columbia to garnishment of credits in its hands belonging to an employee, who was a resident of Maryland, who performed his work in Maryland, and whose wages were payable in Maryland. *Marvins Credit, Inc.* v. *General Motors Corp.* (D.C. Mun. App. 1956, 119 A. 2d 447).

A foreign corporation, notwithstanding its exclusive engagement in business in the District, its organization for that purpose only, and the continuous presence of its secretary and treasurer therein, is a nonresident and subject to attachment as such. *Barbour* v. *Paige Hotel Co.* (1894, 2 App. D.C. 174).

Interest in trust

In suit by divorced wife of trust beneficiary to establish interest in trust fund, wife could not recover fund due as alimony or for the benefit of creditors, in absence of personal service on beneficiary or an attachment of his equitable interest in fund after execution of bond. *Buchanan* v. *National Sav. & Trust Co.* (1945, 146 F. 2d 13, 79 U.S. App. D.C. 278).

Jurisdiction

In a garnishment proceeding in the District of Columbia, it is the person of the garnishee and not the res which confers jurisdiction, and when garnishment is served suit becomes suit in personam and judgment against garnishee becomes personal judgment against him. *Western Urn Manufacturing Co.* v. *American Pipe and Steel Corporation* (C.A.D.C. 1960, 284 F. 2d 279).

When debtor leaves city taking all cash with him and leaves no information as to where he is going or when he will return, a creditor after making unsuccessful attempts to locate him is justified in assuming that he left for the purpose of evading the process and a writ of attachment will lie. *Wilkins & Co.* v. *Hillman* (1896, 8 App. D.C. 469).

The question of the jurisdiction of the court to issue the attachment must be decided solely upon the sufficiency of the declaration, regardless of defenses available to defendant since these are waived by its motion to dissolve the attachment. *Orenstein & Koppel, Aktiengesellschaft* v. *Koppel Industrial Car Equipment Co.* (1930, 38 F. 2d 532, 59 App. D.C. 221, certiorari dismissed 51 S. Ct. 106, 282 U.S. 906, 75 L. Ed. 798).

Member of Congress

A member of Congress, present in the District to attend its sessions, is to be regarded (in the absence of a plain, unequivocal statement to the contrary) as a resident of the state which he represents, and therefore a nonresident of the District within the meaning of the attachment statute. *Howard* v. *Citizens' Bank & Trust Co.* (1898, 12 App. D.C. 222).

Nonresident

Were nonresident corporations brought action in District of Columbia against nonresident corporation and filed bond, writ of attachment was directed to defendant's attorney to whom funds of defendant were paid as shown by return of bank, and personal service upon attorney was had in District of Columbia, if attorney had possession of assets of defendant, he was properly subject to service of writ and action became one in personam against attorney, but if he did not possess defendant's assets, he was not properly subject to service of writ. *Western Urn Manufacturing Co.* v. *American Pipe and Steel Corporation* (C.A.D.C. 1960, 284 F. 2d 279).

For purposes of attachment before judgment on ground that defendant is a nonresident, residence is the test, and the fact that a defendant had an established office in the District of Columbia and presumably was available for personal services was not material. *National Brick & Supply Co.* v. *Bradshaw* (D.C. Mun. App. 1952, 91 A. 2d 838).

Under this section providing that in action for recovery of debt, clerk shall issue writ of attachment if plaintiff files affidavit stating that defendant is not a resident of the District of Columbia, plaintiff who was nonresident of the District was entitled to implement his suit by writ of attachment before judgment. *Rice* v. *Salnier* (D.C. Mun. App. 1952, 86 A. 2d 175).

"Nonresident", as used in this section, must be taken in its ordinary and usual signification. *D'Elia & Marks Co.* v. *Lyon* (D.C. Mun. App. 1943, 31 A. 2d 647).

Whether defendant was subject to attachment as a nonresident would be determined as of time of issuing and serving writ of attachment. *Id.*

That defendant had an established office in the District of Columbia and presumably was available for personal service was not material in determining whether he was a "nonresident" within this section. *Id.*

Evidence that physician with office in District of Columbia boarded up his Maryland home and, with his family, moved to expensive apartment in the District of Columbia under one-year lease, intending to move back to Maryland when he could afford it, authorized quashing of attachment of physician's property on ground that physician was not a "nonresident" of the District of Columbia. *Id.*

Where nonresident taxicab operator's taxicab driver was lured into the District of Columbia in order that taxicab might be attached there the court would in order to protect its process quash the attachment and direct return of cash deposit which was made in lieu of bond to perform judgment of the court. *Guardian Management Corp.* v. *Huffman* (D.C. Mun. App. 1948, 61 A. 2d 472).

That defendant as a common carrier regularly sent its taxicabs into the District of Columbia would not change the effect of procuring the presence of defendant's taxicab in the District by misrepresentation in order that the taxicab might be attached. *Id.*

Previous decisions, effect of

Where one of several creditors who had judgments of condemnation against debtor, filed traverse to garnishee's answer in attachment and offered to prove that creditor's attachment lien was entitled to preference over claims garnishee was attempting to treat in his answer as preferred liens previous decision in same case which merely set forth order of payment of creditors having judgments of condemnation and which did not determine issue as to preferences did not eliminate creditor's right to have trial of issue as to such alleged preferences at present trial. *Troshinsky* v. *Feldman* (D.C. Mun. App. 1951, 81 A. 2d 91).

Property attached

Attachment may be levied against property of the defendant in the possession of the plaintiff. *Harriman* v. *Richardson* (1921, 273 F. 752, 51 App. D.C. 24).

Under this and following sections credits may be attached as well as chattels. *United States Fidelity & Guar. Co.* v. *Wrenn* (1937, 89 F. 2d 838, 67 App. D.C. 94).

Quashing writ of attachment

On motion of defendant to quash plaintiff's attachment, plaintiff has burden of proving facts alleged in his affidavit as a ground for suing out attachment, and mere suspicion that defendant is about to remove property from a district to defeat just demands against him will not suffice. *Washington Building Services* v. *United Janitorial Services* (1965, 352 F. 2d 678, 122 U.S. App. D.C. 202).

Court did not abuse its discretion in denying motion to quash order of condemnation of funds attached and to set aside default judgment, where defendant had filed no responsive pleadings after its motions to strike complaint and to quash attachment were denied and after unsuccessful negotiations to reach a settlement. *Union Storage Company, Inc.* v. *Maury Young et al.* (D.C. Mun. App. 1962, 183 A. 2d 760).

Defendant who, in traversing attachment before judgment obtained on the ground of nonresidency, admitted that his home was in Maryland and denied that he owed the amount claimed and averred that statements in the plaintiff's affidavit for attachment were not true, traversed only main issue in complaint and was not entitled

to have attachment quashed. *National Brick & Supply Co., Inc.* v. *Bradshaw* (D.C. Mun. App. 1952, 91 A. 2d 838).

Release of surety

It was error to release surety from liability on bond executed to obtain a release of attachment of property of third-party defendant by defendant because attachment affidavit was allegedly defective, where judgment was rendered for plaintiff against defendant and for defendant against third-party defendant for identical sums, and judgment contained paragraph declaring that attachment was void because allegation in affidavit was mere conclusion and referring cause to auditor to take proof of damages sustained by third-party defendant by reason of attachment and to report thereon to court. *Washington Building Services* v. *United Janitorial Services* (1965, 352 F. 2d 678, 122 U.S. App. D.C. 202).

If surety on bond to release attachment is ever to prevail on defense based on defect in attachment, such defense must be raised timely by defendant in order to give plaintiff opportunity to provide a curative amendment. *Id.*

Removal of property

A mere suspicion that the defendant intends to remove his property from the District is not sufficient to justify an attachment. *McKenzie* v. *Crouse* (1910, 35 App. D.C. 291).

Res judicata

Where judgment was rendered for plaintiff against defendant and for defendant against third-party defendant for identical sums, and judgment contained paragraph declaring that attachment before judgment of defendant against third-party defendant was void because of alleged defect in attachment affidavit, and referring cause to auditor to take proof of damages sustained by third-party defendant but refusing to release surety on attachment bond at that time, ruling that attachment was void was not res judicata when surety subsequently sought release from liability on bond. *Washington Building Services* v. *United Janitorial Services* (1965, 352 F. 2d 678, 122 U.S. App. D.C. 202).

Reversion interest in trust funds

Where divorced wife sued husband for payment of money due by reason of property settlement incorporated into divorce decree and husband was not resident of District of Columbia and divorced husband had created a District of Columbia trust and he possessed a vested reversion and in May, 1960, he would receive a portion of the trust assets on partial termination of the trust, divorced wife could assert jurisdiction over the property and the husband under District of Columbia Code which provides substantially as to service and the matter thereof on nonresident defendant who has personal property within the jurisdiction against which a claim of a plaintiff is asserted and also under District of Columbia statute relating to attachment before judgment. *King, etc.* v. *Fay et al.* (D.C.D.C. 1958, 169 F. Supp. 934).

Right of attachment

Fact that plaintiff may not prevail when case comes to trial does not mean he had no right of attachment before judgment. *Morfessis* v. *Thomas* (D.C. Mun. App. 1952, 91 A. 2d 833).

Spendthrift trust

A spendthrift trust may under some circumstances be subjected to the obligation to support a wife or child, but enforcement of such obligation requires either personal service on beneficiary or an attachment of his equitable interest in the fund after execution of bond. *Buchanan* v. *National Sav. & Trust Co.* (1945, 146 F. 2d 13, 79 U.S. App. D.C. 278).

Statement of damages

Attachment statute is not only meant to apply to those actions for damages for breach of contract which are precisely liquidated and ascertained. The object of the statute is to require such a statement of the damages suffered as will be informing to the defendant and enable him to prepare himself to meet the issue tendered. *Suter* v. *Lockwood Dental Co.* (1916, 45 App. D.C. 92).

Trial of main issue

A defendant, in traversing an attachment before judgment, may deny by affidavit any of the specific statutory grounds alleged, but he may not by a motion to quash an attachment achieve a trial of the main issue in the case unless it is determined that issues raised by the motion shall be tried at same time as issues raised by the pleadings. *Morfessis* v. *Thomas* (D.C. Mun. App. 1952, 91 A. 2d 833).

Wrongful suing out of attachment

Suit for wrongful attachment is normally predicated on failure of success by plaintiff and is limited to actual damages sustained by defendant, but punitive damages may be recovered in case of malice and complete failure of probable cause. *Id.*

Defendant may recover for wrongful attachment even though plaintiff prevails on merits, if plaintiff is not entitled to the attachment. *Id.*

Where action was brought and attachment issued, failure of plaintiff's suit resulted in a "wrongful suing out of attachment" authorizing property owner to bring suit on bond. *Davis* v. *Peerless Ins. Co. et al.* (1958, 255 F. 2d 534, 103 U.S. App. D.C. 125).

II. Under Present Law

Attachment before judgment

Attachment of wages before judgment was not illegal where all requirements for garnishment were met. *J. R. Smith* v. *The First National Bank of Southern Maryland* (D.C. App. 1966, 220 A. 2d 333).

Judgment on bond in the same suit

A defendant in whose favor a judgment had been rendered, as an alternative to an independent action, could file a motion in the case demanding judgment against plaintiff and his surety for damages alleged to have been sustained by attachment of defendant's funds, but assertion of claim in such manner did not disable plaintiff from utilizing defensive rights available to him were an independent acton filed. *G. P. Schmidt* v. *L. T. Smith* (1965, 344 F. 2d 168, 120 U.S. App. D.C. 74).

District Court may adopt reasonable rules and practices governing assertion of a claim by defendant for damages arising from wrongful attachment, and time within which it may be so asserted may be limited by rules so as to avoid holding original case open unduly long. *Id.*

While rule 73(f) was not available as a means of serving surety on attachment bond on defendant's motion for judgment against plaintiff and surety for damages sustained by the attachment, the ability of defendant to make service upon surety was not thereby necessarily foreclosed. *Id.*

§ 16–502. Service of notice; publication

(a) A writ issued pursuant to section 16-501 shall require the marshal to serve a notice on the defendant, if he is found in the District, and on any person in whose possession any property or credits of the defendant may be attached, to appear in the court on or before the twentieth day, exclusive of Sundays and legal holidays after service of the notice, and show cause, if any there be, why the property so attached should not be condemned and execution thereof had. The marshal's return shall show the fact of the service.

(b) If the defendant is returned "Not to be found," the notice shall be given by publication to the following effect, namely:

In the United States District Court (District of Columbia Court of General Sessions) for the District of Columbia.

A B, plaintiff,
versus
C D, defendant,
} Civil Action No. ———.

The object of this suit is to recover (here state it briefly) and to have judgment of condemnation of

certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim.

It is, therefore, this —— day of ————, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why the condemnation should not be had; otherwise the suit will be proceeded with as in case of default.

By the court:

————— ————, Judge.

(c) The order shall be published at least once a week for three successive weeks or oftener, or for such further time and in such manner as the court orders. (Dec. 23, 1963, 77 Stat. 544, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–302 (Mar. 3, 1901, ch. 854, § 446, 31 Stat. 1259; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

In the form of notice set out in subsec. (b), a parenthetical reference to the Court of General Sessions is inserted for the purpose of completeness.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Credits

Distinction that would permit the attachment of chattels and not of credits, see *United States Fidelity & Guar. Co.* v. *Wrenn* (1937, 89 F. 2d 838, 67 App. D.C. 94).

Legislative intent

One purpose of this section is to protect the rights of third parties in whose possession the property may be. *Harriman* v. *Richardson* (1921, 273 F. 752, 51 App. D.C. 24).

Parties

Under this and following sections, the Attorney General must be made a party in suit to compel the payment of a judgment of condemnation, where such officer has succeeded the Alien Property Custodian. *United States ex rel. Ordmann* v. *Cummings* (1936, 85 F. 2d 273, 66 App. D.C. 107).

Property in safe-deposit box

Property in a safe-deposit box in a trust company is subject to garnishment. *Washington Loan & Trust Co.* v. *Susquehanna Coal Co.* (1905, 26 App. D.C. 149).

§ 16–503. Attachment for debts not due

A creditor may maintain an action and have an attachment against his debtor's property and credits, where his debt is not yet due and payable, if the plaintiff, his agent, or attorney files in the clerk's office, at the commencement of the action, an affidavit, supported by testimony of one or more witnesses, showing the amount and justice of the claim and the time when it will be payable, and also setting forth that the defendant has removed or is removing or intends to remove a material part of his property from the District with the intent or to the effect of defeating just claims against him if only the ordinary process of law is used to obtain judgment against him, and if he also complies with the condition as to filing a bond prescribed by section 16–501. The plaintiff may not have judgment before his claim becomes due. If the attachment is quashed the action shall be dismissed, but without prejudice to a future action. (Dec. 23, 1963, 77 Stat. 545, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–306 (Mar. 3, 1901, ch. 854, § 450, 31 Stat. 1260).

Changes are made in phraseology.

§ 16–504. Additional attachments

Upon the application of the plaintiff, his agent, or attorney, other attachments founded on the original affidavits may be issued from time to time, to be directed, executed, and returned in the same manner as the original, and without further publication, against a nonresident or absent defendant, and without additional bond, unless required by the court. (Dec. 23, 1963, 77 Stat. 545, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–304 (Mar. 3, 1901, ch. 854, § 448, 31 Stat. 1259).

§ 16–505. Sufficiency of plaintiff's bond

The defendant or any other person interested in the proceedings who is not satisfied with the sufficiency of the surety or with the amount of the penalty named in the bond filed pursuant to section 16–501, may apply to the court for an order requiring the plaintiff to give an additional bond in such sum and with such security as may be approved by the court. If the plaintiff fails to comply with any such order the court may order the attachment to be quashed and any property attached or its proceeds to be returned to the defendant or otherwise disposed of, as to the court may seem proper. (Dec. 23, 1963, 77 Stat. 545, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–305 (Mar. 3, 1901, ch. 854, § 449, 31 Stat. 1260).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

In general

Defendant has the right when not satisfied with the sufficiency of the surety on the bond or amount of its penalty to apply for order requiring plaintiff to give additional bond or, if the bond is defective, move to quash the writ. *Moses* v. *Hayes* (1911, 36 App. D.C. 194).

§ 16–506. Traversing affidavits; quashing writ of attachment; trial of issues

If the defendant files affidavits traversing the affidavits filed by the plaintiff the court shall determine whether the facts set forth in the plaintiff's affidavits as ground for issuing the attachment are true, and whether there was just ground for issuing the attachment. When, in the opinion of the court, the proofs do not sustain the affidavit of the plaintiff, his agent, or attorney, the court shall quash the writ of attachment. This issue may be tried by the court or a judge at chambers after three days' notice. The issue may be tried as well upon oral testimony as upon affidavits. If the court deems it expedient, a jury may be impaneled to try the issue. (Dec. 23, 1963, 77 Stat. 545, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–307 (Mar. 3, 1901, ch. 854, § 451, 31 Stat. 1260).

Changes are made in phraseology.

CROSS REFERENCE

Garnishee entitled to benefit of this section, see § 16–529.

NOTES TO DECISIONS UNDER PRIOR LAW

Evidence

Evidence sustained finding that fraud relied on as basis for attachment of automobile had not been proved and that the attachment should be quashed. *Davis* v. *Trumbull* (D.C. Mun. App. 1948, 61 A. 2d 622).

Joinder of defendants

A single defendant may move to quash an attachment even though he is not joined by other defendants. *Davis* v. *Trumbull* (D.C. Mun. App. 1948, 61 A. 2d 622).

Jury trial

The right to trial by jury is governed by this section and not by rule of Municipal Court dealing with right to trial by jury. *Davis* v. *Trumbull* (D.C. Mun. App. 1948, 61 A. 2d 622).

Where defendant filed an affidavit traversing plaintiff's affidavit on which writ of attachment was issued and request for jury trial was made on a Saturday, and judge offered to set motion for jury trial on the following Monday, and plaintiff's counsel said he could not be ready until the following Wednesday or Thursday, whereupon the judge ordered the hearing to proceed without a jury, there was no improper exercise of discretion. *Id.*

Purpose

The purpose of the traverse of an attachment before judgment is to present to the court for determination the issue of whether the facts set forth in the plaintiff's affidavit as ground for issuing the attachment are true, and whether there is just ground for issuing the attachment. *Morfessis* v. *Thomas* (D.C. Mun. App. 1952, 91 A. 2d 833).

Review

The credibility of witnesses and the weight to be given to their testimony could not be determined on appeal from order of Municipal Court quashing writ of attachment. *Davis* v. *Trumbull* (D.C. Mun. App. 1948, 61 A. 2d 622).

Service of process

Where motion to vacate judgment and quash attachment rested on claim that service on defendant had not been made and that Small Claims Branch of District of Columbia Municipal Court acquired no jurisdiction over defendant, motion was sufficiently broad to include by implication an attack on service of process, and irregularlity was curved by subsequent filing of motion to quash service, and filing of motion to vacate judgment and quash attachment was "special" and not "general appearance", and going to trial on merits after denial of such motion did not preclude defendant from raising jurisdictional question on appeal. *Ellerbe* v. *Goldberg* (D.C. Mun. App. 1948, 60 A. 2d 232).

§ 16–507. Property subject to attachment; liens; priorities

(a) An attachment may be levied on the lands and tenements, and personal chattels of the defendant not exempt by law, whether in the defendant's or a third person's possession, and whether the defendant's title to the property is legal or equitable, and upon his credits in the hands of a third person, whether due and payable or not, and upon his undivided interest in a partnership business.

(b) An attachment shall be a lien on the property attached from the date of its delivery to the marshal. When different persons obtain attachments against the same defendant the priorities of the liens of the attachments shall be according to the dates when they were so delivered to the marshal. (Dec. 23, 1963, 77 Stat. 545, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–308 (Mar. 3, 1901, ch. 854, § 452, 31 Stat. 1260).

Property subject to attachment after judgment, see section 16–544 herein. Priority of attachments against same judgment debtor, see section 16–545 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Chattels subject to deed of trust

Attachment is proper against chattels which are subject to a deed of trust as the deed of trust is in favor of the plaintiff in the suit in which the attachment is issued. *Richmond* v. *Cake* (1893, 1 App. D.C. 447).

Deposits

Where judgment creditor to collect judgment attached judgment debtor's deposit account, evidence sustained judgment rejecting debtor's contention that the funds attached were trust funds not subject to attachment. *Laughlin* v. *Bank of Commerce & Savings* (1943, 134 F. 2d 530, 77 U.S. App. D.C. 312).

Payment on account

Where judgment debtor has made a deposit with company on account of the purchase price under another contract, such funds may not be reclaimed by the judgment debtor without the seller's consent, and, being payable upon a contingency, is not subject to garnishment by the judgment creditor. *Wheeler* v. *Thomas* (D.C.D.C. 1940, 31 F. Supp. 702).

Proceeds of sale

Proceeds of the sale of property in the hands of a purchaser from a foreign receiver who brought the property into this jurisdiciton (and was vested with title and a right to sell the same) are not subject to attachment by domestic creditor of original owner. *Jenkins* v. *Purcell* (1907, 29 App. D.C. 209, 9 L.R.A., N.S. 1074).

Rents accruing after service

Rents which accrued after service of the garnishment constituted a contingent liability when the garnishment was levied and was not subject to garnishment. *United States Fidelity & Guar. Co.* v. *Wrenn* (1937, 89 F. 2d 838, 67 App. D.C. 94).

Safe-deposit box

Attachment may be levied against safe-deposit box. *Washington Loan & Trust Co.* v. *Susquehanna Coal Co.* (1905, 26 App. D.C. 149).

"Third person" may be plaintiff

Attachment may be levied against property of the defendant in the possession of the plaintiff. *Harriman* v. *Richardson* (1921, 273 F. 752, 51 App. D.C. 24).

Trust funds

Trust funds coming into possession of Chief Probation Officer of Federal District Court in criminal cases in which defendant is placed on probation on condition of making restitution or paying maintenance are not subject to garnishment. *Manley* v. *Butterfield* (D.C.D.C. 1953, 111 F. Supp. 783).

Where defendant was not placed on probation and money which he informally gave to Probation Officer was not received to make restitution to aggrieved parties for actual damages or loss caused by offenses for which he had been convicted and court who sentenced defendant made no order in respect to restitution, money was subject to garnishment. *Id.*

Waiver of exemption

Funds of an individual in possession of District of Columbia or its officers are not subject to attachment or garnishment in an ordinary proceeding to recover on a debt or other like claim, but exemption is allowed only for convenience of municipality and may be claimed by it alone and not by another, and the District of Columbia may waive it. *Montgomery* v. *Montgomery* (1946, 153 F. 2d 634, 80 U.S. App. D.C. 344).

The exemption of District of Columbia from attachment or garnishment, in an ordinary proceeding to recover on a debt or other like claim against an individual whose funds are held by the District, is waived by a failure or refusal to claim the exemption. *Id.*

§ 16–508. Attachment of real property

An attachment is sufficiently levied on the lands and tenements of the defendant by:

(1) mentioning and describing the property in an indorsement on the attachment, made by the officer to whom it is delivered for service, to the following effect:

"Levied on the following estate of the defendant, A B, to wit: (Here describe) this —— day of ————. C D, Marshal."; and

(2) serving a copy of the attachment, with the indorsement, and the notice required by section 16–502, on the person, if any, in possession of the property.

(Dec. 23, 1963, 77 Stat. 546, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–309 (Mar. 3, 1901, ch. 854, § 453, 31 Stat. 1260).

Changes are made in phraseology.

§ 16–509. Attachment of personal property; undertaking by defendant or person in possession

(a) An attachment shall be levied upon personal chattels by the officer taking them into his possession and custody, unless the defendant gives the officer his undertaking to be filed in the cause, with sufficient security, substantially in the form set forth in subsection (b) of this section, or unless the person in whose possession the property is attached gives the officer his undertaking to be filed in the cause substantially in the form set forth in subsection (c) of this section. In cases where such undertakings are given, the attachment is sufficiently levied by the taking of the undertaking.

(b) An undertaking by the defendant shall contain the substance of the following form:

A B, plaintiff,
versus
C D, defendant. } Civil Action No. —.

The defendant and ———, his surety, in consideration of the discharge from the custody of the marshal of the property seized by him, upon the attachment sued out against the defendant, on the ——— day of ———, anno Domini nineteen hundred ———, in the above entitled cause, appear, and submitting to the jurisdiction of the court, hereby undertake, for themselves and each of them, their and each of their heirs, executors, and administrators, or successors or assigns, to abide by and perform the judgment of the court in the premises in relation to the property, which judgment may be rendered against any or all the parties whose names are hereto signed.

(Signed) C D.
E F.

(c) An undertaking by the person in whose possession the property is attached shall contain the substance of the following form:

A B, plaintiff,
versus
C D, defendant. } Civil Action No. —.

Whereas by virtue of an attachment issued in the above-entitled suit, the United States marshal for the District of Columbia has attached certain property in the hands of the undersigned E F, as garnishee, namely, (here describe) of the value of ——— dollars; and now, therefore, E F and G H, as surety, appearing in the action, and submitting to the jurisdiction of the court, hereby undertake for themselves and each of them, their and each of their heirs, executors, and administrators to abide by the judgment of the court in relation to said property, and that if the same shall be condemned to satisfy the claim of the plaintiff, judgment may be rendered against all the undersigned for the value of the property and costs, to be executed against them, and each of them, unless the property shall be forthcoming to satisfy the judgment of condemnation.

(Signed)

E F.
G H.

The recital of the undertaking in this subsection shall contain a sufficient description of the property and its value ascertained by an appraisement to be made under direction of the officer and returned with the writ. (Dec. 23, 1963, 77 Stat. 546, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–310 (Mar. 3, 1901, ch. 854, § 454, 31 Stat. 1261; June 30, 1902, ch. 1329, 32 Stat. 530).

Changes are made in arrangement and phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Constitutionality

This section was not unconstitutional. *United Surety Co.* v. *American Fruit Product Co.* (1915, 35 S. Ct. 828, 238 U.S. 140, 59 L. Ed. 1238).

Waiver

Where non-resident taxicab owner procured release of attached taxicab by cash deposit instead of giving bond as required by this section such irregularity was waived and case was required to be disposed of as if bond had been given to perform judgment of the court. *Guardian Management Corp.* v. *Huffman* (D.C. Mun. App. 1948, 61 A. 2d 472).

§ 16–510. Release of property or credits from attachment; sufficiency of undertaking

(a) Either the defendant or the person in whose possession the property is attached may obtain a release of the property from the attachment, after it has been taken into the custody of the marshal and the writ has been returned, by giving the undertaking required of him by section 16–509, with security to be approved by the court.

(b) The plaintiff may except to the sufficiency of the undertaking accepted by the marshal and, if the exceptions are sustained, the court shall require a new undertaking, with sufficient surety, by a day to be named, in default of which the marshal shall be liable to the plaintiff on his official bond for any loss sustained by the plaintiff through the default.

(c) Either the defendant or the person in whose possession credits are attached may obtain a release of the credits from the attachment by filing an undertaking with security to be approved by the court. (Dec. 23, 1963, 77 Stat. 547, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–311 (Mar. 3, 1901, ch. 854, § 455, 31 Stat. 1261; June 30, 1902, ch. 1329, 32 Stat. 530; Apr. 19, 1920, ch. 153, 41 Stat. 564).

Section is from part of section 16–311 of D.C. Code, 1961 ed. The remainder of the section is set out in § 16–527.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Amount of recovery

Where plaintiffs in attachment filed bond in accordance with the statute and after dismissal of action defendant in attachment brought suit to recover on bond which provided that surety should make good to defendant all costs and damages which he might sustain by reason of wrongful suing out of said attachment, defendant in attachment was not automatically entitled to recover full penal sum therein named but was limited to such costs and damages as he could show were sustained because of detention of property. *Davis* v. *Peerless Ins. Co. et al.* (1958, 255 F. 2d 534, 103 U.S. App. D.C. 125).

Constitutionality

This section was not unconstitutional. *United Surety Co.* v. *American Fruit Product Co.* (1915, 35 S. Ct. 828, 238 U.S. 140, 59 L. Ed. 1238).

Duty to obtain release

When the plaintiff's car was taken from him, he could have procured its return immediately by giving an undertaking under this section, and it was his duty to do so and thus to reduce the defendant's liability, except if he were financially unable to do so. *Moses* v. *Lockwood* (1924, 295 F. 936, 54 App. D.C. 115, 33 A.L.R. 1467).

Remedy against surety

Bond given under this section to obtain release of attached property is binding upon defendant's surety notwithstanding the fact that defendant was declared bankrupt within four months thereafter. *Fidelity & Deposit Co. of Maryland* v. *Shepherd* (1926, 11 F. 2d 563, 56 App. D.C. 177).

In taking judgment solely against the main defendant, together with the subsequent step against the garnishee as outlined, defendant in error waived his right to pursue his remedy against the surety. *Fidelity & Deposit Co. of Maryland* v. *Hurley* (1934, 72 F. 2d 927, 63 App. D.C. 377).

Undertaking

Under this section, right to release of attachment by filing an undertaking is granted solely where the attachment is made before judgment. *Bank of Commerce & Savings* v. *Laughlin* (D.C.D.C. 1941, 38 F. Supp. 755).

Where judgment debtor tendered an undertaking with security to perform outstanding judgment against him, and asked court to release attachment, the request was properly denied, since this section authorizes release of attachment before judgment but not after judgment. *Laughlin* v. *Bank of Commerce & Savings* (1943, 134 F. 2d 530, 77 U.S. App. D.C. 312).

—— As warranting release

Where judgment debtor tendered an undertaking with security to perform outstanding judgment against him, the judgment debtor was not prejudiced by court's refusal to release attachment of money, since it could make no difference to the judgment debtor whether he paid the amount out of the attached funds or out of the security which he tendered with his undertaking. *Laughlin* v. *Bank of Commerce & Savings* (1943, 134 F. 2d 530, 77 U.S. App. D.C. 312).

§ 16–511. Attachment of credits or partnership interest; retention of property or credits by garnishee

(a) An attachment shall be levied upon credits of the defendant, in the hands of a garnishee, by serving the garnishee with a copy of the writ of attachment and of the interrogatories accompanying the writ, and a notice that any property or credits of the defendant in his hands are seized by virtue of the attachment, besides the notice required by section 16–502. The undivided interest of the defendant in a partnership business may be levied upon by a similar service on the defendant's partner or partners.

(b) Where the property or credits attached or sought to be attached are held by the garnishee in the name of or for the account of a person other than the defendant, the garnishee shall retain the property or credits during the period pending determination by the court of the propriety of the attachment or the rightful owner of the property or credits. During that period, the garnishee shall incur no liability for the retention. (Dec. 23, 1963, 77 Stat. 547, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–312 (Mar. 3, 1901, ch. 854, § 456, 31 Stat. 1262; Apr. 5, 1939, ch. 37, § 8(a), 53 Stat. 567; Dec. 20, 1944, ch. 610, § 4, 58 Stat. 819; Aug. 4, 1959, Pub. L. 86–130, § 5, 73 Stat. 277).

Section is from part of section 16–312 of D.C. Code, 1961 ed. The remainder of the section is set out in §§ 16–512 and 16–513 herein.

Similar provisions as to attachment after judgment are found in section 16–546 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Advance payments

Evidence is quite clear that employer did not make an advance payment to employee on last working day and hence this section does not apply. *American Nat. Red Cross* v. *Jameson* (1949, 178 F. 2d 717, 85 U.S. App. D.C. 389).

Under this section and § 13–103 to effect that advance payment of salary for purpose of avoiding garnishment shall be void as to attaching creditors and that all process against foreign corporations doing business in District may be served by leaving copy at corporation's principal place of business in District, wife, who had obtained decree for separate maintenance and served writ of attachment at Illinois corporation's District of Columbia office, was entitled to judgment of condemnation against corporation for a month's salary paid to husband on day of service, notwithstanding fact that husband and corporation in Illinois had entered into contract providing for payment of salary in advance to avoid garnishment and that such contracts are legal in Illinois. *Welch* v. *Welch Jr.* (D.C.D.C. 1958, 166 F. Supp. 539, reconsideration denied 166 F. Supp. 960).

Alien Property Custodian

The writ of attachment and interrogatories served upon Alien Property Custodian whose office was later abolished and whose duties descended to Attorney General were not binding upon Attorney General. *United States ex rel. Ordmann* v. *Cummings* (1936, 85 F. 2d 273, 66 App. D.C. 107).

Effect of service

Court cites *Washington Loan & Trust Co.* v. *Susquehanna Coal Co.* (1905, 26 App. D.C. 149) and says the effect of the service of the writ of garnishment was to place the property of the judgment debtor in the garnishee's hands in custodia legis. *International Finance Corp.* v. *Jawish* (1959, 271 F. 2d 985, 63 App. D.C. 262).

Money payable upon contingency or condition

Money payable upon a contingency or condition is not subject to garnishment until the contingency has happened or the condition has been fulfilled. *Wheeler* v. *Thomas* (D.C.D.C. 1940, 31 F. Supp. 702).

Personal service required

Where writ of garnishment was served on garnishee's bookkeeper as agent of garnishee and personal service was not had on garnishee, entire garnishment proceeding was a nullity for want of jurisdiction, and judgment creditor had no right to press any further garnishment proceedings and subpoena directing bookkeeper to appear for oral examination and to bring with him specified employment records was properly quashed. *Hollywood Credit Clothing Co.* v. *Ben Hundley* (D.C. Mun. App. 1955, 118 A. 2d 515).

The procedures to which a garnishee is subjected under statute can only become operative and enforceable after personal service on garnishee. *Id.*

Property in safe-deposit box

"Property of a defendant in a safe-deposit box of a trust company is either in the possession of the defendant or in the possession of the trust company. If it is in the possession of the defendant, under the code, it appears liable to attachment and execution. If it is in the possession of the trust company, such company may be garnisheed therefor, as in possession of personal property of the defendant capable of being seized and sold on execution." *Washington Loan & Trust Co.* v. *Susquehanna Coal Co.* (1905, 26 App. D.C. 149).

Timely service of writ

Where employer entered into Illinois contract with employee for payment of employee's salary in advance for purpose of avoiding attachment by wife, who had obtained decree for separate maintenance, subsequently, in July, 1956, a writ of attachment had been served on employer which had answered that it had no funds, employer, in action by wife for judgment of condemnation with respect to salary payment to husband in June 1958, was not entitled to defense that writ of attachment was not served in time. *Welch* v. *Welch Jr.* (1958, 166 F. Supp. 539, reconsideration denied 166 F. Supp. 960).

In action by wife for judgment of condemnation against husband's employer based on writ of attachment served on employer on same day that employer paid to husband a month's salary in advance, evidence established that with due diligence, had employer wished to comply with writ of attachment, it could have answered writ for sum in question. *Id.*

§ 16–512. Attachment and levy upon wages of nonresident

An attachment issued under section 16–501 solely on the ground that the defendant is not a resident of the District of Columbia and levied upon wages as defined in section 16–571 shall be subject to the provisions of subchapter III of this chapter; except that the employer-garnishee shall pay over the wages withheld pursuant to that subchapter only pursuant to the order of the court which has jurisdiction of the case. In applying the provisions of that subchapter to any such attachment, the term "judgment debtor", as used therein, means the defendant in the case in which the attachment is issued; and the term "judgment creditor", as used therein, means the plaintiff in such case. (Dec. 23, 1963, 77 Stat. 547, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–312 (Mar. 3, 1901, ch. 854 § 456, 31 Stat. 1262; Apr. 5, 1939, ch. 37, § 8(a), 53 Stat. 567; Dec. 20, 1944, ch. 610, § 4, 58 Stat. 819; Aug. 4, 1959, Pub. L. 86–130, § 5, 73 Stat. 277).

Section is from part of section 16–312 of D.C. Code, 1961 ed. The remainder of the section is set out in §§ 16–511 and 16–513 herein.

Changes are made in phraseology.

§ 16–513. Advance payment of wages to avoid attachment or garnishment

It is unlawful for an employer to pay salary or earnings to an employee in advance of the time they are due and payable, for the purpose of avoiding or preventing an attachment or garnishment against the earnings or salary of the employee, and such an advance payment, as to the attaching creditor, is void.

After the service of one writ of attachment or garnishment on a judgment against an employer, any payment of salary or earnings thereafter before the time when the salary or earnings are due and payable made within a period of six months after the date of service of the writ or before the earlier satisfaction of the judgment, whichever is the earlier, is as to such attaching creditor presumed to be in violation of this section and casts upon the employer the burden of proving that the advance payment or payments were not for the purpose of avoiding the attachment of the salary or earnings. (Dec. 23, 1963, 77 Stat. 548, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–312 (Mar. 3, 1901, ch. 854, § 456, 31 Stat. 1262; Apr. 5, 1939, ch. 37, § 8(a) 53 Stat. 567; Dec. 20, 1944, ch. 610, § 4, 58 Stat. 819; Aug. 4, 1959, Pub. L. 86–130, § 5, 73 Stat. 277).

Section is from part of section 16–312 of D.C. Code, 1961 ed. The remainder of the section is set out in §§ 16–511 and 16–512 herein.

Changes are made in phraseology.

§ 16–514. Credits or property held for two or more persons or in representative capacity

When a writ of attachment is served on a garnishee, and the garnishee holds a credit or property for two or more persons, including the person whose credit or property is sought to be attached, or holds a credit or property for a person as agent or trustee or in any other representative capacity without designation of the principal or beneficiary, the credit or property is not subject to withdrawal by any person, but shall be held by the garnishee until the attachment is dismissed or otherwise disposed of by the court. If the credit or property is condemned, payment or delivery thereof as ordered by the court is a complete discharge of the garnishee from all liability to any person in respect of the credit or property. The provisions of this section do not apply to a credit or property of a partnership. (Dec. 23, 1963, 77 Stat. 548, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–333 (May 15, 1928, ch. 568, § 3, 45 Stat. 534).

Changes are made in phraseology.

§ 16–515. Attachment of judgments and money or property in hands of marshal

(a) An attachment may be levied upon debts due to the defendant upon a judgment or decree by a service similar to that directed by section 16–511 upon the debtor owing the debts. Execution may issue for the enforcement of the judgment or decree, notwithstanding the attachment, but the money collected upon the execution shall be paid into court to abide the event of the proceedings in attachment and applied as the court directs.

(b) An attachment may be levied upon money or property of the defendant in the hands of the marshal. It binds the money or property from the time of service, and is a legal excuse to the officer for not paying or delivering the same as he would otherwise be bound to do. (Dec. 23, 1963, 77 Stat. 548, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed. § 16–313 (Mar. 3, 1901 ch. 854, § 457, 31 Stat. 1262; June 30, 1902, ch. 1329, 32 Stat. 530).

Section is from part of section 16–313 of D.C. Code, 1961 ed. The remainder of the section is set out in § 16–516.

Similar provisions as to attachment after judgment are found in section 16–548 herein.

In first sentence of subsec. (b), words "or coroner", which followed "marshal", are omitted as obsolete.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Agent, attachment against

Attachment of money or property in the hands of an agent or custodian of an executor. *Frank* v. *Malone* (1942, 126 F. 2d 651, 75 U.S. App. D.C. 296).

Judgment rendered in another court

Money judgment secured by dry dock company against the United States Shipping Board could not be attached by another corporation which held a money judgment against the dry dock company, because the debt was evidence by a judgment rendered in another court. *United States Shipping Board Merchant Fleet Corp.* v. *Hirsch Lbr. Co.* (1930, 35 F. 2d 1010, 59 App. D.C. 116).

§ 16–516. Attachment of money or property in hands of executor or administrator

An attachment may be levied upon money or property of the defendant in the hands of an executor or administrator, and binds the same from the time of service. If the executor or administrator makes return to the writ that he can not certainly answer whether the defendant's share of the money or property in his hands will prove sufficient to pay the plaintiff's debt, a judgment of condemnation may not be rendered as against the executor or administrator until the passage by the Probate Court of his final or other account showing money or property in his hands to which the defendant is entitled. (Dec. 23, 1963, 77 Stat. 548, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961, ed., § 16–313 (Mar. 3, 1901, ch. 854, § 457, 31 Stat. 1262; June 30, 1902, ch. 1329, 32 Stat. 530).

Section is from part of section 16–313 of D.C. Code, 1961 ed. For remainder of such section, see tables.

Similar provisions as to attachment after judgment are found in section 16–549 herein.

Changes are made in phraseology.

§ 16–517. Attachment of other property in replevin action

Where the action is to replevy specific personal property and it has not been replevied, other property may be attached in the action to recover damages and costs, and if a judgment is rendered for damages and costs, it shall carry the same rights as other judgments. (Dec. 23, 1963, 77 Stat. 549, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–321 (Mar. 3, 1901, ch. 854 § 465, 31 Stat. 1263).

Words "and if a judgment is rendered for damages and costs it shall carry the same rights as other judgments" are substituted for "and if the same be adjudged, the proceedings shall be the same as herein provided in other cases of money claims" for the purpose of clarification.

Changes are made in phraseology.

§ 16–518. Preservation of property; sale; receiver

The court may make all orders necessary for the preservation of the property attached during the pendency of the action. When the property is perishable, or for other reasons a sale of it appears expedient, the court may order that the property be sold and its proceeds paid into court and held subject to its order on the final decision of the case.

When it seems expedient, the court may appoint a receiver to take possession of the property. The receiver shall give bond for the due performance of his duties, and, under the direction of the court, shall have the same powers and perform the same duties as a receiver appointed according to the practice in civil actions. (Dec. 23, 1963, 77 Stat. 549, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–314 (Mar. 3, 1901, ch. 854, § 458, 31 Stat. 1262).

Phrase "the practice in equity" is changed to "the practice in civil actions" pursuant to rule 2 of the Federal Rules of Civil Procedure.

Similar provisions as to attachment after judgment are found in section 16–550 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Restraining sale

This section quoted in full and applied in suit to restrain sale of property to satisfy original trust thereon. *Jackson* v. *Finance Corp. of Washington* (1930, 41 F. 2d 103, 59 App. D.C. 309, certiorari denied 51 S. Ct. 29, 282 U.S. 851, 75 L. Ed. 754).

§ 16–519. Defenses by garnishee

A garnishee in an attachment proceeding may make any defense available to the defendant in the action in which the garnishment is issued. (Dec. 23, 1963, 77 Stat. 549, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–315 (Mar. 3, 1901, ch. 854, § 459, 31 Stat. 1262).

Changes are made in phraseology.

§ 16–520. Defending against the attachment; trial of issues

A defendant, any garnishee, party to a forthcoming undertaking, or an officer who might be adjudged liable to the plaintiff by reason of the undertaking being adjudged insufficient, or a stranger to the action who may make claim to the property attached, may file an answer defending against the attachment. The answer may be considered as raising an issue without any reply, and any issue of fact made may be tried with a jury if any party so desires. (Dec. 23, 1963, 77 Stat. 549, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–316 (Mar. 3, 1901, ch. 854 § 460, 31 Stat. 1262).

Similar provisions as to attachment after judgment are found in section 16–551 herein.

Changes are made in phraseology.

NOTES TO DECISIONS

I. UNDER PRIOR LAW

Attaching creditors right to hearing

Where creditor of debtor who had sold his business to garnishee attached money which was in garnishee's hands and which represented part of purchase price, and other creditors subsequently made garnishee a party to action against debtor and garnishee consented to judgment against him and voluntarily paid other creditors, attaching creditor was entitled to hearing on issue of whether money was subject to his attachment or exempt under Bulk Sales Law. *Smith* v. *Anderson* (D.C. Mun. App. 1954, 107 A. 2d 126).

Constitutionality

Sections 16–310, 16–311, providing that surety submits to the jurisdiction of the court, and to a joint judgment, do not deprive surety of property without due process of law. *United Surety Co.* v. *American Fruit Product Co.* (1915, 35 S. Ct. 828, 238 U.S. 140, 59 L. Ed. 1238).

Judgment of condemnation

Where creditor of debtor selling his business to garnishee attached money in the garnishee's hands representing part of the purchase price and other creditors subsequently made garnishee a party to action against debtor, evidence justified judgment of condemnation against the garnishee. *Anderson* v. *Smith* (D.C. Mun. App. 1958, 137 A. 2d 715).

II. Under Present Law

Intervenor's rights

Right of intervention by principal or cestui que trust claiming that funds on deposit in name of debtor are held by him as trustee is only subject to restriction that intervenor must have interest in attached property by way of lien or otherwise, or by claim of title to property. *J. R. Gay t/a Biltmore Realty Co.* v. *Peoples Hardware Co., Inc.* (D.C. App. 1966, 221 A. 2d 923).

§ 16–521. Interrogatories to garnishee; oral examination

(a) In any case in which a writ of attachment is issued, the plaintiff may submit interrogatories in writing, in such form as may be allowed by the rules or special order of the court, to be served on any garnishee, asking about any property of the defendant in his possession or charge, or indebtedness of his to the defendant at the time of the service of the attachment, or between the time of service and the filing of his answers to the interrogatories. The garnishee shall file his answers under oath to the interrogatories within ten days after service upon him.

(b) In addition to the answers to written interrogatories required of him, the garnishee may, on motion, be required to appear in court and be examined orally, under oath, touching any property or credits of the defendant in his hands. (Dec. 23, 1963, 77 Stat. 549, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–303 (Mar 3, 1901, ch. 854, § 447, 31 Stat. 1259).

Section 16–552 herein, which formerly contained provisions similar to this section applicable to attachment after judgment, was amended in 1954 to provide that the garnishee's answers should be verified by a written declaration that they are made under the penalties of perjury; but no change was made in this section which requires answers under oath. Whether or not it is desirable to have different forms of verification of the garnishee's answers, depending upon whether the attachment is before or after judgment, is a question beyond the scope of this revision. See note under section 16–501 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Answer by corporation

Quaere: Where a corporation garnishee may answer per alium through an agent or must answer per se, through its officers. Particularly when no effort was made to examine deponent orally as to the scope of his authority. *International Seal Co.* v. *Beyer* (1909, 33 App. D.C. 172). Compare *Moses* v. *Hayes* (1911, 36 App. D.C. 194), as to authority of agents to execute bond.

An affidavit signed by the president, secretary, or other proper officer of a corporation is prima facie to be considered the act of the corporation. *Id.*

A corporation garnishee may make answer, subscribed and sworn to by a representative of the corporation as "associate counsel." *Mutual Ben. Life Ins. Co. of Newark, N.J.* v. *Flynn* (1931, 48 F. 2d 1020, 60 App. D.C. 108).

Failure to answer in time

Upon failure of garnishee to answer within time limit adverse party must apply to enforce such default. A failure to do so is a tacit consent to an extension of time within which the answer may be filed. *Banville* v. *Sullivan* (1897, 11 App. D.C. 23).

It is not necessary to secure leave of court to file the answer after expiration of time limit, when no steps have been taken to enforce default. *Id.*

Limitation is not for the benefit of the pleader, but for his opponent, and, if the opponent fails to take advantage of the default, failure to plead in time will be deemed waived. *Shannon & Luchs Constrn. Co.* v. *Reichelderfer* (1932, 57 F. 2d 402, 61 App. D.C. 36).

Notice

When the garnishment is served on the garnishee, the suit becomes a suit in personam against the garnishee and he is entitled to notice. *United States ex rel. Ordmann* v. *Cummings* (1936, 85 F. 2d 273, 66 App. D.C. 107).

Oral examination

This section permits of an oral examination of the garnishee as broad as the one in writing and can be invoked although garnishee has not admitted in his written answers that in fact he has property or credits of the defendant in his hands. *Fidelity Sav. Co.* v. *Security Sav. & Commercial Bank* (1925, 3 F. 2d 351, 55 App. D.C. 180).

A traverse of the answer is not a condition precedent to the exercise of the right to require oral examination. *Flynn* v. *Potomac Elec. Power Co.* (1931, 47 F. 2d 978, 60 App. D.C. 82).

Safe-deposit box

Trust company must answer interrogatory as to whether or not defendant has a safe-deposit box. *Washington Loan & Trust Co.* v. *Susquehanna Coal Co.* (1905, 26 App. D.C. 149).

§ 16–522. Traverse of garnishee's answers; trial of issue; costs and attorney's fee

If any garnishee answers to interrogatories that he does not have property or credits of the defendant, or has less than the amount of the plaintiff's claim, the plaintiff may traverse the answer as to the existence or amount of the property or credits, and the issue thereby made may be tried as provided by section 16–520. In such a case, where judgment is rendered for the garnishee, the plaintiff shall be adjudged to pay to the garnishee, in addition to the taxed costs, a reasonable attorney's fee. If the issue is found for the plaintiff, judgment shall be rendered for him in accordance with the finding. (Dec. 23, 1963, 77 Stat. 549, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–317 (Mar. 3, 1901, ch. 854, § 461, 31 Stat. 1262).

Similar provisions as to attachment after judgment are found in section 16–553 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Attaching creditors right to hearing

Where creditor of debtor who had sold his business to garnishee attached money which was in garnishee's hands and which represented part of purchase price, and other creditors subsequently made garnishee a party to action against debtor and garnishee consented to judgment against him and voluntarily paid other creditors, attaching creditor was entitled to hearing on issue of whether money was subject to his attachment or exempt under Bulk Sales Law. *Smith* v. *Anderson* (D.C. Mun. App. 1954, 107 A. 2d 126).

Attorney's fee

This section providing that in all cases where judgment shall be entered for garnishee, plaintiff shall be adjudged to pay to garnishee, in addition to taxed costs, a reasonable counsel fee, is not limited to services of counsel rendered in trial court but includes services rendered in appellate court, but allowance for such services should be made by trial court. *Lincoln Loan Service* v. *Motor Credit Co.* (D.C. Mun. App. 1951, 83 A. 2d 332).

Judgment of condemnation

Where creditor of debtor selling his business to garnishee attached money in the garnishee's hands representing part of the purchase price and other creditors subsequently made garnishee a party to action against debtor, evidence justified judgment of condemnation against the garnishee. *Anderson* v. *Smith* (D.C. Mun. App. 1958, 137 A. 2d 715).

Previous decisions, effect of

Where one of several creditors who had judgments of condemnation against debtor, filed traverse to garnishee's answer in attachment and offered to prove that creditor's attachment lien was entitled to preference over claims garnishee was attempting to treat in his answer as preferred liens previous decision in same case which merely set forth order of payment of creditors having judgments of condemnation and which did not determine issue as to preferences did not eliminate creditor's right to have trial of issue as to such alleged preferences at present trial. *Troshinsky* v. *Feldman* (D.C. Mun. App. 1951, 81 A. 2d 91).

Procedure for interrogatories

The procedure permitted by § 16–303 is not limited or modified by this section. *Fidelty Sav. Co.* v. *Security Sav. & Commercial Bank* (1925, 3 F. 2d 35, 55 App. D.C. 180).

Time for return

"In the absence of a statutory limitation, an attachment return must be made within a reasonable time, or it will be held to be discontinued." *Simpson* v. *Minnix* (1908, 30 App. D.C. 582).

Where attachment had been outstanding for 11 years, and no issue joined on garnishee's return, it will be deemed abandoned and the action discontinued, and a scire facias may issue to revive the judgment. *Id.*

Traverse not necessary for oral examination

Court cites *Fidelty Sav. Co.* v. *Security Sav. & Commercial Bank* (1925, 3 F. 2d 351, 55 App. D.C. 180), and says it was not necessary for the plaintiff to traverse the answer of the garnishee, in order to exercise the right of examining the garnishee orally under oath. *Flynn* v. *Potomac Elec. Power Co.* (1931, 47 F. 2d 978, 60 App. D.C. 82).

§ 16–523. Claims to attached property

Any person may file his motion and affidavit in the cause, at any time before the final disposition of the property attached or its proceeds, except where it is real property, setting forth a claim thereto or an interest in or lien upon the same, acquired before the levy of the attachment. The court, without other pleading, shall try the issues raised by the claim, with a jury if either party so requests, and make all orders necessary to protect any rights of the claimant. (Dec. 23, 1963, 77 Stat. 550, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–318 (Mar. 3, 1901, ch. 854, § 462, 31 Stat. 1262).

Similar provisions as to attachment after judgment are found in section 16–554 herein.

Reference to "motion and affidavit in the cause" is substituted for "petition in the cause, under oath", to conform more nearly with modern practice. The use of petitions is now rare and archaic.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Agency

Where landlord brought suit against tenant for unpaid rent and caused writ of attachment before judgment to be sued out, and, under writ, money, which had been received by auctioneer from sale of tenant's mortgaged furniture and furnishings, was seized, and tenant moved to quash writ, and agent of chattel mortgagee intervened, claiming that the money was not subject to attachment because of alleged oral agreement with tenant that sum realized from sale of furniture and furnishings should be paid to mortgagee in full settlement of mortgaged debt, it was within province of trial judge to find that tenant was not the agent of the agent of the mortgagee in having furniture and furnishings sold. *Thurm* v. *Wall* (D.C. Mun. App. 1954, 104 A. 2d 835).

Oral agreements

Where landlord brough suit against tenant for unpaid rent and caused writ of attachment before judgment to be sued out, and, under writ, money, which had been received by auctioneer from sale of tenant's mortgaged furniture and furnishings, was seized, and tenant moved to quash writ, and agent of chattel mortgagee intervened, claiming that the money was not subject to attachment because of alleged oral agreement with tenant that sum realized from sale of furniture and furnishings should be paid to mortgagee in full settlement of mortgaged debt, alleged oral agreement was without force or effect under statute of frauds to defeat rights of landlord. *Thurm* v. *Wall* (D.C. Mun. App. 1954, 104 A. 2d 835).

Recovery after "final disposition"

In a replevin action against the United States marshal to recover goods seized under writ of attachment, a plea that the plaintiff should have proceeded under this section comes too late when made after close of plaintiff's case. *Splain* v. *B. F. Goodrich Rubber Co.* (1923, 290 F. 275, 53 App. D.C. 300).

§ 16–524. Judgment generally; condemnation of attached property

(a) If the defendant in the action has been served with process, final judgment may not be rendered against the garnishee until the action against the defendant is determined.

(b) If in such an action judgment is rendered for the defendant, the garnishee shall be discharged and shall recover his costs, and the property attached or its proceeds shall be restored to the garnishee or to the defendant, as the case may require.

(c) If in such an action judgment is rendered in favor of the plaintiff against the defendant, and it appears that the plaintiff is entitled to a judgment of condemnation of the property attached, the court shall proceed to enter such judgment in the attachment as is directed by sections 16–525 to 16–527. (Dec. 23, 1963, 77 Stat. 550, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 16–319, 16–320 (Mar. 3, 1901, ch. 854, §§ 463, 464, 31 Stat. 1263).

Section consolidates sections 16–319 and 16–320 of D.C. Code, 1961 ed.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Amendment of garnishment

It was proper for court to allow amendment of garnishments so as to correctly designate corporate name of garnishee where use of incorrect name had neither prejudiced nor mislead it. *Hotel Windsor Park, Inc.* v. *Arco Contractors, Inc.* (D.C. Mun App. 1957, 134 A. 2d 322).

Application for judgment against garnishee

The rule requiring applications for judgment against garnishees to be filed within four weeks after their answers relates to garnishment after judgment and had no application to garnishments served before judgment where action was not determined within such period, in view of this section forbidding judgment against garnishee until determination of action. *Hotel Windsor Park, Inc.* v. *Arco Contractors, Inc.* (D.C. Mun. App. 1957, 134 A. 2d 322).

Evidence of indebtedness

In proceeding wherein company which had installed rink in hotel, at request of non-resident entertainers engaged by hotel, garnished hotel to attach sums allegedly due entertainers so as to acquire jurisdiction of them to recover for services in installing rink, and wherein hotel disclaimed that it was indebted to entertainers on date of

service of garnishment though it later made payments to them, evidence on whether it was so indebted sustained trial court's ruling against it. *Hotel Windsor Park, Inc.* v. *Arco Contractors, Inc.* (D.C. Mun. App. 1957, 134 A. 2d 322).

Garnishment is suit in personam

In garnishment proceeding, it is person of garnishee, not res, which confers jurisdiction, and when garnishment is served, suit becomes suit in personam against garnishee, and in absence of such personal jurisdiction, a judgment against garnishee is a nullity. *Hollywood Credit Clothing Co.* v. *Hundley* (D.C. Mun. App. 1955, 118 A. 2d 515).

Judgment

Where no judgment has been rendered against defendant a judgment by default against garnishee is void. *James E. Colliflower & Co.* v. *McCallum-Sauber Co.* (1933, 63 F. 2d 366, 61 App. D.C. 390).

Prior determination against debtor

Judgment should not be entered against garnishee until action against principal debtor is determined. *Marvins Credit, Inc* v. *General Motors Corp.* (D.C. Mun. App. 1956, 119 A. 2d 447).

Release of assets

Judgment of condemnation before ultimate determination of all claims in case has been had does not, in all circumsances, operate to permit garnishee, without risk of liability, to release balance of assets garnished, and matter depends on determination as to which of the parties, plaintiff or garnishee, was at fault in permitting situation to develop. *J. M. Zamoiski Co.* v. *Discount Sales Co.* (D.C.D.C. 1960, 187 F. Supp. 668).

Where garnishee, before it was called on to pay out any attached money, received letter from plaintiff's counsel stating that plaintiff had moved for summary judgment in certain amount, and that such sum would be condemned as soon as judgment was entered, and that it would be necessary for garnishee to hold balance of attached funds until determination of case, and thereafter partial judgment and judgment of condemnation had thereon both recited that the judgment was a partial judgment, and garnishee inadvertently released balance of attached funds before final judgment was entered for plaintiff, plantiff was entitled to satisfaction of the final judgment by condemnation. *Id.*

Trading with the enemy

Section 30 of the Trading with the Enemy Act, 50 Appendix, U.S. Code § 30, providing that money or property in the hands of the Alien Property Custodian should be subject to attachment in accordance with the provisions of the Code of the District of Columbia, was construed to authorize a decree of condemnation against such money or property, notwithstanding the further provision in section 30 that "nothing in this section shall be construed as authorizing the taking of actual possession, by any officer of the court, of any money or other property held by the Alien Property Custodian or by the Treasurer of the United States." *Sutherland* v. *Kreisch* (1930, 41 F. 2d 974, 59 App. D.C. 351).

§ 16–525. Condemnation and sale of property; proceeds of sale under interlocutory order

In any form of action, where specific property has been attached and remains under the control of the court, judgment of condemnation of the property shall be entered, and as much thereof as may be necessary to satisfy the demand of the plaintiff shall be sold under fieri-facias. If the property was sold under interlocutory order of the court, the proceeds, or as much thereof as may be necessary, shall be applied to the plaintiff's claim by order of the court. (Dec. 23, 1963, 77 Stat. 550, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–322 (Mar. 3, 1901, ch. 854, § 466, 31 Stat. 1263; June 30, 1902, ch. 1329, 32 Stat. 530.)

Similar provisions as to attachment after judgment are found in section 16–555 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

May disregard attached property

Where there are two judgments, one a personal judgment and the other one of condemnation, "it would be unreasonable to hold that the plaintiff must look for his satisfaction to the latter alone. He is entitled to realize his personal judgment out of any property of the judgment debtor which he finds available for the purpose; and he may wholly disregard the attached property, if he so desires." *Adriance, Platt & Co.* v. *Heiskell* (1896, 8 App. D.C. 240).

§ 16–526. Judgment against garnishee

(a) When a garnishee has admitted credits in his hands, in answer to interrogatories served upon him, or the credits have been found upon an issue made as provided by this chapter, judgment shall be entered against him for the amount of credits admitted or found, not exceeding the plaintiff's claim, less a reasonable attorney's fee to be fixed by the court, and costs, and execution may be had thereon. When the credits are not immediately due and payable, execution shall be stayed until they become due.

(b) When the garnishee has failed to answer the interrogatories served on him, or to appear and show cause why a judgment of condemnation should not be entered, judgment shall be entered against him for the whole amount of the plaintiff's claim, and costs, and execution may be had thereon. (Dec. 23, 1963, 77 Stat. 550, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–323 (Mar. 3, 1901, ch. 854, § 467, 31 Stat. 1263).

Similar provisions as to attachment after judgment are found in section 16–556 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Attaching creditors right to hearing

Where creditor of debtor who had sold his business to garnishee attached money which was in garnishee's hands and which represented part of purchase price, and other creditors subsequently made garnishee a party to action against debtor and garnishee consented to judgment against him and voluntarily paid other creditors, attaching creditor was entitled to hearing on issue of whether money was subject to his attachment or exempt under § 28–1701 et seq. *Smith* v. *Anderson* (D.C. Mun. App. 1954, 107 A. 2d 126).

Attorney's fee

In garnishment proceedings, where trial court had question whether an attorney's fee should be allowed garnishee before it, in a motion to amend its judgment to provide therefor, but before reaching a decision thereon an appeal was noted, after mandate is received by the trial court, counsel for appellant may renew his request for such fee under the statute. *Anderson* v. *Smith* (D.C. Mun. App. 1957, 137 A. 2d 715).

Failure to appear and show cause

The lower court was without power to enter judgment against the garnishee unless it failed to appear and show cause, or to answer. *Mutual Ben. Life Ins. Co. of Newark, N.J.* v. *Flynn* (1931, 48 F. 2d 1020, 60 App. D.C. 108).

Motion to vacate

Motion to vacate default judgment against garnishee was addressed to discretion of trial court. *Ray* v. *Bruce* (D.C. Mun. App. 1943, 31 A. 2d 693).

In considering merits of garnishee's motion to vacate default judgment, garnishee's conduct is for court's consideration in determining whether delay in answering writ was due to inadvertence or indifference. *Id.*

Where motion to vacate default judgment against garnishee was based on grounds of misunderstanding that garnishee was required to answer garnishment in ten days after service, and advice of counsel that garnishment did not have to be answered until trial of another suit, but neither motion nor its amendment was verified or accompanied by affidavit and record did not disclose that evidence was offered to support the allegations, denial of motion was not an abuse of discretion. *Id.*

Rents accruing after service not credits

Rents not accrued before service of garnishment are not credits but merely contingent liabilities. *United States Fidelity & Guar. Co.* v. *Wrenn* (1937, 89 F. 2d 838, 67 App. D.C. 94).

Review

Appellate court cannot reverse trial court's denial of garnishee's motion to vacate default judgment against garnishee unless denial of motion was an abuse of discretion. *Ray* v. *Bruce* (D.C. Mun. App. 1943, 31 A. 2d 693).

Order denying motion, filed within term at which judgment was entered, to vacate default judgment against garnishee, is not an "appealable order". *Id.*

§ 16–527. Judgment in case of undertaking for retention of property or credits

(a) When property or credits attached are released upon an undertaking given as provided by sections 16–509 and 16–510, and judgment in the action is rendered in favor of the plaintiff, it is a joint judgment against both the defendant and all persons in the undertaking for the appraised value of the property or the amount of the credits.

(b) When the property attached has been delivered to or retained by a garnishee, upon his executing an undertaking as provided by section 16–509, judgment of condemnation of the property shall be rendered as provided by section 16–525, and judgment shall also be entered that the plaintiff recover from the garnishee and his surety or sureties the value of the property, not exceeding the plaintiff's claim, the judgment to be entered satisfied if the property is forthcoming and delivered to the marshal, undiminished in value, within ten days after the judgment; otherwise, execution thereon may be had against the garnishee and his surety or sureties; and if the property is so delivered to the marshal the same shall be sold by him under fieri facias to satisfy the judgment of condemnation. (Dec. 23, 1963, 77 Stat. 550, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 16–311, 16–324 (Mar. 3, 1901, ch. 854, §§ 455, 468, 31 Stat. 1261, 1263; June 30, 1902, ch. 1329, 32 Stat. 530; Apr. 19, 1920, ch. 153, 41 Stat. 564).

Section consolidates part of section 16–311 of D.C. Code, 1961 ed., with section 16–324 of such Code. The remainder of section 16–311 is set out in section 16–510 herein.

Changes are made in phraseology.

§ 16–528. Judgment protects garnishee

A judgment of condemnation against a garnishee, and execution thereon, or payment by the garnishee in obedience to the judgment or an order of the court, is a sufficient defense to any action brought against him by the defendant in the action in which the attachment is issued, for or concerning the property or credits so condemned. (Dec. 23, 1963, 77 Stat. 551, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–325 (Mar. 3, 1901, ch. 854, § 469, 31 Stat. 1263).

Changes are made in phraseology.

§ 16–529. Attachment in actions for fraudulent conveyances

(a) Where the ground upon which an attachment is applied for is that the defendant has assigned, conveyed, or disposed of his property with intent to hinder, delay, or defraud his creditors, the attachment may be levied upon the property alleged to be so assigned or conveyed in the hands of the alleged fraudulent assignee or transferee, as a garnishee.

(b) The garnishee may have the same benefit of section 16–506 as the defendant in the action. If the court is of the opinion, upon the hearing of the affidavits filed, that the attachment ought not to have issued or to have been levied on the property claimed by the garnishee, the attachment may be quashed as to the garnishee and the levy set aside.

(c) If the levy is not set aside, the garnishee may answer that he was a bona fide purchaser from the defendant for value without notice of any fraud on the part of the defendant, and the answer shall be held to make an issue, without any further pleading in reply thereto; and issue may be tried as directed by section 16–520.

(d) When the issue is found in favor of the garnishee, judgment shall be rendered in his favor for his costs and a reasonable attorney fee. When the issue is found against the garnishee, but judgment in the action is rendered in favor of the defendant, the attachment shall be dissolved, and garnishee shall recover his costs.

(e) When the issue is found against the garnishee and judgment in the action is rendered in favor of the plaintiff against the defendant, or the defendant, not being found, has failed to appear in obedience to the order of publication against him, and when it appears upon the verdict of a jury that the claim of the plaintiff against the defendant is well founded, a judgment of condemnation of the property attached shall be rendered, as directed by section 16–524(c). (Dec. 23, 1963, 77 Stat. 551, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 16–326 to 16–330 (Mar. 3, 1901, ch. 854, §§ 470 to 474, 31 Stat. 1264).

Section consolidates sections 16–326 to 16–330 of D.C. Code, 1961 ed.

Changes are made in phraseology.

CROSS REFERENCE

Fraudulent conveyances, see Title 28, ch. 31.

NOTES TO DECISIONS UNDER PRIOR LAW

In general

This section provides that if the levy shall not be set aside, the garnishee may plead that he was a bona fide purchaser without notice of any fraud on the part of the defendant, and said plea shall make an issue to be tried by the court or by the jury if either party desires it. *Morimura* v. *Samaha* (1905, 25 App. D.C. 189).

Constitutionality

This provision is constitutional. *Morimura* v. *Samaha* (1905, 25 App. D.C. 189).

Counsel fee not allowed

Attorney's fee not allowed when issue found against garnishee. *Morimura* v. *Samaha* (1905, 25 App. D.C. 189).

Garnishee was not entitled to award of counsel fee for successfully opposing judgment creditor's motion for judgment. *Hollywood Credit Clothing Co., Inc.* v. *Autoscope, Inc.* (D.C. App. 1963, 193 A. 2d 733).

Counsel fees

Where there is no finding by the court in favor of the garnishee upon the issue made between him and the plaintiff, and by agreement sale was made and distributed, garnishee is not entitled to counsel fee. *Russell* v. *Moderns Restaurant* (1936, 80 F. 2d 533, 65 App. D.C. 90).

Disclosure of self-deposit box

Upon an allegation that defendant has made a fraudulent assignment to his wife and son to defraud his creditors, a garnishee may be compelled to disclose whether the wife or son has rented a safe-deposit box from it. *Washington Loan & Trust Co.* v. *Susquehanna Coal Co.* (1905, 26 App. D.C. 149).

Issue made

An issue may be made between the attaching creditor and the garnishee as to whether the attachment should have been issued and levied on the property. *Russell* v. *Moderns Restaurant* (1936, 80 F. 2d 533, 65 App. D.C. 90).

Presumption of intent

"Where an instrument contains provisions, the necessary legal effect of which is to work a fraud upon creditors, the assignor is conclusively presumed to have intended the reasonable consequences of his own act," and the property in his hands is subject to attachment. *Cissell* v. *Johnston* (1894, 4 App. D.C. 335).

"Reasonable counsel fee"

What is a reasonable fee in a particular case is within the discretion of the court. *Morimura* v. *Samaha* (1905, 25 App. D.C. 189).

§ 16–530. Time for trial of issues

All issues raised by answers to the attachment, in any case, may be tried at the same time as the issues raised by the pleadings in the action, or separately, as may be just. (Dec. 23, 1963, 77 Stat. 551, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–331 (Mar. 3, 1901, ch. 854, § 475, 31 Stat. 1264).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Trial of main issue

A defendant, in traversing an attachment before judgment, may deny by affidavit any of the specific statutory grounds alleged, but he may not by a motion to quash an attachment achieve a trial of the main issue in the case unless it is determined that issues raised by the motion shall be tried at same time as issues raised by the pleadings. *Morfessis* v. *Thomas* (D.C. Mun. App. 1952, 91 A. 2d 883).

§ 16–531. Attachment dockets; index of attachments

The clerk of the court shall keep an attachment docket, in which, as well as in the regular docket, shall be entered all attachments levied upon real estate, with a description, in brief, of the real estate so levied upon. The attachments shall be indexed in the names of the defendant and of any person in whose possession the estate may have been levied upon. (Dec. 23, 1963, 77 Stat. 551, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–334 (Mar. 3, 1901, ch. 854, § 477, 31 Stat. 1264).

Changes are made in phraseology.

§ 16–532. Other remedies of judgment creditor

Nothing herein contained deprives a judgment creditor of the right to file a civil action to enforce his judgment against an equitable interest in real or personal estate of the judgment defendant, or to have a conveyance of the real or personal estate by the defendant, made with intent to hinder, delay, and defraud his creditors, set aside. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–332 (Mar. 3, 1901, ch. 854, § 476, 31 Stat. 1264).

Reference to "a bill in equity" is changed to "a civil action" pursuant to rule 2 of the Federal Rules of Civil Procedure.

Changes are made in phraseology.

§ 16–533. Attachment proceedings in Court of General Sessions

The provisions of this Code relating to attachments apply to attachment proceedings in the District of Columbia Court of General Sessions. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–733, 11–751a, 16–335 (Mar. 3, 1921, ch. 125, § 9, 41 Stat. 1312; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section consolidates sections 11–733 and 16–335 of D.C. Code, 1961 ed., which were from the same provision of the 1921 act.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

CROSS REFERENCE

Attachment and garnishment, see § 16–501 et seq.

NOTES TO DECISIONS UNDER PRIOR LAW

Generally

The provisions of this section regarding attachment and garnishment are applicable in municipal court. *Frank* v. *Malone* (1942, 126 F. 2d 651, 75 U.S. App. D.C. 296).

Attachment against executor

In action in municipal court of District of Columbia wherein writ of attachment is directed to an executor, in connection with an action against a third party who claims an interest in the estate, the interest of other persons in the estate and the exclusive jurisdiction of district court in probate proceedings are fully protected by statutory provision that, if executor is in doubt whether defendant's share of estate will prove sufficient to pay plaintiff's debt, no judgment shall be entered against the executor until passage by probate court of his final or other account showing money or property in his hands to which defendant is entitled. *Frank* v. *Malone* (1942, 126 F. 2d 651, 75 U.S. App. D.C. 296).

SUBCHAPTER II.—ATTACHMENT AND GARNISHMENT AFTER JUDGMENT IN AID OF EXECUTION

§ 16–541. Definition and applicability

As used in this subchapter, "judgment" includes an unconditional decree for the payment of money, and this subchapter is applicable to such a decree. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–218 (Mar. 3, 1901, ch. 854, § 1104, 31 Stat. 1362).

Section 15–218 of D.C. Code, 1961 ed., cited above, provided, as follows:

"The aforegoing provisions (this chapter) shall be applicable to an unconditional decree in equity for the payment of money. Such decree may be revived by scire facias, and the same writs of execution may be issued thereon within the same time and have the same effect

as liens, and shall be executed and returned in the same manner as if issued upon a common-law judgment.".

In the above-quoted provisions, the parenthetical reference "(this chapter)" referred to chapter 2 of Title 15 of D.C. Code, 1961 ed., in which sections 15–218 and 15–201 to 15–217 thereof, relating to execution of judgment were set out. None of the provisions, relating to attachment and garnishment after judgment, which are carried into this subchapter (sections 15–301 to 15–312 of D.C. Code, 1961 ed.), was set out in such chapter 2. They were set out in chapter 3. However, in the original statute (Code of 1901), the provisions in both of the chapters, including section 1104 thereof, on which section 15–218 was based, were set out in one chapter (ch. 26, §§ 1074–1104, 31 Stat. 1358–1362). Therefore, it would seem that section 1104 made, not only the provisions relating to execution on judgment, but also those relating to attachment after judgment, (this subchapter), applicable to unconditional decrees ("in equity") for the payment of money. Therefore, section 15–218 of D.C. Code, 1961 ed., in addition to being carried into chapter 3 of Title 15 of this revised Part, relating to executions, is carried into this subchapter.

However, it is apparent that all the above-quoted provisions following "scire facias," related only to executions and not to attachments, and accordingly are omitted from this section. Further, the reference to revival by scire facias is omitted for the same reason stated in revision note under section 15–101 herein. Revival of judgments and decrees is now had by motion and hearing. See rules 54(a) and 81(b) of the Federal Rules of Civil Procedure, and rule 30 of the local rules of the United States District Court for the District of Columbia.

Words "in equity", which followed "unconditional decree", are omitted as obsolete, in view of the merger of law and equity procedure by the Federal Rules of Civil Procedure. See rule 2 thereof, also rule 2 of the civil rules of the Court of General Sessions.

The remaining provisions are reworded, but without change of substance.

§ 16–542. Issuance of attachment after judgment; costs

An attachment may be issued upon a judgment either before or after or at the same time with a fieri facias. If costs are unnecessarily multiplied thereby they shall be charged to the party causing the attachment to be issued. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–301 (Mar. 3, 1901, ch. 854, § 1086, 31 Stat. 1359).

For discussion as to the relationship between this subchapter and subchapter I of this chapter, see revision note under section 16–501 herein.

Changes are made in phraseology.

CROSS REFERENCES

Attachment and garnishment before judgment, see §§ 16–501 to 16–533.

Provisions for attachment and garnishment as not preventing a bill in equity to enforce a judgment against equitable interests in property, see § 16–532.

NOTES TO DECISIONS UNDER PRIOR LAW

Executors and administrators

The code provides expressly for actions and judgments against executors and administrators and for the issuance of writs of fieri facias thereon, and there is no reason to doubt that this contemplates the use of attachment and garnishment. *Fishel* v. *Kite* (1940, 101 F. 2d 685, 69 App. D.C. 360, certiorari denied 59 S. Ct. 645, 306 U.S. 656, 83 L. Ed. 1054).

Oral examination

One does not have to file a traverse to garnishee's answer in Municipal Court before being entitled to oral examination. *Ourisman Chevrolet Inc.* v. *Pohanka Service, Inc.* (D.C. Mun. App. 1957, 138 A. 2d 668).

§ 16–543. Revival of judgment unnecessary

Attachment may be issued at any time during the life of the judgment, without issuing an order reviving the judgment previously thereto. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–302 (Mar. 3, 1901, ch. 854, § 1087, 31 Stat. 1359).

Words "an order reviving the judgment" are substituted for "scire facias" pursuant to rule 81(b) of the Federal Rules of Civil Procedure, which abolished the writ of scire facias. See, also, rule 30 of the local rules of the United States District Court for the District of Columbia.

§ 16–544. Property subject to attachment

An attachment may be levied upon the judgment debtor's goods, chattels, and credits. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–303 (Mar. 3, 1901, ch. 854, § 1088, 31 Stat. 1360; June 30, 1902, ch. 1329, 32 Stat. 541.)

Property subject to attachment generally, see section 16–507 herein.

§ 16–545. Multiple attachments against same judgment debtor

Only one attachment upon goods, chattels, and credits of a judgment debtor may be satisfied at one time. Where more than one such attachment issued against the same judgment debtor is served on a garnishee the attachments shall be satisfied in the order in which they were served upon the garnishee. This section does not apply with respect to an attachment upon wages to which subchapter III of this chapter applies. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–304 (Mar. 3, 1901, ch. 854, § 1069, 31 Stat. 1360; Aug. 31, 1954, ch. 1166, § 1, 68 Stat. 1043; Aug. 4, 1959, Pub. L. 86–130, § 2, 73 Stat. 277).

Section is from part of section 15–304 of D.C. Code, 1961 ed. The remainder of the section is set out in § 16.552 herein.

Changes are made in phraseology.

Priority of the liens of attachments, see section 16–507 herein.

§ 16–546. Attachments of credits

An attachment shall be levied upon credits of the defendant, in the hands of a garnishee, by serving the garnishee with a copy of the writ of attachment and of the interrogatories accompanying the writ, and a notice that any property or credits of the defendant in his hands are seized by virtue of the attachment. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–305 (Mar. 3, 1901, ch. 854, § 1090, 31 Stat. 1360; Apr. 5, 1939, ch. 37, § 8(b), 53 Stat. 567).

Section is from part of section 15–305 of D.C. Code, 1961 ed. The remainder of the section is set out in §§ 16–547 and 16–548 herein.

Similar provisions as to attachments generally are found in section 16–511(a) herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Personal property in hands of trust company

Personal property in the hands of a trust company may be garnished. *International Finance Corp.* v. *Jawish* (1934, 71 F. 2d 985, 63 App. D.C. 262).

Retention by garnishee

Where garnishments were dismissed and no steps were taken to preserve lien, lien was extinguished and garnishee could pay funds to owner immediately. *Mandel* v. *Lofton* (D.C. Mun. App. 1952, 89 A. 2d 880).

Subsequent creditor

To rule that after writ of attachment has been served on garnishee a subsequent attaching creditor might seize the property so garnished would be inconsistent with the intent and purpose of the law. *International Finance Corp.* v. *Jawish* (1934, 71 F. 2d 985, 63 App. D.C. 262).

§ 16–547. Retention of property or credits by garnishee

Where the property or credits attached or sought to be attached are held by the garnishee in the name of or for the account of a person other than the defendant, the garnishee shall retain the property or credits during the period pending determination by the court of the propriety of the attachment or the rightful owner of the property or credits. During that period the garnishee shall incur no liability whatsoever for the retention. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–305 (Mar. 3, 1901, ch. 854, § 1090, 31 Stat. 1360; Apr. 5, 1939, ch. 37, § 8(b), 53 Stat. 567).

Section is from part of section 15–305 of D.C. Code, 1961 ed. The remainder of the section is set out in §§ 16–546 and 16–548 herein.

Similar provisions as to attachments generally are found in section 16–511(b) herein. Advance payment of wages to avoid attachment or garnishment, see section 16–513 herein. Credits or property held for two or more persons or in representative capacity, see section 16–514 herein.

Changes are made in phraseology.

§ 16–548. Attachment of judgments and money or property in hands of marshal

(a) An attachment may be levied upon debts due to the defendant upon a judgment or decree by a service similar to that prescribed by section 16–546 upon the debtor owing the debts.

(b) An attachment may be levied upon money or property of the defendant in the hands of the marshal. It binds the money or property from the time of service, and is a legal excuse to the officer for not paying or delivering the same as he would otherwise be bound to do. (Dec. 23, 1963, 77 Stat. 553, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code 1961 ed., §§ 15–305, 15–306 (Mar. 3, 1901, ch. 854, §§ 1090, 1091, 31 Stat. 1360; June 30, 1902, ch. 1329, 32 Stat. 541; Apr. 5, 1939, ch. 37, § 2(b), 53 Stat. 567).

Section consolidates part of sections 15–305 and 15–306 of D.C. Code, 1961 ed. The remainder of the sections is set out in §§ 16–546, 16–547, and 16–549 herein.

Similar provisions as to attachment generally are found in section 16–515 herein.

Reference to the coroner is omitted as obsolete.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Defendant

The "defendant" referred to is one who has a right to money in the hands of an administrator or executor of an estate which is subject to a judgment against him. *Sanford* v. *Sanford* (1923, 286 F. 777, 52 App. D.C. 315).

Retention of seized money subject to tax lien

District court, in a proceeding on motion for return of property and suppression of property as evidence could, after suppressing evidence, direct that money be retained in custody subject to federal tax lien and a final disposition thereof. *Welsh* v. *United States* (1955, 220 F. 2d 200, 95 U.S. App. D.C. 93).

§ 16–549. Attachment of money or property in hands of executor or administrator

An attachment may be levied upon money or property of the defendant in the hands of an executor or administrator, and binds the same from the time of service. If the executor or administrator makes return to the writ that he can not certainly answer whether the defendant's share of the money or property in his hands will prove sufficient to pay the plaintiff's debt, a judgment of condemnation may not be rendered as against the executor or administrator until the passage by the Probate Court of his final or other account showing money or property in his hands to which the defendant is entitled. (Dec. 23, 1963, 77 Stat. 553, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–306 (Mar. 3, 1901, ch. 854, § 1091, 31 Stat. 1360; June 30, 1902, ch. 1329, 32 Stat. 541).

Section is from part of section 15–306 of D.C. Code, 1961 ed. The remainder of the section is set out in § 16–548 herein.

Similar provisions as to attachment generally are found in section 16–516.

Changes are made in phraseology.

§ 16–550. Preservation of property; sale

The court may make all orders necessary for the preservation of the property attached. When the property is perishable, or for other reasons a sale of it appears expedient, the court may order that the property be sold and its proceeds paid into court and held subject to its order on the final decision of the case. (Dec. 23, 1963, 77 Stat. 553, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–307 (Mar. 3, 1901, ch. 854, § 1093, 31 Stat. 1360).

Similar provisions as to attachment generally are found in section 16–518 herein.

Changes are made in phraseology.

§ 16–551. Defending against the attachment; trial of issues

A garnishee or stranger to the action who may make claim to the property attached may file an answer defending against the attachment. The answer may be considered as raising an issue without any reply, and any issue of fact thereby made may be tried with a jury if any party so desires. (Dec. 23, 1963, 77 Stat. 553, Pub. L. 88–241, §1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–308 (Mar. 3, 1901, ch. 854, § 1094, 31 Stat. 1360).

Similar provisions as to attachment generally are found in section 16–520 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Admission of ownership

Where answers of bank disclosed deposits in the names of appellants individually, and appellants in their affidavits in support of their motion to quash as well as in

their verified pleas averred that the said deposits belonged to them, they can not complain if court takes their statements as true and condemns such deposits to satisfy a default judgment against them personally. *Ostrow* v. *McNeal* (1938, 93 F. 2d 228, 68 App. D.C. 69, certiorari denied 58 S. Ct. 410, 302 U.S. 764, 82 L. Ed. 593).

Attorney's lien

In garnishment proceeding, garnishee's assertion of lien for attorney's services would not furnish basis for setting aside District Court's judgment of condemnation, in view of fact that assertion was not made in manner required by District of Columbia law. *Draisner et al.* v. *Liss Realty Co., Inc.* (1956, 228 F. 2d 48, 97 U.S. App. D.C. 77).

Oral examination

One does not have to file a traverse to garnishee's answer in Municipal Court before being entitled to oral examination. *Ourisman Chevrolet Inc.* v. *Pohanka Service, Inc.* (D.C. Mun. App. 1957, 138 A. 2d 668).

Ownership of fund

Neither the answer of the garnishee nor the information obtained in the oral examination is conclusive upon the court in respect of the true ownership of the fund. *Young* v. *Nicholson* (1940, 107 F. 2d 177, 70 App. D.C. 351).

Validity of judgment

Where judgment debtor's partners were not made parties to garnishment proceeding, and did not voluntarily enter such proceeding, condemnation judgment which was against credits and properties in hands of one trustee, as garnishee, or which might affect both trustees as garnishees, would be good only to extent of judgment debtor's interest alone. *Draisner et al.* v. *Liss Realty Co., Inc.* (1956, 228 F. 2d 48, 97 U.S. App. D.C. 77).

§ 16–552. Interrogatories to garnishee; oral examination

(a) In any case in which a writ of attachment is issued, the plaintiff may submit interrogatories in writing, in such form as may be allowed by the rules or special order of the court, to be served upon any garnishee, asking about any property of the defendant in his possession or charge, or indebtedness of his to the defendant at the time of the service of the attachment or between the time of service and the filing of his answers to the interrogatories. The garnishee shall file his answers, verified by a written declaration that the answers are made under the penalties of perjury, to the interrogatories within ten days after service upon him.

(b) In addition to the answers to written interrogatories required of him, the garnishee may, on motion, be required to appear in court and be examined orally, under oath, touching any property or credits of the defendant in his hands.

(c) Whoever willfully makes and subscribes a return, statement, or other document, pursuant to this section, that contains, or is verified by, a written declaration that it is made under the penalties of perjury, and that he does not believe to be true and correct as to every material matter, is subject to the penalties prescribed for perjury. (Dec. 23, 1963, 77 Stat. 553, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–304 (Mar. 3, 1901, ch. 854, § 1089, 31 Stat. 1360; Aug. 31, 1954, ch. 1166, § 1, 68 Stat. 1043).

Section is from part of section 15–304 of D.C. Code, 1961 ed. The remainder of the section is set out in section 16–545 herein.

Similar provisions as to attachment generally that were not amended to change the method of verification of answers, are found in section 16–521 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

In general

Statute contemplates (1) "the garnishee answering interrogatories, (2) oral examination of the garnishee, supplementing the answers to the interrogatories, (3) traverse by plaintiff of the garnishee's answer, after the oral examination, and (4) the determination of the issue joined by traverse" and when the record shows only the first of these steps the trial court is correct in denying the motion for summary judgment. *Dickinson* v. *Brooks* (1940, 108 F. 2d 4, 71 App. D.C. 106).

When the usual written interrogatories were directed to the garnishee and she answered that she was indebted to defendant in the principal suit and that this indebtedness, in the amount of $300, had been established by stipulation filed in an equity suit between her and the defendant then pending in the District Court, and when the stipulation was filed as an exhibit and recited that the named amount was "in compromise of all the various claims and counterclaims between the parties" and if plaintiff was not satisfied with this answer, he had means of testing its accuracy and truthfulness. *Id.*

Form

A garnishee is not excused from answering a proper question merely because it is inaptly combined with improper queries in a single interrogatory where the proper question is clear and easily separable. *Ostrow* v. *McNeal* (1938, 93 F. 2d 228, App. D.C. 69, certiorari denied 58 S. Ct. 410, 302 U.S. 764, 82 L. Ed. 593).

Judgment against garnishee

Where garnisher had obtained a judgment of condemnation against garnishee, garnisher was not required to make a demand for payment before issuing an attachment against garnishee's bank account, and could not be liable to garnishee for wrongful attachment and malicious abuse of process for attaching bank account without first giving notice or demanding payment. *District Credit Clothing, Inc.* v. *Square Deal Trucking Company* (D.C. Mun. App. 1960, 163 A. 2d 822).

Where University which received part of its support from the United States, had the right to hire and fire any employee without consulting any branch of federal government, and salary of furniture repairmen was fixed by University, repairman was an employee of the University, and his salary was owed by the University, and thus was subject to garnishment, even though University intended to pay repairman from funds furnished by government and by a United States Treasury check *Marvins Credit, Inc.* v. *Howard University* (D.C. Mun App. 1953, 101 A. 2d 247).

Judgment of condemnation

Where traverse was not filed to garnishee's answer in Municipal Court, judgment of condemnation immediately following oral examination of garnishee was not proper, and could only be entered when credits were found upon an issue made pursuant to statute. *Ourisman Chevrolet Inc.* v. *Pohanka Service, Inc.* (D.C. Mun. App. 1957, 138 A. 2d 668).

Oral examination

The provision in this section and § 15–309 do not affect the right of the plaintiff to examine the garnishee orally under oath, without waiting for a traverse of the answer. *Flynn* v. *Potomac Elec. Power Co.* (1931, 47 F. 2d 978, 60 App. D.C. 82).

The right to oral examination supplementing the information obtained in the garnishee's answer is permitted in express statutory terms. *Young* v. *Nicholson* (1940, 107 F. 2d 177, 70 App. D.C. 351).

Where the garnishee's answer on its face shows the uncertainty as to the ownership of deposits, it is error to refuse plaintiff the right to examine the garnishee orally. *Id.*

One does not have to file a traverse to garnishee's answer in Municipal Court before being entitled to oral examination. *Ourisman Chevrolet Inc.* v. *Pohanka Service, Inc.* (D.C. Mun. App. 1957, 138 A. 2d 668).

The purpose of oral examination of garnishee in open court as a supplement to his answers to plaintiff's written interrogatories is to enable an attaching plaintiff to test accuracy of such answers and determine whether

to challenge garnishee for formal traverse. *Seaboard Finance Co.* v. *Ruppert* (D.C. Mun. App. 1953, 100 A. 2d 454).

In garnishment proceedings against employer of plaintiff's judgment debtor, plaintiff had right to examine garnishee orally respecting his written answers to plaintiff's interrogatories, where such answers were contradictory as to garnishee's method of paying defendant's salary. *Id.*

§ 16–553. Traverse of garnishee's answers; trial of issue; costs and attorney's fee

If a garnishee answers to interrogatories that he does not have property or credits of the defendant, or has less than the amount of the plaintiff's judgment, the plaintiff may traverse the answer as to the existence or amount of the property or credits, and the issue thereby made may be tried as provided by section 16–551. In such a case, where judgment is rendered for the garnishee, the plaintiff shall be adjudged to pay to the garnishee, in addition to the taxed costs, a reasonable attorney's fee. If the issue is found for the plaintiff, judgment shall be rendered for him in accordance with the finding. (Dec. 23, 1963, 79 Stat. 554, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., 15–309 (Mar. 3, 1901, ch. 854, § 1095, 31 Stat. 1360).

Similar provisions as to attachment generally are found in section 16–522 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Costs

Where judgment creditor issued garnishment to employer of alleged judgment debtor, and alleged judgment debtor demanded trial right of property claiming that he was not same person as judgment debtor, and judgment creditor then entered a praecipe releasing attached credits alleged judgment debtor was entitled to costs. *Hunter* v. *Hollywood Credit Clothing Co., Inc.* (D.C. Mun. App. 1951, 77 A. 2d 317).

Counsel fees

Garnishee was not entitled to award of counsel fee for successfully opposing judgment, creditor's motion for judgment. *Hollywood Credit Clothing Co. Inc.* v. *Autoscope, Inc.* (D.C. App. 1963, 193 A. 2d 733).

Evidence supported finding that garnishee in whose favor judgment had been entered after trial on traverse to his answer had incurred obligation to pay for legal services furnished. *A. A. Peikin* v. *C. Williams* (D.C. Mun. App. 1961, 167 A. 2d 355).

Good faith in issuance of garnishment and traversing of garnishee's answer could be taken into consideration in fixing reasonable counsel fee recoverable by successful garnishee but was not absolute bar to grant of counsel fee. *Id.*

Award to garnishee, in whose favor judgment had been entered after trial on traverse to his answer, of attorney's fee in amount of $300 was not unreasonable although the attachment was for only $600. *Id.*

Oral examination

One does not have to file a traverse to garnishee's answer to Municipal Court before being entitled to oral examination. *Ourisman Chrevolet Inc.* v. *Pohanka Service, Inc.* (D.C. Mun. App. 1957, 138 A. 2d 668).

The purpose of oral examination of garnishee in open court as a supplement to his answers to plaintiff's written interrogatories is to enable an attaching plaintiff to test accuracy of such answers and determine whether to challenge garnishee for formal traverse. *Seaboard Finance Co.* v. *Ruppert* (D.C. Mun. App. 1953, 100 A. 2d 454).

In garnishment proceedings against employer of plaintiff's judgment debtor, plaintiff had right to examine garnishee orally respecting his written answers to plaintiff's interrogatories, where such answers were contradictory as to garnishee's methods of paying defendant's salary. *Id.*

Plaintiff may traverse

The plaintiff may traverse the garnishee's answer, and the issue thereby made may be tried before the court or by a jury if either party so desire. *Young* v. *Nicholson* (1940, 107 F. 2d 177, 70 App. D.C. 351).

If plaintiff is not satisfied with answer to written interrogatories, he has means of testing its accuracy and truthfulness. *Dickinson* v. *Brooks* (1940, 108 F. 2d 4, 71 App. D.C. 106).

§ 16–554. Claims to attached property

Any person may file his motion and affidavit in the cause, at any time before the final disposition of the property attached or its proceeds, except where it is real property, setting forth a claim thereto or an interest in or lien upon the same. The court, without other pleadings, shall try the issues raised by the claim, with a jury if either party so requests, and may make all orders necessary to protect any rights of the claimant. (Dec. 23, 1963, 77 Stat. 554, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–310 (Mar. 3, 1901, ch. 854, § 1096, 31 Stat. 1360).

Similar provisions as to attachment generally are found in section 16–523 herein.

Reference to "motion and affidavit in the cause" is substituted for "petition in the cause, under oath,", to conform more nearly with modern practice. The use of petitions is now rare and archaic.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Admission of ownership

Where appellants have stated in affidavits and in verified pleadings that deposits in bank belonged to them absolutely, they can not complain that the issue as to such credits was not determined as provided in this section. *Ostrow* v. *McNeal* (1938, 93 F. 2d 228, 68 App. D.C. 69, certiorari denied 58 S. Ct. 410, 302 U.S. 764, 82 L. Ed. 593).

Attorney's lien

In garnishment proceeding, garnishee's assertion of lien for attorney's services would not furnish basis for setting aside District Court's judgment of condemnation, in view of fact that assertion was not made in manner required by District of Columbia law. *Draisner et al.* v. *Liss Realty Co., Inc.* (1956, 228 F. 2d 48, 97 U.S. App. D.C. 77).

Equitable interest

Where conditional sales agreement for sale of restaurant equipment was recorded in District of Columbia, and thereafter judgment creditor of buyer issued execution and seized part of equipment, seller had right to file petition in cause in which attachment was made, asserting ownership and demanding order for return thereof. *Cutler* v. *Cooper* (D.C. Mun. App. 1953, 96 A. 2d 360).

Evidence of notice

On buyer's petition to recover automobile retained by vendor and which was attached by vendor's judgment creditor before recording of transfer of title, evidence established that attaching marshal had no notice of transfer of title and consequently statute providing that unrecorded transfer of title was invalid as to parties not having actual knowledge of transfer when seller retained possession of goods was applicable. *Barlow* v. *Langlands* (D.C. Mun. App. 1955, 110 A. 2d 688).

Independent proceedings

When petition by alleged judgment debtor for trial right of attached property is filed, proceeding independent of main action is commenced with alleged judgment debtor as plaintiff and attaching party as defendant. *Hunter* v. *Hollywood Credit Clothing Co., Inc.* (D.C. Mun. App. 1951, 77 A. 2d 317).

Petition asserting ownership

Where conditional sales agreement for sale of restaurant equipment was recorded in District of Columbia, and thereafter judgment creditor of buyer issued execution and seized part of equipment; rule of municipal court for District of Columbia did not displace or supersede seller's long established statutory remedy of filing a petition in proceedings in which attachment had been made, asserting ownership and demanding an order for return thereof. *Cutler* v. *Cooper* (D.C. Mun. App. 1953, 96 A. 2d 360).

Validity of judgment

Where judgment debtor's partners were not made parties to garnishment proceeding, and did not voluntarily enter such proceeding, condemnation judgment which was against credits and properties in hands of one trustee, as garnishee, or which might affect both trustees as garnishees, would be good only to extent of judgment debtor's interest alone. *Draisner et al.* v. *Liss Realty Co., Inc.* (1956, 228 F. 2d 48, 97 U.S. App. D.C. 77).

§ 16–555. Condemnation and sale of property; proceeds of sale under interlocutory order

Where the attachment has been levied upon specific property, on the return by the marshal, judgment of condemnation of the property may be entered, and as much thereof as may be necessary to satisfy the plaintiff's judgment may be sold under a fieri facias. If the property was sold under interlocutory order of the court, the proceeds, or so much thereof as may be necessary, shall be applied to the plaintiff's claim by order of the court. (Dec. 23, 1963, 77 Stat. 554, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–311 (Mar. 3, 1901, ch. 854, § 1097, 31 Stat. 1361).

Similar provisions as to attachment generally are found in section 16–525 herein.

Changes are made in phraseology.

CROSS REFERENCE

Other provisions concerning effect and enforcement of decrees, see §§ 15–103 to 15–105, 15–301, and 16–541.

§ 16–556. Judgment against garnishee

(a) Subject to the provisions of subchapter III of this chapter, if a garnishee has admitted credits in his hands, in answer to interrogatories served upon him, or the credits have been found upon an issue made as provided by this chapter, judgment shall be entered against him for the amount of credits admitted or found, not exceeding the amount of the plaintiff's judgment, and costs, and execution shall be had thereon not to exceed the credits in his hands. When the credits are not immediately due and payable, execution shall be stayed until they become due.

(b) When the garnishee has failed to answer the interrogatories served on him, or to appear and show cause why a judgment of condemnation should not be entered, judgment shall be entered against him for the whole amount of the plaintiff's judgment and costs, and execution may be had thereon. (Dec. 23, 1963, 77 Stat. 554, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961, ed., § 15–312 (Mar. 3, 1901, ch. 854, § 1098, 31 Stat. 1361; Aug. 4, 1959, Pub. L. 86–130, § 3, 73 Stat. 277).

Similar provisions as to attachment generally are found in section 16–526 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Amendment of garnishment

It was proper for court to allow amendment of garnishments so as to correctly designate corporate name of garnishee where use of incorrect name had neither prejudiced nor mislead it. *Hotel Windsor Park, Inc.* v. *Arco Contractors, Inc.* (D.C. Mun. App. 1957, 134 A. 2d 322).

Answers to interrogatories

The garnishee, wife of the judgment debtor, may not be compelled to answer interrogatories that would compel her to testify against her husband. *Commercial Credit Co.* v. *McReynolds* (1934, 68 F. 2d 990, 63 App. D.C. 42).

Appellants having failed to make answer to the proper and separable portion of the third interrogatories within the time limited, judgment was properly entered against them. *Ostrow* v. *McNeal* (1938, 93 F. 2d 228, 68 App. D.C. 69, certiorari denied 58 S. Ct. 410, 302 U.S. 764, 82 L. Ed. 593).

This section, providing that judgment shall be entered against garnishee if garnishee shall have failed to answer interrogatory served on him or to appear and show cause why judgment of condemnation should not be entered, is not mandatory as applied to situation where garnishee has appeared and shown several reasons why no judgment of condemnation or of recovery should be entered. *Horad* v. *Yee* (D.C. Mun. App. 1951, 82 A. 2d 916).

Application for judgment against garnishee

The rule requiring applications for judgment against garnishees to be filed within four weeks after their answers relates to garnishment after judgment and had no application to garnishments served before judgment where action was not determined within such period, in view of statute forbidding judgment against garnishee until determination of action. *Hotel Windsor Park, Inc.* v. *Arco Contractors, Inc.* (D.C. Mun. App. 1957, 134 A. 2d 322).

Attorney's lien

In garnishment proceeding, garnishee's assertion of lien for attorney's services would not furnish basis for setting aside District Court's judgment of condemnation, in view of fact that assertion was not made in manner required by District of Columbia law. *Draisner et al.* v. *Liss Realty Co., Inc.* (1956, 228 F. 2d 48, 97 U.S. App. D.C. 77).

Default

The lower court may not enter judgment by default against the garnishee unless it failed to appear and show cause, or to answer. *Mutual Ben. Life Inc. Co., Newark, N.J.* v. *Flynn* (1931, 48 F. 2d 1020, 60 App. D.C. 108).

Discretion of court

Under this section providing that if a garnishee fails to answer interrogatory served on him in connection with issuance of writ of attachment or fails to appear and show cause why a judgment of condemnation should not be entered, such judgment "shall" be entered against garnishee for whole amount of plaintiff's judgment and costs, the quoted word is not mandatory and court is not without discretion in the matter. *Pastor* v. *Republic Savings and Loan Ass'n.* (D.C. Mun. App. 1959, 153 A. 2d 813).

Municipal Court has discretionary power after entering judgment of recovery against garnishee to set it aside for good cause shown, and such power to set aside a judgment presupposes power to refuse to enter it in the first instance for good cause shown. *Horad* v. *Yee* (D.C. Mun. App. 1951, 82 A. 2d 916).

In garnishment procedings, where garnishee appeared and showed several reasons why no judgment of condemnation or recovery should be entered, including garnishee's failure to understand nature of proceedings, his lack of indebtedness to judgment defendant, and right of judgment defendant to claim exemptions, there was no error in municipal court's use of judicial discretion in refusing to grant judgment of recovery against garnishee. *Id.*

Entry of judgment

Without valid judgment of record against principal debtor, municipal court has no right to enter judgment

of recovery against garnishee. *Horad* v. *Yee* (D.C. Mun. App. 1951, 82 A. 2d 916.)

Failure to answer

Where judgment creditor caused a writ of attachment to issue on judgment addressed to savings and loan association as garnishee, requiring it to answer whether it was indebted to judgment debtor and notifying association that answer was required within ten days after service and that failure to answer might result in judgment being entered against association, and writ was served on assistant secretary-treasurer, who examined account of judgment debtor and found that account had been closed out and who concluded that no action was required and therefore placed writ in a file, court did not abuse its discretion in denying judgment creditor's motion for judgment against association for failure to answer. *Pastor* v. *Republic Savings and Loan Ass'n.* (D.C. Mun. App. 1959, 153 A. 2d 813).

Oral examination

One does not have to file a traverse to garnishee's answer in Municipal Court before being entitled to oral examination. *Ourisman Chevrolet Inc.* v. *Pohanka Service, Inc.* (D.C. Mun. App. 1957, 138 A. 2d 668).

Trust funds

In proceeding to enforce child support judgment against children's father's interest as beneficiary of trust, trial court could stay execution, as to that portion of trust fund not immediately due, until same became due. *Seidenberg et al.* v. *Seidenberg* (1957, 249 F. 2d 123, 101 U.S. App. D.C. 367).

Vacation of judgment

Where garnishee made a motion to vacate default judgment more than six months after entry of judgment, and garnishee claimed that it had mailed its answer to the garnishment to the court, and it was possible that answer had been received by court but had been inadvertently misplaced or misfiled, court, if it should find that garnishee had mailed an answer to the court, could, in its discretion, vacate the default judgment against the garnishee, but was not compelled to vacate the default judgment, in view of fact that garnishee failed to appear and contest motion for judgment. *Fort Stevens Pharmacy* v. *Hollywood Credit Clothing Co.* (D.C. Mun. App. 1956, 126 A. 2d 309).

In vacating default judgment against principal debtor and placing case on calendar for trial, municipal court, by same stroke of pen obliterated any right of creditor under vacated judgment to demand judgment against garnishee as to credits in favor of vacated-judgment debtor in such garnishee's hands. *Horad* v. *Yee* (D.C. Mun. App. 1951, 82 A. 2d 916).

Validity of judgment

Under District of Columbia law, default judgment against garnishee on ground that he had not answered interrogatories was void where record did not disclose that interrogatories had been served on garnishee, despite court's recital that marshal had served interrogatories. *C. Austin* v. *O. Smith* (1962, 312 F. 2d 337, 114 U.S. App. D.C. 97).

Default judgment against garnishee, grounded on his failure to answer interrogatories, was void, although failure to appear and show cause was alternative ground for default and record did not show that garnishee appeared and showed cause. *Id.*

District of Columbia statute permitting default judgment against garnishee is in derogation of common law and should be construed strictly against party who invokes it, and judgment based upon such statute should also be construed strictly against garnisher. *Id.*

Where judgment debtor's partners were not made parties to garnishment proceeding, and did not voluntarily enter such proceeding, condemnation judgment which was against credits and properties in hands of one trustee, as garnishee, or which might affect both trustees as garnishees, would be good only to extent of judgment debtor's interest alone. *Draisner et al.* v. *Liss Realty Co., Inc.* (1956, 228 F. 2d 48, 97 U.S. App. D.C. 77).

SUBCHAPTER III.—ATTACHMENT AND GARNISHMENT OF WAGES, ETC.

§ 16–571. Definition

(a) As used in this subchapter, "wages" means:

(1) wages, salary, commissions, or other remuneration for services performed by an employee for his employer, including any such remuneration measured partly or wholly by percentages or share of profits, or by other sums based upon work done or results produced, whether or not the employee is given a drawing account; and

(2) any drawing account made available to an employee by his employer.

(b) The term "wages" does not include any amount paid or payable to an employee who is not a resident of the District of Columbia as remuneration for services performed within the District of Columbia, if the period for which the employee is engaged by the employer to perform such services within the District of Columbia is less than 15 consecutive days' duration; and any such amount shall be subject to attachment without regard to this subchapter. (Dec. 23, 1963, 77 Stat. 554, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–317 (Mar. 3, 1901, ch. 854, § 1104A (d), (e), (f), as added Aug. 4, 1959, Pub. L. 86–130, § 1, 73 Stat. 276).

Section is derived from subsec. (c) of section 15–317 of D.C. Code, 1961 ed., which was subsec. (f) of section 1104A of act Mar. 3, 1901, as added by section 1 of act Aug. 4, 1959, both cited above. Remainder of section 15–317 of D.C. Code, 1961 ed., is incorporated in this subchapter.

Minor changes are made in phraseology, and changes are made in arrangement.

§ 16–572. Attachment of wages; percentage limitations; priority of attachments

Notwithstanding any other provision of subchapter II of this chapter, where an attachment is levied upon wages due a judgment debtor from an employer-garnishee, the attachment shall become a lien and a continuing levy upon the gross wages due or to become due to the judgment debtor for the amount specified in the attachment to the extent of:

(1) 10 per centum of so much of the gross wages as does not exceed $200 due or to become due to the judgment debtor from the employer-garnishee for the pay period or periods ending in any calendar month; plus

(2) 20 per centum of so much of the gross wages as exceeds $200 but does not exceed $500 due or to become due to the judgment debtor from the employer-garnishee for the pay period or periods ending in any calendar month; plus

(3) 50 per centum of so much of the gross wages as exceeds $500 due or to become due to the judgment debtor from the employer-garnishee for the pay period or periods ending in any calendar month.

The levy shall be a continuing levy until the judgment, interest, and costs thereof are fully satisfied and paid, and in no event may moneys be withheld, by the employer-garnishee from the judgment debtor, in amounts greater than those prescribed by this section. Only one attachment upon the wages

of a judgment debtor may be satisfied at one time. Where more than one attachment is issued upon the wages of the same judgment debtor and served upon the same employer-garnishee, the attachment first delivered to the marshal shall have priority, and all subsequent attachments shall be satisfied in the order of priority set forth in section 16–507. (Dec. 23, 1963, 77 Stat. 555, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–314 (Mar. 3, 1901, ch. 854, § 1104A(a), as added Aug. 4, 1959, Pub. L. 86–130, § 1, 73 Stat. 275).

Minor changes are made in phraseology.

CROSS REFERENCE

Other provisions regarding attachments and priorities, see § 16–507.

NOTES TO DECISIONS UNDER PRIOR LAW

Waiver of misnomer

Garnishee corporation, which was served in its business name, waived any defect in garnishment respecting name when it answered without objection. *Hollywood Credit Clothing Co, Inc.* v. *Autoscope, Inc.* (D.C. App. 1963, 193 A. 2d 733).

§ 16–573. Employer's duty to withhold and make payments; percentage

(a) Except as provided in subsection (b) of this section, an employer upon whom an attachment is served, and who:

(1) at the time is indebted for wages to an employee who is the judgment debtor named in the attachment; or

(2) becomes so indebted to the judgment debtor in the future—

shall, while the attachment remains a lien upon such indebtedness, withhold and pay to the judgment creditor, or his legal representative, within 15 days after the close of the last pay period of the judgment debtor ending in each calendar month, that percentage of the gross wages payable to the judgment debtor for the pay period or periods ending in such calendar month to which the judgment creditor is entitled under the terms of this section until the attachment is wholly satisfied.

(b) Upon written notice of any court proceeding attacking the attachment or the judgment on which it is based, the employer shall make no further payments to the judgment creditor or his legal representative until receipt of an order of court terminating the proceedings.

(c) Any payments made by an employer-garnishee in conformity with this section shall be a discharge of the liability of the employer to the judgment debtor to the extent of the payment.

(d) Under this section the employer-garnishee shall not withhold or pay over more than 10 per centum of the gross wages payable to the judgment debtor for any pay period ending in any calendar month until the total amount of gross wages paid or payable to the judgment debtor for all pay periods ending in such calendar month equals $200, nor more than 20 per centum of the gross wages in excess of $200 payable to the judgment debtor for any pay period ending in any calendar month until the total amount of gross wages paid or payable to the judgment debtor for all pay periods ending in such calendar month equals $500. (Dec. 23, 1963, 77 Stat. 555, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–315 (Mar. 3, 1901, ch. 854, § 1104A(b), as added Aug. 4, 1959, Pub. L. 86–130, § 1, 73 Stat. 275).

Changes are made in phraseology and arrangement.

§ 16–574. Judgment creditor to file receipts, in court, of amount collected

(a) The judgment creditor shall:

(1) file with the clerk of the court, every three months after the serving of an attachment upon an employer-garnishee, a receipt showing the amount received and the balance due under the attachment as of the date of filing;

(2) file a final receipt with the court and furnish a copy thereof to the employee-garnishee; and

(3) obtain a vacation of the attachment within 20 days after the attachment has been satisfied.

(b) If the judgment creditor fails to file any of the receipts prescribed by subsection (a) of this section, an interested party may move the court to compel the defaulting judgment creditor to appear in court and make an accounting forthwith. The court may, in its discretion, enter judgment for any damages, including a reasonable attorney's fee suffered by, and tax costs in favor of, the party filing the motion to compel the accounting. (Dec. 23, 1963, 77 Stat. 556, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–316 (Mar. 3, 1901, ch. 854, § 1104A(c), as added Aug. 4, 1959, Pub. L. 86–130, § 1, 73 Stat. 276).

Changes are made in phraseology and arrangement.

§ 16–575. Judgment against employer-garnishee for failure to pay percentages

If the employer-garnishee fails to pay to the judgment creditor the percentages prescribed in this subchapter of the wages which become payable to the judgment debtor for any pay period, judgment shall be entered against him for an amount equal to the percentages with respect to which the failure occurs. (Dec. 23, 1963, 77 Stat. 556, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–317 (Mar. 3, 1901, ch. 854, § 1104A (d), (e), (f), as added Aug. 4, 1959, Pub. L. 86–130, § 1, 73 Stat. 276).

Section is derived from subsec. (a) of section 15–317 of D.C. Code, 1961 ed., which was subsec. (d) of section 1104A of act Mar. 3, 1901, as added by section 1 of act Aug. 4, 1959, both cited above. Remainder of section 15–317 of D.C. Code, 1961 ed., is incorporated in this subchapter.

Minor changes are made in phraseology.

§ 16–576. Lapse of attachment upon resignation or dismissal of employee

If a judgment debtor resigns or is dismissed from his employment while an attachment upon his wages is wholly or partly unsatisfied, the attachment shall lapse and no further deduction may be made thereon unless the judgment debtor is reinstated or reemployed within 90 days after the resignation or dismissal. (Dec. 23, 1963, 77 Stat. 556, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–317 (Mar. 3, 1901, ch. 854, § 1104A (d), (e), (f), as added Aug. 4, 1959, Pub. L. 86–130, § 1, 73 Stat. 276).

Section is derived from subsec. (b) of section 15–317 of D.C. Code, 1961 ed., which was subsection (e) of section 1 of act Mar. 3, 1901, as added by section 1 of act Aug. 4, 1959, both cited above. Remainder of section 15–317 of D.C. Code, 1961 ed., is incorporated in this subchapter.

Minor changes are made in phraseology.

§ 16–577. Applicability of per centum limitations to judgments for support

The per centum limitations prescribed by section 16–572 do not apply in the case of execution upon a judgment, order, or decree of any court of the District of Columbia for the payment of any sum for the support or maintenance of a person's wife, or former wife, or children, and any such execution, judgment, order, or decree shall, in the discretion of the court, have priority over any other execution which is subject to the provisions of this subchapter. In the case of execution upon such a judgment, order, or decree for the payment of such sum for support or maintenance, the limitation shall be 50 per centum of the gross wages due or to become due to any such person for the pay period or periods ending in any calendar month. (Dec. 23, 1963, 77 Stat. 556, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–318 (Mar. 3, 1901, ch. 854, § 1104A(g), as added Aug. 4, 1959, Pub. L. 86–130, § 1, 73 Stat. 276).

Minor changes are made in phraseology.

§ 16–578. Court of General Sessions judgments; lapse; validity

An attachment issued by the District of Columbia Court of General Sessions upon a judgment of that court duly docketed in the United States District Court for the District of Columbia, and levied within six years from the date of the judgment upon the wages due or to become due to the judgment debtor from the employer-garnishee, shall not lapse or become invalid prior to complete satisfaction solely by reason of the expiration of the period of limitation set forth in section 15–132(a). (Dec. 23, 1963, 77 Stat. 557, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 15–319 (Mar. 3, 1901, ch. 854, § 1104A (h), (i), (j), as added Aug. 4, 1959, Pub. L. 86–130, § 1, 73 Stat. 277; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section is derived from subsec. (a) of section 15–319 of D.C. Code, 1961 ed., which was subsec. (h) of section 1104A of act Mar. 3, 1901, as added by section 1 of act Aug. 4, 1959, both cited above. Remainder of section 15–319 of D.C. Code, 1961 ed., is incorporated in this subchapter.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Minor changes are made in phraseology.

CROSS REFERENCES

Method of making levies, avoidance of attachment, etc., see §§ 16–511 to 16–513.

Quashing of attachments, see § 16–506.

§ 16–579. Payments by employer-garnishee where employee has no salary or salary inadequate for services rendered

Where the judgment debtor claims or is proved to be rendering services to or employed by a relative or other person or by a corporation owned or controlled by a relative or other person, without salary or compensation, or at a salary or compensation so inadequate as to satisfy the court that the salary or compensation is merely colorable and designed to defraud or impede the creditors of the debtor, the court may direct the employer-garnishee to make payments on account of the judgment, in installments, based upon a reasonable value of the services rendered by the judgment debtor under his employment or upon the debtor's then earning ability. (Dec. 23, 1963, 77 Stat. 557, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–319 (Mar. 3, 1901, ch. 854, § 1104A (h), (i), (j), as added Aug. 4, 1959, Pub. L. 86–130, § 1, 73 Stat. 277).

Section is derived from subsec. (b) of section 15–319 of D.C. Code, 1951 ed., which was subsec. (i) of section 1104A of act Mar. 3, 1901, as added by section 1 of act Aug. 4, 1959, both cited above. Remainder of section 15–319 of D.C. Code, 1961 ed., is incorporated in this subchapter.

Minor changes are made in phraseology.

§ 16–580. Quashing attachment where judgment obtained to hinder just claims

Where an attachment levied under this subchapter is based upon a judgment obtained by default or consent without a trial upon the merits, the court, upon motion of an interested person, may quash the attachment upon satisfactory proof that the judgment was obtained without just cause and solely for the purpose of preventing or delaying the satisfaction of just claims. (Dec. 23, 1963, 77 Stat. 557, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 15–319 (Mar. 3, 1901, ch. 854, § 1104A (h), (i), (j), as added Aug. 4, 1959, Pub. L. 86–130, § 1, 73 Stat. 277).

Section is derived from subsec. (c) of section 15–319 of D.C. Code, 1951 ed., which was subsec. (j) of section 1104A of act Mar. 3, 1901, as added by section 1 of act Aug. 4, 1959, both cited above. Remainder of section 15–319 of D.C. Code, 1961 ed., is incorporated in this subchapter.

Minor changes are made in phraseology.

§ 16–581. Rules of procedure

The judges of the District of Columbia Court of General Sessions and of the United States District Court for the District of Columbia shall establish such rules of procedure for their respective courts as may be necessary to effectuate the purposes of this subchapter. (Dec. 23, 1963, 77 Stat. 557, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 15–320 (Aug. 4, 1959, Pub. L. 86–130, § 8, 73 Stat. 278; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The reference "this subchapter" is substituted for "this Act".

§ 16–582. Attachments to which this subchapter is applicable

This subchapter applies only with respect to attachments upon wages, as defined by section 16–571, issued on or after 60 days from August 4, 1959. (Dec. 23, 1963, 77 Stat. 557, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on act Aug. 4, 1959, Pub. L. 86–130, § 6, 73 Stat. 278.

Section was classified as a note under section 15–314 of D.C. Code, 1961 ed.

Changes are made in phraseology.

Chapter 6.—BONDS AND UNDERTAKINGS

Sec.
16–601. Undertaking in lieu of fiduciary's bond.

§ 16–601. Undertaking in lieu of fiduciary's bond

A bond required from an executor, administrator, administrator cum testamento annexo, administrator de bonis non, guardian, committee, collector, trustee, receiver, assignee for the benefit of creditors, or other fiduciary appointed or confirmed by the United States District Court for the District of Columbia, or a judge thereof, or a bond required from a party to a cause or proceeding pending in that court, shall be in the form of an undertaking, under seal, in a maximum amount to be fixed by the court, conditioned as required by law, the surety or sureties therein submitting themselves to the jurisdiction of the court and undertaking for themselves and each of them, their and each of their heirs, executors, administrators, successors, and assigns to abide by and perform the judgment or decree of the court in the premises; and further agreeing that, upon default by the principal in any of the conditions thereof, the damages may be ascertained in such manner as the court directs and the court may give judgment thereon in favor of any person thereby aggrieved against the principal and sureties for the damages sustained by him, and that judgment may be rendered against all or any of the parties whose names are thereto signed.

The United States District Court for the District of Columbia has jurisdiction to enter such judgments and decrees against the principal and surety or sureties, or any of them, upon the undertaking, as law and justice require. This section does not deprive a party having a claim or cause of action under or upon the undertaking from electing to pursue his ordinary remedy by civil suit.

The provisions of this Code relating to actions, remedies and proceedings upon bonds of fiduciaries apply to such undertakings to the same extent as if undertaking had been expressly mentioned and referred to therein. (As added Aug. 30, 78 Stat. 678, Pub. L. 88–509, § 3(c)(1).)

AMENDMENT

1964—Section 3(c)(1) of act Aug. 30, 1964, amended title 16, by adding chapter 6 thereto.

NOTES TO DECISIONS UNDER PRIOR LAW

In general

This section does not repeal section 16–301, [now section 16–501] relative to attachment bonds. *Tri-State Motor Corp.* v. *Standard Steel Car Co.* (1922, 276 F. 631, 51 App. D.C. 109).

A bond executed to the United States is valid, although there is no previous statutory authorization therefor. *United States* v. *Pumphrey* (1897, 11 App. D.C. 44).

Action on bond

Action to recover on bond for damages from wrongful suing out of an attachment is maintainable under this section providing that when a bond is referred to in statutes it signifies an obligation in a certain sum or penalty subject to condition on breach of which bond becomes absolute and is enforceable by action. *Davis* v. *Peerless Ins. Co. et al.* (1958, 255 F. 2d 534, 103 U.S. App. D.C. 125).

Where action was brought and attachment issued, failure of plaintiff's suit resulted in a "wrongful suing out of attachment" authorizing property owner to bring suit on bond. *Id.*

Amount of recovery

Where plaintiffs in attachment filed bond and after dismissal of action defendant in attachment brought suit to recover on bond which provided that surety should make good to defendant all costs and damages which he might sustain by reason of wrongful suing out of said attachment, defendant in attachment was not automatically entitled to recover full penal sum therein named but was limited to such costs and damages as he could show were sustained because of detention of property. *Davis* v. *Peerless Ins. Co. et al.* (1958, 255 F. 2d 534, 103 U.S. App. D.C. 125)

Attorneys fees

Where executor appropriated to his own use an amount greatly in excess of his approved commission and estate had no assets to pay approved fee due attorney for estate, surety on executor's bond was liable for amount of the fee. *In re Estate of P. M. Oberly* (D.C.D.C. 1964, 228 F. Supp. 665).

Chapter 7.—CRIMINAL PROCEEDINGS IN THE COURT OF GENERAL SESSIONS

Sec.
16–701. Rules and regulations.
16–702. Information, prosecution by.
16–703. Process of criminal division; fees.
16–704. Bail; collateral security.
16–705. Jury trial; trial by court.
16–706. Enforcement of judgments; commitment upon non-payment of fine.
16–707. Disposition of fines.
16–708. Penalties for wrongful conversion of forfeitures and fines.
16–709. Executions on forfeited recognizances and judgments.
16–710. Suspension of imposition or execution of sentence.

§ 16–701. Rules and regulations

The District of the Columbia Court of General Sessions may make rules and regulations deemed necessary and proper for conducting business in the criminal division of the court. (Dec. 23, 1963, 77 Stat. 557, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–748a, 11–751a, 11–755 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, § 48, 31 Stat. 1197; Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32 (b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; June 29, 1953, ch. 159, § 410, 67 Stat. 108; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from the last part of the first sentence of section 11–748a of D.C. Code, 1961 ed.

Section 11–755 of D.C. Code, 1961 ed., is also cited as one of the sources of this section because, in connection with the merger, by the act of Apr. 1, 1942, of the Police Court and the Municipal Court, to form a new Municipal Court, subsec. (a) thereof provided, among other things, that the court thus formed, and the judges thereof, should have and exercise the same powers and jurisdic-

tion theretofore had and exercised by the Police Court and the judges thereof.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Reference to "criminal division" of the court is inserted because, since the above-mentioned merger, the Municipal Court (now the Court of General Sessions) has exercised its civil jurisdiction and powers through a civil division, and its criminal jurisdiction and powers through a criminal division. The above-cited section 11–755 (subsec. (a)) of D.C. Code, 1961 ed., provided that the court should consist of a civil branch and a criminal branch (among others). See, also, rule 1 of the Rules Regulating Practice Before the "Criminal Division" of the Court.

Minor changes are made in phraseology.

The power of the Court of General Sessions to prescribe rules governing practice and procedure, generally, in the court, are set out in section 13–101 herein. For remainder of sections 11–748a and 11–755 of D.C. Code, 1961 ed., see tables.

§ 16–702. Information, prosecution by

Prosecutions in the criminal division of the District of Columbia Court of General Sessions shall be by information by the proper prosecuting officer. (Dec. 23, 1963, 77 Stat. 558, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–715a, 11–751a, 11–755 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, § 44, 31 Stat. 1196; Mar. 3, 1925, ch. 443, § 4, 43 Stat. 1120; Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from the first sentence of section 11–715a of D.C. Code, 1961 ed.

Sections 11–751a and 11–755 of D.C. Code, 1961 ed., are also cited as sources of this section, and "criminal division of the Court of General Sessions" is substituted for "municipal court" for the same reasons stated in revision note under section 16–701 herein.

A minor change in phraseology.

For remainder of sections 11–715a and 11–755 of D.C. Code, 1961 ed., see tables.

Cross References

Jury trials in vagrancy proceedings, see § 22–3301.
Procedure, see § 13–101.

NOTES TO DECISIONS UNDER PRIOR LAW

In general

Although police court could try criminal cases on information, there was no presumption that it would sentence one to hard labor so as to deprive it of jurisdiction. *Cleveland* v. *Mattingly* (1923, 287 F. 948, 52 App. D.C. 374, certiorari denied 43 S. Ct. 521, 262 U.S. 744, 67 L. Ed. 1211).

One guilty of changing the name of a licensee appearing on a motor vehicle operator's permit, whereupon he was sentenced to pay a fine of $275, and in default to be committed to the Washington Asylum and Jail for 60 days; it was proper and within the jurisdiction of the court. *Dorsey* v. *Peak* (1928, 24 F. 2d 892, 58 App. D.C. 54, 57 A.L.R. 865).

While other courts of the United States may commit for an indefinite period, a defendant in default of payment of a fine, the police court of the District was limited to one year. *Dodd* v. *Peak* (1931, 47 F. 2d 430, 60 App. D.C. 68).

The alternative sentence of imprisonment in default of payment of fine is not imposed as a part of the penalty but as a means of compelling payment of the fine. *Peeples* v. *District of Columbia* (D.C. Mun. App. 1950, 75 A. 2d 845).

Where the statute provides a fine but no imprisonment, an alternative prison sentence may be imposed, and where a fine or imprisonment or both may be imposed, and both are imposed, the weight of authority is that in default of payment of fine, the defendant may be commited for an additional term after expiration of the term for which sentenced. *Id.*

Constitutionality

A person charged with having committed the crime of conspiracy in the District of Columbia is entitled to a jury trial; and to accord the accused a right to be tried by jury in an appellate court, after he has been once fully tried, otherwise than by a jury, in the court of original jurisdiction and sentenced to pay a fine or be imprisoned, does not satisfy the requirements of the Constitution. *Callan* v. *Wilson* (1888, 8 S. Ct. 1301, 127 U.S. 540, 32 L. Ed. 223).

Constitutional requirement that trial of all crimes shall be by jury is to be interpreted in the light of the common law, according to which petty offenses might be proceeded against summarily before a magistrate sitting without a jury. *District of Columbia* v. *Colts* (1930, 51 S. Ct. 52, 282 U.S. 63, 75 L. Ed. 177).

This act does not violate either the Fifth or Sixth Amendments. *United States* v. *Wood* (1936, 57 S. Ct. 177, 299 U.S. 123, 81 L. Ed. 78, rehearing denied 57 S. Ct. 319, 299 U.S. 624, 81 L. Ed. 89).

Cumulative sentences

Section 934 of 1901 Code, relative to cumulative sentences, does not apply to sentences imposed upon different informations, after separate convictions at different times, nor does it apply to a sentence to pay a pecuniary fine, followed by imprisonment in default of payment, as provided in this section. *Harris* v. *Lang* (1906, 27 App. D.C. 84, 7 Ann. Cas. 141, 7 L.R.A., N.S., 124). See, also, *Harris* v. *Nixon* (1906, 27 App. D.C. 94 certiorari denied 26 S. Ct. 761, 201 U.S. 645, 50 L. Ed. 903).

Findings of court

Under this section the finding and judgment entered by the police court were entitled to the same force and effect in all respects as if entered and pronounced upon the verdict of a jury. *District of Columbia* v. *Kendall* (1927, 20 F. 2d 287, 57 App. D.C. 271).

Fines and imprisonment

Where defendant, convicted of being drunk in a public park and unable to pay fine, was imprisoned, his argument that general authority given by former §§ 11–606 and 11–616 was limited by the later § 25–128, is without merit, since the general statute existed before the special one and Congress must have been aware of the older ones, and had it intended to modify the earlier, would have done so, and accordingly, his imprisonment must be affirmed. *Peeples* v. *District of Columbia* (D.C. Mun. App. 1950, 75 A. 2d 845).

A note of warning should be addressed to the trial court that the alternative sentence is a mode of compelling payment of a fine and its use should be confined to such and should not be used for the purpose of imposing a longer term of imprisonment than is permitted by law. *Id.*

Statute authorizing court to commit defendant in default of payment of fine for term not exceeding one year provides means of enforcing punishment as distinguished from punishment provided by statute defining crime. *D. Henderson* v. *United States* (D.C. App. 1963, 189 A. 2d 132).

Alternative sentence of imprisonment for failure to pay fine is not to be considered a part of the penalty for the crime. *Id.*

Defendant was not entitled to relief from sentence imposed upon failure to pay fine imposed in addition to maximum imprisonment authorized as punishment on any theory that if she were indigent, alternative sentence coupled with primary sentence would be tantamount to sentence in excess of that authorized and that court should have, as part of sentencing procedure, inquired into her ability to pay where record revealed nothing as to her financial resources, she did not claim inability to pay fine, and there was nothing to indicate that court used alternative sentence to accomplish imprisonment for term longer than permitted by statute. *Id.*

Mandamus

The District of Columbia Municipal Court had jurisdiction to direct that charge of practicing healing arts without license should be tried by jury, and an erroneous decision on the question would not constitute such unlawful exercise of authority as would entitle Government to writ of mandamus directing Municipal Court to expunge jury trial order from the record. *United States* v. *Kronheim* (D.C. Mun. App. 1951, 80 A. 2d 280).

The fact that ruling of District of Columbia Municipal Court granting jury trial in prosecution for practicing healing arts without a license could not be reviewed in the regular course of appeal was not such an exceptional circumstance as would call for issuance of writ of mandamus expunging order from record. *Id.*

Municipal ordinance

One charged with the violation of a municipal ordinance, the maximum penalty for which is a fine not exceeding $40, is not entitled to a trial by jury. *Bowles* v. *District of Columbia* (1903, 22 App. D.C. 321).

Record on appeal

Record on appeal from conviction for possessing and selling obscene literature and pictures failed to disclose any abuse of discretion on part of trial court, with respect to sentence imposed in default of payment of fine, in sentencing defendant to one year and fine of $300 and in default of payment to be imprisoned for an additional year. *Hankins* v. *United States* (D.C. Mun. App. 1956, 120 A. 2d 590).

Review

Where defendant, who had been sentenced by Municipal Court for District of Columbia to one year and a fine of $300, and in default of payment to be imprisoned for an additional year, for possessing and selling obscene literature and pictures, contended only that sentence imposed in default of payment of the fine was too severe, Municipal Court of Appeals could not reduce sentence in absence of showing of abuse of discretion on part of lower court. *Hankins* v. *United States* (D.C. Mun. App. 1956, 120 A. 2d 590).

Statutes providing that defendant upon whom fine has been imposed may, in default of payment, be committed for such term as court thinks proper not to exceed one year, gives broad discretion in imposing imprisonment in default of payment of fine. *Id.*

Right to jury trial

Congress in the exercise of its general and exclusive power of legislation over the District, could provide for the trial of civil causes of moderate amount by a justice of the peace, or, in his presence, by a jury of 12, or of any less number, and allowing either party an appeal. *Capital Traction Co.* v. *Hof* (1899, 19 S. Ct. 580, 174 U.S. 1, 43 L. Ed. 873).

Where the accused would be entitled to a jury trial under the Constitution, trial shall be by jury unless waived, but petty offenses may be tried without jury. *District of Columbia* v. *Colts* (1930, 51 S. Ct. 52, 282 U.S. 63, 75 L. Ed. 177).

The right of trial by jury does not extend to every criminal proceeding. *District of Columbia* v. *Clawans* (1937, 57 S. Ct. 66, 300 U.S. 617, 81 L. Ed. 843).

Constitutional provisions with relation to jury trial apply, first, in all cases, especially in all cases where as here there is no election of right and no appeal of right, in which the offense charged was an indictable offense under the common law, without regard to the measure of punishment; and, second, in all cases without regard to the nature of the offense, where the punishment which may be inflicted under the statute involves a sentence as severe as confinement in jail for 90 days. *Clawans* v. *District of Columbia* (1936, 84 F. 2d 265, 66 App. D.C. 11, affirmed 57 S. Ct. 660, 300 U.S. 617, 81 L. Ed. 843).

A single offense of using premises for a purpose other than a single family dwelling without an occupancy permit or of operating a rooming house without a license, is a petty offense not involving moral turpitude nor indictable at common law, and therefore a jury trial is not demandable as of right. *Savage* v. *District of Columbia* (D.C. Mun. App. 1947, 54 A. 2d 562, affirmed 169 F. 2d 889, 83 U.S. App. D.C. 401, certiorari denied 60 S. Ct. 654, 336 U.S. 924, 93 L. Ed. 1086, rehearing denied 68 S. Ct. 810, 336 U.S. 947, 93 L. Ed. 1103).

Under this section providing for right to jury trial in cases in which fine or penalty may be more than $300, trial by jury should be had if penalty of more than $300 may be imposed on any one offense, but consolidation for trial of nine petty offenses did not amount to one greater offense, and, therefore, possibility that general sentence exceeding $300 could be imposed would not require trial by jury upon defendant's demands. *Scott, Jr.* v. *District of Columbia* (D.C. Mun. App. 1956, 122 A. 2d 579).

The District of Columbia Municipal Court acting on demand for jury trial in prosecution for practice of healing arts without license was performing a judicial function, and not a ministerial act which could be controlled by mandamus. *United States* v. *Kronheim* (D.C. Mun. App. 1951, 80 A. 2d 280).

Soliciting prostitution

Soliciting prostitution, punishable by jail sentence of 90 days, is a crime which is of right tried by a jury. *Blackburn* v. *United States* (1936, 84 F. 2d 269, 66 App. D.C. 15).

Neither the nature of the offense of soliciting prostitution nor the amount of the punishment brought the prosecution within the limits of the constitutional guaranty of a jury trial. *Bailey* v. *United States* (1938, 98 F. 2d 306, 69 App. D.C. 25).

Violation of traffic regulations

One charged with operating a motor vehicle in violation of statute not only recklessly but so as to endanger property and individuals, has a constitutional right to a jury trial. *District of Columbia* v. *Colts* (1930, 51 S. Ct. 52, 282 U.S. 63, 75 L. Ed. 177).

Waiver of jury trial

Trial by jury may be waived. *Shick* v. *United States* (1904, 24 S. Ct. 826, 195 U.S. 65, 49 L. Ed. 99).

Where defendant who was not unfamiliar with criminal procedure and who had had the experience of two prior jury trials, had demanded jury trial, but his attorney informed judge that defense desired to waive jury trial, judge immediately informed jury of this fact, counsel returned to talk to accused about matter, and accused raised no objection until after adverse decision by judge, even if accused did not initiate the waiver of jury, he ratified the waiver, and thus made the waiver his personal act, and he was not deprived of jury trial without legal and intelligent waiver of the same. *Hensley* v. *United States* (1960, 281 F. 2d 605, 108 U.S. App. D.C. 242).

Where defendant was arraigned and pleaded not guilty to assault charge and demanded trial by jury, and a month later case was called for jury trial, and defendant was present, and, after completiion of voir dire examination, defendant's attorney approached bench and informed trial judge that defense desired to waive jury trial and take trial by court, and prosecution voiced no opposition, and trial judge told jury in open court that defense preferred trial by court and that jury would be relieved from sitting in case, there was a valid waiver of jury trial by defendant under statute. *Hensley* v. *United States* (D.C. Mun. App. 1959, 155 A. 2d 77, affirmed 281 F. 2d 605, 108 U.S. App. D.C. 242).

§ 16–703. Process of criminal division; fees

(a) The criminal division of the District of Columbia Court of General Sessions may issue process for the arrest of persons against whom an information is filed or complaint under oath is made.

(b) Process shall:

(1) be under the seal of the court;

(2) bear teste in the name of a judge of the court; and

(3) be signed by the clerk.

(c) In cases arising out of violations of any of the ordinances or laws of the District, process shall be directed to the Chief of Police, who shall execute the

process and make return thereof in like manner as in other cases.

(d) In criminal cases cognizable in the United States District Court for the District of Columbia the process issued by the Court of General Sessions shall be directed to the United States marshal, except in cases of emergency, when it may be directed to the Chief of Police.

(e) For services pursuant to subsection (d) of this section the marshal shall receive the fees prescribed by section 15–709(b)(2). (Dec. 23, 1963, 77 Stat. 558, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–748a, 11–748b, 11–748c, 11–748d, 11–751a, 11–755 (June 17, 1870, ch. 133, 16 Stat. 153; R.S.D.C. §§ 1065–1067; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, § 48, 31 Stat. 1197; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32 (b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; June 29, 1953, ch. 159, § 410, 67 Stat. 108; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates first clause of section 11–748a of D.C. Code, 1961 ed., and sections 11–748b to 11–748d thereof.

Section 11–755 of the Code is cited above as one of the sources of this section for the reasons stated in revision note under section 16–701 herein.

Section 11–751a of the Code is cited as one of the sources of the section because section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Subsec. (a) of this section is based on the first clause of section 11–748a of D.C. Code, 1961 ed., which empowered the Municipal Court (now Court of General Sessions) to issue the process described. The reference "criminal division of the Court of General Sessions" is subtituted for the reference to the municipal court, in view of the enactment, in 1942, of section 11–755 (a) of D.C. Code, 1961 ed., and the 1962 amendment of that section. See revision note under section 16–701 herein. The additional provision in the first clause of section 11–748a that the court should have power to compel the attendance of witnesses is omitted as having been superseded by a provision in section 11–756(c) of D.C. Code, 1961 ed., that is carried into another section of this revised Part (see tables).

Sections 748b to 748d of D.C. Code, 1961 ed., which are carried into subsecs. (c), (d), and (b), respectively, of this section, were made applicable to the criminal division of the Municipal Court (now Court of General Sessions) pursuant to section 11–755(b) of D.C. Code, 1961 ed., which provided that service of process in the criminal division of the Municipal Court should be had as provided under existing law for the Police Court of the District of Columbia.

References to the major and superintendent of police are changed to Chief of Police pursuant to Reorganization Order No. 46, set out in Appendix to Title 1 of D.C. Code, 1961 ed.

Under section 4–138 of D.C. Code, 1961 ed., a warrant for search or arrest may be executed in any part of the District by any member of the police force.

Rule 13 of the Rules Regulating Practice Before the Criminal Division of the court provides: "The Federal Rules of Criminal Procedure shall apply to all proceedings in the criminal division of this court in which the judges are acting as committing magistrates." Therefore, in addition to this section, process of the Court of General Sessions in criminal cases cognizable in the United States District Court is governed by the Federal Rules of Criminal Procedure and by 18 U.S.C § 3041.

Subsec. (e) of this section is new, but states no new law, being in the nature of a cross reference. It is inserted for the purpose of completeness.

Changes are made in phraseology.

For remainder of sections 11–748a and 11–755 of D.C. Code, 1961 ed., see tables.

§ 16–704. Bail; collateral security

(a) A person charged with an offense triable in the criminal division of the Court of General Sessions may give security for his appearance for trial or for further hearing, either by giving bond to the satisfaction of the court or by depositing money as collateral security with the appropriate officer at the court or the station keeper of the police precinct within which he is apprehended. When a sum of money is deposited as collateral security as provided by this section it shall remain, in contemplation of law, the property of the person depositing it until duly forfeited by the court. When forfeited, it shall be, in contemplation of law, the property of the United States of America or of the District of Columbia, according as the charge against the person depositing it is instituted on behalf of the United States or of the District. Every person receiving any sum of money deposited as provided by this section shall be deemed in law the agent of the person depositing it or of the United States or the District, as the case may be, for all purposes of properly preserving and accounting for money.

(b) This section does not affect the ultimate rights under existing law of the Washington Humane Society of the District of Columbia, in or to any forfeitures collected in the criminal division of the Court of General Sessions. (Dec. 23, 1963, 77 Stat. 558, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–748a, 11–751a, 11–755 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, § 48, 31 Stat. 1197; Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32 (b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; June 29, 1953, ch. 159, § 410, 67 Stat. 108; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from the first and second sentences of the second paragraph of section 11–748a of D.C. Code, 1961 ed., and part of the proviso at the end thereof.

Sections 11–751a and 11–755 of D.C. Code, 1961 ed., are also cited as sources of this section, and "criminal division of the Court of General Sessions" is subtituted for "municipal court", for the same reasons given in revision note under section 16–701 herein.

Changes are made in phraseology.

For remainder of sections 11–748a and 11–755 of D.C. Code, 1961 ed., see tables.

For rules governing the execution of bonds in the criminal division of the Court of General Sessions, see rule 5 of the court's rules regulating practice and procedure in that division.

NOTES TO DECISIONS UNDER PRIOR LAW

Abrogation of privilege of posting collateral

At time of application for warrant, District of Columbia may petition court to abrogate offender's privilege of posting collateral as security and of forfeiting it instead of going to trial. *H. E. Coleman* v. *District of Columbia* (D.C. App. 1964, 203 A. 2d 918).

§ 16–705. Jury trial; trial by court

(a) In a criminal prosecution within the jurisdiction of the Court of General Sessions in which, according to the Constitution of the United States. the accused would be entitled to a jury trial, the trial shall be by jury, unless the accused in open

court expressly waives trial by jury and requests to be tried by the judge. In the latter case, the trial shall be by the judge, and the judgment and sentence shall have the same force and effect in all respects as if they had been entered and pronounced upon the verdict of a jury.

(b) In any case where the accused would not by force of the Constitution of the United States be entitled to a trial by jury, the trial shall be by the court without a jury, unless it is a case wherein the fine or penalty may be more than $300, or imprisonment as punishment for the offense may be more than ninety days and the accused demands a trial by jury. In the latter case the trial shall be by jury.

(c) The jury for service in the criminal division of the court shall consist of twelve persons, unless the parties, with the approval of the court and in the manner provided by rules of the court, agree to a number less than twelve. (Dec. 23, 1963, 77 Stat. 558, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–715a, 11–716a, 11–751a, 11–755 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, §§ 44, 45, 31 Stat. 1196, 1197; Mar. 3, 1925, ch. 443, §§ 4, 5, 43 Stat. 1120; Aug. 22, 1935, ch. 604, 49 Stat. 681; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates the second sentence of the first paragraph, and the first sentence of the second paragraph, of section 11–715a of D.C. Code, 1961 ed., with the first clause of the first sentence of section 11–716a thereof.

Sections 11–751a and 11–755 of D.C. Code, 1961 ed., are also cited as sources of this section; and in subsec. (a), "Court of General Sessions" is substituted for "said court" (which, as used in section 11–715a of D.C. Code, 1961 ed., referred to the municipal court), and in subsec. (c), "criminal division of the court" is substituted for "said court" (which, as used in section 11–716a of D.C. Code, 1961 ed., also referred to the municipal court), for the same reasons stated in revision note under section 16–701 herein.

In subsec. (c) of this section, which, as indicated above, is from section 11–716a of D.C. Code, 1961 ed., words "unless the parties, with the approval of the court and in the manner provided by rules of the court, agree to a number less than twelve" are inserted to conform with present practice in the criminal division of the Municipal Court as expressed in the criminal rules of the court. Section II(a) of rule 14 of such rules provides in part that at any time before a verdict the parties may stipulate in writing with the approval of the court that the jury shall consist of any number of persons less than 12. For other provisions relating to jury trials, including those relating to automatic waiver of the right to demand a jury, see other provisions of that rule.

Changes are made in phraseology.

For remainder of sections 11–715a, 11–716a, and 11–755 of D.C. Code, 1961 ed., see tables.

NOTES TO DECISIONS UNDER PRIOR LAW

Right to jury trial

If United States District Court for the District of Columbia should proceed without jury in contempt proceeding, District Court could impose no greater imprisonment than 90 days. *R. Rollerson* v. *United States* (1964, 343 F. 2d 269, 119 U.S. App. D.C. 400).

Defendant must have knowledge of penalty he may receive inasmuch as his right to jury trial depends on severity of punishment. *A. Dobkin* v. *District of Columbia* (D.C. App. 1963, 194 A. 2d 657).

§ 16–706. Enforcement of judgments; commitment upon non-payment of fine

The Court of General Sessions may enforce any of its judgments rendered in criminal cases by fine or imprisonment, or both. Except as otherwise provided by law, in any case where the criminal division of the court imposes a fine, the court may, in default of the payment of the fine imposed, commit the defendant for such a term as the court deems right and proper, not to exceed one year. (Dec. 23, 1963, 77 Stat. 559, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–715a, 11–748a, 11–751a, 11–755 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, §§ 44, 48, 31 Stat. 1196, 1197; Mar. 3, 1925, ch. 443, § 4, 43 Stat. 1120; Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; June 25, 1953, ch. 159, § 410, 67 Stat. 108; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section consolidates part of the first sentence and all of the second sentence of the first paragraph of section 11–748a of D.C. Code, 1961 ed., with the second sentence of the second paragraph of section 11–715a thereof. The second sentence of the first paragraph of section 11–748a, and the second sentence of the second paragraph of section 11–715a thereof, were identical.

Sections 11–751a and 11–755 of D.C. Code, 1961 ed., are also cited as sources of this section; the words "Court of General Sessions may enforce any of its judgments rendered in criminal cases" are substituted for "to enforce any of its judgments"; and the words "criminal division of the court" are substituted for "said court" (which referred to the municipal court), for the reasons stated in revision note under section 16–701 herein.

The exception phrase is inserted at the beginning of the second sentence, to avoid conflict between that sentence and other laws. For example, see section 22–109 of D.C. Code, 1961 ed., as amended in 1953, wherein the maximum term of imprisonment upon failure to pay a fine imposed upon conviction of certain specified offenses is six months for each such offense.

Changes are made in phraseology.

For remainder of sections 11–715a, 11–748a, and 11–755 of D.C. Code, 1961 ed., see tables.

NOTES TO DECISIONS UNDER PRIOR LAW

Abuse of discretion

Where defendant, who had been sentenced by Municipal Court for District of Columbia to one year and a fine of $300, and in default of payment to be imprisoned for an additional year, for possessing and selling obscene literature and pictures, contended only that sentence imposed in default of payment of the fine was too severe, Municipal Court of Appeals could not reduce sentence in absence of showing of abuse of discretion on part of lower court. *Hankins* v. *United States* (D.C. Mun. App. 1956, 120 A. 2d 590).

This section providing that defendant upon whom fine has been imposed may, in default of payment, be committed for such term as court thinks proper not to exceed one year, gives broad discretion in imposing imprisonment in default of payment of fine. *Id.*

Fines and imprisonment

Where defendant, convicted of being drunk in a public park and unable to pay fine, was imprisoned, his argument that general authority given by this section and section 11–715a is limited by the later § 25–128, is without merit, since the general statute existed before the special one and Congress must have been aware of the older ones. Had the Congress intended later to modify the earlier, it would have done so. Accordingly, judgment of conviction affirmed. *Peeples* v. *District of Columbia* (D.C. Mun. App. 1950, 75 A. 2d 845).

A note of warning should be addressed to the trial court that the alternative sentence is a mode of compelling

payment of a fine and its use should be confined to such and should not be used for the purpose of imposing a longer term of imprisonment than is permitted by law. *Id.*

The alternative sentence of imprisonment in default of payment of fine is not imposed as a part of the penalty but as a means of compelling payment of the fine. *Id.*

Where the statute provides a fine but no imprisonment, an alternative prison sentence may be imposed, and where a fine or imprisonment or both may be imposed, and both are imposed, the weight of authority is that in default of payment of fine, the defendant may be committed for an additional term after expiration of the term for which sentenced. *Id.*

Imprisonment for nonpayment

Where trial imposed a money fine against defendant operator of automobile body works for failure to file monthly Sales and Use tax returns as required by statute, trial court under this section could enforce payment of fine by ordering defendant in the alternative to serve a jail sentence. *Perlich* v. *District of Columbia* (D.C. Mun. App. 1952, 90 A. 2d 227).

Sentences imposing fines or term in jail in default of paying fines were not illegal as jail sentences. *Savage* v. *District of Columbia* (D.C. Mun. App. 1947, 54 A. 2d 562, affirmed 169 F. 2d 889, 83 U.S. App. D.C. 401, certiorari denied 69 S. Ct. 654, 336 U.S. 924, 93 L. Ed. 1086, rehearing denied 69 S. Ct. 810, 336 U.S. 947, 93 L. Ed. 1103).

A defendant convicted for violation of Female Eight Hour Law, § 36–301 et seq., could be sentenced to prison in event of default in payment of fines, notwithstanding that § 36–309 provided for fines only, in view of this section authorizing commitment of defendant in default of payment of fine imposed. *Anderson* v. *District of Columbia* (D.C. Mun. App. 1946, 48 A. 2d 710).

Limitation of jurisdiction

Police court was an "inferior court" or "limited jurisdiction." It had original jurisdiction concurrently with the District Court, except as otherwise provided, of all crimes in the District not capital or infamous, and all offenses against municipal ordinances. It had the power to examine, commit, or hold to bail, but had no power to admit attorneys nor suspend an attorney on charge of solicitation. *Mullen* v. *Canfield* (1939, 105 F. 2d 47, 70 App. D.C. 168).

Payment of fine precluding appeal

Where defendant on conviction was sentenced to pay a fine of $25 or serve 25 days, and he paid fine without attempting to stay judgment and without making protest or giving notice of intent to appeal, the payment which was voluntary, satisfied the judgment, rendered case "moot" and precluded defendant from appealing. *Hanback* v. *District of Columbia* (D.C. Mun. App. 1944, 35 A. 2d 189).

Record on appeal

Record on appeal from conviction for possessing and selling obscene literature and pictures failed to disclose any abuse of discretion on part of trial court, with respect to sentence imposed in default of payment of fine, in sentencing defendant to one year and fine of $300 and in default of payment to be imprisoned for an additional year. *Hankins* v. *United States* (D.C. Mun. App. 1956, 120 A. 2d 590).

§ 16–707. Disposition of fines

(a) All fines payable and paid under judgment of the criminal division of the Court of General Sessions shall, upon their payment, immediately become, in contemplation of law, the property of the United States or the District of Columbia, according to the charge upon which the fine may be adjudged. Every person receiving such a fine shall be deemed in law an agent of the United States or the District, as the case may be.

(b) This section does not affect the ultimate rights under existing law of the Washington Humane Society of the District of Columbia, in or to any fines paid in the criminal division of the Court of General Sessions. (Dec. 23, 1963, 77 Stat. 559, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–748a, 11–751a, 11–755 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar 3, 1901, ch. 854, § 48, 31 Stat. 1197; Apr. 1, 1942, ch. 207, §§ 1, 4, 56 Stat. 190, 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; June 29, 1953, ch. 159, § 410, 67 Stat. 108; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from that part of the third sentence of the second paragraph of section 11–748a of D.C. Code, 1961 ed., that preceded the first semicolon in the paragraph, and the proviso at the end of the paragraph. Insofar as the paragraph also related to forfeitures, it is carried into section 16–704 herein.

Sections 11–751a and 11–755 of D.C. Code, 1961 ed., are also cited as sources of this section, and "criminal division of the Court of General Sessions" is substituted for "said municipal court", for the same reasons stated in revision note under section 16–701 herein.

Changes are made in phraseology.

For remainder of sections 11–748a and 11–755 of D.C. Code, 1961 ed., see tables.

§ 16–708. Penalties for wrongful conversion of forfeitures and fines

Whoever, being an agent as contemplated and defined by section 16–704(a), or by section 16–707(a), wrongfully converts to his own use any money received by him as provided therein, is guilty of embezzlement, and shall be fined not more than $5,000 or imprisoned not more than five years, or both. (Dec. 23, 1963, 77 Stat. 559, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–748a (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, § 48, 31 Stat. 1197; Apr. 1, 1942, ch. 207, § 1, 56 Stat. 190; June 29, 1953, ch. 159, § 410, 67 Stat. 108).

Section is derived from a clause in the third sentence of the second paragraph of section 11–748a of D.C. Code, 1961 ed. For remainder of such section 11–748a, see tables.

As herein set out, the provisions relate to wrongful conversion of forfeitures and fines collected or paid in the criminal division of the Court of General Sessions, formerly designated the municipal court. See revision note under section 16–701 herein.

Words "and upon conviction thereof", which followed "embezzlement," are omittted as surplusage.

Changes are made in phraseology.

§ 16–709. Executions on forfeited recognizances and judgments

The Court of General Sessions may issue execution on all recognizances forfeited in its criminal division, upon motion of the prosecuting officer; and all writs of fieri facias or other writs of execution on judgments issued by the criminal division shall be directed to and executed by the United States marshal. (Dec. 23, 1963, 77 Stat. 559, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–724a, 11–751a, 11–755 (June 17, 1870, ch. 133, 16 Stat. 153; Mar. 3, 1891, ch. 536, 26 Stat. 848; Mar. 3, 1901, ch. 854, § 57, 31 Stat. 1199; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section is derived from section 11–724a of D.C. Code, 1961 ed.

Sections 11–751a and 11–755 of D.C. Code, 1961 ed., are cited as sources of this section; "Court of General Sessions" is substituted for "said court" (which referred to the municipal court); words "recognizances forfeited in its criminal division" are substituted for "forfeited recognizances"; and the reference "the criminal division" is substituted for "said court" where the latter term appeared for the second time in section 11–724a, for the reasons stated in revision note under section 16–701 herein.

Changes are made in phraseology.

For remainder of section 11–755 of D.C. Code, 1961 ed., see tables.

NOTES TO DECISIONS UNDER PRIOR LAW

Remission of penalty

R.S. § 1020 (U.S.C. title 18, former § 601), conferred authority on court to remit penalty of forfeited recognizance in certain cases. *United States* v. *Von Jenny* (1912, 39 App. D.C. 377).

§ 16–710. Suspension of imposition or execution of sentence

In criminal cases in the District of Columbia Court of General Sessions, the court may, upon conviction, suspend the imposition of sentence or impose sentence and suspend the execution thereof, for such time and upon such terms as it deems best, if it appears to be the satisfaction of the court that the ends of justice and the best interests of the public and of the defendant would be served thereby. In each case of the imposition of sentence and the suspension of the execution thereof, the court may place the defendant on probation under the control and supervision of a probation officer. The probationer shall be provided by the clerk of the court with a written statement of the terms and conditions of his probation at the time when he is placed thereon. He shall observe the rules prescribed for his conduct by the court and report to the probation officer as directed. A person may not be put on probation without his consent. (Dec. 23, 1963, 77 Stat. 559, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–757, 24–102 (June 25, 1910, ch. 433, § 2, 36 Stat. 864; June 18, 1953, ch. 128, § 1, 67 Stat. 65; June 20, 1958, Pub. L. 85–463, § 2, 72 Stat. 216; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section consolidates sections 11–757 and 24–102 of D.C. Code, 1961 ed.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The provisions from which section 11–757 of D.C. Code, 1961 ed., was derived (the above-cited section 1 of act June 18, 1953) were also set out in that Code as section 11–942a thereof because they referred, not only to the Municipal Court (now the Court of General Sessions), but also to the Juvenile Court. In this section, the provisions that related to the Juvenile Court are omitted, as they are set out in section 16–2383 herein.

Section 11–757 of D.C. Code, 1961 ed., provided that in each case of the imposition of sentence and the suspension of the execution thereof, the Municipal Court (now, the Court of General Sessions) might, in its discretion, place the defendant on probation "as provided by section 24–102". Section 24–102, as enacted in 1910, conferred power upon both the Supreme Court of the District of Columbia (later redesignated the District Court) and the former police court (of which the Municipal Court was the successor) to place defendants on probation, and prescribed certain conditions and procedures to be followed. Insofar as the District Court was concerned, that section was repealed by act June 20, 1958, Pub. L. 85–463, § 2, 72 Stat. 216, since probation matters in the United States District Court for the District of Columbia are now covered by Title 18, United States Code, section 3651 et seq., in view of the amendment of section 3651 thereof by section 1 of the 1958 act. Section 2 of the 1958 act, in repealing section 24–102, D.C. Code, 1961 ed., insofar as it related to the District Court, contained a saving clause, as follows: "but nothing contained in this act shall be construed to amend or repeal the provisions of the act entitled 'An act to provide for the suspension of the imposition or execution of sentence in certain cases in the Municipal Court for the District of Columbia and in the Juvenile Court of the District of Columbia', approved June 18, 1953 (67 Stat. 65)". However, section 24–102 of D.C. Code, 1961 ed., never related to the Juvenile Court, and, as amended by the 1958 act to strike out the reference to the District Court, it related solely to the Municipal Court (now, the Court of General Sessions). Therefore, it is consolidated with section 11–757 of D.C. Code, 1961 ed., to form this revised section. The 1953 act cited in the above-quoted provisions of the 1958 act was classified to section 11–757, and, insofar as it related to the Juvenile Court, to section 11–968 of D.C. Code, 1961 ed., which is carried into section 16–2383 herein. The 1953 act did not provide that the Juvenile Court, in placing defendants on probation, should do so "as provided by section 24–102".

Changes are made in phraseology.

CROSS REFERENCES

Probation and suspension of sentences in the United States District Court for the District of Columbia, see 18 U.S.C. § 3651.

When probation may be granted, see § 16–710.

NOTES TO DECISIONS UNDER PRIOR LAW

Appeal after suspension of sentence

Defendant convicted of indecent assault had a right of appeal notwithstanding that imposition of sentence was suspended and that defendant was required to give his personal recognizance or bond not to repeat the offense. *Thomas* v. *United States* (D.C. Mun. App. 1957, 129 A. 2d 852).

Defendant who was convicted of indecent assault and whose sentence was suspended with requirement that defendant give his personal recognizance or bond not to repeat the offense could appeal as a matter of right rather than by application for appeal, notwithstanding statute providing that where penalty imposed is less that $50 review shall be by application. *Id.*

Chapter 9.—DIVORCE, ANNULMENT, SEPARATION, SUPPORT, ETC.

Sec.

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16–917. Co-respondents as defendants; service of process.
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16–920. Effective date of decree for annulment or absolute divorce.
16–921. Validity of marriage, action to determine.
16–922. Validity of marriages and divorces solemnized or pronounced before January 1, 1902.

§ 16–901. Definition

As used in this chapter, "court" means the Domestic Relations Branch of the District of Columbia Court of General Sessions. (Dec. 23, 1963, 77 Stat. 560, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Section is new, but states no new law. It is inserted for the purpose of clarification. At the time of the enactment, in 1901, of the provisions carried into this chapter, the term "court", as used in the provisions, referred to the Supreme Court of the District of Columbia, the name of which was changed in 1936 to the "District Court of the United States for the District of Columbia", and in 1948 to the "United States District Court for the District of Columbia". Jurisdiction of actions for divorce or annulment of marriage, legal separation from bed and board, and related matters, continued to be vested in that court until the enactment of the act Apr. 11, 1956, ch. 204, § 101 et seq., 70 Stat. 111–113 (D.C. Code, 1961 ed., § 758 et seq.). Since that time, it has been vested in the Domestic Relations Branch of the Municipal Court, the name of which was changed by act Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171, to the District of Columbia Court of General Sessions. See section 11–1141 herein.

§ 16–902. Residence requirements

No action for divorce shall be maintainable unless one of the parties to the marriage has been a bona fide resident of the District of Columbia for at least one year next preceding the commencement of the action. No action for annulment of a marriage performed outside the District of Columbia shall be maintainable unless one of the parties is a bona fide resident of the District of Columbia at the time of the commencement of the action. No action for the affirmance of any marriage shall be maintainable unless one of the parties is a bona fide resident of the District of Columbia at the time of the commencement of the action. The residence of the parties to an action for annulment of a marriage performed in the District of Columbia shall not be considered in determining whether such action shall be maintainable. (Dec. 23, 1963, 77 Stat. 560, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; Sept. 29, 1965, 79 Stat. 889, Pub. L. 89–217, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–401 (Mar. 3, 1901, ch. 854 § 971, 31 Stat. 1345; Aug. 7, 1935, ch. 453, § 2, 49 Stat. 539).

Minor changes are made in phraseology.

AMENDMENT

1965—Section 1 act Sept. 29, 1965, amended section to read as above set out. For provisions of section prior to this amendment see Supp. IV to the 1961 edition of the code.

NOTES TO DECISIONS UNDER PRIOR LAW

Abandonment of abode

Where wife abandons her abode in District of Columbia and establishes a new abode in Virginia, if at any time during her stay in Virginia she forms the intention of remaining there indefinitely, she acquires a domicile in Virginia and is no longer a resident of District of Columbia for purposes of filing divorce complaint, notwithstanding that she may have a floating intention to return to the District at some future time. *Adams* v. *Adams, Jr.* (D.C. Mun. App. 1957, 136 A. 2d 866).

Accrual of right of action

Both separation and desertion are continuing acts and right of action for divorce incident to them is not perfected until required period of time has elapsed. *Oatley* v. *Oatley* (D.C. Mun. App. 1960, 161 A. 2d 834).

For purposes of this section requiring two years' residence within district as prerequisite to divorce for cause which occurred out of district and prior to residence therein, voluntary separation or desertion as basis for divorce occurs when time element required by this section lapses rather than when parties initially separate. *Id.*

"Application" defined

Residential requirement of this section providing that no decree of nullity of marriage or divorce shall be rendered in favor of anyone who has not been a bona fide resident of District of Columbia for at least one year next before application therefor, and no divorce shall be decreed in favor of any person who has not been a bona fide resident of the district for at least two years next before "application" therefor for any cause which shall have occurred out of the district and prior to residence therein relates to the beginning of a suit for divorce, and motion for enlargement of judgment for divorce from bed and board to absolute divorce does not require such residence, since word "application" as used in statute dealing with enlargement of divorce from bed and board to absolute divorce, means no more than "motion." *Bottomley* v. *Bottomley* (1958, 262 F. 2d 23, 104 U.S. App. D.C. 311).

Bona fide resident

Even though a marriage is void ab initio without being so decreed for reason that husband had a previous undissolve marriage, where a judicial decree of nullity is sought in District of Columbia, the petitioning party is required to establish that she has been a bona fide resident of District for at least one year preceding the petition for annulment. *Koonin, next friend of Hornsby* v. *Hornsby* (D. C. Mun. App. 1958, 140 A. 2d 309).

Construction

The provision of this section, that no divorce shall be granted to anyone who has not been a bona fide resident of District for at least one year before application therefor did not require Federal District Court to refuse to entertain wife's amended cross-complaint, charging husband's commission of adultery with one named therein as co-respondent and cross-defendant, in husband's divorce suit, even if cross-complainant lost her District domicile by moving to Maryland before filing amended cross-complaint. *Daniels* v. *Souders* (1952, 195 F. 2d 780, 90 U.S. App. D.C. 298).

Exclusionary provisions of this section are in the conjunctive and cause of action for divorce must have occurred both outside of district and prior to residency in district before longer period of residence is required. *Oatley* v. *Oatley* (D.C. Mun. App. 1960, 161 A. 2d 834).

Cross-complaint

Where cases adopting view, in other jurisdictions than District of Columbia that divorce may be granted nonresident of state of forum on cross-petition in divorce action by resident thereof, though this section requires plaintiff in divorce action to be resident of such state for designated time, clearly indicate that plainest principles of equity furnished impulse for such view, it will be adopted by Court of Appeals for District of Columbia in construing District Code prohibiting divorce decree in favor of one who has not been bona fide resident of District for at least one year before application therefor. *Daniels* v. *Souders* (1952, 195 F. 2d 780, 90 U.S. App. D.C. 298).

Domicile

In divorce action instituted by wife of North Carolina serviceman one year after she and her husband began living in Washington, D.C., but only a month and a half after date of their separation, evidence sustained finding that there was no intent on part of husband to abandon

his former domicile and establish one in Washington, and therefore court did not have jurisdiction of suit. *Stephenson* v. *Stephenson* (D.C. Mun. App. 1957, 134 A. 2d 105).

Evidence

"The statute in no way changes the rules of evidence but is designed primarily to prevent this jurisdiction from becoming a haven for those seeking divorce." *Creel* v. *Creel* (1915, 43 App. D.C. 82).

Evidence supported finding that wife, suing for divorce, was a resident of New York, and not of the District of Columbia, and justified decree dismissing suit. *Metcalf* v. *Metcalf* (1944, 142 F. 2d 102, 79 U.S. App. D.C. 51).

Foreign decrees

A divorce granted in any State according to its laws by a court having jurisdiction of the cause and of both the parties is valid and effectual everywhere. *Sears* v. *Sears* (1937, 92 F. 2d 530, 67 App. D.C. 379).

Good faith

Residence for purpose of divorce must be in good faith. *Downs* v. *Downs* (1904, 23 App. D.C. 381).

Instructions

An instruction in a prosecution for perjury committed in a divorce action that "residence required does not necessarily mean the technical, legal domicile, but does mean that locality where the social life of the parties is lived, and that locality where the greatest publicity will be given by litigation concerning his status" was erroneous and standing alone would require reversal. *McFarland* v. *United States* (1949, 174 F. 2d 538, 85 U.S. App. D.C. 19).

Jurisdiction

Statutory jurisdiction of United States District Court for the District of Columbia in law and equity between parties, both or either of which shall be resident or be found within the district, extends also to application for enlargement of judgment of divorce from bed and board to a judgment for absolute divorce. *Bottomley* v. *Bottomley* (1958, 262 F. 2d 23, 104 U.S. App. D.C. 311).

The federal District Court for District of Columbia had jurisdiction of husband's action for divorce on ground of adultery committed by wife outside District, though plaintiff did not allege his residence therein for two years, where wife's acts of adultery were alleged to have been committed within period of over a year for which complaint alleged that plaintiff was a resident of District. *Orlans* v. *Orlans et al.* (1956, 238 F. 2d 31, 99 U.S. App. D.C. 170).

This section does not require two years residence where cause for divorce occurs outside District during period in which plaintiff is bona fide resident of District. *Id.*

The voluntary appearance of the defendant in such cases does not confer jurisdiction. *Winston* v. *Winston* (1921, 271 F. 551, 50 App. D.C. 321).

Jurisdiction in divorce suit not shown, by reason of nonresidence. *Rollings* v. *Rollings* (1932, 53 F. 2d 917, 60 App. D.C. 305). See, also, *Marcum* v. *Marcum* (1933, 62 F. 2d 871, 61 App. D.C. 332); *Ridgeway* v. *Ridgeway* (1933, 63 F. 2d 458, 61 App. D.C. 395).

Where wife's former marriage to another had been annulled by decree of chancery court of Mississippi wherein the other but not the wife was then domiciled, and wife was not served with process there or anywhere else except by publication and entered no appearance, regardless of whether the annulment was entitled to full faith and credit in District of Columbia, it was within power of district court to recognize it in wife's suit for limited divorce against husband by subsequent marriage. *Shima* v. *Shima* (1942, 130 F. 2d 809, 75 U.S. App. D.C. 370).

District Court was without jurisdiction of a bill for divorce where plaintiff had not been a bona fide resident of the District of Columbia for at least one year before filing her complaint. *Clark* v. *Clark* (D.C.D.C. 1948, 79 F. Supp. 722).

If court does not have jurisdiction of the original bill for divorce, it is without jurisdiction of the cross-bill and it will be treated as a mere auxiliary suit or as a dependency upon the original bill, and, when the original bill is dismissed for lack of jurisdiction, the cross-bill must also be dismissed. *Id.*

In wife's divorce suit, it was proper for trial court at conclusion of wife's case to make finding of fact as to whether wife was bona fide resident of District of Columbia for one year preceding filing of her complaint, as required by this section. *Adams* v. *Adams, Jr.* (D.C. Mun. App. 1957, 136 A. 2d 866).

In divorce suit by wife who lived in District of Columbia at time of her marriage and for a year thereafter when she moved to Arlington, Virginia, where she lived for nearly two years prior to bringing suit against husband who was in armed services and who had remained in District only a few days after the marriage, evidence sustained trial court's finding of fact that wife was not bona fide resident of District for one year preceding filing of her complaint as required by this section. *Id.*

Law applicable

When Congress has enacted a complete set of divorce and marriage laws for the District of Columbia, it is to these laws, rather than to those preserved out of the past relationship with the State of Maryland, that must be looked to for guidance and control in the determination of a question. *Hoage* v. *Murch Bros. Constr. Co.* (1931, 50 F. 2d 983, 60 App. D.C. 218).

Locus of acts

Where the parties are residents of the District and sue for a divorce for acts committed therein it is not error to introduce evidence showing acts of cruelty commenced in another jurisdiction and culminating in this District. *Creel* v. *Creel* (1915, 43 App. D.C. 82).

Where offense was committed beyond the District of Columbia plaintiff must affirmatively aver in the bill, and prove as a fact at the trial, a bona fide residence here for a period of three years; and such averment and proof is jurisdictional. *Winston* v. *Winston* (1921, 271 F. 551, 50 App. D.C. 321).

Permanency of residence

Where parties were married in Virginia on June 27, 1953, in October, 1956 while they were living in West Virginia they separated, wife remained there until November 1, 1956, when she came to District of Columbia having obtained employment there, she had been working and living there continuously ever since and paid taxes in the District as her home, wife was resident of District for more than two years prior to filing of her suit for divorce on grounds of desertion notwithstanding that for a while wife was willing to resume marital relations with husband out of District if and when he provided a satisfactory home for her, which he never did, since the law did not require that wife when she moved to District intended to remain in District permanently. *Heater* v. *Heater* (D.C. Mun. App. 1959, 155 A. 2d 523).

In action by husband for divorce on ground of wife's desertion in Virginia where husband had formerly lived with wife, testimony of husband, who had moved to District of Columbia more than two years prior to commencement of action, that husband did not intend to make his home permanently in District because his employer was transferring him back to Virginia in near future did not, by itself, deprive trial court of jurisdiction and trial court erred in dismissing complaint for lack of jurisdiction. *Jones* v. *Jones* (D.C. Mun. App. 1957, 136 A. 2d 580).

Residence

One who was married in the District of Columbia and resided there for 14 years does not lose such residence by temporarily residing in another state, without intending to abandon the domicile here. *Stewart* v. *Stewart* (1923, 286 F. 987, 52 App. D.C. 323).

Naval officer who was born and lived in Washington, D.C., may obtain divorce in that jurisdiction although he was a registered voter in New Jersey. *Dennett* v. *Dennett* (1934, 71 F. 2d 975, 63 App. D.C. 252).

In wife's action for divorce where proof showed that parties were married in the District of Columbia in October 1939, and had obtained license upon representation that both resided there, and husband had lived in the District continuously since 1935, and testified that he meant to remain in District so long as he could work and make a living, and there was no evidence that husband had a fixed and definite intent to return to state of his former residence, proof showed that plaintiff was a

"bona fide resident" of the District for the year preceding the filing suit for divorce. *Rogers* v. *Rogers* (1942, 130 F. 2d 905, 76 U.S. App. D.C. 297).

Persons are "domiciled" in the District of Columbia who live there and have no fixed and definite intent to return and make their homes where they were formerly domiciled. *Id.*

Under this section "residence" means "domicile" *Rogers* v. *Rogers* (1942, 130 F. 2d 905, 76 U.S. App. D.C. 297). See, also, *Koonin, next friend of Hornsby* v. *Hornsby* (D.C. Mun. App. 1958, 140 A. 2d 309; *Jones* v. *Jones* (D.C. Mun. App. 1957, 136 A. 2d 580); *Adams* v. *Adams, Jr.* (D.C. Mun. App. 1957, 136 A. 2d 866).

Where wife, suing for divorce, had been absent from her former home in District of Columbia since 1923, in meantime she had been in China, Massachusetts, and New York, and had recently voted in New York and had continued to reside in New York City, but she testified that she had never abandoned her domicile in the District of Columbia, in deciding the issue of fact with regard to her intention, the court properly gave substantial weight to all of the facts. *Metcalf* v. *Metcalf* (1944, 142 F. 2d 102, 79 U.S. App. D.C. 51).

In action by husband for divorce, finding that husband had been for the required period a bona fide resident of the District of Columbia was not clearly erroneous. *Jeffe* v. *Jeffe* (1946, 152 F. 2d 24, 80 U.S. App. D.C. 284).

Plaintiff could not at the same time qualify as a legal voter of New York and sue for divorce in the District of Columbia as a resident of the city of Washington. *Moritz* v. *Moritz* (D.C. Sup. 1936, 80 F. Supp. 267).

For purposes of this section providing that no divorce shall be decreed in favor of any person who has not been a bona fide resident of the District for at least two years next before the application therefor for any cause which shall have occurred out of District and prior to residence therein, the term "residence" means domicile. *Heater* v. *Heater* (D.C. Mun. App. 1959, 155 A. 2d 523).

District of Columbia Court of General Sessions did not have jurisdiction of suit for annulment of marriage brought by husband who became a resident only about three months before the complaint was filed. *J. A. Gullo* v. *M. A. Gullo etc.* (D.C. App. 1963, 192 A. 2d 126).

"Residence" as used in statute concerning granting of a divorce or annulment of a marriage means "domicile". *Id.*

§ 16–903. Decree annulling marriage

A decree annulling the marriage as illegal and void may be rendered on any of the grounds specified by sections 30–101 and 30–103 as invalidating a marriage. (Dec. 23, 1963, 77 Stat. 560, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–402 (Mar. 3, 1901, ch. 854, § 965, 31 Stat. 1345).

A minor change was made in phraseology.

Cross References

Alimony pendente lite, see § 16–911.

Legitimacy of issue, see §§ 16–907 to 16–910.

Marriage may be decreed void, grounds, see § 30–102.

NOTES TO DECISIONS UNDER PRIOR LAW

Fraud

Fraud in its procurement will vitiate the contract upon which marriage is based as well as any other contract, and will justify its annulment by the courts. *Lenoir* v. *Lenoir* (1904, 24 App. D.C. 160).

Jurisdiction

The court of the domicile of the parties has jurisdiction to annul a marriage contracted elsewhere, but, in determining whether such a decree will be rendered, the court of the forum will be governed by principles of marriage law of state which, under the appropriate conflicts of law rule, determine validity of marriage in question, and marriages in violation of strong "public policy" of the domiciliary state can be declared void in a proceeding there. *Hitchens* v. *Hitchens* (D.C.D.C. 1942, 47 F. Supp. 73).

Legislative intent

Plain purpose of the law is to prohibit divorce or annulment of marriage upon the mere statement of one of the parties without corroborative evidence. *Lenoir* v. *Lenoir* (1904, 24 App. D.C. 160).

Lunatic

A person who has been allured or entrapped into a marriage with an insane person is not required to procure an adjudication of such insanity in an independent proceeding before he or she could be permitted to institute a suit directly for the annulment of the marriage. *Mackey* v. *Peters* (1903, 22 App. D.C. 341).

Parties

Proceeding in equity on behalf of a lunatic to annul a marriage contracted during infancy is properly brought by his next friend; however, the committee should be made a party defendant. *Mackey* v. *Peters* (1903, 22 App. D.C. 341).

§ 16–904. Grounds for divorce, legal separation and annulment

(a) A divorce from the bond of marriage or a legal separation from bed and board may be granted for adultery, actual or constructive desertion for one year, voluntary separation from bed and board for one year without cohabitation, or final conviction of a felony and sentence for not less than two years to a penal institution which is served in whole or in part. A legal separation from bed and board also may be granted for cruelty.

(b) A judgment of legal separation from bed and board may be enlarged into a judgment of divorce from the bond of marriage upon application of the innocent party, a copy of which shall be duly served upon the adverse party, after the separation of the parties has been continuous for one year next before the making of the application.

(c) Marriage contracts may be declared void in the following cases:

First. Where such marriage was contracted while either of the parties thereto had a former wife or husband living, unless the former marriage had been lawfully dissolved.

Second. Where such marriage was contracted during the lunacy of either party (unless there has been voluntary cohabitation after the discovery of the lunacy).

Third. Where such marriage was procured by fraud or coercion.

Fourth. Where either party was matrimonially incapacitated at the time of marriage and has continued so.

Fifth. Where either of the parties had not arrived at the age of legal consent to the contract of marriage (unless there has been voluntary cohabitation after coming to legal age), but in such cases only at the suit of the party not capable of consenting. (Dec. 23, 1963, 77 Stat. 560, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; Sept. 29, 1965, 79 Stat. 889, Pub. L. 89–217, § 2.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–403 (Mar. 3, 1901, ch. 854, § 966, 31 Stat. 1345; Aug. 7, 1935, ch. 453, § 1, 49 Stat. 539).

Changes are made in phraseology or arrangement.

Amendment

1965—Section 2 act Sept. 29, 1965, amended section to read as above set out. For provisions of section prior to this amendment see Supp. IV to the 1961 edition of the code.

CROSS REFERENCE

Co-respondents must be made parties defendant and served with process as other defendants, see § 16–917.

NOTES TO DECISIONS

I. UNDER PRIOR LAW

Admissibility of evidence

In wife's action for annulment of marriage on ground of husband's matrimonial incapacity, psychiatrist who had examined husband should have been permitted to answer question as to whether husband was matrimonially incapacitated at time of marriage as result of phychogenic causes, notwithstanding that his diagnosis as to husband's impotence would rest largely upon history and symptoms described to him by husband. *Kaufman* v. *Kaufman* (1948, 164 F. 2d 519, 82 U.S. App. D.C. 397).

Adultery

Foundation principle underlying connivance, and essential to its establishment, is that plaintiff must have consented, either expressly or impliedly, to the adultery. *Bateman* v. *Bateman* (1914, 42 App. D.C. 230).

Husband's suspicions of wife, his failure to put obstacles in her way, and his desire for divorce did not amount to "connivance", so that finding that wife committed adultery without her husband's connivance was based on sufficient evidence. *Shima* v. *Shima* (1942, 130 F. 2d 809, 75 U.S. App. D.C. 370).

Amendment of complaint

Where husband sued wife for absolute divorce on ground of voluntary separation but evidence pointed to constructive desertion on part of wife and uncontradicted evidence seemed to justify divorce for desertion, husband was entitled to amend complaint to conform to evidence showing desertion. *Slone* v. *Slone* (D.C. Mun. App. 1957, 134 A. 2d 585).

Annulment

In proceedings to annul a void marriage, especially where it is so declared by statute, the rule of pari delicto and the equitable principle of "clean hands" are inapplicable, since in such cases the State becomes a third party. *Simmons* v. *Simmons* (1927, 19 F. 2d 690, 57 App. D.C. 216, 54 A.L.R. 75).

Antenuptial agreement

Agreement prior to and at time of marriage that purpose of marriage was to give child born legal name and that if parties were not satisfied with marriage, divorce could be obtained, did not constitute "collusion" in legal sense and did not bar husband from obtaining divorce on ground of voluntary five years' separation. *L. R. Davis, Jr.* v. *A. L. Davis* (D.C. App. 1963, 191 A. 2d 138).

Agreement prior to entering into marriage that parties may voluntarily separate, end marriage, and be divorced, is nothing more than recognition of rights given by statute and is not contrary to law. *Id.*

Application defined

Residence requirement of this section providing that no decree of nullity of marriage or divorce shall be rendered in favor of anyone who has not been a bona fide resident of District of Columbia for at least one year next before application therefor, and no divorce shall be decreed in favor of any person who has not been a bona fide resident of the district for at least two years next before "application" therefor for any cause which shall have occurred out of the district and prior to residence therein relates to the beginning of a suit for divorce, and motion for enlargement of judgment for divorce from bed and board to absolute divorce does not require such residence, since word "application" as used in this section dealing with enlargement of divorce from bed and board to absolute divorce, means no more than "motion". *Bottomley* v. *Bottomley* (1958, 262 F. 2d 23, 104 U.S. App. D.C. 311).

Burden of proof

In divorce suit based on voluntary separation for five years, party contending that a voluntary separation ceased to be voluntary has burden of proving that contention. *Bowers* v. *Bowers* (1944, 143 F. 2d 158, 79 U.S. App. D.C. 146).

Capacity

Matrimonial incapacity as result of impotence as ground for annulment may be result of psychogenic causes as well as result of physical defects. *Kaufman* v. *Kaufman* (1948, F. 2d 519, 82 U.S. App. D.C. 397).

In action by husband for annulment of marriage on ground that his wife was incapable of entering into married state due to psychogenic causes, evidence was insufficient to sustain finding that failure to consummate marriage was due to stubborn disposition on part of wife to deny husband matrimonial intercourse. *Jwaideh* v. *Jwaideh* (D.C. Mun. App. 1958, 140 A. 2d 303).

"Cohabitation" construed

"Cohabitation," as used in statute specifying as a ground for divorce voluntary separation without cohabitation, means sexual intercourse, and therefore wife who lived separately from her husband for five consecutive years but who engaged in sexual relations with him approximately once a month during such period could not be granted a divorce on ground of voluntary separation. *G. B. Dottelis* v. *M. S. Dottelis* (D.C. Mun. App. 1962, 187 A. 2d 128).

Common-law marriage

Evidence that the parties never expressly agreed to be husband and wife, and that the defendant made a promise to marry the plaintiff which he never kept, was insufficient to establish a common-law marriage. *M. M. Toye* v. *Leo A. Toye* (D.C. Mun. App. 1961, 170 A. 2d 778).

Where ceremonial marriage of parties was void because it occurred before annulment of husband's former marriage to another had become final, but the parties continued their cohabitation after the annulment became final, there was a valid common law marriage, and wife was not entitled to annulment because of the invalidity of the ceremonial marriage. *Utterback* v. *Utterback* (D.C.D.C. 1947, 71 F. Supp. 231).

Action to annul ceremonial marriage on ground that at time of marriage, annulment of husband's prior marriage to another had not become absolute, was required to be considered in the light of the fact that the District of Columbia was a common law marriage jurisdiction. *Id.*

Consent

Consent necessary to bar a divorce for desertion must be found in some affirmative conduct by complainant amounting to a participation in the conduct of the opposite spouse; silent acquiescence or mere acceptance of fixed determination to leave or failure to object to departure or to exert physical force or other importunity to prevent departure do not constitute "consent". *Betty L. Marcey* v. *Melvin L. Marcey* (D.C. Mun. App. 1957, 130 A. 2d 918).

In wife's action for divorce on ground of husband's desertion for more than two years, evidence warranted finding that wife did not consent to husband leaving home of parties even though she did not make an affirmative protest. *Id.*

Construction

There is no provision in this section which permits the application of the doctrine of revival after condonation prior to institution of suit for divorce. *Stea* v. *Stea* (D.C.D.C. 1949, 83 F. Supp. 625).

Corroboration

In husband's suit for divorce on ground of voluntary separation from bed and board for five consecutive years without cohabitation, ruling requiring corroboration of plaintiff's testimony was erroneous. *Moore* v. *Moore* (D.C. Mun. App. 1957, 135 A. 2d 643).

Where husband sued wife for absolute divorce on ground of voluntary separation from bed and board for five consecutive years without cohabitation and husband's testimony supported allegations of the complaint, trial court's dismissal of complaint on ground that such testimony was without corroboration constituted reversible error. *Henderson* v. *Henderson* (D.C. Mun. App. 1957, 134 A. 2d 581).

In uncontested divorce action by husband on ground of five years voluntary separation from wife, corroboration of husband's testimony that he and his wife had not

cohabited for five years was unnecessary. *Weber* v. *Weber* (D.C. Mun. App. 1957, 134 A. 2d 323).

Corroboration of husband's testimony that wife deserted him was not necessary as a matter of law in action by husband for divorce on ground of desertion. *Stevens, Jr.* v. *Stevens* (D.C. Mun. App. 1957, 134 A. 2d 111).

Corroboration of testimony is not required in divorce action. *Johnson* v. *Johnson* (D.C. Mun. App. 1957, 134 A. 2d 109).

In an uncontested action for absolute divorce alleging desertion, where plaintiff's evidence tended to prove constructive desertion, corroboration of plaintiff's testimony was not required. *Brett* v. *Brett* (D.C. Mun. App. 1957, 133 A. 2d 927).

Cruelty

Mental cruelty as well as physical cruelty must be such as to endanger and impair the wife's health. *Kimmel* v. *Kimmel* (1949, 171 F. 2d 340, 84 U.S. App. D.C. 177).

"It is difficult to lay down any definite rule as to what constitutes cruelty within the provisions of this statute. It is clear, we think, that it is not necessary that the conduct be limited to such physical treatment as would endanger life or health. * * * The conduct of the offending party, in the absence of assault, may be such as to make life intolerable and thereby amount to such cruel treatment as to justify a decree of separation. * * * It is sufficient if the evidence, in the absence of physical violence, establishes conduct which creates a state of mind which operating upon the physical system produces bodily injury." *Waltenberg* v. *Waltenberg* (1924, 298 F. 842, 54 App. D.C. 383). See, also, *Snow* v. *Snow* (1919, 48 App. D.C. 448, certiorari denied 39 S. Ct. 492, 250 U.S. 641, 63 L. Ed. 1185).

Evidence did not establish cruelty warranting a divorce. *Trice* v. *Trice* (1925, 5 F. 2d 543, 55 App. D.C. 328).

"Cruelty" may be shown, without physical violence, but not by mere incompatibility. *Taylor* v. *Taylor* (1934, 67 F. 2d 582, 62 App. D.C. 316). See, also, *Holt* v. *Holt* (1935, 77 F. 2d 538, 64 App. D.C. 280).

A limited divorce may be granted for cruelty. *Helvestine* v. *Helvestine* (1937, 89 F. 2d 970, 67 App. D.C. 121).

False accusations of adultery, maliciously made, without probable cause or reasonable grounds for belief, and producing requisite degree of anguish, suffering, and danger to health constitute sufficient cause to warrant limited divorce for "cruelty". *Bostick* v. *Bostick* (D.C. Mun. App. 1960, 163 A. 2d 817).

Cruelty within divorce statute must depend largely on circumstances of each case. *Schreiber* v. *Schreiber* (D.C. Mun. App. 1958, 139 A. 2d 278).

Decisions of District Court

The Court of Appeals for the District of Columbia would accord great weight to findings of District Court in a divorce action. *Cocci* v. *Cocci* (1951, 185 F. 2d 898, 88 U.S. App. D.C. 43).

Definitions

While statute does not declare length of time drunkenness, cruelty, or desertion must continue, "there is no difficulty in arriving at the legal definition of the terms employed." *Maschaur* v. *Maschaur* (1904, 23 App. D.C. 87).

Denial of intercourse

"The wife's denial to the husband of matrimonial intercourse is not, of itself, ground for divorce." *Underwood* v. *Underwood* (1921, 271 F. 50 App. D.C. 323).

Desertion

"Desertion" means a voluntary separation of one party from the other without justification, with no intention to return and the absence of consent of connivance of other party. *W. Mitchell* v. *W. R. Mitchell* (D.C. App. 1963, 194 A. 2d 828).

In absence of two year statutory period of continued, uninterrupted desertion by wife, judgment for absolute divorce granted to husband on ground of desertion was improper. *Id.*

Decree granting legal separation ended possibility of a charge of further or continuing desertion against the wife. *Id.*

Evidence justified denial of divorce to the wife on the ground of desertion. *G. R. Bowles* v. *C. H. Bowles* (D.C. Mun. App. 1962, 178 A. 2d 434).

Wife was entitled to divorce on ground of desertion where husband had left, more than two years before initiation of action, for no good or stated reason and without wife's consent. *V. Gaskins* v. *F. L. Gaskins* (D.C. Mun. App. 1961, 175 A. 2d 783).

Right of wife to divorce on ground of desertion was not lost; although, more than four years after husband left, she did not offer to mend situation by taking him back. *Id.*

Testimony of wife, corroborated in part, that husband left, taking most of his belongings, and did not say where he was going, that she could not locate him, and that about two months later he came to get rest of belongings and told her she could get divorce but did not say where he was going, was not inherently incredible. *Id.*

Where trial court which granted husband divorce on ground of desertion made no specific finding of fact as to whether it had been purpose and intent of husband, in entering into separation agreement, to consent or acquiesce in separation, case would be remanded for proper consideration of issue. *Lort* v. *Lort* (1952, 198 F. 2d 598, 91 U.S. App. D.C. 118, 34 A.L.R. 2d 951).

One unjustifiably deserted need not seek a reconcilement. *Underwood* v. *Underwood* (1921, 271 F. 553, 50 App. D.C. 323).

Ill temper and differences over financial matters are not sufficient to justify desertion. "Acts justifying desertion must be such as would support a decree for divorce." *Id.*

"No definite period of desertion is prescribed. Intent, therefore, plays an important part in determining the question. While actual separation and intention to desert must exist together to constitute desertion, it is apparent that they need not be identical in their commencement. Thus, if the departure antedates the intention to desert, the period of desertion dates from the time such intention was formed. *Hitchcock* v. *Hitchcock* (1899, 15 App. D.C. 81), while if the intention to desert antedates the departure, the period commences to run from the time of the latter." *Moncure* v. *Moncure* (1922, 278 F. 1005, 51 App. D.C. 292). See, also, *Blandy* v. *Blandy* (1902, 20 App. D.C. 535).

The present law of the District authorizes absolute divorce for desertion. *Atkinson* v. *Atkinson* (1936, 82 F. 2d 847, 65 App. D.C. 241).

An unrevoked separation agreement in the absence of other circumstances bars a divorce on the ground of desertion but where other circumstances are present, the agreement becomes merely one of the factors to be considered and the question must be determined upon its merits in each case. The important consideration is whether the separation of the parties was consented to or acquiesced in by the innocent party, who except for such consent or acquiescence would have been privileged to secure a divorce upon the ground of desertion. *Parks* v. *Parks* (1938, 98 F. 2d 235, 68 App. D.C. 363).

Desertion for a period before the passage of this act may be added to time subsequent, before institution of absolute divorce proceedings, to make up the two years provided for herein. *Richardson* v. *Richardson* (1940, 112 F. 2d 19, 72 App. D.C. 67).

Dismissal of wife's action for divorce on ground of desertion was unauthorized where husband, without wife's consent, left home following a quarrel and wife had done nothing which would justify a divorce by husband and had unsuccessfully urged husband to return. *Miller* v. *Miller* (1940, 114 F. 2d 596, 72 App. D.C. 348).

Generally, a husband is guilty of "desertion" if he lives apart from wife without her consent, unless wife is guilty of acts which would justify a divorce. *Id.*

Where separation of husband and wife occurred in February, 1936, but full and complete marital relations were reestablished in February, 1940, and the reestablished relation was again terminated after February 23, 1940, alleged desertion of wife was not continuous for a period of more than two years next preceding the commencement of action by husband for absolute divorce on September 10, 1940, and therefore complaint was required to be dismissed. *Bledsoe* v. *Bledsoe* (D.C.D.C. 1942, 43 F. Supp. 784).

Wife, who did not prove that conduct of husband amounted to cruelty which would warrant a limited divorce on that ground, was not entitled to absolute divorce on ground that by reason of husband's conduct she was forced to leave him and that husband therefore was guilty of constructive desertion. *Schreiber* v. *Schreiber* (D.C. Mun. App. 1958, 139 A. 2d 278).

Under this section allowing innocent party an absolute divorce in case of desertion for two years, word "desertion" contemplates a voluntary separation without justification or an intention to return, and without consent or connivance on part of other party; the separation and intent must concur to meet requirements of desertion. *Betty L. Marcey* v. *Melvin L. Marcey* (D.C. Mun. App. 1957, 130 A. 2d 918).

Drunkenness

Cruelty resulting from excessive drinking, which will justify a spouse in leaving the other and thereby make the other guilty of constructive desertion, will justify a limited divorce. *R. W. Potts* v. *J. H. Potts* (D.C. Mun. App. 1961, 171 A. 2d 263).

When facts show occasional instances, within the three years, of disgusting and sometimes protracted intoxication, it falls short of establishing the state of habitual drunkenness required by the statute. *Acker* v. *Acker* (1903, 22 App. D.C. 353).

Enlargement of final decree

Where separation continued for more than two years since the date of the separation decree, but prior to an application of enlargement for a final decree of divorce, the parties resumed marital relations and thereafter the relationship was again severed and more than two years elapsed before the filing of the application herein, the motion for absolute divorce is not available as a basis because separation had not continued for two years since the date of such decree. *Stea* v. *Stea* (D.C.D.C. 1949, 83 F. Supp. 625).

Felony involving moral turpitude

Violation of the Harrison Act, although said act was passed as an exercise of the government's taxing power, involved control of narcotics and was a felony involving moral turpitude within meaning of this section. *Menna* v. *Menna* (1939, 102 F. 2d 617, 70 App. D.C. 13).

Where husband was convicted on plea of guilty to charge of obtaining money by false pretenses with intent to defraud and was sentenced to imprisonment for maximum of three years, and he began serving sentence and did not appeal, and seven months after conviction, wife brought suit for absolute divorce under this section authorizing divorce in case of final conviction of a felony involving moral turpitude, and a week after husband was served in divorce action he filed in criminal case a motion for new trial, it could not be said as a matter of law that husband, by lodging motion for new trial in criminal case, destroyed right of wife to divorce. *Katz* v. *Katz* (D.C. Mun. App. 1957, 136 A. 2d 261).

Foreign decree

When petitioner presented to the Virginia court the grounds on which he sought release, gave notice to the respondent of the suit, and when she appeared, especially as she maintains and raised the question whether he had standing to sue, it would be unreasonable to hold that his domicile in Virginia was not sufficient to entitle him to obtain a divorce having the same force in the District as in that State. *Davis* v. *Davis* (1938, 59 S. Ct. 3, 305 U.S. 32, 83 L. Ed. 26).

Virginia decree, lawfully obtained, constitutes a valid divorce a vinculo, entitled to full faith and credit in the Supreme Court of the District when there drawn in question. *Bloedorn* v. *Bloedorn* (1935, 76 F. 2d 812, 64 App. D.C. 199).

Divorce obtained in Maryland on grounds not recognized in the District, which was the matrimonial domicile, would be held valid. *Atkinson* v. *Atkinson* (1936, 82 F. 2d 847, 65 App. D.C. 241).

A divorce obtained by a person legally domiciled in the District who leaves it and goes into a state solely for the purpose of obtaining a divorce and with no purpose of residing there permanently, is invalid, and the District, being the bona fide residence, may forbid the enforcement within its borders of a decree of divorce so procured. *Sears* v. *Sears* (1937, 92 F. 2d 530, 67 App. D.C. 379).

Fraud

Concealing pregnancy at time of marriage, fraud. *Lenoir* v. *Lenoir* (1904, 24 App. D.C. 160). See, also, *Alexander* v. *Alexander* (1910, 36 App. D.C. 78).

Husband's choice of domicile

Generally, a husband has the right to choose the place where the family will live; and if the husband acts reasonably, the unjustified failure or refusal of wife to follow him is desertion, which, if it persists for statutory period of two years, is grounds for divorce. *Snyder* v. *Snyder* (D.C. Mun App. 1957, 134 A. 2d 587).

Insanity

This section authorizing divorce for voluntary separation for five consecutive years requires that continued separation depend upon the continued intention, so that a period of insanity suffered by the wife must be excluded in computing the statutory period. *Dorsey* v. *Dorsey* (1952, 195 F. 2d 567, 90 U.S. App. D.C. 284).

Jurisdiction

Statutory jurisdiction of United States District Court for the District of Columbia in law and equity between parties, both or either of which shall be resident or be found within the district, extends also to application for enlargement of judgment of divorce from bed and board to a judgment for absolute divorce. *Bottomley* v. *Bottomley* (1958, 262 F. 2d 33, 104 U.S. App. D.C. 311).

Laches and estoppel

Wife's delay of 21 years after separation before her first demand for support did not constitute laches barring her from permanent alimony in husband's divorce action on ground of five years' voluntary separation, in absence of showing of prejudice to husband, where wife had wished to be independent but her health deteriorated, and particularly where, during 12 of those years, she was mentally incompetent. *J. N. Samuels, Jr.* v. *D.C. Samuels* (D.C. Mun. App. 1961, 173 A. 2d 214).

In wife's divorce action, where at conclusion of hearing on husband's motion for new trial on ground of invalidity of marriage because of invalidity of wife's prior foreign divorce decree from another, court ordered wife's complaint dismissed on theory that prior marriage had not been terminated and wife's motion to vacate judgment and for new trial was not timely made, overruling of wife's motion could not be considered a determination against the wife of issues of laches and estoppel presented by her motion since it was assumed that the trial court properly overruled the motion on the ground that the motion was too late and did not pass on the merits of the motion. *Ruppert* v. *Ruppert* (1943, 134 F. 2d 497, 77 U.S. App. D.C. 65).

Under marriage and divorce statutes of District of Columbia, in determining the effect to be given irregular foreign divorce decree, the doctrines of "laches" and "estoppel" may be applied not only in annulment actions but also in divorce action where attack upon marriage by a party thereto is made by way of defense. *Id.*

Generally suits to annul marriages on ground of incapacity must be brought within a reasonable time after discovery of defect, and if action is not instituted promptly it will be barred by laches. *Jwaideh* v. *Jwaideh* (D.C. Mun. App. 1958, 140 A. 2d 303).

Where husband discovered wife's incapacity to enter into married state due to psychogenic causes within a year following marriage, but after initial treatment parties did nothing more to correct the trouble until some six years later, husband's action for annulment of marriage was barred by laches. *Id.*

Legislative intent

Congress intended by the enactment of 1935 (§§ 16–401, 16–403, 16–409, 16–421) to liberalize and enlarge the divorce laws of the District of Columbia, both as to existing and prospective conditions. *Tipping* v. *Tipping* (1936, 82 F. 2d 828, 65 App. D.C. 222).

In passing the act of August 7, 1935 (§§ 16–401, 16–403, 16–409, 16–421), it was the intention of Congress to liberalize the grounds for divorce. *Helvestine* v. *Helvestine* (1937, 89 F. 2d 970, 67 App. D.C. 121).

The purpose of liberalizing amendment to divorce statute was to permit termination of law of certain marriages which have ceased to exist in fact. *Vanderhuff* v. *Vanderhuff* (1944, 144 F. 2d 509, 79 U.S. App. D.C. 153). See, also, *Boyce* v. *Boyce* (1946, 153 F. 2d 229, 80 U.S. App. D.C. 355).

Legitimacy

While the courts of the District will refuse a husband or wife relief from a remarriage willfully contracted in violation of the laws of the District, and will not enforce the obligations of the marital status so assumed, if such enforcement will result in benefit or advantage to the wrongdoer only, judicial cognizance may be taken of such status in order to preserve and protect the rights of children and innocent persons. *Olverson* v. *Olverson* (1924, 293 F. 1015, 54 App. D.C. 48).

The courts do not look with favor on the construction of a law, if not unavoidable, which declares children illegitimate. *Thomas* v. *Murhpy* (1940, 107 F. 2d 268, 71 App. D.C. 69).

Limited divorce

Under particular circumstances the trial court should grant a limited divorce although there is no specific prayer for such decree. *O'Neil* v. *O'Neil* (1924, 299 F. 914, 55 App. D.C. 40).

Lunatic

Suit to annul marriage of lunatic may be filed by next friend, and need not be filed by his committee, although in such case the committee should be made a defendant. *Mackey* v. *Peters* (1903, 22 App. D.C. 341).

Maintenance

To entitle a wife, seeking a limited divorce, to a temporary allowance for maintenance, she must live separate and apart from her husband. *Cooper* v. *Cooper* (D.C.D.C. 1940, 30 F. Supp. 151).

Where parties enter into a ceremonial marriage and live together for 19 years, the wife, having every right to assume that her former husband from whom she had heard nothing for more than 10 years before her marriage was dead, may sue for separate maintenance upon separation. It could not be presumed that the former husband had remained alive for the 30 years, and the circumstances would establish a common-law marriage upon the death of the former husband in case he was alive at the time of the second ceremonial marriage. *Williams* v. *Williams* (D.C.D.C. 1940, 33 F. Supp. 612). See, also, *Parrella* v. *Parrella* (D.C.D.C. 1940, 33 F. Supp. 614).

Medical services

Municipal court has no power to compel a husband to provide funds for his wife's separate maintenance. Accordingly judgment obtained by physician for professional services rendered to wife against husband must be dismissed. *Irwin* v. *Hawfield* (D.C. Mun. App. 1949, 62 A. 2d 926).

Period of desertion

A limited divorce may not be granted on ground of desertion for period of less than two years. *Scott* v. *Scott* (D.C. Mun. App. 1958, 140 A. 2d 312).

Pleading

A suit for a limited divorce and alimony or, in the alternative, for separate maintenance, states two causes of action, distinct not only in the nature of the relief sought but also in the statutory causes for which it may be granted. *Pedersen* v. *Pedersen* (1940, 107 F. 2d 227, 71 App. D.C. 26).

Presumptions

That wife, in good faith continually attempted to bring about reconciliation from beginning of separation until 18 months later gave rise to a presumption, applicable in husband's action for divorce on grounds of five years' voluntary separation, that wife's continued efforts during five year period relied on had also been in good faith. *Roberts* v. *Roberts* (1955, 222 F. 2d 408, 95 U.S. App. D.C. 382).

Where wife voluntarily left husband and there was no evidence or contention that wife afterwards changed her mind and wished to return, law presumes that she did not wish to do so. *Buford* v. *Buford* (1946, 156 F. 2d 567, 81 U.S. App. D.C. 169).

Prima facie case

In action by husband for divorce on ground of desertion on theory that wife refused to accompany him to new residence, even though action was uncontested, because testimony raised an inference of possible justification of wife's conduct, husband had burden of making out at least a prima facie case and explaining away any apparent justification for wife's conduct. *Snyder* v. *Snyder* (D.C. Mun. App. 1957, 134 A. 2d 587).

Prior decree

Where wife, on November 2, 1953, obtained a limited divorce, on ground of husband's desertion, which court found began June 2, 1948, and continued more than two years, and on January 29, 1954, husband brought action for divorce on ground of voluntary separation for five consecutive years, husband's action was barred by the 1953 decree, since desertion and voluntary separation cannot exist at the same time, and there was therefore not a voluntary separation of five years when husband brought action. *Pratt* v. *Pratt* (1957, 240 F. 2d 639, 99 U.S App. D.C. 401).

Prior divorce invalid

In wife's divorce action, husband's motion for new trial on ground that wife's divorce decree from another was invalid because of fraud perpetrated on court in respect of wife's residence presented a "question of fact" and decision granting new trial was not so wanting in evidential support as to be arbitrary. *Ruppert* v. *Ruppert* (1943, 134 F. 2d 497, 77 U.S. App. D.C. 65).

A divorce to a husband in Virginia being invalid, his subsequent marriage was void, his wife acquired no rights, nor his children, except to have their legitimacy declared. *Frey* v. *Frey* (1932, 59 F. 2d 1046, 61 App. D.C. 232).

Proceedings

A proceeding for absolute divorce may be either by a new suit or by a petition in an old suit for a limited divorce in which the defendant has been brought in by rule to show cause. *Stern* v. *Stern* (D.C. Sup. 1948, 80 F. Supp. 266).

Purpose

The purpose of this section making voluntary separation from bed and board for five consecutive years ground for divorce is to permit termination in law of marriages which have ceased to exist in fact. *Hawkins* v. *Hawkins* (1951, 191 F. 2d 344, 89 U.S. App. D.C. 147).

Question of fact

In divorce proceeding, question whether as result of conduct of husband wife suffered requisite impairment of health to justify granting of divorce on ground of cruelty was question of fact. *Schreiber* v. *Schreiber* (D.C. Mun. App. 1958, 139 A. 2d 278).

Recrimination

Recrimination is not an absolute bar to a divorce. *Vanderhuff* v. *Vanderhuff* (1944, 144 F. 2d 509, 79 U.S. App. D.C. 153).

A husband's invalid marriage to another did not preclude husband and lawful wife from ending their separation and resuming life together, and the remarriage was immaterial to action for divorce by husband under five-year provisions of this section, since recrimination is no longer a defense to a divorce suit. *Buford* v. *Buford* (1946, 156 F. 2d 567, 81 U.S. App. D.C. 169).

Remarriage

District law, forbidding remarriage of guilty party (provision subsequently eliminated from law by amendment) to divorce, does not render invalid subsequent remarriage in Florida. *Loughran* v. *Loughran* (1934, 54 S. Ct. 684, 292, U.S. 216, 78 L. Ed. 1219, rehearing denied 54 S. Ct. 861, 292 U.S. 615, 78 L. Ed. 1474).

A remarriage elsewhere in disregard of the statute, even when both parties remained domiciled in the District, is not void ab initio, but, at most, voidable, and a voidable marriage cannot be annulled after death of either spouse. *Id.*

Provision that after divorce for adultery the innocent party only may remarry was eliminated by 1935 amendment. *Thomas* v. *Murphy* (1940, 107 F. 2d 268, 71 App. D.C. 69).

Separation agreement

Order, dismissing wife's complaint because of belief that separation agreement barred right to absolute divorce on ground of two years' desertion, was reversed and cause remanded for new trial. *E. S. Coles* v. *W. W. Coles* (D.C. App. 1964, 200 A. 2d 193).

Evidence supported finding that wife had acted voluntarily in entering into separation agreement with husband, who was suing for divorce on ground of 5-year voluntary separation and who had made lengthy negotiations with wife's lawyer who had thereafter prepared the agreement. *R. C. Clement* v. *H. G. Clement* (D.C. Mun. App. 1962, 179 A. 2d 433).

The validity of separation agreement depended on whether it was fairly and voluntarily made, if intended as complete and final settlement, and if so made, it was binding and barred further claims by wife. *B. LeBert-Francis* v. *M. P. LeBert-Francis* (D.C. Mun. App. 1961, 175 A. 2d 602).

Evidence sustained finding that husband had, by his acts as well as by execution of separation agreement with his wife, confirmed and consented to separation already existing between parties, and did not carry his burden, showing desertion. *G. N. Keller* v. *D. W. Keller* (D.C. Mun. App. 1961, 171 A. 2d 511).

Generally, an unrevoked separation agreement, in absence of other circumstances, bars a divorce on ground of desertion, but where other circumstances appear, agreement becomes one of factors to be considered and question must be determined upon the merits, important considerations being whether separation of parties was consented to or acquiesced in by innocent party who except for such consent or acquiescence would have been privileged to secure divorce on ground of desertion. *Lort* v. *Lort* (1952, 198 F. 2d 598, 91 U.S. App. D.C. 118, 34 A.L.R. 2d 951).

If parties to a marriage separated by agreement without cohabitation for more than eight years under the old law and one month under the new law, the actual status of the parties should be recognized and the separation be regarded as a ground for divorce rather than require separation should continue for four years and eleven months more before a divorce could be granted. *Tipping* v. *Tipping* (1936, 82 F. 2d 828, 65 App. D.C. 222).

Separation from bed and board

Husband and wife who, though they sometimes eat at the same table, never eat together with any decent degree of socialibility are "separated from board" within meaning of this section making separation from bed and board for five consecutive years ground for divorce. *Hawkins* v. *Hawkins* (1951, 191 F. 2d 344, 89 U.S. App. D.C. 147).

Sharing a "board" within meaning of this section connotes eating together with some decent degree of sociability. *Id.*

The fact that husband and wife, after separation, continued to live under the same roof and shared in the use of the same dining table did not establish that there was no "separation from bed and board," where they did not occupy the same room and alternated in the use of the table to avoid friction. *Boyce* v. *Boyce* (1946, 153 F. 2d 229, 80 U.S. App. D.C. 355).

Legal separation from bed and board is authorized for various grounds including cruelty. *Pedersen* v. *Pedersen* (1940, 107 F. 2d 277, 71 App. D.C. 26).

Under this section as amended in 1935, a divorce a mensa et thoro establishes a permanent status which can be changed only by revocation of the decree or by absolute divorce for cause arising since the decree or by the enlargement of the decree into a decree of absolute divorce upon the application of the innocent spouse. *Parks* v. *Parks* (D.C.D.C. 1948, 79 F. Supp. 919, reversed on other grounds 116 F. 2d 556, 73 App. D.C. 93).

The phrase "legal separation from bed and board" is a synonymous term with divorce a mensa et thoro. *Maschaur* v. *Maschaur* (D.C.D.C. 23 App. D.C. 87).

Divorce a vinculo matrimonii is final, while separation from bed and board is only a partial divorce. *Id.*

Standard of proof

That wife, who was sued by husband for desertion, failed to substantiate her counterclaim for divorce for husband's constructive desertion on basis that his cruelty had forced her to leave did not entitle husband to absolute divorce because wife admitted leaving marital abode. *J. M. Stephenson* v. *V. Stephenson* (D.C. App. 1963, 191 A. 2d 248).

1935 Amendments to Code did not lesson standard of proof required to sustain divorce on one of statutory ground. *Id.*

Admissions of both counsel at end of trial, in which both husband and wife sought divorce on ground of desertion, that neither party objected to the other's obtaining divorce on ground of desertion did not lend strength to proof of desertion of either side. *Id.*

Willingness of parties to have bonds of matrimony severed is not substitute for evidentiary showing required to establish statutory grounds for divorce. *Id.*

Status of divorce from bed and board

A judgment of divorce from bed and board in the District of Columbia leaves the parties in the continuing status of husband and wife, with inherent possibility that a further motion for absolute divorce will be made, and the action therefore remains open for further action as though it were an equity injunction. *Bottomley* v. *Bottomley* (1958, 262 F. 2d 23, 104 U.S. App. D.C. 311).

Sufficiency of evidence

In husband's divorce action on ground of five years' voluntary separation, evidence whether wife's attempts to effect a reconciliation during five year period relied on had been in good faith did not support finding that separation had been voluntary. *Roberts* v. *Roberts* (1955, 222 F. 2d 408, 95 U.S. App. D.C. 382).

Evidence sustained judgment denying husband a divorce under this section. *Butler* v. *Butler* (1946, 154 F. 2d 203, 81 U.S. App. D.C. 26).

Evidence, consisting of wife's uncontradicted testimony as to husband's impotence at time of marriage, corroborated by record of prior annulment suit against husband in which a former wife obtained an annulment upon ground of fraudulent misrepresentation of his matrimonial capacity, was sufficient to require judgment of annulment on ground of matrimonial incapacity. *Kaufman* v. *Kaufman* (1948, 164 F. 2d 519, 82 U.S. App. D.C. 397).

Evidence justified denial of limited divorce for cruelty to either husband or wife. *O'Neal* v. *O'Neal* (D.C.D.C. 1948, 80 F. Supp. 538).

There was sufficient evidence to find cruelty, taking into consideration that appellant was and is an admittedly nervous woman. *Kimmell* v. *Kimmell* (1949, 171 F. 2d 340, 84 U.S. App. D.C. 177).

A wife seeking a divorce under the District Code is not required to live separate and apart from the husband further than to segregate herself from him so as to avoid condoning acts which she charges as the basis for divorce. The essential thing is not separate roofs but separate lives so as to abandon with apparent permanency of intention the relation of husband and wife. *Hurd* v. *Hurd* (1950, 179 F. 2d 68, 86 U.S. App. D.C. 62).

That the parties to a divorce continue their residence in the same dwelling is merely a fact which is evidentiary on the question as to whether they are living together as husband and wife. *Id.*

Where appellant attacked a limited divorce granted for cruelty upon the ground of insufficient evidence, and testimony showed no physical violence or abuse and no evidence that the wife's health had suffered by reason of husband's mistreatment and neglect, the charge of cruelty was not proved and the judgment awarding the divorce should be reversed. *Moore* v. *Moore* (1950, 179 F. 2d 38, 86 U.S. App. D.C. 16).

The evidence was sufficient to support the granting of a limited divorce for cruelty in favor of appellee. *Reilly* v. *Reilly* (1950, 182 F. 2d 108, 86 U.S. App. D.C. 345, certiorari denied 71 S. Ct. 90, 340 U.S. 865, 95 L. Ed. 632).

In action for divorce by wife who alleged that by reason of her husband's conduct which amounted to cruelty she was forced to leave him and that he therefore was guilty of constructive desertion, evidence sustained find-

ing that wife's health was not affected by husband's conduct. *Schreiber* v. *Schreiber* (D.C. Mun. App. 1958, 139 A. 2d 278).

In action by wife for a limited divorce on grounds of cruelty and for maintenance for support of herself and five minor children of the marriage, evidence supported judgment denying divorce but granting wife separate maintenance and custody. *Divers* v. *Divers* (D.C. Mun. App. 1957, 134 A. 2d 332).

Termination of decree

Final divorce decree, which changes the fundamental relationship of parties, terminates wife's right to receive alimony under a preceding separation decree predicated on her status as a wife. *Holmes* v. *Holmes* (1946, 155 F. 2d 737, 81 U.S. App. D.C. 132, 166 A.L.R. 1000).

Alimony, awarded in decree for divorce a mensa et thoro subject to further order of court, was automatically terminated by decree a vinculo matrimonii in which no provision for or reference to payment of alimony was made, even though the decree a vinculo was obtained pursuant to provisions of local rules for enlargement of decree. *Id.*

Vacation of residence

Where court denied limited divorce for cruelty to either party, and wife purchased residential property with her own funds, and continued presence of the husband therein constituted a threat to wife's health, and the parties had already voluntarily separated, court would compel the husband to move from the residence upon the petition of the wife. *O'Neal* v. *O'Neal* (D.C.D.C. 1948, 80 F. Supp. 538).

Voidable marriages

Where boy who was of the age of 16 years and 7 months and girl who was of the age of 15 years and 10 months were domiciled in District of Columbia, and boy obtained father's consent to marry by falsely representing that girl was pregnant and obtained Virginia marriage license by falsely representing that he was age 18 and that she was age 17, and after their marriage in Virginia they lived together in District of Columbia in their own home as man and wife for about six months and then separated, under the District of Columbia statutes the marriage, although forbidden, was not void ab initio, but was merely void when declared so by court decree, and court had judicial discretion to refuse to grant annulment, and under the circumstances such refusal was not abuse of discretion. *Duley, etc.* v. *Duley* (D.C. Mun. App. 1959, 151 A. 2d 255).

To establish ground for divorce under this section plaintiff must prove that spouse had affirmatively agreed to separation through its duration, that spouse had silently acquiesced during period relied upon, or that spouse did not actually in good faith manifest a desire to continue marriage relation, thus justifying a conclusion of acquiescence. *Roberts* v. *Roberts* (1955, 222 F. 2d 408, 95 U.S. App. D.C. 382).

Marriages which, because of long separation, have ceased in fact to exist, may, for that reason, be legally ended only where separation has been continuously voluntary on part of both parties for statutory period. *Id.*

Where separation of wife and husband was voluntary originally, and shortly thereafter wife was committed to mental institution as insane, time spent by wife in the institution could not be counted as time spouses were voluntarily separated so as to entitle husband to an absolute divorce on ground that spouses were voluntarily separated for five years notwithstanding that wife in visits to her home manifested no change of attitude regarding the separation. *Dorsey* v. *Dorsey* (1952, 195 F. 2d 567, 90 U.S. App. D.C. 284).

Evidence that husband and wife, while continuing to live in the same house, had for twenty years occupied separate bedrooms, had no marital relations or social life together and, though they sometimes ate together, did not speak to each other, established voluntary "separation from bed and board" as ground for absolute divorce. *Hawkins* v. *Hawkins* (1951, 191 F. 2d 344, 89 U.S. App. D.C. 147).

Where husband and wife for twenty years occupied separate bedrooms, had no marital relations or social life together and did not speak to each other, in absence of anything to suggest that they did not intend to do what they did and regardless of whether they knew the legal effect of their conduct, their separation was "voluntary" within meaning of this section making voluntary separation from bed and board for five consecutive years ground for divorce. *Id.*

In divorce action evidence was insufficient to establish that wife had during the statutory five year period made any effort to get in touch with her husband so as to effect a reconciliation, and therefore separation of parties must be deemed to have been voluntary within meaning of this section. *Cocci* v. *Cocci* (1951, 185 F. 2d 898, 88 U.S. App. D.C. 43).

In divorce action, whether conversations which wife stated she had with her husband did occur, and whether they constituted substantial efforts on her part, made in good faith to effect a reconciliation, as bearing on whether 5 years' separation of husband and wife was voluntary within this section, were questions of fact. *Farish* v. *Farish* (1951, 185 F. 2d 425, 87 U.S. App. D.C. 329).

This section authorizing divorce on voluntary separation for five years without cohabitation, retroactively applied, was valid. *Tipping* v. *Tipping* (1936, 82 F. 2d 828, 65 App. D.C. 222). See, also, *Parks* v. *Parks* (1941, 116 F. 2d 556, 73 App. D.C. 93).

Record justified decree awarding husband absolute divorce on ground of five years' voluntary separation, notwithstanding wife had previously obtained limited divorce or separation, with maintenance, in New York, on ground, among others, of cruelty which made it unsafe and improper for her to cohabit with her husband. *Clemens* v. *Clemens* (1944, 143 F. 2d 24, 79 U.S. App. D.C. 116, certiorari denied 65 S. Ct. 76, 323 U.S. 736, 89 L. Ed. 590).

The fact that separation resulted from husband's fault was not a defense to husband's suit for absolute divorce under this section. *Parks* v. *Parks* (1941, 116 F. 2d 556, 73 App. D.C. 93).

Where husband deserted wife, without cause, on April 18, 1932, and parties did not live together thereafter, and husband filed suit on May 6, 1938, for absolute divorce, and wife, although wishing that husband would return, silently acquiesced in separation, husband was entitled to divorce, since wife's asquiescence made separation "voluntary", within less than a year after it began, within contemplation of this section. *Id.*

That wife had obtained a limited divorce from husband did not prevent husband from subsequently obtaining an absolute divorce on ground of separation or of voluntary separation. *Id.*

A separation agreement signed by husband and wife after husband deserted wife was no defense to husband's suit for absolute divorce where separation had been voluntary for more than five years before commencement of suit. *Id*

A deserted spouse need not make attempts to end the separation in order to obtain a divorce, and even actual unwillingness on her part to take the deserter back does not prevent her from obtaining a divorce. *Id.*

A husband was entitled to divorce on ground of voluntary separation for five years, where separation was originally voluntary on both sides and wife failed to establish that her subsequent requests that husband return to her were made in good faith. *Bowers* v. *Bowers* (1944, 143 F. 2d 158, 79 U.S. App. D.C. 146).

Under this section authorizing divorce for voluntary separation for five consecutive years, divorce is authorized if both parties voluntarily and continuously acquiesce in separation during five years, even though separation was not originally voluntary on both sides. *Id.*

Under this section authorizing divorce for voluntary separation for five consecutive years, divorce is unauthorized if either party does not voluntarily and continuously acquiesce in separation during five years, even though separation was originally voluntary on both sides. *Id*

Under this section authorizing absolute divorce on ground of five years' voluntary separation without cohabitation, if wife's leaving of husband was influenced by unkindness or even cruelty that is immaterial under this section, since provocation or justification for an act is not to say that the act is involuntary. *Buford* v. *Buford* (1946, 156 F. 2d 567, 81 U.S. App. D.C. 169).

When separation is continued more than five years and neither party has tried to end it, a divorce should be granted. *Id.*

Husband's silent acquiescence in continued separation made the separation "voluntary" in the statutory sense less than six months after it began. *Id.*

For plaintiff to be entitled to a divorce under this section, it must be established that the separation was voluntary at the outset, or that the defendant's silent acquiescence made the separation voluntary, in the statutory sense. *Butler* v. *Butler* (1946, 154 F. 2d 203, 81 U.S. App. D.C. 26).

Where husband and wife after separation continued to occupy separate rooms under the same roof, but had no marital relations, and ate at different times, although using the same table, and husband silently acquiesced therein for more than five years, wife was entitled to divorce under this section on ground of voluntary separation from bed and board for five consecutive years without cohabitation. *Boyce* v. *Boyce* (1946, 153 F. 2d 229, 80 U.S. App. D.C. 355).

Under provision of this section authorizing an absolute divorce on ground of voluntary separation from bed and board for five consecutive years without cohabitation, where the separation was not voluntary on part of wife for the full term of five consecutive years, fact that the court also found that the parties for all practical purposes had been unmarried since 1939 did not entitle the husband to a divorce. *Martin* v. *Martin* (1947, 160 F. 2d 20, 82 U.S. App. D.C. 40).

Under provision of this section authorizing an absolute divorce on the ground of voluntary separation from bed and board for five consecutive years without cohabitation, "voluntary" connotes an agreement and unless the parties agreed to live apart, separation is not voluntary. *Id.*

This section authorizing divorce for voluntary separation for five consecutive years requires a physical separation plus a mental disposition which gives a voluntary character to the separation, and the initial character of separation is not determinative of voluntariness of separation. *Dorsey* v. *Dorsey* (D.C.D.C. 1951, 94 F. Supp. 917, affirmed 195 F. 2d 567, 90 U.S. App. D.C. 284).

Action for absolute divorce on the ground of voluntary separation for five years, brought approximately three years after defendant was granted a divorce a mensa et thoro, was premature. *Parks* v. *Parks* (D.C.D.C. 1948, 79 F. Supp. 919, reversed on other grounds 116 F. 2d 556, 73 App. D.C. 93).

A separation for five consecutive years between husband and wife is "voluntary" under the evidence so as to entitle plaintiff to divorce notwithstanding that separation was originally caused by desertion by plaintiff husband. *Helfgott* v. *Helfgott* (1950, 179 F. 2d 39, 86 U.S. App. D.C. 409).

In action by husband for divorce on ground of voluntary separation for five years, evidence was insufficient to establish that separation of the parties, even though 20 years in duration, was voluntary on part of wife, notwithstanding the fact that in answer to an interrogatory as to whether wife was willing to attempt to effect a reconciliation with her husband, she stated that she was not so willing *Maur etc.* v. *C. Ciavarro* (D.C. Mun. App. 1959, 154 A. 2d 366).

In action by husband for divorce on ground of five years' voluntary separation, evidence sustained finding that separation had not been voluntary on part of wife after original separation. *Scott* v. *Scott* (D.C. Mun. App. 1959, 147 A. 2d 449).

Voluntary separation

Husband was properly denied divorce on ground of five years' voluntary separation, where trial court found, on conflicting testimony of husband and wife, that husband had failed to prove that separation was voluntary. *O. O. Taylor* v. *Lola C. Taylor* (D.C. App. 1963, 191 A. 2d 140).

In action for absolute divorce on ground of voluntary separation from bed and board for five consecutive years without cohabitation, evidence sustained finding that the parties had not been voluntarily separated from bed and board without cohabitation for the five years next preceding the filing of the complaint. *Talbert* v. *Talbert* (1955, 223 F. 2d 347, 96 U.S. App. D.C. 55).

Waiver

Separation agreement which required parties, in event of decree of divorce or of separation, to request no sum for maintenance, alimony, property settlement, costs or attorney fees except as provided therein, did not constitute waiver of attorney's fees to wife's counsel in husband's unsuccessful divorce action. *G. N. Keller* v. *D. W. Keller* (D.C. Mun. App. 1961, 171 A. 2d 511).

II. Under Present Law

Constructive desertion

Spouse who seeks to justify his or her desertion by establishing constructive desertion on part of other spouse must do so by proving acts of cruelty sufficient to support a limited divorce. *J. R. Mazique* v. *E. C. Mazique* (1966, 356 F. 2d 801, 123 U.S. App. DC 48)

Failure to establish constructive desertion entitles opposing spouse to divorce on grounds of unwarranted desertion, providing that guilty party remained away from statutory two-year period. *Id.*

For "constructive desertion", as ground for divorce, spouse must show misconduct by the other spouse forcing the former to abandon the marital abode. *E. S. Hales* v. *D. E. Hales* (D.C. App. 1965, 207 A. 2d 657).

Husband who found doors to his home secured against his entry and thereafter failed to make any effort to reconcile with his wife despite her overtures to him was not entitled to divorce on ground of constructive desertion. *Id.*

Corroboration

Hearsay testimony of husband's witnesses as to wife's adultery was not corroborative of wife's admission in divorce action. *Hagans v. Hagans* (D.C. App. 1966, 215 A. 2d 842).

Court's amendment of pleadings

Trial court's amendment of pleadings, sua sponte, in divorce action based on desertion on ground that proof adduced at trial established that husband was entitled to divorce for wife's adultery amounted to introduction after trial of new cause of action and was reversible error. *Hagans* v. *Hagans* (D.C. App. 1966, 215 A. 2d 842).

Desertion

Evidence in husband's divorce action supported finding that wife had deserted without just cause. *J. R. Mazique* v. *E. C. Mazique* (1966, 356 F. 2d 801, 123 U.S. App. D.C. 48).

Felony involving moral turpitude

Where spouse had been convicted of attempted robbery and sentenced to reformatory under Federal Youth Corrections Act for an indeterminate sentence with maximum limit of six years, wife was entitled to absolute divorce on ground that spouse had been convicted of felony and sentenced to penal institution for not less than two years, although youth offender may be released at any time *Courtney* v. *Courtney* (D.C. App. 1965, 214 A. 2d 478).

Attempted robbery was crime involving moral turpitude within divorce statute. *Id.*

For purposes of statute authorizing divorce on conviction for felony and sentence to penal institution for not less than two years, maximum limits of sentence must be considered to determine length of sentence. *Id.*

For purposes of divorce statute, sentence under Youth Corrections Act is sentence to a "penal institution." *Id.*

Grounds for divorce

A single assault by wife, striking husband with a glass, was not sufficient cruelty to warrant divorce in absence of showing that husband's health was impaired, or that husband had to consult a doctor or had reasonable apprehension of serious future danger, especially where attack was not wholly unprovoked. *M. R. Chapple* v. *C. C. Chapple* (D.C. App. 1964, 204 A. 2d 815).

Generally, proof of a single assault will not necessarily constitute sufficient cruelty to sever bonds of matrimony, but a single act of violence may be so severe and atrocious under particular circumstances as to satisfy the statute. *Id.*

Presumptions

Presumption of forgiveness or condonation arises from resumption of marital relations which, absent satisfactory showing that no true forgiveness existed or that

apparent resumption of ordinary marital relations was illusory, cancels out earlier offense. *J. R. Mazique* v. *E. C. Mazique* (1966, 356 F. 2d 801, 123 U.S. App. D.C. 48).

Proper parties

Where second wife sued husband for legal separation from bed and board on ground of alleged cruelty, and he counterclaimed for annulment on ground that marriage was void ab initio, and after trial, but while case was still under advisement by trial judge, husband died, husband's minor children by first marriage lacked standing as "proper parties" to press annulment claim to its conclusion. *J. D. Nunley et al.* v. *B. G. Nunley* (D.C. App. 1965, 210 A. 2d 12).

If validity of second marriage of deceased father was challenged by his minor children in probate proceedings, court would have power to investigate fully and determine whether marriage was void ab initio or voidable and would be required to resolve whether second wife was in fact and in law a surviving wife before it could approve any distribution to her from estate. *Id.*

Sufficiency of evidence

Evidence sustained finding, in wife's action for limited divorce and for separate maintenance, that there was no substantial evidence of excessive drinking, that wife failed to prove the claimed threats, that, although husband had slapped wife on two occasions, she was not justified in leaving the marital domicile, and that husband adequately supported wife up to time she left him. *Hannon* v. *Hannon* (D.C. App. 1966, 220 A. 2d 94).

A single assault, or two isolated assaults, by one spouse upon the other does not necessarily constitute sufficient cruelty to justify injured spouse in leaving marital abode. *Id.*

Evidence supported findings that husband's departure from marital abode was without justification and without wife's consent. *McEachnie* v. *McEachnie* (D.C. App. 1966, 216 A. 2d 169).

Adultery must be proved by clear and convincing evidence, and confession thereof must be well established, direct, certain, free from suspicion of collusion, and corroborated by independent facts and circumstances. *Hagans* v. *Hagans* (D.C. App. 1966, 215 A. 2d 842).

Even if trial court's amendment of pleadings in divorce action based on desertion, sua sponte, on ground that proof established that husband was entitled to divorce for wife's adultery was permissible under amendment rule, evidence was insufficient to sustain finding of adultery. *Id.*

Voluntary separation

Evidence in wife's divorce action, based on five years' voluntary separation, did not support finding that husband had made good faith offers of reconciliation. *H. C. Glendening* v. *H. S. Glendening* (D.C. App. 1965, 206 A. 2d 824).

Purpose of statute permitting divorce for five years' voluntary separation is to permit termination in law of marriages which have ceased to exist in fact. *Id.*

"Voluntary separation", as ground for divorce requires that separation be voluntary on part of both parties. *Id.*

Question of continuing voluntariness of separation, and question of good faith in tendering offer of reconciliation, are generally questions of fact for trial judge. *Id.*

In actions for divorce on ground of voluntary separation for five consecutive years without cohabitation, trial judge must decide from all testimony whether spouse who disputes that separation was voluntary did in good faith manifest real desire to continue marriage status, and such manifestation must be showing of desire to resume marital relationship which must be directed to petitioning party, and desires not reflected in conduct have little or no legal significance. *B. J. Henderson* v. *T. S. T. Henderson* (D.C. App. 1965, 206 A. 2d 267).

In absence of proof of mutual consent to initial separation of husband and wife, issue of continuing voluntariness of separation for five-year period specified by statute as ground for divorce is generally question of fact for trial judge. *Id.*

Evidence supported finding that wife, who was sued by husband for divorce on ground of voluntary separation, had acquiesced in mutual voluntary separation for five consecutive years as required by statute. *Id.*

Under statute providing for absolute divorce when husband and wife have been voluntarily separated from bed and board for five consecutive years without cohabitation, one essential element that party seeking divorce must establish is that separation was voluntary on part of both for statutory period. *Id.*

If party seeking divorce on ground of voluntary separation for five consecutive years without cohabitation cannot prove that his spouse agreed to separation throughout five-year period or had silently acquiesced therein, he must establish that other spouse did not in good faith manifest desire to continue marriage, thus justifying conclusion that there had been acquiescence in fact to separation for critical period. *Id.*

Nature of separation at its inception is not determinative of its continuing character, but is only evidence thereof, and if one spouse does not agree to separation at beginning, that spouse may thereafter affirmatively consent or silently acquiesce therein for required period. *Id.*

If either spouse does not continuously acquiesce in separation during five-year statutory period, statute authorizing absolute divorce on ground of voluntary separation does not authorize divorce. *Id.*

Evidence supported finding that separation between husband seeking divorce on ground of five years' voluntary separation and wife who claimed she did not leave the marital abode voluntarily and that she wrote husband a number of times expressing readiness and willingness to return but that the offers were ignored had not been voluntary. *J. K. Lewis* v. *E. M. Lewis* (D.C. App. 1965, 206 A. 2d 266).

§ 16–905. Revocation of decree of divorce from bed and board

The court may revoke its decree of divorce from bed and board at any time, upon the joint application of the parties to be discharged from the operation of the decree. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–404 (Mar. 3, 1901, ch. 854, § 969, 31 Stat. 1345).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Repeal

The 1935 amendment to §§ 401, 403, 409, 421 of this title did not affect the repeal of this section providing for a revocation of a decree of divorce a mensa et thoro upon joint application of the parties. *Parks* v. *Parks* (D.C.D.C. 1948, 79 F. Supp. 919, reversed on other grounds 116 F. 2d 556, 73 App. D.C. 93).

§ 16–906. Causes for absolute divorce arising after decree for separation

Where a divorce from bed and board has been decreed the court may afterwards decree an absolute divorce between the parties for any cause arising since the first decree and sufficient to entitle the complaining party to the second decree. (Dec. 23, 1963, 77 Stat. 561, Pub. L, 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–405 (Mar. 3, 1901, ch. 854, § 970, 31 Stat. 1345).

A minor change is made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Enlargement of final decree

The motion for enlargement of the decree of limited divorce into one of absolute divorce is denied but without prejudice to an independent action by the plaintiff for an absolute divorce if she has grounds therefor in accordance with § 16–405. *Stea* v. *Stea* (D.C.D.C. 1949, 83 F. Supp. 625).

§ 16–907. Legitimacy of issue of annulled marriage contracted while another in force

If any marriage is declared by decree to be void because either party has a former wife or husband living, and it appears that the marriage was contracted in good faith by the other party and in ignorance of the obstacle to the marriage, the court shall so find and declare in its decree, and the issue of the marriage shall be deemed to be the legitimate issue of the parent who was capable of contracting. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–406 (Mar. 3, 1901, ch. 854, § 972, 31 Stat. 1346).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Marriage—when void

When divorce decree was obtained in Virginia through falsehood, any subsequent marriage by either party is void. *Frey* v. *Frey* (1932, 59 F. 2d 1046, 61 App. D.C. 232).

§ 16–908. Legitimacy of issue of annulled marriage with lunatic

If a marriage is declared null and void because of the idiocy or lunacy of either party at the time of the marriage the issue of the marriage shall be deemed legitimate. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–407 (Mar. 3, 1901, ch. 854, § 973, 31 Stat. 1346).

Minor changes are made in phraseology.

§ 16–909. Legitimacy of issue of divorced marriage

A divorce for a cause provided for by this chapter does not affect the legitimacy of the issue of the marriage dissolved by the divorce, but the legitimacy of the issue, if questioned, shall be tried and determined according to the course of the common law. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–408 (Mar. 3, 1901, ch. 854, § 974, 31 Stat. 1346).

Changes are made in phraseology.

§ 16–910. Dissolution of property rights; jurisdiction of court

Upon the entry of a final decree of annulment or absolute divorce, in the absence of a valid antenuptial or postnuptial agreement in relation thereto, all property rights of the parties in joint tenancy or tenancy by the entirety shall stand dissolved and, in the same proceeding in which the decree is entered, the court may award the property to the one lawfully entitled thereto or apportion it in such manner as seems equitable, just, and reasonable. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–409 (Mar. 3, 1901, ch. 854, § 974a, as added Aug. 7, 1935, ch. 453, § 3, 49 Stat. 540).

Changes are made in phraseology.

CROSS REFERENCE

Joint deposits, accounts, or safety deposit boxes, see § 26–201 et seq.

NOTES TO DECISIONS

I. UNDER PRIOR LAW

Antenuptial agreements

Under this section permitting husband and wife to retain incidents of tenancy by entireties by valid antenuptial or postnuptial agreement "in relation" thereto, property settlement agreement must be made "in relation" to property rights of parties rather than "in relation" to the divorce and consequently any agreement which preserves those property rights of parties is sufficient. *Heath* v. *Heath* (1951, 189 F. 2d 697, 89 U.S. App. D.C. 68).

Authority to partition property held by the entirety

District court, refusing a divorce, has no power or authority to partition or award to one spouse real property which is titled by the entireties. *Hogan* v. *Hogan* (1958, 250 F. 2d 412, 102 U.S. App. D.C. 87).

Discretion of court

Denial to wife, divorced on ground of adultery, of any share of home property held by husband and wife as tenants by entirety was not abuse of discretion. *P. C. Pearsall and R. H. Hill* v. *H. C. Pearsall* (D.C. App. 1964, 197 A. 2d 269).

Where in annulment proceedings, trial court excluded evidence of wife's contribution toward the purchase of a house and where the record shows that husband's counsel, without having offered evidence, expressly rested except for the identification of the parties, there was no error or abuse or discretion in the court's subsequent ruling that it was too late for counsel of husband to make a proffer of testimony. *Nelson* v. *Nelson* (1949, 171 F. 2d 1021, 84 U.S. App. D.C. 167).

Duty of court

District court has the right and duty to exercise a sound judicial discretion in adjusting the property rights of the parties. *Slaughter* v. *Slaughter* (1949, 171 F. 2d 129, 83 U.S. App. D.C. 301).

Inapplicability of statute

In a suit for limited divorce for cruelty, this section does not apply since its provision for apportionment relates only to property in which a tenancy, joint or by entireties, dissolves through a decree for absolute divorce or nullity of marriage. *Reilly* v. *Reilly* (1950, 182 F. 2d 108, 86 U.S. App. D.C. 345, certiorari denied 71 S. Ct. 90, 340 U.S. 865, 95 L. Ed. 632).

Jurisdiction

This section does not deprive district court of jurisdiction to determine ownership of property in District of Columbia formerly held in tenancy by entirety by persons divorced by a foreign decree, there being no agreement or other decree respecting the property. *Scholl* v. *Scholl* (1946, 152 F. 2d 672, 80 U.S. App. D.C. 292).

Where ownership of house, proceeds from its occupancy under lease executed by defendant, and disposition of furniture were issues presented by complaint for divorce, but defendant pleaded that she had been granted an absolute divorce from plaintiff by a foreign decree, court had jurisdiction to resolve disputed ownership of rents and furniture notwithstanding court dismissed action for divorce because of foreign divorce decree. *Id.*

Where decree in proceeding for annulment of marriage incorporated by reference purported property settlement agreement which defendant claimed provided for alimony, error, if any, was in decreeing a sum over and above amount of property settlement itself, and such error, if any, did not oust court of jurisdiction to enter the decree. *Moran* v. *Moran* (1947, 160 F. 2d 925, 82 U.S. App. D.C. 107).

Procedure

This section permitting a husband and wife to retain ceeding should have power to award or apportion property owned jointly is concerned solely with matters of procedure and not with substantive powers of court. *Wheeler* v. *Wheeler* (1951, 188 F. 2d 31, 88 U.S. App. D.C. 193).

Property rights

Ordinarily, decree forfeiting wife's interest in entireties property because of adultery is effective as of date

of its entry, unless it expressly provides earlier date. *M. Schultze* v. *G. H. Schultze* (1962, 300 F. 2d 917, 112 U.S. App. D.C. 162).

Decree forfeiting wife's interest in entireties property because of adultery was effective as of date of Maryland divorce judgment, which found adultery and on basis of which forfeiture was directed, although forfeiture decree did not fix date of effect. *Id.*

Wife whose interest in entireties property was declared forfeited because of adultery was not entitled to share in rents accruing after effective date of forfeiture, nor to conveyance of one-half of property. *Id.*

Where property was conveyed to husband and wife as joint tenants and they entered into separation agreement providing that real estate jointly owned by parties should thereafter remain as joint property of parties in joint tenancy, conveyance using words creating joint tenancy actually gave husband and wife tenancy by entireties and incidents of tenancy by entirety would be retained after dissolution of marriage by reason of separation agreement, notwithstanding fact that separation agreement referred to estate as property held in joint tenancy. *Heath* v. *Heath* (1951, 189 F. 2d 697, 89 U.S. App. D.C. 68).

This section permitting a husband and wife to retain the incidents of a tenancy by the entirety after their marriage is dissolved if they so agreed but terminating such estate in the absence of agreement and authorizing court to award or apportion property involved applies to property settlement agreement when foreign divorce has been obtained. *Id.*

This section providing that, upon entry of divorce decree, property rights of parties in joint tenancy or tenancy by the entirety shall stand dissolved and court shall have power to award or apportion property does not empower court to award wife an interest in property owned by husband alone. *Wheeler* v. *Wheeler* (1951, 188 F. 2d 31, 88 U.S. App. D.C. 193).

Where wife has interest in husband's property, court in divorce proceeding may adjudicate property rights and award wife the property which belongs to her. *Id.*

Under this section, giving the court the right to adjudicate the title to property held in common, the court did not abuse its discretion in awarding to the husband, on his application for divorce, sole ownership of real estate which was purchased from a joint account established by him, the wife having been guilty of breaching the marriage vows. *Richardson* v. *Richardson* (1940, 112 F. 2d 19, 71 App. D.C. 26).

While the court has the right and duty to exercise a sound judicial discretion in adjusting the property rights of the parties, it is an abuse of discretion, upon awarding the husband a divorce, to fail to award to the husband ownership of property when the wife furnished no part of the money necessary to acquire the property and has completly forfeited her interest in it by failure to live up to the marriage covenants. *Oxley* v. *Oxley* (1947, 159 F. 2d 10, 81 U.S. App. D.C. 346).

District Court for District of Columbia had power in annulment proceeding to settle property rights of parties even if there had been no agreement between parties. *Moran* v. *Moran* (1947, 160 F. 2d 925, 82 U.S. App. D.C. 107).

It does not necessarily follow that the court would have abused its discretion if it had awarded appellant more than the amount she had contributed to the purchase of the house, and there was certainly no abuse thereof in limiting her to that amount. *Slaughter* v. *Slaughter* (1949, 171 F. 2d 129, 83 U.S. App. D.C. 301).

Property conveyed to spouses by entireties can be ordered partitioned or sold, or disputes can otherwise be adjudicated, by District Court for District of Columbia in cases where limited divorce decree is in existence; and, likewise, property held by entireties can be awarded in part, or in its totality, to one tenant, depending upon facts, evidence, etc., in case; and District Court has such power of partition or award even though divorce was granted by Municipal Court. *Hipp* v. *Hipp* (D.C.D.C. 1960, 191 F. Supp. 299).

District Court for District of Columbia had power to determine property rights of divorced parties after entry of foreign divorce. *Curles* v. *Curles et al.* (D.C.D.C. 1956, 136 F. Supp. 916, affirmed 241 F. 2d 448, 100 U.S. App. D.C. 43).

Where realty owned by husband and wife as tenants by the entirety was not referred to in final divorce decree, and wife died before decree could become effective to terminate marriage by expiration of six months, the proceedings in divorce action abated by death of plaintiff, and divorce court would not determine whether husband was entitled to property as sole surviving tenant by entirety or whether on entry of decree the husband and wife became owners as tenants in common with interest of wife passing to her heirs at law on her death. *Brown v. Brown* (D.C.D.C. 1951, 97 F. Supp. 237).

This section giving Domestic Relations Branch of Municipal Court, on grant of an absolute divorce, power to award property held by parties jointly or by entireties to one or the other of the parties, or to apportion it, was not applicable to wife's claim against her husband for individual property. *Posnick* v. *Posnick* (D.C. Mun. App. 1960, 160 A. 2d 804).

Under amendment to § 11–762 of Domestic Relations Branch Act, giving Domestic Relations Branch of Municipal Court jurisdiction over determinations and adjudications of property rights, both real and personal, in any divorce action irrespective of any jurisdictional limitation imposed on the Municipal Court, Domestic Relations Branch of Municipal Court has authority, on granting a limited divorce, to award, or partition the property, real or personal, held by the parties jointly or by entirety, in the same manner in which it may act on granting an absolute divorce. *Id.*

Review

Where trial court could not properly have awarded wife an interest in husband's property in divorce case unless wife had an interest in property, and reviewing court could not ascertain from findings and conclusions whether that was the case, the portion of award relating to that property was set aside and case remanded for further findings. *Wheeler* v. *Wheeler* (1951, 188 F. 2d 31, 88 U.S. App. D.C. 193).

Where divorce case was being remanded on issue of award to wife of an interest in husband's property and it appeared that District Court might desire to change allowances as to alimony and counsel fees, reviewing court would not pass on award with respect to those matters. *Id.*

Where evidence was conflicting in suit for divorce, Municipal Court of Appeals for the District of Columbia would not be justified in reversing findings of Municipal Court for the District of Columbia, Domestic Relations Branch, which had opportunity to hear witnesses and observe their demeanor. *Bostick* v. *Bostick* (D.C. Mun. App. 1960, 163 A. 2d 817).

Sufficiency of evidence

An award of real property to plaintiff wife in divorce proceeding on finding that she had purchased the property from proceeds of sale of a lot and premises, title to which was in her name and which she had previously purchased out of her own funds was sustained by the evidence. *Bilsborough* v. *Bilsborough* (1947, 160 F. 2d 933, 82 U.S. App. D.C. 115).

Tenancy by the entirety

Where husband and wife held realty as tenants by the entirety, and wife obtained a decree of absolute divorce that did not expressly deal with realty, and wife died five months and four days after decree was signed so that decree did not become final, divorce proceedings were properly declared abated under statutes of District of Columbia, and daughter of the deceased wife was not entitled to an interest in the realty by descent on ground that the wife was a tenant in common thereof at time of her death. *Wesley* v. *Brown* (1952, 196 F. 2d 859, 90 U.S. App. D.C. 351).

II. Under Present Law

Antenuptial or postnuptial agreements

Husband and wife can retain incidents of tenancy by entirety or joint tenancy after their marriage is dissolved if they so agree. *Hardy* v. *C. Hardy* (D.C.D.C. 1966, 250 F. Supp. 956).

Under agreement whereby checks in payment for marital domicile were to be made to husband and wife as tenants by entireties without prejudice to respective rights of husband and wife, parties intended that their rights in checks be determined according to rights in realty which would be determined by law of situs of realty and law of state in which realty was located governed their rights to the checks. *Id.*

Division of property

Property held solely in name of husband entitled to divorce on ground of a desertion was not subject to division by the court. *J. R. Mazique* v. *E. C. Mazique* (D.C. App. 1965, 206 A. 2d 577).

Jurisdiction

Action brought by husband, who had been granted divorce in Maryland on ground of wife's desertion, to declare forfeited wife's one-half interests in funds arising from sale of marital domicile in Maryland was an equity action which District of Columbia court had jurisdiction of on basis of its general grant of authority under statute. *Hardy* v. *C. Hardy* (D.C.D.C. 1966, 250 F. Supp. 956).

District of Columbia Code to effect that upon entry of final decree of divorce, all property rights of parties in joint tenancy or tenancy by entirety shall stand dissolved and court shall have power to award property to one lawfully entitled thereto was intended to endow court which entered divorce decree with power to adjudicate, in same action, property rights of parties before it, but statute is not the sole basis upon which court can exercise jurisdiction where parties before it have been divorced by a foreign decree. *Id.*

Court of one state cannot by its decree create an equitable interest in land of another state. *Id.*

Property rights

Failure to make adjudication of property rights between parties to marriage annulment proceeding was not error, where there was no jointly owned property and no property acquired by parties' joint efforts and thus no property properly subject to adjudication. *M. M. Jett* v. *L. A. Jett* (D.C. App. 1966, 221 A. 2d 925).

Award of all parties' property to divorced husband was not abuse of discretion, where there was no evidence as to wife's contribution to property after first few years of marriage, and evidence concerning early years was in conflict. *J. R. Mazique* v. *E. C. Mazique* (1966, 356 F. 2d 801, 123 U.S. App. D.C. 48).

Where property is held solely in name of one spouse, other spouse must make showing of legal or equitable interest therein to establish claim in divorce action. *Id.*

Where jointly held property is involved, and evidence shows that husband contributed bulk, if not all, of funds for purchase thereof, wife's interest is deemed to be conditioned on her faithful performance of marriage vows. *Id.*

That record title to realty or proceeds therefrom was vested in husband alone did not deprive court of general sessions of jurisdiction to award wife suing for divorce on ground that husband had been convicted of felony involving moral turpitude an interest in the properties. *J. W. Hunt* v. *M. V. Hunt* (D.C. App. 1965, 208 A. 2d 731).

Where wife entitled to divorce has legal or equitable interest in property not jointly held by husband and wife, court of general sessions may adjudicate property rights of the parties and award wife property belonging to her. *Id.*

Notwithstanding lack of showing of direct financial contribution by wife seeking divorce on ground that husband had been convicted of felony involving moral turpitude. award to wife, who had assisted in operating business, of half interest of proceeds from sale of the property was result of exercise of sound discretion. *Id.*

§ 16–911. Alimony pendente lite; suit money; enforcement; custody of children

During the pendency of an action for divorce, or an action by the husband to declare the marriage null and void, where the nullity is denied by the wife, the court may:

(1) require the husband to pay alimony to the wife for the maintenance of herself and their minor children committed to her care, and suit money, including counsel fees, to enable her to conduct her case, whether she is the plaintiff or the defendant, and enforce any order relating thereto by attachment and imprisonment for disobedience;

(2) enjoin any disposition of the husband's property to avoid the collection of the allowances so required;

(3) if the husband fails or refuses to pay the alimony or suit money, sequestrate his property and apply the income thereof to such objects; and

(4) determine who shall have the care and custody of infant children pending the proceedings. (Dec. 23, 1963, 77 Stat. 561, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–410 (Mar. 3, 1901, ch. 854, § 975, 31 Stat. 1346; June 30, 1902, ch. 1329, 32 Stat. 537).

Changes are made in phraseology.

Cross References

As to use of habeas corpus in connection with custody of children, see § 16–1908.

Orders for support of feeble-minded person enforceable as decrees for temporary alimony, see § 32–616.

NOTES TO DECISIONS

I. Under Prior Law

In general

Court may award alimony pendente lite without passing on merits of litigation. *Sparks* v. *Sparks* (1905, 25 App. D.C. 356). See, also, *Lesh* v. *Lesh* (1903, 21 App. D.C. 475).

Suit to set aside divorce and for maintenance in personam, and wife may not create jurisdiction by seizure of property and notice by publication. *Bliss* v. *Bliss* (1931, 50 F. 2d 1002, 60 App. D.C. 237).

This section purports to authorize an award pendente lite only as incident to a suit for divorce or one for annulment. *Pedersen* v. *Pedersen* (1940, 107 F. 2d 227, 71 App. D.C. 26).

Abatement

Divorce action abated upon wife's death, and, therefore, court lacked power to compel surviving husband to pay wife's counsel fees for services prior to wife's death. *B. F. Fitzgerald, Jr., et ano.* v. *M. Williams* (D.C. Mun. App. 1961, 170 A. 2d 777).

Absconding husband

This section authorizes the rendering and enforcement of personal decrees for temporary alimony and it may well be extended to include the case of an absconding husband when the matrimonial domicile of husband and wife is within jurisdiction of the court. *Thompson* v. *Tanner* (1923, 287 F. 980, 53 App. D.C. 3).

Annulment

When suit was for the annulment of the marriage, and not for a divorce, the court might allow alimony pendente lite, but it had no power to award to the defendant permanent alimony. *Alexander* v. *Alexander* (1910, 36 App. D.C. 78). See, also, *Payne* v. *Payne* (1924, 295 F. 970, 54 App. D.C. 149).

Basis for commitment

Where neither underlying order for payment of money for maintenance of minor children nor order adjudging defendant to be in contempt for failure to obey underlying order and committing defendant to jail rested upon necessary finding that defendant had failed or refused to maintain his wife and minor children although able to do so, order of commitment was invalid. *Lundergan* v. *Lundergan* (1958, 252 F. 2d 823, 102 U.S. App. D.C. 259).

When validity of commitment for contempt for nonpayment of money judgment is questioned, court will look behind commitment order to money judgment itself,

and if that judgment is invalid on its face as a basis for commitment then commitment will not be sustained, and rule that decree of court, assuming jurisdictional basis, must be obeyed until set aside by judicial process, is not applicable. *Id.*

Collection after dismissal

Installments of alimony pendente lite previously accruing are collectible after entry of a final judgment dismissing action for divorce. *Cole* v. *Cole* (1946, 67 F. Supp. 134, reversed on other grounds 161 F. 2d 883, 82 U.S. App. D.C. 155).

Contempt

Divorced husband's remarriage and acquisition of second set of children whom he must support and the attainment of majority by children of first marriage did not justify refusal to hold husband in contempt for failure to pay monthly installments which divorce decree required husband to pay for support of wife and children of first marriage. *Kephart* v. *Kephart* (1952, 193 F. 2d 677, 89 U.S. App. D.C. 373, certiorari denied 72 S. Ct. 557, 342 U.S. 944, 96 L. Ed. 702).

A wife's delay in seeking to enforce payment of alimony does not destroy or affect the husband's obligation to obey the court's order, and that obligation does not depend upon the payee's diligence in trying to collect, and contempt is shown by an inexcusable failure to pay what the court ordered and is not limited to a failure to pay sums which the wife promptly demands. *Id.*

Costs and counsel fees

Award of counsel fees to unsuccessful wife in divorce action is discretionary. *M. M. P. Ritz* v. *B. A. Ritz* (D.C. App. 1964, 197 A. 2d 155).

It requires extremely strong showing to convince reviewing court that award of counsel fees to unsuccessful wife is so arbitrary as to constitute abuse of discretion. *Id.*

In determining amount of award of counsel fees to unsuccessful wife in divorce suit, trial court is not bound by any mathematical computation of time consumed multiplied by some hourly rate. *Id.*

In determining amount of award of counsel fees to unsuccessful wife in divorce action, consideration should be given to many factors, including quality and nature of services performed, necessity for such services, results obtained from services, and husband's ability to pay. *Id.*

Trial court did not abuse its discretion in awarding unsuccessful wife only $1,500 as counsel fees, though divorce trial lasted eight days. *Id.*

"Without regard to whether or not the wife succeeds in her litigation, we think that under section 975 of the Code (this section) she is entitled to reasonable attorney's fees for services rendered in prosecuting her case and to costs of the suit." *Towson* v. *Towson* (1919, 258 F. 517, 49 App. D.C. 45).

Counsel fees of a husband who was plaintiff in divorce proceedings cannot be allowed against the corespondent. *Eichelberger* v. *Symons* (1923, 288 F. 654, 53 App. D.C. 116).

The wife was entitled to present her case, and the court may compel a husband to pay counsel fee for the wife, while refusing because of her misconduct to compel the payment of alimony. *Myers* v. *Myers* (1925, 4 F. 2d 300, 55 App. D.C. 224).

Although there had been no lawful marriage between the parties, either under the statutes or at common law, because plaintiff had a legal husband living, the court was authorized to require defendant to pay a reasonable counsel fee to plaintiff's counsel for their services. *Tendler* v. *Tendler* (1926, 12 F. 2d 831, 56 App. D.C. 296, certiorari denied 47 S. Ct. 96, 273 U.S. 637, 693, 71 L. Ed. 843).

The fact that the court found against the wife did not affect the rightfulness of the allowance for counsel fees. *Friedenwald* v. *Friedenwald* (1927, 16 F. 2d 509, 57 App. D.C. 13).

Order for "suit money" could not be entered after divorce suit had abated by reason of the plaintiff's death. *Bailey* v. *Scott* (1927, 18 F. 2d 184, 57 App. D.C. 142).

The court is not required to hear and pass upon the evidence relating to the final issues involved before granting allowance to wife for suit money and counsel fees. *Martin* v. *Martin* (1927, 18 F. 2d 823, 57 App. D.C. 173).

Counsel fees to wife in divorce proceedings; enforced by contempt proceedings. *Boardman* v. *Carey* (1933, 65 F. 2d 600, 62 App. D.C. 152).

Upon dismissal of complaint the allowance of costs and counsel fees is within the discretion of the trial court. *Shellman* v. *Shellman* (1938, 95 F. 2d 108, 68 App. D.C. 197).

Where husband appealing from judgment in divorce action granting a divorce to husband but giving custody of two children to wife and awarding wife alimony, counsel fees, and suit money, filed notice of appeal on June 27, 1940, and on July 2, 1940, the husband filed a supersedeas bond, the district court had jurisdiction on that date, to enter an order allowing suit money and counsel fees to wife in respect of appeal. *Jaffe* v. *Jaffe* (1942, 124 F. 2d 233, 74 App. D.C. 394).

If counsel for wife knowingly participates to husband's injury in wife's wrongful or inequitable conduct in connection with a divorce suit, counsel should not be assisted by the court in collecting a fee from the injured husband. *Shima* v. *Shima* (1944, 139 F. 2d 533, 78 U.S. App. D.C. 265, 150 A.L.R. 1179).

An attorney who conducts a wife's divorce case properly has a claim of his own against the husband for fees independent of and superior to any claim of the wife. *Id.*

Since attorney's liens are of an equitable nature, the court's action in forcing a husband to pay the fees of his wife's attorney in a divorce suit should be limited by equitable considerations. *Id.*

Where, on appeal from order denying divorced husband's motion to set aside a previous order of court appointing a sequestrator for pension payments due from District of Columbia to husband who had failed to make payments directed by divorce decree, application was made for allowance of counsel fees to wife's attorney, allowance of $200 would be reasonable. *Montgomery* v. *Montgomery* (1946, 153 F. 2d 634, 80 U.S. App. D.C. 344).

Where dismissing on her own motion a wife's complaint for divorce, the District court acted within its discretion in denying fees to her attorney. *Neudecker* v. *Philpot* (1949, 174 F. 2d 668, 85 U.S. App. D.C. 28).

Custody of children

Welfare of the child is a matter of paramount consideration at all times and under all circumstances. *Slack* v. *Perrine* (1896, 9 App. D.C. 128, error dismissed 17 S. Ct. 79, 169 U.S. 452, 41 L. Ed. 510).

Courts, looking principally to the welfare and happiness of the children, will award their care and custody to the one party or the other as will best promote child's interest and general welfare. *Wells* v. *Wells* (1897, 11 App. D.C. 392).

When custody of children is involved "the courts do not act to enforce the right of either parent, but to protect the interest and general welfare of the children." *Stickel* v. *Stickel* (1901, 18 App. D.C. 149).

Interest of infants is even paramount to the claim of both parents. *Seeley* v. *Seeley* (1907, 30 App. D.C. 191, 12 Ann. Cas. 1058, certiorari denied 28 S. Ct. 570, 209 U.S. 544, 52 L. Ed. 919).

This section authorizes the court to determine who shall have the care and custody of infant children pending proceedings for divorce. Since the court had jurisdiction of the appellant and of the subject-matter, it was his duty to obey the order, irrespective of whether or not it was erroneous. *Early* v. *Early* (1920, 261 F. 1003, 49 App. D.C. 123).

Equity will interfere to protect children from cruelty or from immoral influences, and may even deprive parents of the care of their own children. *Church* v. *Church* (1921, 270 F. 359, 50 App. D.C. 237).

Disposition of the custody of the child rests in the sound discretion of the court, subject to the rule that its welfare is the paramount thing to be considered. *Snow* v. *Snow* (1922, 280 F. 1013, 52 App. D.C. 39).

A father who is a party to divorce proceedings cannot, by contract or otherwise, avoid, or relieve himself from, his primary obligation to maintain a minor child. *Emrich* v. *McNeil* (1942, 126 F. 2d 841, 75 U.S. App. D.C. 307, 146 A.L.R. 1146).

Other things being equal, a child's mother should be preferred to its grandmother in determining the matter of custody, and mother's actual custody should not be

disturbed while divorce suit was pending. *Kirk* v. *Kirk* (1945, 150 F. 2d 589, 80 U.S. App. D.C. 183).

In child custody case, where district court, acting through different judges, had on four or five previous occasions found wife an unsuitable person to have custody, order requiring that custody be delivered to divorced husband was not abuse of discretion. *Steele* v. *Steele* (1948, 168 F. 2d 562, 83 U.S. App. D.C. 254).

In child custody case, either party is entitled to have his evidence presented through mouths of his witnesses rather than by affidavits. *Id.*

In child custody case, where plaintiff's counsel, in order to obtain hearing at early date and out of order, agreed to submit case on affidavits, court's refusal of request at trial to hear testimony of child, then nine years of age, was not error, not only because matter was in trial court's sound discretion, but also because to have granted request would have violated conditions on which case was set down for hearing, particularly where stenographic transcript of child's evidence given in police court was before trial court for consideration. *Id.*

Discretion of court

A divorced wife's motion to hold husband in contempt for failure to pay alimony should not be treated as though it were a citation for contempt, and motion should not be denied after considering husband's affidavit filed in defense, but if motion is supported by wife's affidavit showing arrearages in alimony then after notice of motion has been given to husband a hearing should be had in open court or on affidavits and counteraffidavits and court should determine whether there was deficiency and if so whether husband had shown an excuse for nonperformance sufficient to cause the court in exercise of sound discretion to refrain from punishing him. *Kephart* v. *Kephart* (1952, 193 F. 2d 677, 89 U.S. App. D.C. 373, certiorari denied 72 S. Ct. 557, 342 U.S. 944, 96 L. Ed. 702).

"The granting of alimony pendente lite is a matter within the sound discretion of the trial court." *Dunnington* v. *Dunnington* (1916, 45 App. D.C. 277). See, also, *Jacobi* v. *Jacobi* (1916, 45 App. D.C. 442).

The trial court may in its discretion award counsel fees to wife regardless of the outcome of her divorce suit, and right of wife's attorney to fees is not vitiated by wife's wrongful conduct. *Shima* v. *Shima* (1944, 139 F. 2d 533, 78 U.S. App. D.C. 265, 150 A.L.R. 1179).

The entry of final judgment pending special appeal which challenged District Court's right to refuse to consider a motion for alimony pendente lite because movant had declined to appear before Domestic Relations Commissioner did not foreclose matter of allowance of alimony pendente lite, and refusal of motion for the reason stated having been improper, District Court had power, upon return of the case to exercise a sound judicial discretion as to whether a pendente lite allowance should be made and, if so, as to the amount. *Kernan* v. *Kernan* (1948, 165 F. 2d 232, 82 U.S. App. D.C. 382).

Enforcement of order

An order for alimony and attorney's fees pendente lite in a divorce proceeding is in effect a personal decree, and can only be enforced in a foreign jurisdiction after personal service upon the defendant, regardless of the statutory provisions in the state or jurisdiction where the divorce proceeding is pending. Publication may be substituted for personal service of process upon any defendant in a divorce proceeding in this District. *Johnston* v. *Johnston* (1935, 74 F. 2d 774, 64 App. D.C. 87).

Failure to make payments for maintenance of minor children not enforceable by imprisonment for contempt. *Rapeer* v. *Colpoys* (1936, 85 F. 2d 715, 66 App. D.C. 216).

Order requiring payments for maintenance of children is enforceable against father, who is not divorced, by imprisonment. *Ebert* v. *Ebert* (1945, 148 F. 2d 226, 80 U.S. App. D.C. 69).

In divorce action, defendant could be cited for contempt for noncompliance with maintenance order by service of motion on his counsel, since contempt proceedings are incidental to pending cause. *Id.*

After entry of final judgment dismissing wife's action for divorce, husband would be adjudged guilty of contempt of court for failure to pay installments of alimony pendente lite accruing before entry of such judgment. *Id.*

This section providing that, in event a husband fails or refuses to pay alimony, court may sequester his property and apply the income to its payment, is applicable to pension payments due husband from District of Columbia. *Montgomery* v. *Montgomery* (1946, 153 F. 2d 634, 80 U.S. App. D.C. 344).

Where divorce decree directed husband to make monthly payments to wife for her maintenance and support of minor child but husband moved from District of Columbia and stopped making payments and District did not appeal from order appointing a sequestrator for pension payments due to the husband from District and was making no claim to exemption, the husband should not be permitted to make the claim of exemption. *Id.*

Under this section providing that during pendency of suit for divorce court shall have power to require husband to pay alimony to wife and to enforce obedience to order by attachment and imprisonment for disobedience, only so long as divorce suit is pending does court have authority to require husband to pay alimony and to enforce obedience by attachment and imprisonment. *Cole* v. *Cole* (1947, 161 F. 2d 883, 82 U.S. App. D.C. 155).

Failure to pay installments of alimony which had accrued under a pendente lite order could not be punished by contmpt proceedings after suit for divorce, in which temporary allowance was made, had been dismissed by order containing no reference to unpaid installments. *Id.*

Excuse for nonpayment of alimony

When husband shows justifiable cause for failing to comply with court order for support or willingness to pay or reduce arrearages, court, in exercise of its discretion may refrain from punishing him. *V. A. Johnson* v. *L. Johnson* (D.C. App. 1963, 195 A. 2d 406).

Burden is upon husband sought to be held in contempt for failure to make support payments to show by competent evidence a reasonable excuse for his nonperformance and where he offers no valid reason for his default, wife is entitled to aid of court in enforcement of its order by imprisonment, unless husband purges himself of arrears. *Id.*

Husband who neither offered to pay support arrearages nor presented evidence upon which court could predicate finding that he was justified in failing to comply with support order was in contempt. *Id.*

Exemptions

Payments of disability insurance are not exempt under § 35–717 from liability for alimony and support of divorced wife. *Schlaefer* v. *Schlaefer* (1940, 112 F. 2d 177, 71 App. D.C. 350, 130, A.L.R. 1014).

Imprisonment

Inasmuch as acknowledged father of illegitimate children did not have status of husband, his disobedience of order directing him to support children, though contemptuous, could not be punished by imprisonment. *C. Johnson* v. *E. Johnson et al.* (D.C. Mun. App. 1962, 183 A. 2d 916).

One may not be imprisoned to compel obedience to court order directing payment of money except in those cases especially provided for. *Lundergan* v. *Lundergan* (1958, 252 F. 2d 823, 102 U.S. App. D.C. 259).

Judgment against property

Court may, in case of the husband's failure or refusal to pay such alimony and suit money, sequestrate his property and apply the income to such object but when husband does not default in paying installment of alimony when due, a writ will not lie. *Stewart* v. *Stewart* (1923, 286 F. 987, 52 App. D.C. 323).

An order to sequestrate property of the absent defendant, within the immediate jurisdiction of the court, is quasi in rem, issued to satisfy a personal claim on specific property. Thus the court acquires jurisdiction to render a judgment essentially in rem affecting such property, notwithstanding the absence of the owner from the state. *Thompson* v. *Tanner* (1923, 287 F. 980, 53 App. D.C. 3).

Jurisdiction of equity

Equity is ancillary and not antagonistic to the law, and where a statute precludes the authority to make an allowance, equity can not be invoked to aid in its circum-

vention. *Eichelberger* v. *Symons* (1923, 288 F. 654, 53 App. D.C. 116).

Independent of statute, a court of chancery has jurisdiction over the custody and maintenance of a minor child. *Emrich* v. *McNeil* (1942, 126 F. 2d 841, 75 U.S. App. D.C. 307, 146 A.L.R. 1146).

Laches

Where 1936 District of Columbia divorce decree required husband to pay $75 per month for support of wife and two infant daughters, and in 1937 husband paid amount then due and subsequently paid occasional small amounts until March 22, 1940, after which date he paid nothing, and wife was ill and poor and had difficulty in obtaining counsel, and husband had resided in Maryland after the divorce, wife's delay until 1949 to file motion that husband be held in contempt for failure to pay alimony was explained and excused and did not amount to laches. *Kephart* v. *Kephart* (1952, 193 F. 2d 677, 89 U.S. App. D.C. 373, certiorari denied 72 S. Ct. 557, 342 U.S. 944, 96 L. Ed. 702).

Liability of husband

Decree awarding alimony pendente lite is a final order, and husband is liable therefor although he finally prevail. *Lynham* v. *Hufty* (1915, 44 App. D.C. 589).

"In a divorce proceeding the husband is primarily liable for the costs." *Id.*

Multiple contempt motions

That husband's failure to pay support arrearages had been held to be justifiable in one contempt proceeding did not preclude court in later contempt proceeding from finding that his continued failure to pay those arrearages was contemptuous. *V. A. Johnson* v. *L. Johnson* (D.C. App. 1963, 195 A. 2d 406).

More than one contempt motion may be brought with respect to same support arrearages. *Id.*

That delinquent husband may on one occasion justify his failure to comply with court support order does not permanently protect him from enforcement procedures available in contempt proceeding and there is nothing to prevent court, upon successive motions by wife seeking to collect same arrearages, from committing husband when he presents no mitigating circumstances justifying his continued failure to discharge them. *Id.*

Multiple executions

Wife seeking enforcement order for support may execute on each maturing installment as upon any other judgment for money or may seek to hold husband in contempt. *V. A. Johnson* v. *L. Johnson* (D.C. App. 1963, 195 A. 2d 406).

Property

In making provision for the wife's sustenance, the term "property" requires a liberal interpretation. *Schlaefer* v. *Schlaefer* (1940, 112 F. 2d 177, 71 App. D.C. 350, 130 A.L.R. 1014).

—— Subject to payment

A decree for payment of alimony against a non-resident brought before the court by constructive or extra-territorial service is void except as to property which is within the court's jurisdiction, and which has been specifically proceeded against in the divorce action. *Gaines* v. *Gaines* (1946, 157 F. 2d 521, 81 U.S. App. D.C. 260).

Order of District Court of District of Columbia directing resident of Virginia who was personally served in Virginia, to pay alimony pendente lite, was "in personam" and void for lack of jurisdiction, in absence of any acts by non-resident to subject himself to court's authority, and in absence of a claim of, right to, or lien on any personality in District of Columbia. *Id.*

Punishment for contempt

This section's authority to punish for contempt a failure to pay permanent alimony awarded to wife in divorce decree is not required to be invariably exercised, and when a proper defensive showing is made by a delinquent husband, such as unavoidable casualty, the court may refuse to punish him, but such refusal does not release the delinquent from civil liability to pay the amounts which have become due. *Kephart* v. *Kephart* (1952, 193 F. 2d 677, 89 U.S. App. D.C. 373, certiorari denied 72 S. Ct. 557, 342 U.S. 944, 96 L. Ed. 702).

Recovery back of payments

An order for payment of alimony pendente lite is in effect a final order enforceable by immediate execution, and though it is revocable and may be rescinded by court and may wholly fall by a final decision on the merits adverse to petitioner, as long as it remains in effect to the extent to which it has been enforced by payment or execution, it is an absolute finality and money so paid cannot be recovered back. *Cole* v. *Cole* (D.C.D.C. 1946, 67 F. Supp. 134, reversed on other grounds 161 F. 2d 883, 82 U.S. App. D.C. 155).

Repayment of unauthorized fee

Where order, denying husband's motion pending determination of referred question as to husband's damages from wife's suing out an injunction tying up husband's funds, to stay condemnation of his attached funds, for his wife's counsel fees in dismissed divorce suit, was reversed and the fees had been paid from the attached funds, the District Court would be authorized to require counsel to repay the fees if he were not entitled to retain them, notwithstanding such counsel had not been made a party to husband's appeal from the order. *Shima* v. *Shima* (1944, 139 F. 2d 533, 78 U.S. App. D.C. 265, 150 A.L.R. 1179).

Sequestration of pension payments

Where divorced husband was entitled to pension payable out of Policeman's and Fireman's Relief Association of District of Columbia, divorced wife was not entitled to appointment of sequestrator to collect pension from disbursing officer of the District for payment to wife in satisfaction of her alimony claim. *Rone* v. *Rone* (1944, 141 F. 2d 23, 78 U.S. App. D.C. 369).

Set off

Where judgment dismissing wife's suit for divorce and taxing husband with wife's counsel fees determined neither the facts nor the law with regard to husband's right to set off, against claim for counsel fees, damages sustained by wife's suing out of an injunction tying up husband's funds, husband would be allowed to set off such damage against the claimed fees if wife's attorney knowingly participated in wrongful issuance of injunction, notwithstanding allowance of fees had become final. *Shima* v. *Shima* (1944, 139 F. 2d 533, 78 U.S. App. D.C. 265, 150 A.L.R. 1179).

Where District Court dismissed wife's suit for divorce and taxed husband with her counsel fees, if court should find that wife's attorney knowingly participated in wrongful suing out of injunction by wife to tie up husband's funds, husband would be allowed to set off his damage from the injunction against the claim for counsel fees. *Id.*

Statutory policy

The policy underlying alimony statutes is not punishment for a wrongdoing husband, but is to insure that where wife is entitled to support, she will receive it and not become a public charge. *Wheeler* v. *Wheeler* (1951, 188 F. 2d 31, 88 U.S. App. D.C. 193).

Subsequent obligations

A divorced husband's voluntary assumption of new obligation by marrying a second time does not excuse him from the primary obligations imposed by the court's award of alimony to first wife. *Kephart* v. *Kephart* (1952, 193 F. 2d 677, 89 U.S. App. D.C. 373, certiorari denied 72 S. Ct. 557, 342 U.S. 944, 96 L. Ed. 702).

Writ of execution

An award of alimony is a judgment for money on which execution may issue, and it is perhaps convenient and certainly not improper for the court to enter a new judgment establishing of record the accrued installments which are unpaid when the wife draws the facts to the court's attention, but such procedure is not essential, and the installments which have become due are easily calculated from the terms of the original decree and a look at the calendar, and wife's application for writ of execution accompanied by her affidavit as to nonpayment should move the issuance of the writ, and if an issue is raised concerning the amount due the court can determine it. *Kephart* v. *Kephart* (1952, 193 F. 2d 677, 89 U.S. App. D.C. 373, certiorari denied 72 S. Ct. 557, 342 U.S. 944, 96 L. Ed. 702).

II. Under Present Law

Basis for commitment

No further evidence besides husband's admission of failure to pay wife's counsel fees pursuant to judgment ordering husband, who had unsuccessfully sought divorce, to pay separate maintenance and support and counsel fees was necessary on issue of whether sums due under the judgment had been paid, in proceeding on motion by wife to hold husband in contempt. *R. B. Edmonds* v. *L. M. Edmonds* (D.C. App. 1965, 212 A. 2d 534).

Counsel fees

Award of counsel fees of $350 to wife's attorney in divorce action, with opportunity given husband to pay the fee within 120 days, was reasonable and supported by record. *McEachnie* v. *McEachnie* (D.C. App. 1966, 216 A. 2d 169).

In view of husband's financial resources, award of $600 to wife's attorney in divorce action was excessive, and more commensurate fee was $400. *Hagans* v. *Hagans* (D.C. App. 1966, 215 A. 2d 842).

Ordinarily, reviewing court would have left question of counsel fees for services in trial court to that court for determination, but in order to bring an end to vexatious litigation, reviewing court, upholding dismissal of husband's annulment action on ground that matter was res judicata, ordered that husband pay $1,000 to wife for legal services in reviewing and trial courts. *J. A. Gullo* v. *M. A. Hirst* (D.C. App. 1965, 207 A. 2d 662).

The statute providing that divorce court may award counsel fees to wife during pendency of suit for divorce affords exclusive means for compelling husband to pay wife's counsel fees. *Meyers & Batzell* v. *M. R. Moezie* (D.C. App. 1965, 208 A. 2d 627).

A husband can be held liable for legal expenses incurred by wife in divorce action only if divorce court so orders during pendency of action. *Id.*

§ 16–912. Permanent alimony; enforcement; retention of dower

When a divorce is granted to the wife, the court may decree her permanent alimony sufficient for her support and that of any minor children whom the court assigns to her care, and secure and enforce the payment of the alimony in the manner prescribed by section 16–911, and may, if it seems appropriate, retain to the wife her right of dower in the husband's estate; and the court may, in similar circumstances, retain to the husband his right of dower in the wife's estate. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–411 (Mar. 3, 1901, ch. 854, § 976, 31 Stat. 1346).

The provision for retention of the husband's right of dower in the wife's estate, in similar circumstances, is added, to conform with section 18–201a of D.C. Code, 1961 ed., which, as amended by act Sept. 14, 1961, Pub. L. 87–246, § 3, 75 Stat. 515 (Supp. II, 1963), not only restored the wife's right of dower (which had been abolished by act Aug 31, 1957, Pub. L. 85–244, § 3, 71 Stat. 560) but established a statutory right of dower in the husband as well, in the estate of his wife, and provided that all other laws in force in the District of Columbia relating to the right of dower and its incident should, on and after the effective date of such act (Mar. 15, 1962), be construed to be applicable to both husband and wife. The 1961 act also amended sections 18–101, 18–204, 18–211 and 30–201 of D.C. Code, 1961 ed. See, also, section 16–2921 et seq. of this revised Part.

Changes are made in phraseology.

NOTES TO DECISIONS

I. Under Prior Law

Amount

An allowance to wife of permanent alimony sufficient for her support and that of the minor children whom the court may assign to her care is alimony payable to the wife and is not contingent on minority of the children. *Kephart* v. *Kephart* (1952, 193 F. 2d 677, 89 U.S. App. D.C. 373, certiorari denied 72 S. Ct. 557, 342 U.S. 944, 96 L. Ed. 702).

Husband who had abandoned his wife and child and who was earning $6,000 a year was directed to pay $200 a month for the maintenance of wife and child and $500 attorney's fees. *Noffsinger* v. *Noffsinger* (D.C.D.C. 1943, 50, F. Supp. 810).

In divorce suit, order requiring husband to pay wife $30 on the 6th and 21st day of each month until court's further order was clear, although court stated that payments would apply on previous New York judgment for maintenance. *Clemens* v. *Clemens* (1944, 143 F. 2d 24, 79 U.S. App. D.C. 116, certiorari denied 65 S. Ct. 76, 323 U.S. 736, 89 L. Ed. 590).

Where divorced husband's income is large, divorced wife is entitled not merely to subsistence but to maintenance in manner which station of life of parties makes appropriate, but court should not make award so high as to cause financial difficulties and personal embarrassment on part of husband which would impair his earning capacity. *Russell* v. *Russell* (1944, 142 F. 2d 753, 79 U.S. App. D.C. 44, 153 A. L. R. 1037).

Amount of alimony award above average level of income should not be set without safeguards against improvident expenditures which impair future security of divorced wife or children. *Id.*

Alimony, when allotted, measures the husband's duty of support. *Irwin* v. *Hawfield* (D.C. Mun. App. 1949, 62 A. 2d 926).

Arrears

No contempt where arrears are due to personal injuries. *Caffrey* v. *Caffrey* (1925, 4 F. 2d 952, 55 App. D.C. 285).

A husband who had income of $160 per month was properly punished for contempt for failure to pay $45 per month alimony awarded to wife, where only excuse offered for alleged inability to pay alimony was that husband voluntarily contributed to support of his mother and his invalid brother and therefore had no funds with which to make the payments. *Kelly* v. *Kelly* (1943, 137 F. 2d 254, 78 U.S. App. D.C. 97).

One who has no money or tangible property may be punished for contempt for failure to pay alimony award, if he makes no honest effort, considering his physical and mental capabilities, to work and earn money to pay alimony. *Id.*

On wife's motion to adjudicate arrears of alimony, trial court acted properly in enforcing full payment of accrued alimony notwithstanding children who were minors when award was made had reached majority at time default in payment commenced. *Lockwood* v. *Lockwood* (1947, 160 F. 2d 923, 82 U.S. App. D.C. 105).

Award

Provision in 1901 Code, § 978 (§ 16–413) that a case where permanent alimony has been awarded under 1901 Code, § 976 (this section) shall still be considered open for any further orders operates only prospectively, and the court can not set aside or reduce sums determined and past due. *Biscayne Trust Co.* v. *American Security & Trust Co.* (1927, 20 F. 2d 267, 57 App. D.C. 251).

Contempt

Where husband had been ordered to pay support money and attorney's fees, contempt order committing husband until he paid an amount greater than that due for support alone was erroneous in so far as it committed husband for failure to pay attorney's fees. *Berman* v. *Berman* (1953, 202 F. 2d 812, 92 U.S. App. D.C. 77).

Divorced husband's remarriage and acquisition of second set of children whom he must support and the attainment of majority by children of first marriage did not justify refusal to hold husband in contempt for failure to pay monthly installments which divorce decree required husband to pay for support of wife and children of first marriage. *Kephart* v. *Kephart* (1952, 193 F. 2d 677, 89 U.S. App. D.C. 373, certiorari denied 72 S. Ct. 557, 342 U.S. 944, 96 L. Ed. 702).

A wife's delay in seeking to enforce payment of alimony does not destroy or affect the husband's obligation to obey the court's order, and that obligation does not depend upon the payee's diligence in trying to collect, and

contempt is shown by an inexcusable failure to pay what the court ordered and is not limited to a failure to pay sums which the wife promptly demands. *Id.*

Discretion of court

A divorced wife's motion to hold husband in contempt for failure to pay alimony should not be treated as though it were a citation for contempt, and motion should not be denied after considering husband's affidavit filed in defense, but if motion is supported by wife's affidavit showing arrearages in alimony then after notice of motion has been given to husband a hearing should be had in open court or on affidavits and counteraffidavits and court should determine whether there was deficiency and if so whether husband had shown an excuse for nonperformance sufficient to cause the court in exercise of sound discretion to refrain from punishing him. *Kephart* v. *Kephart* (1952, 193 F. 2d 677, 89 U.S. App. D.C. 373, certiorari denied 72 S. Ct. 557, 342 U.S. 944, 96 L. Ed. 702).

In awarding alimony, limited discretion of court is based on standards which are necessarily vague, but where income of divorced husband is small the problem only involves giving the wife a decent subsistence if it is possible. *Russell* v. *Russell* (1944, 142 F. 2d 753, 79 U.S. App. D.C. 44, 153 A.L.R. 1037).

Both award of alimony and amount to be awarded are matters placed in trial court's discretion, and exercise of such discretion will not be disturbed on appeal except for clear abuse. *Shelton* v. *Shelton* (D.C. Mun. App. 1959, 153 A. 2d 663).

Where, at time of divorce action, 47-year-old wife, who had been a school teacher elsewhere, but who was unable to qualify for such position in the District of Columbia, was unemployed and was being supported by her brother, while her 40-year-old husband was earning $4,640 a year, award of $25 per week as alimony to wife did not constitute a manifest abuse of trial court's discretion. *Id.*

Divorced father

Section 16–415, which defines the power of a court to make a support-money order against a husband for the benefit of a wife and minor child, does not embrace the case of an order against a divorced father. *Rapeer* v. *Colpoys* (1936, 85 F. 2d 715, 66 App. D.C. 216).

Effective date

Any allowance of alimony which is to be effective after suit for divorce has ceased to pend must be made under this section regarding permanent alimony. *Cole* v. *Cole* (1947, 161 F. 2d 883, 82 U.S. App. D.C. 155).

Increase of alimony

Where, in a petition for an increase in an alimony award, the petitioner alleged that she was without knowledge of the provisions of the decree awarding alimony, and that she had accepted the monthly payments provided therefor under protest, an affidavit asserting that petitioner was present in court when the decree was signed, when undenied, was sufficient to overcome petitioner's allegation that she had no knowledge of the provisions of the decree. *Moran* v. *Moran* (D.C.D.C. 1940, 31 F. Supp. 227).

A claim for an increase in alimony, based on an allegation that the decree was entered by mistake, will be denied, where the motion was not made until more than six months after the judgment was taken. *Id.*

Where divorce decree required husband to pay wife $900 a month for alimony and $100 for support of one of their two children who required special schooling, award amounted to between 40 and 50 percent of husband's entire income, husband had remarried, and his position as an executive required certain standards which, if not maintained, would impair his usefulness to his employer, and pleadings indicated that his living standards were not as high as those of his divorced wife, an increase in award was not justified, even though wife was required to pay income tax on alimony which she received. *Russell* v. *Russell* (1944, 142 F. 2d 753, 79 U.S. App. D.C. 44, 153 A.L.R. 1037).

Any decrease in divorced wife's net income because of taxes or any other reason which brings it below what is necessary for her station in life may be considered in granting an increase in alimony, but increase must be based on examination of needs of wife in light of present size of divorced husband's income, not on theory of equitable tax adjustment. *Id.*

Where alimony award to divorced wife is above average level of income, the moral obligations of husband, such as obligation to his mother-in-law, by second marriage, as well as legal obligations of husband, should be considered in determining divorced wife's petition for increase in alimony. *Id.*

If divorced wife's application for increase in alimony was to be decided against husband without a hearing, all controverted issues and all legitimate inferences raised by the pleadings were required to be resolved in his favor. *Id.*

Laches

Where 1936 District of Columbia divorce decree required husband to pay $75 per month for support of wife and two infant daughters, and in 1937 husband paid amount then due and subsequently paid occasional small amounts until March 22, 1940, after which date he paid nothing, and wife was ill and poor and had difficulty in obtaining counsel, and husband had resided in Maryland after the divorce, wife's delay until 1949 to file motion that husband be held in contempt for failure to pay alimony was explained and excused and did not amount to laches. *Kephart* v. *Kephart* (1952, 193 F. 2d 677, 89 U.S. App. D.C. 373, certiorari denied 72 S. Ct. 557, 342 U.S. 994, 96 L. Ed. 702).

In divorce action, evidence, which revealed that wife had waited for four years after she had been deserted by husband before asserting her claim for alimony and that wife could have sued for separate maintenance immediately following the desertion but could not sue for divorce until desertion had continued for two years, was sufficient to sustain trial court's finding that wife was not guilty of laches which would bar her claim for alimony. *Shelton* v. *Shelton* (D.C. Mun. App. 1959, 153 A. 2d 663).

Presumptions

Where moving party comes before court asking for enlargement of a limited divorce decree and for final severance of bonds of matrimony, movant must be presumed to be requesting the full relief to which she believes herself entitled. *Holmes* v. *Holmes* (1946, 155 F. 2d 737, 81 U.S. App. D.C. 132, 166 A.L.R. 1000).

Property rights

In absence of some right or element of ownership, legal or equitable, on part of wife in husband's property, court in divorce case is without power to order transfer of that property to her, and no such power is included in an authorization to grant alimony. *Wheeler* v. *Wheeler* (1951, 188 F. 2d 31, 88 U.S. App. D.C. 193).

This section authorizing court in divorce case to grant permanent alimony to wife and to retain to wife her right of dower in husband's estate does not empower court to award real property of one spouse to the other. *Id.*

Punishment for contempt

This section's authority to punish for contempt a failure to pay permanent alimony awarded to wife in divorce decree is not required to be invariably exercised, and when a proper defensive showing is made by a delinquent husband, such as unavoidable casualty, the court may refuse to punish him, but such refusal does not release the delinquent from civil liability to pay the amounts which have become due. *Kephart* v. *Kephart* (1952, 193 F. 2d 677, 89 U.S. App. D.C. 373, certiorari denied 72 S. Ct. 557, 342 U.S. 944, 96 L. Ed. 702).

Remission of installment

Decree as to alimony is final as to installments of alimony in arrears, and court cannot remit them. *Caffrey* v. *Caffrey* (1925, 4 F. 2d 952, 55 App. D.C. 285).

Res judicata

Order of District Court in divorce action denying motion to modify judgment confirming stipulation of parties whereby husband agreed to pay permanent alimony and determining that the stipulation was a contract but that divorce judgment approving stipulation did not award alimony was res judicata precluding relitigation of the question in the Municipal Court in a suit to enforce the stipulation. *Woodruff* v. *Woodruff* (D.C. Mun. App. 1948, 60 A. 2d 538, affirmed 176 F. 2d 72, 85 U.S. App. D.C. 424).

Review

Record on appeal in husband's divorce action did not support his contention that trial judge had used erroneous standard in computing alimony award, although judge's summary of considerations in that respect omitted certain proper considerations, there having been testimony relating to those considerations. *O. Cole* v. *E. Cole* (D.C. App. 1963, 193 A. 2d 76).

Where trial court could not have awarded wife an interest in husband's property in divorce case unless wife had an interest in property, and reviewing court could not ascertain from findings and conclusions whether that was the case, the portion of award relating to that property was set aside and case remanded for further findings. *Wheeler* v. *Wheeler* (1951, 188 F. 2d 31, 88 U.S. App. D.C. 193).

Where divorce case was being remanded on issue of award to wife of an interest in husband's property and it appeared that District Court might desire to change allowances as to alimony and counsel fees, reviewing court would not pass on award with respect to those matters. *Id.*

Sequestration of pension payments

This section providing that in event a husband fails or refuses to pay alimony, court may sequester his property and apply the income to its payment, is applicable to pension payments due husband from District of Columbia. *Montgomery* v. *Montgomery* (1946, 153 F. 2d 634, 80 U.S. App. D.C. 344).

Where divorce decree directed husband to make monthly payments to wife for her maintenance and support of minor child but husband moved from District of Columbia and stopped making payments and District did not appeal from order appointing a sequestrator for pension payments due to the husband from District and was making no claim to exemption, the husband should not be permitted to make the claim of exemption. *Id.*

Statutory policy

The policy underlying alimony statutes is not punishment for a wrongdoing husband, but is to insure that where wife is entitled to support, she will receive it and not become a public charge. *Wheeler* v. *Wheeler* (1951, 188 F. 2d 31, 88 U.S. App. D.C. 193).

Subsequent obligations

A divorced husband's voluntary assumption of new obligation by marrying a second time does not excuse him from the primary obligations imposed by the court's award of alimony to first wife. *Kephart* v. *Kephart* (1952, 193 F. 2d 677, 89 U.S. App. D.C. 373, certiorari denied 72 S. Ct. 557, 342 U.S. 944, 96 L. Ed. 702).

Termination of prior alimony decree

Final divorce decree, which changes the fundamental relationship of parties, terminates wife's right to receive alimony under a preceding separation decree predicated on her status as a wife. *Holmes* v. *Holmes* (1946, 155 F. 2d 737, 81 U.S. App. D.C. 132, 166 A.L.R. 1000).

Alimony, awarded in decree for divorce a mensa et thoro subject to further order of court, was automatically terminated by decree a vinculo matrimonii in which no provision for or reference to payment of alimony was made, even though the decree a vinculo was obtained pursuant to provisions of local rules for enlargement of decree. *Id.*

Writ of execution

An award of alimony is a judgment for money on which execution may issue, and it is perhaps convenient and certainly not improper for the court to enter a new judgment establishing of record the accrued installments which are unpaid when the wife draws the facts to the court's attention, but such procedure is not essential, and the installments which have become due are easily calculated from the terms of the original decree and a look at the calendar, and wife's application for writ of execution accompanied by her affidavit as to nonpayment should move the issuance of the writ, and if an issue is raised concerning the amount due the court can determine it. *Kephart* v. *Kephart* (1952, 193 F. 2d 611, 89 U.S. App. D.C. 373, certiorari denied 72 S. Ct. 557, 342 U.S. 944, 96 L. Ed. 702).

II. Under Present Law

Award

Certain primary factors, such as duration of marriage, ages and health of parties, respective financial positions, both past and prospective, wife's contribution to family support and property ownership, needs of wife and husband's ability to contribute thereto, and interest of society generally in preventing wife from becoming public charge, must be considered in determining whether to award alimony or maintenance to wife and amount of any such award. *T. V. Tibbs* v. *A. B. Tibbs* (D.C. App. 1966, 223 A. 2d 279).

Award of alimony which appeared to be predicated only upon wife's assertion that she could use an additional $50 per month was erroneous. *McEachnie* v. *McEachnie* (D.C. App. 1966, 216 A. 2d 169).

Review

Reviewing court may reverse an alimony award only where finding is plainly wrong or without substantial evidence to support it. *McEachnie* v. *McEachnie* (D.C. App. 1966, 216 A. 2d 169).

Court reviewing judgment in divorce case was without authority to substitute its views for those of trial court where there was conflict in testimony surrounding factual issues. *Id.*

Statutory policy

Alimony is not intended as a penalty to be imposed upon husband nor as compensation to solice wife for wrongful abandonment by her husband, and her financial situation is a relevant consideration which may limit or even defeat an award. *McEachnie* v. *McEachnie* (D.C. App. 1966, 216 A. 2d 169).

Factors to be considered in determining whether alimony should be granted and amount thereof include duration of marriage, ages and health of parties, their respective financial positions, both past and prospective, wife's contribution to family support and property ownership, needs of wife and husband's ability to contribute thereto, and interest of society generally in preventing wife from becoming a public charge. *Id.*

§ 16–913. Alimony when divorce is granted on husband's application

When a divorce is granted on the application of the husband, the court may require him to pay alimony to the wife, if it seems just and proper. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–412 (Mar. 3, 1901, ch. 854, § 977, 31 Stat. 1346; June 30, 1902, ch. 1329, 32 Stat. 537).

Minor changes are made in phraseology.

NOTES TO DECISIONS

I. Under Prior Law

Alimony award

Alimony may be awarded to a wife even though the divorce was granted on the application of the husband, if it would seem just and proper to the court. *Quarles* v. *Quarles* (1950, 179 F. 2d 57, 86 U.S. App. D.C. 41).

Amount of award

Where husband who was awarded a divorce on ground of wife's adultery, had a substantial business and an income of about $12,000 a year, wife, who had not been repaid $2,000 which she had advanced to husband for purchase of family home, was without means, and trial lasted five days and required considerable preparation, sums of $2,000 in cash, $50 a week alimony for support of wife and two minor children, or $75 if wife ceased to occupy husband's house free of rent, $825, in addition to $175 previously paid, as wife's counsel fees in district court, and $150 suit money and $300 counsel fees in respect of husband's appeal directed to be paid to wife by husband were reasonable. *Jaffe* v. *Jaffe* (1942, 124 F. 2d 233, 74 App. D.C. 394).

That wife's counsel represented co-respondent as well as wife in trial of husband's divorce action based on ground of adultery did not show that award to wife of

$825, in addition to $175 previously paid, as counsel fees in the district court and $300 counsel fees in respect of husband's appeal were excessive. *Id.*

The record does not support the award of alimony to wife when there is no evidence that she contributed either her funds or her industry in the accumulation of the property by her husband, and no loss either financial or by way of security, or status, was suffered by reason of her marriage, and upon consideration of other compelling factors of an equitable nature. *Quarles* v. *Quarles* (1950, 179 F. 2d 57, 86 U.S. App. D.C. 41).

Judgment of the trial court in determining whether an award of alimony to a guilty defendant is just and proper will not be disturbed unless an abuse of discretion is made, manifested by the record. Evidence here was sufficient to sustain monthly payment of $65.00 for alimony. *Schulz* v. *Schulz* (1950, 179 F. 2d 59, 86 U.S. App. D.C. 43).

Custody of children

A court may in its discretion award custody of children to the unsuccessful defendant in a divorce action. *Jaffe* v. *Jaffe* (1942, 124 F. 2d 233, 74 App. D.C. 394).

Effect of agreement

Where the court did not require husband to pay alimony, but only approved an agreement by which the parties adjusted their respective property rights and all claims for alimony, the decree cannot be considered open for a future order in that respect, at least in the absence of fraud or mistake. *Heckman* v. *Heckman* (D.C.D.C. 1949, 83 F. Supp. 687).

Retention of jurisdiction

Jurisdiction may be retained to enter further orders respecting alimony and care and custody of child. *Davis* v. *Davis* (1932, 57 F. 2d 414, 61 App. D.C. 48).

Scope of review

Ordinarily, the trial court's determination of the propriety of the award under all the circumstances will not be disturbed unless an abuse of discretion is shown. *Quarles* v. *Quarles* (1950, 179 F. 2d 57, 86 U.S. App. D.C. 41).

Waiver of appeal

Right to appeal is lost by acceptance of alimony. *Harris* v. *Harris* (1936, 89 F. 2d 829, 67 App. D.C. 85).

Where judgment granted plaintiff husband an absolute divorce but also awarded alimony and counsel fees to wife, and after entry of judgment husband paid monthly to wife the alimony as well as the counsel fees, appeal by wife was subject to dismissal upon ground that, having accepted benefits of judgment, she was precluded from appealing therefrom. *Stein* v. *Stein* (1948, 170 F. 2d 162, 83 U.S. App. D.C. 286).

II. Under Present Law

Criteria for award

Proof that wife has abandoned marital abode and concomitant responsibilities of marital relation without just cause or reason may be considered in determining whether to award her alimony. *J. R. Mazique* v. *E. C. Mazique* (1966, 356 F. 2d 801, 123 U.S. App. D.C. 48).

Denial of alimony to wife who left marital abode was not abuse of discretion where wife presented but minimal evidence relating to contribution to family property and she refused to testify with respect to her present income and ability to earn a living. *Id.*

Trial court's determination of property of award of alimony under all circumstances will not be disturbed, unless abuse of discretion is made manifest by record. *Id.*

§ 16–914. Retention of jurisdiction as to alimony and custody of children

After the issuance of a decree of divorce granting alimony and providing for the care and custody of children, the case shall still be considered open for any future orders relating to those matters. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–413 (Mar. 3, 1901, ch. 854, § 978, 31 Stat. 1346).

Minor changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Arrears

Decree as to alimony is final as to installments of alimony in arrears. *Caffery* v. *Caffery* (1925, 4 F. 2d 952, 55 App. D.C. 285).

Provision in § 978 (this section) that a case where permanent alimony has been awarded under § 976 (§ 16–411) shall still be considered open for any further orders operates only prospectively, and the court can not set aside or reduce sums determined and past due. *Biscayne Trust Co.* v. *American Security & Trust Co.* (1927, 20 F. 2d 267, 57 App. D.C. 251).

Care and custody of children

Phrase "care and custody of children," includes maintenance, since plainly a child cannot be cared for without being fed, clothed, and otherwise maintained. *Elkins* v. *Elkins* (1924, 299 F. 690, 55 App. D.C. 9). See, also, *Evans* v. *Evans* (D.C.D.C. 1941, 36 F. Supp. 12).

Marriage of a daughter may constitute a good and sufficient reason for modification of a previous order for support and maintenance. *Davis* v. *Davis* (1938, 96 F. 2d 512, 68 App. D.C. 240).

The District Court of the United States for the District of Columbia may, independently of statute, provide for care and custody of children in divorce cases. *Evans* v. *Evans* (D.C.D.C. 1941, 36 F. Supp. 12).

Where the District Court of the United States for the District of Columbia acquired jurisdiction over custody and maintenance of child of parties to divorce suit, the court's jurisdiction continued for all proper purposes concerning the custody and maintenance of the child. *Emrich* v. *McNeil* (1942, 126 F. 2d 841, 75 U.S. App. D.C. 307, 146 A.L.R. 1146).

After submitting themselves to jurisdiction of court in divorce proceedings, parents cannot by their agreement deprive court of power to control custody and maintenance of child. *Id.*

In divorce proceeding the court must retain a continuing jurisdiction with respect to custody and maintenance of minor child. *Id.*

A child's claim against his father for maintenance is not subsidiary to that of the mother. *Id.*

Where District Court of United States for District of Columbia granting divorce failed to make provision regarding custody or maintenance of minor child, but parties filed stipulation for maintenance and support giving mother custody but requiring father to make payments for support, fact that mother had supported the child and the child had had support did not affect the duty of the father to render it, relieve him of the burden, or deprive the court of power to compel him to discharge it or to force him to reimburse the mother for what she had expended on that account. *Id.*

Where stipuation for support of infant child was made part of record in divorce proceeding in District Court of United States for District of Columbia, the district court had continuing and exclusive jurisdiction over custody and maintenance of child and the municipal court did not have jurisdiction of action to recover amount alleged to be due under the stipulation. *Id.*

Courts jurisdiction, having attached to child custody case, continued undisturbed to final conclusion of case. *Steele* v. *Steele* (1948, 168 F. 2d 562, 82 U.S. App. D.C. 254).

Counsel fees

An order for payment of counsel fees in connection with the collection of alimony and support, is an order "in those respects" within the meaning of this section, and the case was "open" for the purposes of this order. *Junghans* v. *Junghans* (1940, 112 F. 2d 212, 72 App. D.C. 129).

Discretion of court

Trial court has large discretion in awarding custody of minor child and cause will remain open for any further orders found to be proper. *Warner* v. *Warner* (1928, 24 F. 2d 609, 58 App. D.C. 34).

Alimony within trial court's discretion. Dependent on circumstances. *Garrett* v. *Garrett* (1963, 62 F. 2d 471, 61 App. D.C. 309).

Increase of alimony

Where agreement of parties incorporated in divorce decree provided for division of property and for monthly payments to wife "as maintenance for her support", although both provisions were included in same instrument, they were separable so that if parties intended monthly payments to be an alimony award, provision concerning monthly payments would be subject to modification. *Rogers* v. *Rogers* (1953, 203 F. 2d 61, 92 U.S. App. D.C. 97).

Where divorce decree incorporated agreement of husband and wife which contained provisions for division of property and monthly payments to wife "as maintenance for her support" to cease on her remarriage and court retained jurisdiction to enforce compliance with agreement and all matters pertaining thereto, but parties' intent as to whether monthly payments were alimony was not apparent from agreement, order denying, for lack of jurisdiction, motion for increase in alimony would be reversed and case would be remanded for evidence of intention. *Id.*

Jurisdiction of court

Where the court did not require the husband to pay alimony, but only approved an agreement by which the parties adjusted their respective property rights and all claims for alimony, the decree cannot be considered open for a future order in that respect, at least in the absence of fraud or mistake. *Heckman* v. *Heckman* (D.C.D.C. 1949, 83 F. Supp. 687).

Modification or remission of installment

Under this section, the United States District Court for the District of Columbia cannot modify or remit installments of alimony which have become due. *Kephart* v. *Kephart* (1952, 193 F. 2d 677, 89 U.S. App. D.C. 373, certiorari denied 72 S, Ct. 557, 342 U.S. 944, 96 L. Ed. 702).

Proceeding in personam

Claim for maintenance is essentially a proceeding in personam and there can be no attachment, seizure, or taking of the property until after the decree has passed. *Bliss* v. *Bliss* (1931, 50 F. 2d 1002, 60 App. D.C. 237).

Property rights

Where husband and wife's agreement incorporated in divorce decree settles only property rights, its inclusion in judgment does not confer jurisdiction to modify it. *Rogers* v. *Rogers* (1953, 203 F. 2d 61, 92 U.S. App. D.C. 97).

Stipulations

In divorce suit, it was duty of court to act for the protection of minor child and where parties filed stipulation, for maintenance and support of the child, it was proper to assume that the official duty of the court was performed. *Emrich* v. *McNeil* (1942, 126 F. 2d 841, 75 U.S. App. D.C. 307, 146 A.L.R. 1146).

Even though stipulation for maintenance and support of child was not incorporated in divorce decree, it would be granted equal effectiveness as if it had been incorporated in decree to extent that it received the tacit approval of the court and was carried out by the parties. *Id.*

In a divorce suit where court approves stipulation for maintenance and support of child, it is better practice to incorporate stipulation into the decree. *Id.*

Court ratification and confirmation of a stipulation for permanent alimony as a contract for support and maintenance does not convert the stipulation into a decree for alimony. *Woodruff* v. *Woodruff* (D.C. Mun. App. 1948, 60 A. 2d 538, affirmed 176 F. 2d 72, 85 U.S. App. D.C. 424).

Where stipulation for permanent alimony was ratified and confirmed by the court as a contract for support and maintenance, husband could not after stipulation was filed and submitted on behalf of both parties resist enforcement on the ground that he did not intend to be bound by the agreement. *Id.*

Stipulation for alimony whereby husband, who had deserted his wife and was under legal and moral obligation to provide for her support, agreed to pay permanent alimony in consideration of which wife refrain from seeking court award of alimony and counsel fees was amply supported by consideration. *Id.*

Termination of separation decree

Alimony, awarded in decree for divorce a mensa et thoro subject to further order of court, was automatically terminated by decree a vinculo matrimonii in which no provision for or reference to payment of alimony was made, even though the decree a vinculo was obtained pursuant to provisions of local rules for enlargement of decree. *Holmes* v. *Holmes* (1946, 155 F. 2d 737, 81 U.S. App. D.C. 132, 166 A.L.R. 1000).

The power under this section which district court has to award permanent alimony in case of a proceeding for final divorce, whether it is on original complaint or on petition for enlargement of limited decree, is discretionary with trial court. *Id.*

§ 16–915. Restoration of wife's maiden or other previous name

In granting a divorce from the bond of marriage, the court may restore to the wife her maiden or other previous name. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–414 (Mar. 3, 1901, ch. 854, § 979, 31 Stat. 1346).

The only change is the insertion of a comma after "marriage".

§ 16–916. Maintenance of wife and minor children; maintenance of former wife; enforcement

(a) Whenever any husband shall fail or refuse to maintain his wife, minor children, or both, although able to do so, or whenever any father shall fail or refuse to maintain his children by a marriage since dissolved, although able to do so, the court, upon proper application, may decree, pendente lite and permanently, that he shall pay reasonable sums periodically for the support of such wife and children, or such children, as the case may be, and the court may decree that he pay suit money, including counsel fees, pendente lite and permanently, to enable plaintiff to conduct the case.

(b) Whenever a former husband has obtained a foreign ex parte divorce, the court thereafter, on application of the former wife and with personal service of process upon the former husband in the District of Columbia, may decree that he shall pay her reasonable sums periodically for her maintenance and for suit money, including counsel fees, pendente lite and permanently, to enable plaintiff to conduct the case.

(c) The Court may enforce any decree entered under this section in the same manner as is provided in section 16–911. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; Sept. 29, 1965, 79 Stat. 889, Pub. L. 89–217, § 3.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–415 (Mar. 3, 1961, ch. 854, § 980, 31 Stat. 1346; June 20, 1949, ch. 228, 63 Stat. 213).

Minor changes are made in phraseology.

AMENDMENT

1965—Section 3 act Sept. 29, 1965, amended section to read as above set out. For provisions of section prior to this amendment, see Supp. IV to 1961 edition of the code.

NOTES TO DECISIONS

I. UNDER PRIOR LAW

In general

Under this section "the power of the court to grant separate maintenance can be exercised only where the 'husband shall fail or refuse to maintain his wife and minor children,' if any, although able so to do." *Towson* v. *Towson* (1919, 258 F. 517, 49 App. D.C. 45).

This section does not require that husband and wife live "separate and apart." *Pedersen* v. *Pedersen* (1940, 107 F. 2d 227, 71 App. D.C. 26).

Admissibility of evidence

Proof regarding motivation of husband's conduct, justification for wife's departure from family home, and the necessity, if any, for her maintenance apart from her husband, is admissible in action of wife for separate maintenance. *Gill* v. *Gill* (1945, 147 F. 2d 154, 79 U.S. App. D.C. 357).

Amount of award

Evidence was sufficient to sustain an order of $150 per month for the support and maintenance of wife and three children. *Wedderburn* v. *Wedderburn* (1924, 295 F. 1014, 54 App. D.C. 193).

Lower court, having first obtained jurisdiction of the parties under the bill for maintenance, had the power and the right to enter a decree for maintenance and as shown in the circumstances the allowance of the amount of alimony should be sustained as a proper allowance. *Marcum* v. *Marcum* (1933, 62 F. 2d 871, 61 App. D.C. 332).

Arrears

An unfair burden would be imposed upon appellee if, after he had contributed directly to the support of his children and had otherwise acted in accordance with assurance that appellant wanted no money from him, he were now to be required to pay her large accumulations of arrears for maintenance. *Franklin* v. *Franklin* (1949, 171 F. 2d 12, 83 U.S. App. D.C. 385).

Award pendente lite

This section makes no provision for an award pendente lite as an incident to a suit for separate maintenance. *Pedersen* v. *Pedersen* (1940, 107 F. 2d 227, 71 App. D.C. 26).

Basis for award

Under statute to effect that court may award maintenance to wife if husband fails or refuses to maintain her, wife makes out prima facie case by proving husband failed to maintain her and was able to do so, but husband may offer evidence that wife left him without just cause or that separation was brought about largely or in part by wife's cruelty or act of unkindness or indignity and such proof may justify denial or abatement of maintenance. *F. L. Miller* v. *B. Miller* (D.C. Mun. App. 1962, 180 A. 2d 888).

Wife's misconduct may bar her claim from maintenance or, despite misconduct, she may be entitled to award but in lesser amount than would otherwise be awarded. *Id.*

Finding that wife, who has left husband, was justified in living separate and apart from husband should be prerequisite to award of maintenance to wife. *Id.*

Contempt

Where neither underlying order for payment of money for maintenance of minor children nor order adjudging defendant to be in contempt for failure to obey underlying order and committing defendant to jail rested upon necessary finding that defendant had failed or refused to maintain his wife and minor children although able to do so, order of commitment was invalid. *Lundregan* v. *Lundregan* (1958, 252 F. 2d 823, 102 U.S. App. D.C. 259).

When validity of commitment for contempt for nonpayment of money judgment is questioned, court will look behind commitment order to money judgment itself, and if that judgment is invalid on its face as a basis for commitment then commitment will not be sustained, and rule that decree of court, assuming jurisdictional basis, must be obeyed until set aside by judicial process, is not applicable. *Id.*

Counsel fees

Wife who brought proceeding to affirm marriage and set aside foreign divorce decree was entitled to counsel fees. *E. Gherardi de Parata* v. *B. Gherardi de Parata; B. Gherardi de Parata* v. *E. Gherardi de Parata* (D.C. App. 1963, 193 A. 2d 213).

Wife's proceeding to affirm marriage and set aside foreign decree was equitable in nature and District of Columbia Court of General Sessions had power to award counsel fees to wife. *Id.*

Where husband had been ordered to pay support money and attorney's fees, contempt order committing husband until he paid an amount greater that that due for support alone was erroneous in so far as it committed husband for failure to pay attorney's fees. *Berman* v. *Berman* (1953, 202 F. 2d 812, 92 U.S. App. D.C. 77).

The District Court has authority to award counsel fees in a wife's action for separate maintenance. *Melvin* v. *Melvin* (1942, 129 F. 2d 39, 76 U.S. App. D.C. 56).

In action by wife for separate maintenance, evidence of cruelty of husband is relevant on question of how much maintenance the husband should be required to pay. *Gill* v. *Gill* (1945, 147 F. 2d 154, 79 U.S. App. D.C. 357).

Wife's attorney's fee of $125 was ordered paid by husband in wife's maintenance action, where husband's income was not ample to justify more, notwithstanding services of wife's counsel warranted a higher amount. *Hodge* v. *Hodge* (D.C.D.C. 1948, 80 F. Supp. 379).

Custody of children

In action by wife for maintenance and support, exclusive custody of minor children of the parties should not have been awarded to wife where husband and wife and the children remained living together in the same household. *R. L. Clements* v. *R. Clements* (D.C. Mun. App. 1962, 184 A. 2d 195).

Where first order required husband to pay wife for maintenance of children, and second order after husband and wife were divorced replaced earlier order and required husband to pay a greater amount for such maintenance, husband failing to pay the amount provided for in the second order was in contempt, but husband could not be imprisoned inasmuch as the second order was entered after the divorce. *Queen* v. *Queen* (1951, 188 F. 2d 624, 88 U.S. App. D.C. 157).

Discharge of order

"The amount and the continuation of the allowance will remain subject to the control of the equity court," and should the parties be reconciled or should the husband provide a suitable home and invite the wife to occupy it, the order for maintenance will be discharged. *Bernsdorff* v. *Bernsdorff* (1906, 26 App. D.C. 520). See, also, *Marschalk* v. *Marschalk* (1916, 45 App. D.C. 455).

Discretion of court

Broad discretionary power is vested in trial court to award maintenance to a wife when the husband has failed or refuses to support her, and if she has need thereof and he has the ability to pay, a judgment of maintenance will not be disturbed except upon a clear showing of abuse. *C. T. Rutherford* v. *E. S. Rutherford* (D.C. App. 1963, 189 A. 2d 124).

Statute providing that court may award maintenance to wife if husband has failed to support her although able to do so does not compel award but leaves it within discretion of trial court. *S. W. Foley* v. *J. D. Foley* (D.C. Mun. App. 1962, 184 A. 2d 853).

Wife's financial condition is relevant consideration and may limit award of maintenance or defeat it altogether. *Id.*

Where a bill for maintenance makes out a prima facie case, the complainant is entitled to an allowance pendente lite for support, the amount of which is within the sound discretion of the trial court. *Tolman* v. *Tolman* (1893, 1 App. D.C. 299).

Matter of granting or refusing temporary alimony is committed to sound discretion of trial court, and will not be disturbed by reviewing court, unless discretion has been abused. *Reed* v. *Reed* (1922, 280 F. 1009, 52 App. D.C. 35). See, also, *Howard* v. *Howard* (1940, 112 F. 2d 44, 72 App. D.C. 145).

In wife's suit for maintenance, awards of maintenance pendente lite and suit money were within District Court's discretion under its general equity powers. *Bates* v. *Bates* (1944, 141 F. 2d 723, 79 U.S. App. D.C. 14).

Dismissal

A motion to dismiss a complaint for maintenance was required to be denied notwithstanding defendant introduced affidavit and a supplemental answer disclosing that defendant had obtained an absolute divorce from plaintiff in Arkansas wherein he claimed to have obtained a legal residence, since court could consider only facts set forth

in complaint which disclosed an existing marriage of parties who were residents of Maryland and that defendant was temporarily within the District. *Brandenburg* v. *Brandenburg* (D.C.D.C. 1948, 80 F. Supp. 562).

Effect of award under reciprocal laws

Award for separate maintenance and support for minor children obtained under reciprocal enforcement of Support Act did not preclude later statutory action for maintenance and support. *A. E. Figliozzi* v. *J. Figliozzi* (D.C. Mun. App. 1961, 173 A. 2d 904).

Effect of divorce

For purposes of jurisdiction in suits to enforce support, divorced wife is to be deemed a wife. *W. P. Christian* v. *J. C. Christian* (D.C. Mun. App. 1962, 187 A. 2d 126).

Right to support acquired by marriage is incident of marriage which survives an ex parte divorce decree. *Id.*

1951 Maryland ex parte divorce obtained by husband remained ex parte decree even though wife in 1960 attempted to vacate decree by motion which was never passed upon and which was withdrawn by consent without prejudice, and proceeding did not bar subsequent suit by wife in District of Columbia for separate maintenance. *Id.*

Where husband filed suit for divorce against wife in the District of Columbia, and wife filed a counterclaim for separate maintenance, and husband then moved to Texas and procured a divorce in Texas, court in District of Columbia properly dismissed counterclaim for separate maintenance, since there could be no award of maintenance after divorce decree became effective. *Meredith* v. *Meredith* (1953, 204 F. 2d 64, 96 U.S. App. D.C. 351).

This section defines the power of a court to make a support-money order against a husband for the benefit of a wife and minor children, but does not embrace the case of an order against a divorced father. *Rapeer* v. *Colpoys* (1936, 85 F. 2d 715, 66 App. D.C. 216).

Effect of post divorce agreement

Post-divorce agreement providing that in consideration for payment of $5,000, husband would be discharged from all claims arising out of and during marital relationship with exception of obligation to support children and that wife released all present and future claims to husband's property and all claims for alimony and support for herself, failed to extinguish rights of children to continued support and District Court had jurisdiction to determine whether support provided for children was adequate even though husband had presented a substantial showing that he had been affording children full measure of support. *Harrison et al.* v. *Harrison* (1957, 248 F. 2d 631, 101 U.S. App. D.C. 309).

Where parties had entered into post-divorce agreement providing that in consideration for payment of $5,000, husband would be discharged from all claims arising out of and during marital relationship with exception of obligation to support children and that wife released all present and future claims to husband's property and all claims for alimony and support for herself, wife had released all claims to separate maintenance for herself. *Id.*

Equity jurisdiction

Equity will compel a husband to support his wife, quite apart from apparent restrictions on such obligation in statute. *Meredith* v. *Meredith* (1955, 226 F. 2d 257, 96 U.S. App. D.C. 355).

United States District Court for the District of Columbia has general equity powers, which are not supplanted by this section providing that whenever any husband shall fail to maintain his wife, court, on application of wife, may order him to pay as maintenance such sums as would be allowed in case of divorce, and which are broad enough in appropriate circumstances to support a grant of maintenance after an ex parte divorce. *Hopson* v. *Hopson* (1955, 221 F. 2d 839, 95 U.S. App. D.C. 285).

This section providing that whenever any husband shall fail to maintain his wife, court, on application of wife may order him to pay as maintenance such sums as would be allowed in case of divorce, is merely a specific authorization to enter a maintenance decree and is not a limitation on court's general equitable powers to enter such a decree. *Id.*

Equity has jurisdiction to grant maintenance as an independent relief. *Rhodes* v. *Rhodes* (1911, 36 App. D.C. 261). See, also, *Lesh* v. *Lesh* (1903, 21 App. D.C. 475); *Tolman* v. *Tolman* (1893, 1 App. D.C. 299).

Where father was worth over a million dollars, $50 a month was not adequate for care and education of son of 18, custody of whom had been awarded to mother by Nevada divorce decree, and it was duty of court to compel father to provide adequate support under its general equity powers. *Schneider* v. *Schneider* (1944, 141 F. 2d 542, 78 U.S. App. D.C. 383).

Suits for maintenance have been regarded in the District as equitable rather than legal. *Franklin* v. *Frankiln* (1949, 171 F. 2d 12, 83 U.S. App. D.C. 385).

The power of the court of equity to adopt its remedial relief to existing conditions and circumstances should not be curtailed. *Id.*

Evidence

Sufficient competent evidence supported findings and judgment of trial court granting separate maintenance. *C. T. Rutherford* v. *E. S. Rutherford* (D.C. App. 1963, 189 A. 2d 124).

Evidence in separate maintenance action supported finding that husband's misconduct had justified wife in leaving him. *G. M. Johnson* v. *C. D. Johnson* (D.C. Mun. App. 1962, 179 A. 2d 720).

In wife's suit for maintenance, defended on ground that she had been guilty of adultery and had, accordingly, forfeited her right to support, evidence supported decree granting permanent maintenance. *Smith* v. *Smith* (D.C. Mun. App. 1957, 137 A. 2d 221).

Foreign decree

Decree of divorce obtained by husband in Virginia barred wife's action for maintenance in the courts of the District of Columbia. *Thompson* v. *Thompson* (1913, 33 S. Ct. 129, 266 U.S. 551, 57 L. Ed. 347).

A Texas court's decree, granting husband a divorce after dismissal of his complaint for divorce by federal District Court for District of Columbia on his motion because of his removal to Texas, did not destroy wife's personal financial right to claim maintenance, for which she filed counterclaim in District of Columbia court before filing of husband's Texas divorce suit, where wife did not appear in such suit, as Texas court had no jurisdiction over her. *Meredith* v. *Meredith* (1955, 226 F. 2d 257, 96 U.S. App. D.C. 355).

Ex parte foreign divorce procured by husband did not operate as a bar, under the full faith and credit clause, Art. 4, § 1, of the federal Constitution, to subsequent suit by wife in the District of Columbia for support and maintenance for herself and child. *Hopson* v. *Hopson* (1955, 221 F. 2d 839, 95 U.S. App. D.C. 285).

A grant of maintenance in a suit filed after an ex parte foreign divorce is consistent with the full faith and credit clause, Art. 4, § 1, of the federal Constitution. *Id.*

A Florida divorce decree obtained by husband who went to Florida solely for purpose of obtaining the divorce, and with no bona fide intention of remaining therein permanently or indefinitely, was not entitled to full faith and credit in the District of Columbia, so as to bar wife's action for maintenance. *White* v. *White* (1945, 150 F. 2d 157, 80 U.S. App. D.C. 156).

In absence of any showing of invalidity, Florida judgment granting absolute divorce to husband barred right of wife to maintenance, notwithstanding wife had instituted suit for maintenance in District Court for District of Columbia and had obtained an order granting temporary maintenance prior to time husband instituted Florida divorce suit. *Gullet* v. *Gullet* (1945, 149 F. 2d 17, 80 U.S. App. D.C. 73). See, also, *Gullet* v. *Gullet* (1947, 71 F. Supp. 378, affirmed 174 F. 2d 531, 85 U.S. App. D.C. 12).

Where husband took 40-hour annual leave from Washington job and went to Mexico for divorce, remaining there for not more than eight days, returning to Washington before decree was signed, husband was not a bona fide resident of Mexico, and decree obtained by him was not binding on District Court for District of Columbia in wife's subsequent action for support and maintenance. *Hodge* v. *Hodge* (D.C.D.C. 1948, 80 F. Supp. 379).

Maryland court's judgment of acquittal in bigamy prosecution following husband's remarriage after Mexican divorce did not settle question of validity of divorce in

wife's action for maintenance brought subsequent to both Maryland judgment and Mexican divorce. *Id.*

Imprisonment

Inasmuch as acknowledged father of illegitimate children did not have status of husband, his disobedience of order directing him to support children, though contemptuous, could not be punished by imprisonment. *C. Johnson* v. *E. Johnson et al.* (D.C. Mun. App. 1962, 183 A. 2d 916).

One may not be imprisoned to compel obedience to court order directing payment of money except in those cases especially provided for. *Lundregan* v. *Lundregan* (1958, 252 F. 2d 823, 102 U.S. App. D.C. 259).

Under this section, authorizing imprisonment for enforcement of permanent maintenance and §§ 16–410, 16–411, for enforcement of alimony during pendency of divorce suit and § 11–327, permitting enforcement of interlocutory orders by same process as final decrees, court had no power to imprison husband for failure to pay awards of maintenance pendente lite and suit money, in wife's suit for maintenance. *Bates* v. *Bates* (1944, 141 F. 2d 723, 79 U.S. App. D.C. 14).

Judgment

Where wife brought action for divorce from bed and board, or, in alternative, for separate maintenance, judgment for separate maintenance was a finality as to every matter which was offered and received to sustain or defeat the case. *Gill* v. *Gill* (1945, 147 F. 2d 154, 79 U.S. App. D.C. 357).

A judgment for separate maintenance requires some basis for its support. *Id.*

Jurisdiction

Where mother's custody of children was not in issue, court had jurisdiction to award money for support of children residing in New York with mother against father living and employed in District of Columbia and it was error not to do so. *N. G. Sheridan* v. *G. T. Sheridan* (D.C. App. 1964, 202 A. 2d 653).

Legitimacy of child

The presumption of legitimacy of a child, corroborated by the mother's sworn statement that her husband, defendant in suit for maintenance, was the father of the child, and affidavits of third parties detailing circumstances strongly corroborative of the claim, is not overcome by the husband's denial of paternity, supported by the professional opinion of a physician, based on an examination of defendant more than a year later, that he was sterile at the time conception occurred. *Howard* v. *Howard* (1940, 112 F. 2d 44, 72 App. D.C. 145).

Maintenance as alimony

Where wife was denied a divorce because of insufficiency of her proof of cruelty, but was awarded "alimony", the "alimony" was in fact an award of "maintenance", which was within the power of the court, upon a proper showing, even though there was no ground for divorce. *Brooker* v. *Brooker* (1954, 211 F. 2d 648, 94 U.S. App. D.C. 38).

This section authorizing award of maintenance to a wife in such sums as would be allowed as permanent alimony in case of divorce assimilates maintenance, at least as regards amount, to alimony within rule that alimony is largely discretionary and may be granted to a wife who is at fault or denied against a husband who is at fault and that its amount is elastic. *Melvin* v. *Melvin* (1942, 129 F. 2d 39, 76 U.S. App. D.C. 56).

Marriage validity

Although Virginia marriage was void because one of parties thereto had just been divorced and six months' period for divorce to become final had not elapsed, a subsequent religious marriage ceremony more than a year after the divorce decree created a valid husband-wife relationship as basis for separate maintenance award. *C. L. Morse* v. *S. W. Morse* (D.C. App. 1964, 200 A. 2d 375).

In wife's suit for separate maintenance, evidence established that wife was justified in leaving the marital abode, that husband failed to support her and that $75 a month was a reasonable allowance. *Id.*

Measure of support

Alimony, when allotted, measures the husband's duty of support. *Irwin* v. *Hawfield* (D.C. Mun. App. 1949, 62 A. 2d 926).

Nonresident parties

Where parents and children were residents of Maryland and at time wife's separate maintenance suit was filed the husband was working in District of Columbia where personal service was had upon him but at time of trial he was employed in Maryland, District of Columbia court properly declined to award custody to either parent. *I. Z. Schiller* v. *C. Schiller* (D.C. App. 1963, 194 A. 2d 665).

Where wife failed to prove that husband had failed or refused to maintain her and court declined to award either husband or wife custody of children in wife's separate maintenance suit for lack of jurisdiction, court properly declined to award support for the children. *Id.*

Where complaint for maintenance states an existing marriage and that plaintiff and defendant are residents of Maryland and that defendant husband is temporarily within the District, practice is for the District Court for the District of Columbia, to take jurisdiction. *Bradenburg* v. *Bradenburg* (D.C.D.C. 1948, 80 F. Supp. 562).

Permanent alimony

Question of permanent alimony could be judicially considered only on the granting of a divorce or on application of the wife for maintenance. *Payne* v. *Payne* (1924, 295 F. 970, 54 App. D.C. 149).

In view of this section providing for the allowance of money for the maintenance of a wife upon her application therefor whenever the husband fails or refuses to maintain her, permanent alimony may be granted in an annulment action. *Parrella* v. *Parrella* (1941, 120 F. 2d 728, 74 App. D.C. 161).

Proceeding in personam

When suit is for maintenance it is a proceeding in personam, and wife could not by attachment or seizure take the property until after the decree has passed. *Bliss* v. *Bliss* (1931, 50 F. 2d 1002, 60 App. D.C. 237).

Res judicata

A judgment in prior action between same parties is res judicata on the points and matters in issue and adjudicated in such action. *Gill* v. *Gill* (1945, 147 F. 2d 154, 79 U.S. App. D.C. 357).

Even if subsequent action is for different cause of action, a right, question, or fact determined in prior action must, as between same parties, be taken as conclusively established, so long as judgment in prior action remains unmodified. *Id.*

Decree on wife's cross-complaint denying divorce, but allowing temporary and permanent alimony and dismissing both husband's divorce complaint and wife's cross-complaint, was not res judicata precluding subsequent action by wife for support and maintenance. *Hodge* v. *Hodge* (D.C.D.C. 1948, 80 F. Supp. 379).

An issue of how much defendant should pay his wife for necessaries litigated in District Court was res judicata between husband and wife and District Court alone had the power to reopen and modify decree. *Irwin* v. *Hawfield* (D.C. Mun. App. 1949, 62 A. 2d 926).

Separate maintenance

A wife makes out a prima facie case for separate maintenance when she proves that her husband has failed or refused to maintain her and that he is able to do so. *I. Z. Schiller* v. *C. Schiller* (D.C. App. 1963, 194 A. 2d 665).

A husband may defeat a wife's claim for separate maintenance by showing that she left without cause or reason or that separation was brought about by her misconduct. *Id.*

Wife was not entitled to separate maintenance based on claim that husband failed to support her when she left marital abode and secreted herself so that it was impossible for husband to do so, particularly when it was admitted that prior to departure husband had supported his family commensurate with his earning ability and had remained willing to continue such support if wife returned with children to marital abode. *Id.*

Statute providing that court "may" award maintenance to wife if husband fails or refuses to support her though able to do so does not compel award but leaves it to discretion of trial judge whose judgment will not be disturbed except on clear showing of abuse. *O. S. DeSipio* v. *J. DeSipio* (D.C. Mun. App. 1962, 186 A. 2d 624).

Support may be granted to wife who is at fault, and it may in proper case be denied against husband who is at fault, and amount is elastic. *Id.*

Misconduct of wife may defeat her claim to support, but if husband asserts her misconduct as defense, he must plead and prove it. *Id.*

Though duty of husband to meet reasonable needs of wife within his financial capabilities in absolute and remains unimpaired as long as marital relationship exists, court, in enforcing obligation, must remain equally mindful of welfare of husband and avoid penalizing him by imposition of harsh financial terms. *Id.*

Court was unauthorized to deny wife all support on ground that she was presently or would very soon be in position where she could use her education and experience in gainful employment. *Id.*

Wife who was living under the same roof with her husband although refusing to share his bed was not entitled to an award of separate maintenance merely because she contributed to living expenses by purchasing groceries with money she earned, where such arrangement was voluntary, and husband paid rent, telephone, electricity, and contributed to the cost of groceries and clothing of minor children of the parties. *R. L. Clements* v. *R. Clements* (D.C. Mun. App. 1962, 184 A. 2d 195).

Although an award of separate maintenance may be made to a wife in fact living a separate life, although under the same roof with her husband, such situation should be given careful scrutiny to discourage litigation between husbands and wives who are actually living together. *Id.*

Wife makes out case for separate maintenance by establishing that husband failed or refused to support her, although able to do so; no allegation of cruelty is necessary. *G. M. Johnson* v. *C. D. Johnson* (D.C. Mun. App. 1962, 179 A. 2d 720).

Where evidence clearly and uncontrovertedly established that husband and wife had in fact been living separate lives though under the same roof, even though such situations generally invite careful scrutiny of courts, there was no reason to withhold an award of maintenance money to wife suing for separate maintenance. *Lutz* v. *Lutz* (D.C. Mun. App. 1960, 166 A. 2d 489).

Municipal Court has no power to compel a husband to provide funds for his wife's separate maintenance. Accordingly, judgment obtained by physician against husband for professional services rendered to wife must be reversed. *Irwin* v. *Hawfield* (D.C. Mun. App. 1949, 62 A. 2d 926).

Sufficiency of allegations

Wife suing for limited divorce and failing to establish any dereliction on the part of the husband is not entitled to maintenance under section 980, D.C. Code of 1901 (this section). *Towson* v. *Towson* (1919, 258 F. 517, 49 App. D.C. 45).

Although cruelty was alleged in bill for maintenance on ground of failure to support, it was sufficient. *Cissell* v. *Cissell* (1933, 61 F. 2d 679, 61 App. D.C. 271).

A wife may state a cause of action for maintenance when she alleges that her husband has failed or refused to maintain her, although able to do so, and an allegation of cruelty is not necessary. *Gill* v. *Gill* (1945, 147 F. 2d 154, 79 U.S. App. D.C. 357).

Suit by nonresident wife

A suit for maintenance may be maintained by a nonresident wife against a resident husband. *Tolman* v. *Tolman* (1893, 1 App. D.C. 299).

The District Court for the District of Columbia properly accepted jurisdiction of wife's action for maintenance where the parties had lived together in the District for ten years, then moved to Maryland, just over the District line, where they lived until separation, and husband then moved back to the District, where he had since lived and worked, except for period of temporary residence in Florida, where he attempted to obtain divorce. *White* v. *White* (1945, 150 F. 2d 157, 80 U.S. App. D.C. 156).

Support of child

A child's claim to paternal support, unlike a claim by a wife in separate maintenance and support proceedings, is not affected by the merits of the controversy between the spouses. A father's obligation to contribute to the support of a child born of marriage is unqualified, and maintenance pendente lite for the child must be provided. *Howard* v. *Howard* (1940, 112 F. 2d 44, 72 App. D.C. 145).

A child's claim for maintenance is not subsidiary to that of the mother. *Id.*

Where domicile of father and minor son was in District of Columbia, duty imposed by this section on father to provide adequate support for his son existed in spite of Nevada divorce decree containing inadequate support provisions. *Schneider* v. *Schneider* (1944, 141 F. 2d 542, 78 U.S. App. D.C. 383).

A suit by mother as next friend of minor son is proper proceeding to enforce duty of father to provide adequate support for his minor son. *Id.*

The measure of father's duty to provide adequate support for minor son was present needs of son and ability of father to provide for him. *Id.*

Trust funds used for support

Trust funds established to provide for child's education may be used to discharge father's duty to support, without regard to his financial status. *M. S. Grollman* v. *J. J. Grollman* (D.C. App. 1966, 220 A. 2d 330).

Where trust funds were expressly established by father's brother to provide for payment from both income and corpus of certain educational expenses of the children, father had the right, if not the duty as trustee, to apply such funds for his children's college education, irrespective of whether he was able to so provide from his own means. *Id.*

II. Under Present Law

Ability to pay

Evidence sustained finding that husband had failed and refused to adequately maintain wife and children although able to do so. *A. Crancer, Jr.* v. *L. S. Crancer* (D.C. App. 1966, 222 A. 2d 853).

Lack of finding on ability of husband to make support payments directed by court invalidated his commitment to jail as means of enforcing support. *R. M. Truslow* v. *P. M. Truslow* (D.C. App. 1965, 212 A. 2d 763).

Adultery, proof required

Evidence in separate maintenance action consisting of implied admissions by husband was insufficient to support finding of husband's adultery. *W. S. Snyder* v. *M. F. Snyder* (D.C. App. 1966, 222 A. 2d 850).

Charge of adultery in separate maintenance action must be supported by clear and satisfactory evidence. *Id.*

Mere circumstances of suspicion are not enough to sustain charge of adultery in separate maintenance suit. *Id.*

Standard of proof for adultery in separate maintenance suit is no less than that in divorce suit. *Id.*

Amount of award

Certain primary factors, such as duration of marriage, ages and health of parties, respective financial positions, both past and prospective, wife's contribution to family support and property ownership, needs of wife and husband's ability to contribute thereto, and interest of society generally in preventing wife from becoming public charge, must be considered in determining whether to award alimony or maintenance to wife and amount of any such award. *T. V. Tibbs* v. *A. B. Tibbs* (D.C. App. 1966, 223 A. 2d 279).

Where there was no evidence in separate maintenance suit by wife that she required money for her support additional to her own earnings, and where her current and prospective financial condition was in fact better than her husband's, award of $80 per month entered against her husband for purpose of supporting her would be improper, but award would be proper if based upon fact that wife was paying installments on cooperative apartment coowned by her husband. *T. V. Tibbs* v. *A. B. Tibbs* (D.C. App. 1966, 223 A. 2d 279).

Evidence was sufficient to support trial court's finding that wife was entitled to separate maintenance in the amount of $10 per week and that husband had ability to pay. *Green* v. *Green* (D.C. App. 1966, 217 A. 2d 658).

Order awarding wife $35 per week separate maintenance was not abuse of discretion, despite husband's uncontradicted testimony that his net weekly income was only $50, in absence of substantiating records. *D. E. Vance* v. *E. M. Vance* (D.C. App. 1965, 212 A. 2d 532).

Appeal

Petition to United States Court of Appeals for allowance of appeal from a judgment of District of Columbia Court of Appeals would be denied by United States Court of Appeals on ground that further review was not merited, where it had remanded case so that D.C. Court of Appeals might consider whether denial of support to wife on ground of misconduct was permissible, absent determination of effect of such denial on her ability to provide proper care for children entrusted to her custody, and D.C. Court of Appeals adhered to opinion and stated that record made plain that Court of General Sessions determined greatest amount that husband could reasonably pay and ordered such sum to be paid for support of children. *Lattisaw* v. *Lattisaw* (1966, 359 F. 2d 258, 123 U.S. App. D.C. 274).

Custody of children

Where in wife's complaint she alleged she had custody of children and husband admitted that fact in his answer, at trial wife requested permanent custody and husband's only protestation was that he should be allowed visitation privileges outside of wife's environment, custody was not in issue and award of custody to mother was not improper on basis that husband had not been given notice that custody was to be litigated. *A. Crancer, Jr.* v. *L. S. Crancer* (D.C. App. 1966, 222 A. 2d 853).

Discretion of court

The award of separate maintenance of wife is a matter within broad discretion of trial court and will not be disturbed except upon clear showing of abuse. *Green* v. *Green* (D.C. App. 1966, 217 A. 2d 658).

Broad discretion is vested in trial judge in awarding support and maintenance and in fixing amount thereof based on various factors, including reasonable needs of wife and ability of husband to contribute to her support, and determination of judge on this matter will not be disturbed except upon clear showing of abuse of discretion. *J. K. Lewis* v. *E. M. Lewis* (D.C. App. 1965, 206 A. 2d 266).

Imprisonment

Where husband, who defaulted in his support obligations to his wife and children, was ordered committed to jail, and order was stayed on condition he make timely future payments on both current obligation and arrearages, the court properly ordered his commitment on ex parte application when husband failed to make the required payments. *Scott* v. *Scott* (D.C. App. 1966, 220 A. 2d 95).

Husband committed to jail for failure to keep up support payments to wife and children was free to seek suspension of commitment by making appropriate showing of physical disabiilty or other reason for not complying with order. *Id.*

Husband who felt, because of physical disability or any other reason, he was unable to make support payments to wife and children in compliance with court order should have applied to court for modification of the order. *Id.*

Father sought to be held in contempt for failure to perform order for support of minor children must show by competent evidence reasonable excuse for nonperformance, and when he offers no valid reason for default, trial court has right to enforce compliance by imprisonment unless husband purges himself of the arrears. *R. M. Truslow* v. *P. M. Truslow* (D.C. App. 1965, 212 A. 2d 763).

Separate maintenance

Where wife was awarded separate maintenance largely on ground of husband's adultery but wife had never claimed that she was living apart because of husband's adultery and claimed only that she was living apart because he had left against her will, and wife had testified as to willingness to overlook husband's conduct, award was reversed even though record may have sustained award completely disregarding charge of adultery. *W. S. Snyder* v. *M. F. Snyder* (D.C. App. 1966, 22 A. 2d 850).

§ 16–917. Co-respondents as defendants; service of process

In a divorce case where adultery is charged, the person or persons with whom the adultery is charged to have been committed shall be made defendant or defendants and brought in by personal service of process or by publication as in other cases. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–417 (Mar. 3, 1901, ch. 854, § 983, 31 Stat. 1347).

NOTES TO DECISIONS UNDER PRIOR LAW

In general

Bill alleging adultery with two persons without making them party to suit, was not maintainable. *Nelson* v. *Nelson* (1931, 49 F. 2d 680, 60 App. D.C. 156).

Counsel fees

Counsel fees of husband plaintiff cannot be assessed against the co-respondent as costs. *Eichelberger* v. *Symons* (1923, 288 F. 654, 53 App. D.C. 116).

Defense by co-respondent

Quaere: Whether co-respondent can plead condonation by plaintiff. *Holden* v. *Matteson* (1912, 38 App. D.C. 128).

Identity unknown

It is not necessary to make co-respondent a party if his identity cannot be determined or he is known only by a fictitious name. *McLarren* v. *McLarren* (1916, 45 App. D.C. 237, 1 A.L.R. 1412).

§ 16–918. Assignment of counsel in uncontested cases; compensation

In all uncontested divorce cases, and in any other divorce or annulment case where the court deems it necessary or proper, a disinterested attorney shall be assigned by the court to enter his appearance for the defendant and actively defend the cause. The attorney shall receive such compensation for his services as the court determines to be proper, which shall be paid by the parties as the court directs. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–418 (Mar. 3, 1901, ch. 854, § 982, 31 Stat. 1374; June 20, 1949, ch. 229, 63 Stat. 213).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Compensation

Under this section authorizing Domestic Relations Court to assign counsel in uncontested cases, and providing that counsel shall receive such compensation for his services as the court determine to be proper, to be paid by parties as the court may direct, court had authority in default divorce action by wife to require fee of counsel appointed to defend to be paid by the wife, even though she was the aggrieved party and prevailed in the action. *Sutton* v. *Sutton et al.* (D.C. Mun. App. 1960, 164 A. 2d 477).

In action by wife for divorce, where husband defaulted, court appointed attorney to defend, and, after proof of case, ordered wife to pay fee of appointed attorney, and where wife failed to pay such fee for period of three months, judge notified wife's attorney that unless fee was paid within week, appointed counsel waived fee, or plaintiff filed an affidavit of impecuniosity, action would be dismissed, and fee was not waived or paid, and wife did not file an affidavit, court properly dismissed action for failure to comply with order of the court. *Id.*

Contempt

Municipal court had summary jurisdiction over attorneys who had represented plaintiff in unsuccessful divorce action in which court ordered payment of attorney fees to counsel appointed for defendant, and such summary power could be invoked to punish such attorneys for contempt when they failed to pay over to defendant's counsel a sum which the court had found had

been entrusted to them for payment of such fees. *In re E. L. Ferrell and N. A. Perry* (D.C. Mun. App. 1961, 172 A. 2d 555).

Failure of attorneys to comply with order requiring them to pay over funds found to have been entrusted to them by their client for payment of attorney fees awarded opponent constituted "contempt of court". *Id.*

Trial court had authority to award counsel fees for attorney appointed by court to represent husband in wife's uncontested divorce action dismissed for lack of jurisdiction and lack of proof. *Id.*

In divorce action, where an attorney was appointed for defaulting defendant and final decree granting divorce ordered defendant to pay a fee to attorney but this section providing compensation for attorney so appointed, made no provision for enforcement of payment of compensation, attorney could not enforce payment of his fee by way of contempt proceeding. *Robinson* v. *Robinson* (D.C.D.C. 1948, 80 F. Supp. 397).

§ 16–919. Proof required on default or admission of defendant

A decree for a divorce, or a decree annulling a marriage, may not be rendered on default, without proof; and an admission contained in the answer of the defendant may not be taken as proof of the facts charged as the ground of the application, but shall be proved by other evidence in all cases. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–419 (Mar. 3, 1901, ch. 854, § 964, 31 Stat. 1345).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Admissions

Admissions of adultery by wife, having been freely made, were rightly received in evidence against her. *Holden* v. *Matteson* (1912, 38 App. D.C. 128).

The testimony of a party to a divorce suit need not be corroborated when it is undisputed, the suit is contested and no collusion appears, though testimony is necessary and admissions in pleadings are not enough. *Buford* v. *Buford* (1946, 156 F. 2d 567, 81 U.S. App. D.C. 169).

In husband's action for annulment of marriage to wife who was in armed forces at time of marriage and who refused to join husband after she obtained discharge from service, admissions of wife made in letters and telephone calls to husband that she did not intend to join husband were properly received in evidence. *Farrington* v. *Farrington* (D.C. Mun. App. 1958, 140 A. 2d 921).

Confessions

"In *Michalowicz* v. *Michalowicz* (1905, 25 App. D.C. 484) it was ruled that this provision [this section] of the code is declarative of the general rule of practice in such cases and was not intended to prohibit all evidence of confessions that may have been made by a party. 'But,' said the court, 'to warrant a decree of divorce the confessions must be well established, direct, and certain, free from suspicion of collusion, and corroborated by independent facts and circumstances.'" *Cogswell* v. *Cogswell* (1919, 258 F. 287, 49 App. D.C. 31).

Corroboration

Rule requiring corroboration of plaintiff's testimony in divorce cases was a rule of ecclesiastical courts and disappeared in common-law courts; and, in absence of statutory requirement for corroboration, divorce can be granted on uncorroborated testimony of complainant in uncontested divorce action. *Schroeder* v. *Schroeder* (D.C. Mun. App. 1957, 133 A. 2d 470).

Nature of proof required

In divorce proceedings, evidence of wife's adultery must be clear and convincing. Mere circumstances of suspicion are not sufficient. *Krous* v. *Krous* (1913, 41 App. D.C. 200). See, also, *Symons* v. *Symons* (1922, 275 F. 1015, 51 App. D.C. 69); *Stewart* v. *Stewart* (1923, 286 F. 987, 52 App. D.C. 323); *McKitrick* v. *McKitrick* (1920, 261 F. 451, 49 App. D.C. 109); *Topham* v. *Topham* (1921, 269 F. 1013, 50 App. D.C. 229).

Proof of an adulterous disposition and opportunity to commit offense warrant a finding of adultery. *Allen* v. *Allen* (1923, 285 F. 962, 52 App. D.C. 228).

Where testimony is in conflict, "the finding of the lower court will not be disturbed, unless it is palpably wrong." *Cole* v. *Cole* (1923, 286 F. 764, 52 App. D.C. 302). See, also, *Church* v. *Church* (1921, 270 F. 359, 50 App. D.C. 237).

"But that rule does not require proof beyond the possibility of doubt, nor does it necessarily require proof by eye witnesses of the actual offense. Nor do we overlook the rule that the testimony of hired detectives in such cases should be scrutinized with great caution." *Stewart* v. *Stewart* (1923, 286 F. 987, 52 App. D.C. 323). See, also *Allen* v. *Allen* (1923, 285 F. 962, 52 App. D.C. 228).

Penalty for failure to give deposition

Where husband had failed to appear for the taking of his deposition concerning alimony pendente lite in divorce action, trial judge properly refused to allow husband to testify at preliminary hearing concerning temporary support. *Hipp* v. *Hipp* (D.C. Mun. App. 1957, 134 A. 2d 493)

Purpose

It is the purpose of law of District of Columbia to require caution in granting of uncontested divorces and to prevent the granting of default decrees, without proof. *Stone* v. *Stone* (1943, 136 F. 2d 761, 78 U.S. App. D.C. 5).

Striking of pleading in divorce action

Rule that pleadings may be stricken if person willfully fails to appear before officer for deposition purposes is permissive and does not require that it be done and was not applicable in divorce case since only purpose for striking an answer would be to proceed as if in default, but this section specifically forbids the grant of divorce on default. *Hipp* v. *Hipp* (D.C. Mun. App. 1957, 134 A. 2d 493).

Summary judgment

Divorce should not be granted by judgment on the pleadings or by summary judgment. *Rea* v. *Rea* (D.C.D.C 1954, 124 F. Supp. 922).

Public is third party in every divorce case and has interest in preservation of the marriage bond, and therefore, divorce should not be granted until after the court hears evidence. *Id.*

Even if issue, on which moving party relied as basis for its application for summary judgment in divorce proceeding on ground that such issue was res judicata due to prior litigation between the parties, had been established by court's finding in prior action, summary judgment for divorce would not be granted, but taking of evidence would be required. *Id.*

Witness

"In the case of *Bergheimer* v. *Bergheimer* (1901, 17 App. D.C. 381), we held that in divorce cases the parties to a suit are not competent to testify as witnesses in their own behalf. Therein we followed the ruling of the general term of the Supreme Court of the District in the case of *Burdette* v. *Burdette* (2 Mackey (13 D.C.) 469) and the uniform rule of practice in this District. And this rule, we think, is not affected by section 1068 of the Code (§ 14–306). * * * This section must be taken as qualified by section 964 of the Code (this section), which provides a special rule of evidence for divorce cases." *Lenoir* v. *Lenoir* (1904, 24 App. D.C. 160).

This section has no relation to the competency of the witnesses of the parties to the suit. *Early* v. *Early* (1920, 261 F. 1003, 49 App. D.C. 123).

The parties to a divorce suit are competent witnesses. *Buford* v. *Buford* (1946, 156 F. 2d 567, 81 U.S. App. D.C. 169).

§ 16–920. Effective date of decree for annulment or absolute divorce

A decree, annulling or dissolving a marriage, or granting an absolute divorce, shall not become effective until the time for noting an appeal shall have expired, and, if notice of appeal has been entered, such decree shall not become effective until the date

of the final disposition of the appeal. (Dec. 23, 1963, 77 Stat. 563, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; Sept. 29, 1965, 79 Stat. 890, Pub. L. 89–217, § 4.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–421 (Apr. 19, 1920, ch. 153, § 983a, 41 Stat. 567; Aug. 7, 1935, ch. 453, § 4, 49 Stat. 540).

Changes are made in phraseology.

AMENDMENT

1965—Section 4 of Act Sept. 29, 1965, amended section to read as above set out. For provisions of section prior to this amendment see Supp. IV to 1961 edition of the code.

NOTES TO DECISIONS

I. UNDER PRIOR LAW

In general

Meaning and purpose of this provision is to prevent the remarriage of and preserve the status quo of the parties until the losing party may have his or her full legal rights and the law should be satisfied when that result is accomplished. *Tillinghast* v. *Tillinghast* (1928, 25 F. 2d 531, 58 App. D.C. 107).

Assault during coverture

Action against former husband for assault committed after decree of absolute divorce had been entered, but before expiration of six months' period when decree would become effective, could be maintained as against contention that a married woman may not sue for assault committed on her by her husband during coverture. *Steele* v. *Steele* (D.C.D.C. 1946, 65 F. Supp. 329).

Death

Widow was entitled to share in the estate of her husband, as widow, where husband died within six months after entry of a decree of divorce from widow but before that decree has become final. *B. H. Saunders, Executor etc. et al.* v. *A. B. B. Hanson* (1964, 327 F. 2d 889, 117 U.S. App. D.C. 191).

Death of one of the parties during six-month period following entry of an absolute divorce decree abates the action for all purposes. *Id.*

Where husband and wife held realty as tenants by the entirety, and wife obtained a decree of absolute divorce that did not expressly deal with realty, and wife died five months and four days after decree was signed so that decree did not become final, divorce proceedings were properly declared abated, and daughter of the deceased wife was not entitled to an interest in the realty by descent on ground that the wife was a tenant in common thereof at time of her death. *Wesley* v. *Brown* (1952, 196 F. 2d 859, 90 U.S. App. D.C. 351).

Defense in collateral proceeding

A divorced husband, marrying another woman in Maryland while both of them were domiciled in District of Columbia within six months after entry of divorce decree in court of such district, was not estopped to plea invalidity of second marriage under District Code as ground for vacation of order against him for support of second wife's minor child, whose paternity he denied, especially in view of statutory provision that nullity of bigamous marriage may be shown in any collateral proceeding. *Oliver* v. *Oliver* (1951, 185 F. 2d 429, 87 U.S. App. D.C. 334).

Defense to polygamy

Since plaintiff had been legally divorced in the District while the parties were domiciled there, and the decree became effective unconditionally and irrevocably, she was thereafter an unmarried woman and could not be guilty of polygamy. *Loughran* v. *Loughran* (1934, 54 S. Ct. 684, 292 U.S. 216, 78 L. Ed. 1219, rehearing denied 54 S. Ct. 861, 292 U.S. 615, 78 L. Ed. 1474).

Effect of foreign decree

A Virginia decree of absolute divorce issued May 14, 1958 and not appealed finally dissolved the plaintiff's marriage to a federal employee upon its issuance and hence she was no longer the wife of the employee on July 8, 1958, the date of his death, and was not entitled as his widow to receive the proceeds of federal group life insurance on his death and the parents of the employee were entitled to such proceeds. *Dillard* v. *Dillard* (1960, 275 F. 2d 878, 107 U.S. App. D.C. 214).

II. UNDER PRESENT LAW

Custody of children

Whether husband who had been granted absolute divorce should be allowed custody of child initially awarded wife, on condition that she would not allow corespondent in her living quarters, by reason of wife's entering into void ceremonial marriage with corespondent before divorce had become absolute was question for trial court to which case would be remanded by court of appeals finding that trial court which denied custody change had erred in concluding that ceremonial marriage was merely voidable. *V. E. Jay* v. *L. Jay* (D.C. App. 1965, 212 A. 2d 331).

Marriage during six months after decree

Under statute providing that no divorce shall be absolute and take effect until six months after its date, any marriage contracted by party to divorce within such period is bigamous. *V. E. Jay* v. *L. Jay* (D.C. App. 1965, 212 A. 2d 331).

Ceremonial marriage performed in Maryland before one of the parties' District of Columbia divorce from another had become absolute was void ab initio and not merely voidable. Id.

§ 16–921. Validity of marriage, action to determine

When the validity of an alleged marriage is denied by either of the parties thereto the other party may institute an action for affirming the marriage, and upon due proof of the validity thereof the court shall decree it to be valid. The decree shall be conclusive upon all parties concerned. (Dec. 23, 1963, 77 Stat. 563, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–422 (Mar. 3, 1901, ch. 854, § 981, 31 Stat. 1346).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Finding by court in advisory action

Where trial court properly disclaimed jurisdiction of action by alleged wife against alleged husband for declaration as to marital status, as only an advisory opinion was sought, it was error for trial court to find as fact that marriage was invalid. *Gardner* v. *Gardner* (1956, 233 F. 2d 23, 98 U.S. App. D.C. 144).

Jurisdiction

Where woman sued by alleged common-law wife for order declaring validity of common-law marriage filed counterclaim seeking declaration that, as lawful wife, she was entitled to interest in property owned by male defendant, defendant woman was not entitled to thereafter contend that court was limited to determination of marital status of plaintiff. *I. M. Lee* v. *G. M. Lee and G. V. Lee* (D.C. App. 1964, 201 A. 2d 873).

Maintenance of action

Under this section providing that where validity of alleged marriage is denied by either party, other party may institute suit for affirming marriage, action by alleged wife against alleged husband for declaration as to marital status could not be maintained where she alleged neither validity nor invalidity of marriage and husband answered that he could neither admit nor deny her allegations concerning doubt as to marital status, in view of fact that marriage was not asserted by one party and denied by other. *Gardner* v. *Gardner* (1956, 233 F. 2d 23, 98 U.S. App. D.C. 144).

Remarriage before appeal date

A wife's remarriage before time had expired for taking appeal from husband's annulment decree, was valid. *Tillinghast* v. *Tillinghast* (1928, 25 F. 2d 531, 58 App. D.C. 107).

Validity of foreign divorce

Alabama divorce decree was subject to challenge in the District of Columbia for lack of jurisdiction over the

res, or over either of the parties, where husband merely flew into Alabama, signed a complaint and affidavit, and 4 or 5 hours later flew back to his home and business in Washington, D.C., even though wife signed an acceptance of service of process and answer and waiver. *E. G. DeParata* v. *B. G. DeParata* (D.C. Mun. App. 1962, 179 A. 2d 723).

§ 16–922. Validity of marriages and divorces solemnized or pronounced before January 1, 1902

This chapter does not invalidate any marriage solemnized according to law before January 1, 1902, or any decree or judgment of divorce pronounced before that date. (Dec. 23, 1963, 77 Stat. 563, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–420 (Mar. 3, 1901, ch. 854, § 967, 31 Stat. 1345).

Changes are made in phraseology.

Chapter 11.—EJECTMENT AND OTHER REAL PROPERTY ACTIONS

SUBCHAPTER I.—EJECTMENT

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SUBCHAPTER II.—PROCEEDINGS TO DISCOVER THE DEATH OF A TENANT FOR LIFE

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SUBCHAPTER I.—EJECTMENT

§ 16–1101. Parties defendant; joint tenants and tenants in common

(a) A civil action based upon a cause of action in ejectment, may be brought against:

(1) the person actually occupying the premises claimed, either in person or by tenant; or

(2) both the claimant and his tenant, or other occupant claiming under him; or

(3) if the premises are not actually occupied, a person exercising acts of ownership thereon adversely to the plaintiff.

When a lessee is made a defendant at the suit of a party claiming against the title of the lessee's landlord, the landlord may appear and be made a party defendant in the place of his lessee.

Any person claiming to be in possession may, on motion, be admitted to defend the action.

(b) Joint tenants shall sue jointly in ejectment, but tenants in common may sue either jointly or separately, and any number of tenants in common, less than the whole number entitled, may sue jointly in reference to their undivided interests. (Dec. 23, 1963, 77 Stat. 564, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 16–501, 16–510 (Mar. 3, 1901, ch. 854, §§ 984, 994, 31 Stat. 1347, 1348; June 30, 1902, ch. 1329, 32 Stat. 537).

Section consolidates sections 16–501 and 16–510 of D.C. Code, 1961 ed.

At the beginning, words "A civil action, based upon a cause of action in ejectment," are substituted for "Every action of ejectment" to conform the terminology more closely with rule 2 of the Federal Rules of Civil Procedure, which provides, with respect to civil cases, that there shall be only one form of action, to be known as a "civil action". See, also, rule 2 of the civil rules of the Court of General Sessions.

The provision of section 16–501 of D.C. Code, 1961 ed., that the action "shall be brought in the name of the real claimant" is omitted as covered by the first clause of rule 17(a) of the Federal Rules of Civil Procedure, which provides that "Every action shall be prosecuted in the name of the real party in interest". See, also, the first clause of rule 17(a) of the civil rules of the Court of General Sessions.

For procedural provisions relating to necessary, permissive, misjoinder, or nonjoinder of parties, and interpleader, see rules 19–22, respectively, of the Federal Rules of Civil Procedure, and the civil rules of the Court of General Sessions.

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS UNDER PRIOR LAW

Equity

When equity has jurisdiction to enjoin prosecution of an action of ejectment involving three tracts of land, so far as two tracts are concerned, on ground that defendants have no adequate remedy at law, it will assume jurisdiction as to the third tract to terminate the litigation even though the defendants would have a remedy as to said third tract. *Camp* v. *Boyd* (1910, 35 App. D.C. 159, affirmed 33 S. Ct. 785, 229 U.S. 530, 57 L. Ed. 1317).

Estoppel

Strict rules of estoppel are present when the parties in both actions are the same, when they are parties in interest, not only asserting in both instances the right of possession, but the title to the property. *Lyon* v. *Bursey* (1911, 36 App. D.C. 235).

Historical

The abolition of fictions in pleading in the District of Columbia by act June 1, 1870 (16 Stat. 146, ch. 115) and providing that all actions for the recovery of real estate

in the District should be commenced in the name of the real party in interest, did not abolish the action of ejectment or make any other alteration in the form of the action, or extend limitations. *Hogan* v. *Kurtz* (1876, 94 U.S. 773, 4 Otto 773, 24 L. Ed. 317).

British statutes prohibiting conveyance of lands held adversely are obsolete in this District. *Chesapeake Beach R. Co.* v. *Washington, P. & C. R. Co.* (1904, 23 App. D.C. 587, affirmed 26 S. Ct. 25, 199 U.S. 247, 50 L. Ed. 175).

Pleading

It seems to be unnecessary to plead the statute of limitations where the general issue has been pleaded in actions of ejectment. *McMillan* v. *Fuller* (1914, 41 App. D.C. 384).

Where defendant pleads the general issue, and was found in possession of the land demanded, his plea must be construed as making defense for the whole. *Marine R. & Coal Co.* v. *United States* (1920, 265 F. 437, 49 App. D.C. 285, affirmed 42 S. Ct. 32, 257 U.S. 47, 66 L. Ed. 124).

Possession

"Where in ejectment a party in possession has been ejected from the premises under a judgment found upon appeal or writ of error to be erroneous, the party so dispossessed is entitled to restitution of the premises." *Wilson* v. *Newburgh* (1914, 42 App. D.C. 407).

The court is without jurisdiction to permit the plaintiff to retain possession under such reversed judgment, conditioned upon paying the original occupant a monthly rental pending further litigation. *Id.*

Presumption as to judgment

The doctrine as to the inconclusiveness of judgments of ejectment has been abrogated by section 1002 of the Code (§ 16–518). *Lyon* v. *Bursey* (1911, 36 App. D.C. 235).

Proof of title

For exceptions to the rule that plaintiff in ejectment must recover on strength of his own title, see *Chesapeake Beach R. Co.* v. *Washington, P. & C. R. Co.* (1904, 23 App. D.C. 587, affirmed 26 S. Ct. 25, 199 U.S. 247, 50 L. Ed. 175).

Marshal's deed of land which shows levy upon and sale of property under judgment is not sufficient to show title to the land in the grantee, but the grantee must prove the judgment and the execution. *Rowlett* v. *Nash* (1912, 38 App. D.C. 598).

One in peaceable possession of property, either in person or by tenant, is presumed to be in lawful possession, and "he was entitled to recover possession from a mere trespasser without further proof of title." *Nash* v. *Rawlett* (1914, 41 App. D.C. 456). See, also, *Bradshaw* v. *Ashley* 1901, 21 S. Ct. 297, 180 U.S. 59, 45 L. Ed. 423); *Chesapeake Beach R. Co.* v. *Washington, P. & C. R. Co.* (1904, 23 App. D.C. 587, affirmed 26 S. Ct. 25, 199 U.S. 247, 50 L. Ed. 175); *Robinson* v. *Hillman* (1911, 36 App. D.C. 576).

Right of action

Where party occupying landowner's premises had not right to possession but his original entry had been lawful, and where action under forcible entry and detainer statute was not available because relation of landlord and tenant had not existed, ejectment was only appropriate remedy. *Shapiro* v. *Christopher* (1952, 195 F. 2d 785, 90 U.S. App. D.C. 114).

Action of ejectment may be commenced by a claimant to property against anyone occupying the premises, either in person or by tenants, or against any person exercising acts of ownership adversely to the plaintiff. *Spruill* v. *Brooks* (D.C. Mun. App. 1908, 68 A. 2d 204).

Right of tenant in common

Where decedent died intestate, left no children or no descendants of children or father or mother, plaintiff as a child of one of the deceased sisters of the decedent became a tenant in common with other heirs of realty owned by the decedent and had a right to maintain proceedings for recovery or possession of the realty in her own name. *Bagby* v. *Honesty* (D.C. Mun. App. 1959, 149 A. 2d 786).

§ 16–1102. Failure of tenant to give notice to landlord

If a tenant, on whom a complaint in ejectment is served, fails to give notice thereof, without delay, to his landlord or the agent of the landlord, he shall forfeit and pay to the landlord the value of three years' full rent of the premises, to be recovered by a civil action. (Dec. 23, 1963, 77 Stat. 564, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–502 (11 Geo. 2, ch. 19, § 12, 1738; Kilty Rep., p. 251; Alex. Br. Stat., p. 737; Comp. Stat. D.C., p. 332, § 61).

Section 16–502 of D.C. Code, 1961 ed., which, as indicated above, was based upon one of the British statutes in force in the District, provided, as follows:

"Every tenant, to whom any declaration in ejectment shall be delivered for any lands, tenements, or hereditaments, shall forthwith give notice thereof to his or her landlord or landlords, or his, her, or their bailiff or receiver, under penalty of forfeiting the value of three years improved or rack rent of the premises so demised or holden in the possession of such tenant, to the person of whom he or she holds; to be recovered by action of debt.".

As set out in this revised section, the provisions are re-written to modernize the language, but without change of substance. Further, "complaint" is substituted for "declaration", and "civil action" is substituted for "action of debt" to conform the terms with rules 2 and 7(a), respectively, of the Federal Rules of Civil Procedure, and the civil rules of the Municipal Court.

§ 16–1103. Contents of complaint; adverse possession

In his complaint in ejectment, the plaintiff shall:

(1) describe the premises claimed with reasonable certainty; and

(2) set forth distinctly the nature and quantity of the estate claimed by him in the premises.

It is sufficient for the plaintiff to state, in addition, that:

(1) he was possessed of the premises, and while he was so possessed the defendant entered wrongfully into possession thereof, and withholds the possession of the premises from the plaintiff, or wrongfully detains possession; or

(2) the defendant is wrongfully exercising acts of ownership over the premises.

However, except as provided by this chapter, acts of ownership do not amount to an adversary possession, so as to make it necessary for the plaintiff to sue in order to avoid the bar of the statute of limitations. (Dec. 23, 1963, 77 Stat. 564, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–503 (Mar. 3, 1901, ch. 854, § 985, 31 Stat. 1347).

The term "complaint" is substituted for "declaration" to conform with rule 7(a) of the Federal Rules of Civil Procedure, and rule 7(a) of the civil rules of the Court of General Sessions.

Changes are made in phraseology and arrangement.

CROSS REFERENCE

Pleadings generally, see § 13–101.

NOTES TO DECISIONS UNDER PRIOR LAW

Conforming pleadings to proof

Where only issue as to right of possession raised and tried in landowner's action against occupant was whether parties had intended lease of adjacent lot to cover also the premises in issue, and it appeared that occupant was not entitled to possession, although his entry had been lawful, landowner was not concluded by his allegation describing occupant as a "tenant by sufferance", in view of fact that complaint also alleged that occupant held "without right"; and if there was any doubt in trial judge's mind as to sufficiency of complaint as one in ejectment, it was his duty to permit plaintiff to amend by

withdrawing allegations concerning tenancy by sufferance and clearly stating cause of action in ejectment in conformity with facts. *Shapiro* v. *Christopher* (1952, 195 F. 2d 785, 90 U.S. App. D.C. 114).

§ 16–1104. Proof necessary

(a) Except as provided by subsection (b) of this section, in an action of ejectment it is sufficient to entitle the plaintiff to relief to show that he is entitled, as against the defendant, to the immediate possession of the premises claimed, and that the defendant is:

(1) in possession of the premises, and is holding adversely to the plaintiff; or

(2) exercising acts of ownership over the premises, adversely to the plaintiff.

(b) In an action pursuant to this chapter by one or more joint tenants or tenants in common against their cotenants, the plaintiff shall be required to prove an actual ouster or some other act amounting to a denial of the plaintiff's title and his exclusion from the enjoyment of the property. (Dec. 23, 1963, 77 Stat. 565, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–505 (Mar. 3, 1901, ch. 854, § 988, 31 Stat. 1347).

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS UNDER PRIOR LAW

Defense

Defense of adverse possession was established. *Holtzman* v. *Douglas* (1897, 18 S. Ct. 65, 168 U.S. 278, 42 L. Ed. 466).

Disclaimer of other part

Where plaintiff claims only a portion of the land sued for, he may, under this section, disclaim as to the other part. *Robinson* v. *Hillman* (1911, 36 App. D.C. 576).

Ouster not presumed

"Ouster will not be presumed, but there must be a showing of positive acts of hostility." *Lyon* v. *Bursey* (1914, 42 App. D.C. 519).

Proof of title

Where plaintiff and defendant do not claim through common source of title, plaintiff must "show a complete chain of title from the sovereign, either the English crown, the State of Maryland, or the United States," particularly when neither plaintiff nor those under whom he claims was ever in possession of the property. *Bursey* v. *Lyon* (1908, 30 App. D.C. 597). See, also, *Anderson* v. *Reid* (1897, 10 App. D.C. 426); *Scott* v. *Herrell* (1906, 27 App. D.C. 395); *Robinson* v. *Hillman* (1911, 36 App. D.C. 576).

Tenants in common

"One tenant in common is not liable to his cotenant for use and occupation, unless there has been an actual ouster of the cotenant, or acts amounting to that." *Lyon* v. *Bursey* (1914, 42 App. D.C. 519).

§ 16–1105. Legal title in mortgagee or trustee; possession

It is not a bar to the plaintiff's recovery in an action of ejectment that the legal title to the property claimed is outstanding in another as mortgagee or trustee under a mortgage or deed of trust to secure a debt, unless the mortgagee or trustee, or those claiming under him, has taken possession of the premises, or unless the defendant claims under the mortgagor or grantor in the deed of trust. (Dec. 23, 1963, 77 Stat. 565, Pub. L. 88–241, §1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–506 (Mar. 3, 1901, ch. 854, § 989, 31 Stat. 1347; June 30, 1902, ch. 1329, 32 Stat. 537).

Minor changes are made in phraseology.

§ 16–1106. Performance of contract by vendee as precluding vendor from recovery

Where real property has been sold under a written contract executed by the vendor, and there has been such a performance of its terms by the vendee as would entitle him to a decree for a conveyance of the legal title, without condition, the vendor may not recover the property from the vendee. (Dec. 23, 1963, 77 Stat. 565, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–507 (Mar. 3, 1901, ch. 854, § 990, 31 Stat. 1348).

Words "in equity", which followed "decree", are omitted; and words "the vendor may not recover" are substituted for "such vendor shall not be entitled at law, any more than in equity, to recover", in view of the merger of law and equity procedure by the Federal Rules of Civil Procedure, and the civil rules of the Court of General Sessions.

A minor change is made in phraseology.

§ 16–1107. Several judgments against defendants occupying distinct parcels

When it appears on the trial in an action of ejectment that some of the defendants occupy distinct parcels of the property claimed, in severalty, the plaintiff, if entitled to recover, may in the discretion of the court, have several judgments against the respective parties, according to the proof of occupancy. (Dec. 23, 1963, 77 Stat. 565, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–508 (Mar. 3, 1901, ch. 854, § 992, 31 Stat. 1348; June 30, 1902, ch. 1329, 32 Stat. 537).

A minor change is made in phraseology.

§ 16–1108. Recovery of less than is claimed

The plaintiff, under a claim to certain described premises, may recover less than the whole property claimed, and, under a claim to an entire property, may recover an undivided part thereof. (Dec. 23, 1963, 77 Stat. 565 Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–509 (Mar. 3, 1901, ch. 854, § 993, 31 Stat. 1348).

§ 16–1109. Recovery of mesne profits and damages; separate count

(a) The plaintiff may embody in his complaint, in a separate count, a claim for the:

(1) mesne profits received by the defendant from the property sued for; or

(2) clear value of the use and occupation of the property sued for—

extending to the time of the verdict, and also damages for waste or injury to the premises during that period.

(b) If the jury find for the plaintiff, they may, at the same time, find and assess the mense profits, or the value of the use and occupation and the amount of damages, specified by subsection (a) of this section. Except in the case provided for by section 16–1116, there shall be rendered, besides a judgment

for the recovery of the property, a judgment against the defendant for the amount so found by the jury. (Dec. 23, 1963, 77 Stat. 565, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–511 (Mar. 3, 1901, ch. 854, § 995, 31 Stat. 1348; June 30, 1902, ch. 1329, 32 Stat. 537).

The term "complaint" is substituted for "declaration" to conform with rule 7(a) of the Federal Rules of Civil Procedure, and rule 7(a) of the civil rules of the Court of General Sessions.

Changes are made in phraseology and arrangement.

For permissive joinder of claims and remedies, see rule 18 of the Federal Rules of Civil Procedure, and rule 18 of the civil rules of the Court of General Sessions.

§ 16–1110. Recovery, by landlord, of furniture, arrears in rent, and damages; separate counts

(a) In an action in ejectment against his tenant, a landlord may embody in his complaint, in separate counts, claims for:

(1) furniture, if leased with the realty;

(2) arrears of rent due at the termination of the tenancy;

(3) double rent in cases authorized by this Code from the termination of the tenancy to the verdict for possession; and

(4) damages for waste or injury to the premises or furniture during the defendant's occupancy of the premises and before commencement of the action.

(b) If the jury find for the landlord, they may, at the same time, find the amounts due for arrears of rent and for double rent and for damages, as provided by subsection (a) of this section, and judgment shall be rendered accordingly. (Dec. 23, 1963, 77 Stat. 566, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–512 (Mar. 3, 1901, ch. 854, § 996, 31 Stat. 1348).

The term "complaint" is substituted for "declaration" to conform with rule 7(a) of the Federal Rules of Civil Procedure, and rule 7(a) of the civil rules of the Court of General Sessions.

Changes are made in phraseology and arrangement.

For permissive joinder of claims and remedies, see rule 18 of the Federal Rules of Civil Procedure, and rule 18 of the civil rules of the Court of General Sessions.

NOTES TO DECISIONS UNDER PRIOR LAW

Amount of verdict

In action for rent, where defendant admitted liability for a fixed amount and claimed a credit for repairs made, and the evidence was conflicting, some items of defense were hard to prove, and jury had no purely mathematical basis upon which to rest its verdict, a verdict for less than amount demanded, but for more than amount admitted by defendant, would not be disturbed. *Shlopak* v. *Davison* (D.C. Mun. App. 1943, 34 A. 2d 126).

In action for rent where defendant admitted liability for a limited amount, and jury returned a verdict for less than amount demanded, but more than amount admitted to be due by defendant, and verdict was accepted by plaintiff, defendant was in no position to complain that verdict should have been a verdict for all or nothing. *Id.*

§ 16–1111. Separate action for rent or damages

The plaintiff in ejectment is not required to join his claim for rent or damages with his claim for the recovery of the land and his omission to do so does not prevent him from bringing his action for rent or damages separately. (Dec. 23, 1963, 77 Stat. 566, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–513 (Mar. 3, 1901, ch. 854, § 997, 31 Stat. 1348).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Concurrent actions

A landlord could maintain action against tenant in District of Columbia District Court for arrears of rent and an action against tenant in the municipal court for possession of leased premises. *Service Parking Corp.* v. *Trans-Lux Radio City Corp.* (D.C. Mun. App. 1946, 47 400).

Nature of possessory action

A landlord's action for possession of leased premises for nonpayment of rent is statutory substitute for the ancient remedy of ejectment. *Service Parking Corp.* v. *Trans-Lux Radio City Corp.* (D.C. Mun. App. 1946, 47 A. 2d 400).

§ 16–1112. Expiriation of title pending suit; damages

If the title of the plaintiff in ejectment expires after the commencement of his action but before the trial, and but for the expiration he would have been entitled to recover, the verdict shall find the facts, and the plaintiff may recover his damages sustained by the wrongful withholding of the possession. (Dec. 23, 1963, 77 Stat. 566, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–514 (Mar. 3, 1901, ch. 854, § 998, 31 Stat. 1349).

Changes are made in phraseology.

§ 16–1113. Defense of adverse possession; enclosure

In an action to recover vacant and unimproved lots of ground it is not necessary, in order to maintain the defense of adversary possession, to show that the premises in controversy had been enclosed; but if it appears that the property had been assessed for taxation to the defendant, or those under whom he claims, and that he or they had regularly paid the taxes on the property and were the only persons who had exercised control over the property for a period of fifteen years before the bringing of the action, the facts shall be the equivalent of possession by actual enclosure. (Dec. 23, 1963, 77 Stat. 566, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–515 (Mar. 3, 1901, ch. 854, § 999, 31 Stat. 1349).

Changes are made in phraseology.

CROSS REFERENCE

Quieting title, see § 16–3301.

NOTES TO DECISIONS UNDER PRIOR LAW

In general

Defense of adverse possession was established by payment of taxes on lot and collection of rent from one who used it as stoneyard. *Holtzman* v. *Douglas* (1897, 18 S. Ct. 65, 168 U.S. 278, 42 L. Ed. 466).

"The evidence on behalf of the defendant made out a clear case of actual, exclusive, continuous, open, and adverse possession of the premises for more than 20 years by her and those under whom she claimed, and had the effect to create in her a good and sufficient title." *Briel* v. *Jordan* (1906, 27 App. D.C. 202).

Effectiveness of title so secured

When title is secured by adverse possession an attempted dedication by the record owner is ineffectual to

vest title in the District of Columbia. *Rudolph* v. *Peters* (1910, 35 App. D.C. 438, Ann. Cas. 1912A, 446).

Limitations

This section referred to section 201 of Title 12, and plaintiff could establish title to such lands by adverse possession upon proof of payment of taxes regularly for 15-year period, even though the period did not immediately precede the bringing of the action. *Faulks* v. *Schrider* (1940, 114 F. 2d 587, 72 App. D.C. 308).

Occupation by mistake

Where one entitled to eight acres of land by mistake takes eleven acres, and occupies the entire tract adversely, such error can not be held to operate against his acquisition by such adverse possession of the three wrongfully occupied acres. *Johnson* v. *Thomas* (1904, 23 App. D.C. 141, appeal dismissed 25 S. Ct. 797, 197, U.S. 619, 49 L. Ed. 909).

Occupation by grantee, although by mistake, of land beyond boundaries as specified in deed vests in him an indefeasible title if his possession has been actual, open, notorious, exclusive, and adverse for the statutory period. *Rudolph* v. *Peters* (1910, 35 App. D.C. 438, Ann. Cas. 1912A, 446).

Persons within section

Congress, in enacting this section, did not intend to limit the substantive effects of the section to specific procedural situation described, and the section was applicable to plaintiff who claimed land by adverse possession and brought action to obtain payment of a condemnation award which had been made in favor of plaintiff and was deposited in registry of court when defendants asserted title to the condemned land. *Faulks* v. *Schrider* (1940, 114 F. 2d 587, 72 App. D.C. 308).

Possession by inclosure

Congress, in enacting this section which provided that proof of facts specified should be the equivalent of "possession by actual inclosure", intended to make proof of such facts sufficient for creation of title by adverse possession. *Faulks* v. *Schrider* (1940, 114 F. 2d 587, 72 App. D.C. 308).

Under Maryland law, the phrase "possession by inclosure" embraced all possessory elements necessary for adverse possession, and the court would assume that such meaning was carried over to this section, which provided that proof of certain facts should be the equivalent of "possession by inclosure", in view of fact that the provision was drawn with a view to Maryland law. *Id.*

Presumption that possession followed title

Where railroad tracks were on the land, and when plaintiff exhibits a series of deeds purporting to convey the property, the last one to itself, it is to be presumed that possession followed the title until dispossession by the defendant took place. *Chesapeake Beach R. Co.* v. *Washington, P. & C. R. Co.* (1904, 23 App. D.C. 587 affirmed 26 S. Ct. 25, 199 U.S. 247, 50 L. Ed. 175).

Public highway

Quaere: Whether one may acquire title by adverse possession of a portion of a public highway outside of the boundary of the city of Washington. *Rudolph* v. *Peters* (1910, 35 App. D.C. 438, Ann. Cas. 1912A, 446).

Purpose

The purpose of this section was to make proof of facts specified therein, not only the equivalent of possession by actual inclosure, but also of intent to claim adversely. *Faulks* v. *Schrider* (1940, 114 F. 2d 587, 72 App. D.C. 308).

This section was not intended as revenue-enforcing measure nor as measure which would make acquisition of title by adverse possession more difficult than it had been previously, and the obvious purpose of the provision was to dispense with necessity for showing that acts of dominion other than assessment and payment of taxes had been continuous throughout the limitation period when no other person had exercised control within it. *Id.*

This section was intended to modify and not merely to codify the previously existing common law. *Id.*

Recovery against trespasser

One in adverse possession for less than statutory period, and who has never voluntarily relinquished possession, may recover as against a subsequent trespasser. *Bradshaw* v. *Ashley* (1899, 14 App. D.C. 485 affirmed 21 S. Ct. 297, 180 U.S. 59, 45 L. Ed. 423). See, also, *Staffan* v. *Zeust* (1897, 10 App. D.C. 260).

Tax payments and acts of control

Title to vacant and unimproved land is established by "adverse possession" where claimant shows that for 15 years the land was assessed to him or his predecessors in claim, and that he or they regularly paid the taxes, and exercised other acts of dominion over the property, though not necessarily continuously during the entire period, and that no one else including the legal title holder had done so. *Faulks* v. *Schrider* (1940, 114 F. 2d 587, 72 App. D.C. 308).

Proof that plaintiff and his predecessors held vacant and unimproved land openly, notoriously, exclusively, and adversely for statutory period, and during that period paid taxes on the land established title in plaintiff by "adverse possession" without proof that acts of ownership other than assessment to and payment of taxes by the plaintiff and his predecessors were exercised by them continuously during the period prescribed by this section. *Id.*

§ 16–1114. Verdict; judgment; costs; future actions

(a) In an action of ejectment, if the plaintiff's title is established by proof, the verdict of the jury shall be generally for the plaintiff as to the whole or part of the property or interest claimed in the complaint, as the case may be. If the plaintiff fails to make satisfactory proof of title, the verdict shall be for the defendant as to the whole or part of the property, as the case may be. The verdict may be for the plaintiff as to part and for the defendant as to other part thereof. Except as provided by this chapter, judgment shall be rendered according to the verdict.

(b) When it appears on the trial that the defendant did not wrongfully enter into possession of the property sued for, or exercise acts of ownership over the same adversely to the plaintiff, the verdict of the jury shall be that the defendant is not guilty. Thereupon, judgment shall be rendered in favor of the defendant against the plaintiff for the costs of the action, but the judgment is not a bar to a future action by the plaintiff against the defendant for the recovery of the property. (Dec. 23, 1963, 77 Stat. 566, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 16–516, 16–517 (Mar. 3, 1901, ch. 854, §§ 1000, 1001, 31 Stat. 1349; June 30, 1902, ch. 1329, 32 Stat. 538).

Section consolidates sections 16–516 and 16–517 of D.C. Code, 1961 ed.

The term "complaint" is substituted for "declaration" to conform with rule 7(a) of the Federal Rules of Civil Procedure, and rule 7(a) of the civil rules of the Court of General Sessions.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Judgment for part of property

Under this section, plaintiff may recover a less portion than the whole sued for. *Robinson* v. *Hillman* (1911, 36 App. D.C. 576).

§ 16–1115. Conclusiveness of final judgment

A final judgment rendered in an action of ejectment is conclusive as to the title thereby established as between the parties to the action and all persons claiming under them since the commencement of the action. (Dec. 23, 1963, 77 Stat. 567, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–518 (Mar. 3, 1901, ch. 854, § 1002, 31 Stat. 1349).

Minor changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Common law abrogated

The section, making any final judgment rendered in action of ejectment conclusive as to title thereby established as between parties to action and all parties claiming under them since commencement of action, was enacted to abrogate doctrine of common law as to inconclusiveness of judgment of ejectment and was not intended to change remedy of injectment from one well defined as possessory in character to one in which title is automatically in issue. *Shapiro* v. *Christopher* (1952, 195 F. 2d 785, 90 U.S. App. D.C. 114).

"The doctrine of the common law as to the inconclusiveness of judgments of ejectment has been abrogated in this District" by code section 984 (§ 16–501) and this section. *Lyon* v. *Bursey* (1911, 36 App. D.C. 235).

Final judgment

A judgment in ejectment, appealed from, is a final judgment. *Reed* v. *Allen* (1932, 52 S. Ct. 532, 286 U.S. 191, 76 L. Ed. 1054, 81 A.L.R. 703).

Jurisdiction of municipal court

Plaintiff's title is not "in issue", in ejectment cases, when it is expressly conceded or not denied, and in such cases municipal court has jurisdiction; but, whenever it becomes apparent in action of ejectment in municipal court that plaintiff's title must be tried and determined, that court should take no further cognizance of cause, but should stop short. *Shapiro* v. *Christopher* (1952, 195 F. 2d 785, 90 U.S. App. D.C. 114).

§ 16–1116. Improvements; notice; good faith; directions to jury; measure of damages

In an action of ejectment, at any time before the trial, the defendant may give notice that if the verdict of the jury is in favor of the plaintiff's title the defendant will claim the benefit of permanent improvements that may have been placed on the property by the defendant or those under whom he claims, and offer evidence at the trial tending to show that he or those under whom he claims had peaceably entered into possession of the premises in controversy under a title which he or they had reason to believe and did believe to be good, and had erected valuable and permanent improvements on the property, which were begun in good faith before the commencement of the action. The court shall then direct the jury, in case they find in favor of the plaintiff's title and also find that the permanent improvements were made by the defendant, or those under whom he claims, under the circumstances described in this section, to assess the:

(1) damages of the plaintiff, being the clear value over and above taxes and necessary expenses of the use and occupation of the property, exclusive of the improvements, during the whole period of the occupation of the property to the date of the verdict, and any damage done to the property, by waste or otherwise, by the parties during the occupation;

(2) present value of any permanent improvements that may have been placed on the premises by the defendant or those under whom he claims;

(3) present value of the property of the plaintiff without and exclusive of the improvements.

(Dec. 23, 1963, 77 Stat. 567, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–519 (Mar. 3, 1901, ch. 854, § 1003, 31 Stat. 1349; June 30, 1902, ch. 1329, 32 Stat. 538).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Occupation in good faith

This section "is limited to those who enter into possession of the premises under a title which they had reason to believe, and did believe, to be good, and erect valuable and permanent improvements in good faith." *Robinson* v. *Hillman* (1911, 36 App. D.C. 576). See, also, *Armstrong* v. *Ashley* (1903, 22 App. D.C. 368), holding that grantee of an occupant in good faith can have no better right than his grantor had to an equitable lien for improvements, citing *Anderson* v. *Reid* (1899, 14 App. D.C. 54) and stating that the rule therein announced "has now, at least to some extent, been modified by the code in section 1003 (this section)."

§ 16–1117. New trial as to assessment

Either party who feels aggrieved by the assessment provided for by section 16–1116, may, within four days after the verdict, move to set the assessment aside, and the court may, for good cause shown, set the verdict aside and order another jury to be empaneled in the cause to make a new assessment. (Dec. 23, 1963, 77 Stat. 567, Pub. L. 88–567, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–520 (Mar. 3, 1901, ch. 854, § 1004, 31 Stat. 1350; June 30, 1902, ch. 1329, 32 Stat. 538).

Minor changes are made in phraseology.

§ 16–1118. Judgment for damages in excess of improvements

When the damages of the plaintiff, assessed as provided by section 16–1116, exceed the value of the permanent improvements as ascertained by the jury, the plaintiff shall be entitled to a judgment for the excess in like manner as directed by section 16–1109. (Dec. 23, 1963, 77 Stat. 567, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–521 (Mar. 3, 1901, ch. 854, § 1005, 31 Stat. 1350).

Minor changes are made in phraseology.

§ 16–1119. Judgment when improvements and damages are equal

When the value of the improvements, ascertained as provided by this chapter, equal but do not exceed the plaintiff's damages, as found by the jury, the plaintiff shall be entitled to judgment only for the recovery of the property sued for and costs. (Dec. 23, 1963, 77 Stat. 567, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–522 (Mar. 3, 1901, ch. 854, § 1006, 31 Stat. 1350).

Minor changes are made in phraseology.

§ 16–1120. Election of plaintiff if value of improvements exceeds damages

If the value of the improvements referred to in this chapter is found by the jury to exceed the damages of the plaintiff, the plaintiff may elect either to pay to the defendant the amount of the excess or to demand of the defendant the value of the plaintiff's property, without the improvements, as fixed by the jury, and tender to the defendant a deed for the

property, with all the plaintiff's right, title, and interest therein. (Dec. 23, 1963, 77 Stat. 567, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–523 (Mar. 3, 1901, ch. 854, § 1007, 31 Stat. 1350).

Minor changes are made in phraseology.

§ 16–1121. Judgment and writ of possession after payment for improvements

When the plaintiff pays to the defendant, within the time fixed therefor by the court, or, in case of the defendant's refusal to accept the payment, pays into court for the defendant's use the amount of the excess of the value of the improvements over the damages of the plaintiff, the plaintiff shall be entitled forthwith to a judgment and writ of possession. (Dec. 23, 1963, 77 Stat. 568, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–524 (Mar. 3, 1901, ch. 854, § 1008, 31 Stat. 1350).

Changes are made in phraseology.

§ 16–1122. Judgment and writ of possession after tender of deed and defendant's refusal to pay

If the plaintiff tenders to the defendant a deed as provided by section 16–1120 and demands the value of his property without the improvements, as found by the jury, and the defendant fails or refuses to pay the value within the time fixed therefor by the court, the plaintiff shall, in like manner, be entitled to a judgment and writ of possession; and if the plaintiff is a minor, the court may authorize the deed to be executed by his guardian. (Dec. 23, 1963, 77 Stat. 568, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–525 (Mar. 3, 1901, ch. 854, § 1009, 31 Stat. 1350).

Changes are made in phraseology.

§ 16–1123. Judgment for defendant after plaintiff's refusal to pay excess or tender deed

If the plaintiff fails or refuses either to pay the defendant the excess of the value of the improvements over the amount of the plaintiff's damages, or, as provided by the chapter, to tender a deed to the defendant and accept from him the value of the plaintiff's property, exclusive of the improvements, the defendant may pay the value into court for the use of the plaintiff. Thereupon, the defendant shall be entitled to a judgment in his favor, but without costs, which judgment shall be a bar to any future action by the plaintiff against the defendant to recover the property for cause theretofore existing. (Dec. 23, 1963, 77 Stat. 568, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–526 (Mar. 3, 1901, ch. 854, § 1010, 31 Stat. 1350).

Changes are made in phraseology.

§ 16–1124. Ejectment for non-payment of rent; time limitation on relief from judgment; set-off; dismissal upon payment

(a) In a case between landlord and tenant, where one-half year's rent or more is in arrear and unpaid, and the landlord or lessor to whom the rent is due has the right by law, in default of a sufficiency of goods and chattels whereon to distrain for the satisfaction of the rent due, to re-enter for non-payment of the rent, he may, without any formal demand or re-entry, commence a civil action in ejectment for the recovery of the demised premises.

(b) When a judgment is given for the plaintiff in an action pursuant to this section, and execution is had on the judgment, before the rent in arrear and costs of suit are paid, the lease of the property shall cease and be determined, unless the judgment is reversed on appeal or certiorari or, within six months after execution on the judgment, the defendant or a person who has succeeded to his interest, or a mortgagee of the lease or of any party thereof who was not in possession when final judgment was rendered, applies to the court for an order granting equitable relief from the judgment, which is subsequently granted.

(c) When possession of the property recovered has been delivered to the plaintiff under execution issued upon a judgment in an action pursuant to this section, and, in connection with the application for equitable relief from the judgment, the defendant or other person referred to in subsection (b) of this section, has, prior to or at the time of his application, paid or tendered to the plaintiff or his legal representative or successor in interest, or paid into court for the use of the person entitled thereto, the amount of rent in arrear, as stated in the judgment and costs of suit and all damages sustained by the plaintiff, the order for restoration of possession of the property to the person who made the payment shall provide for setting off the sum that the plaintiff has made, or that he might, without fraud, deceit, or willful neglect, have made, of the property, during his possession, against the rent accruing after the judgment was rendered, and for reimbursement to the applicant of the balance, if any, of the sum paid into court by him, after making the set-off prescribed by this subsection.

(d) At any time before the trial of an action pursuant to this section, the defendant may pay or tender to the plaintiff, or pay into court, the amount of all the rent then in arrear, and costs of suit. Thereupon, the action shall be dismissed. (Dec. 23, 1963, 77 Stat. 568, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 16–532, 16–533, 16–534 (4 Geo. 2, ch. 28, §§ 2, 3, 4, 1731; Kilty's Rept., p. 249; Alex. Br. Stat., pp. 705–707; Comp. Stat. D.C., pp. 326–328, §§ 46, 47, 48).

Section consolidates sections 16–532, 16–533, and 16–534 of D.C. Code, 1961 ed.

The three sections of D.C. Code, 1961 ed., cited above, were derived, as above indicated, from three sections of a British statute of the year 1731, and the text thereof is set out immediately below exactly as it appeared in D.C. Code, 1961 ed.

Sec. 16–532 (4 Geo. 2, ch. 28, § 2)

"In case the lessee or lessees, his, her, or their assignee or assignees, or other person or persons claiming or deriving under the said leases, shall permit and suffer judgment to be had and recovered on ejectment, and execution to be executed thereon, without paying the rent and arrears, together with full costs and without filing any bill or bills for relief in equity, within six calendar months after such execution executed; then, and in such case, the said lessee or lessees, his, her, or their assignee or assignees, and all other persons claiming and deriving

under the said lease, shall be barred and foreclosed from all relief or remedy in law or equity, and the said landlord or lessor shall from thenceforth hold the said demised premises discharged from such lease; and if on such ejectment verdict shall pass for the defendant or defendants, or the plaintiff or plaintiffs shall be nonsuited therein, then in every such case such defendant or defendants shall have and recover his, her, and their full costs: provided always, that nothing herein contained shall extend to bar the right of any mortgagee or mortgagees of such lease, or any part thereof, who shall not be in possession, so as such mortgagee or mortgagees shall and do, within six calendar months after such judgment obtained, and execution executed, pay all rent in arrear, and all costs and damages sustained by such lessor, person or persons entitled to the remainder or reversion, as aforesaid, and perform all the covenants and agreements, which on the part and behalf of the first lessee or lessees are and ought to be performed.".

Sec. 16–533 (4 Geo. 2, ch. 28, § 3)

"In case the said lessee or lessees, his, her, or their assignee or assignees, or other person or persons, claiming any right, title, or interest, in law or equity, of, in, or to the said lease, shall, within the time aforesaid, file one or more bill or bills, for relief in any court of equity. such person or persons shall not have or continue any injunction, against the proceedings at law on such ejectment, unless he, she, or they do or shall within forty days next after a full and perfect answer shall be filed by the lessor or lessors of the plaintiff in such ejectment, bring into court, and lodge with the proper officer such sum and sums of money, as the lessor, or lessors of the plaintiff in the said ejectment shall, in his, her, or their answer, swear to be due and in arrear, over and above all just allowances, and also the costs taxed in the said suit, there to remain till the hearing of the cause, or to be paid out to the lessor or landlord, on good security, subject to the decree of the court; and in case such bill or bills shall be filed within the time aforesaid, and after execution is executed, the lessor or lessors of the plaintiff shall be accountable only for so much, and no more, as he, she, or they shall really and bona fide, without fraud, deceit, or wilful neglect, make of the demised premises, from the time of his, her, or their entering into the actual possession thereof, and if what shall be so made by the lessor or lessors of the plaintiff, happen to be less than the rent reserved in the said lease, then the said lessee, or lessees, his, her, or their assignee or assignees, before he, she, or they shall be restored to his, her, or their possession or possessions, shall pay such lessor or lessors or landlord or landlords, what the money so by them made, fell short of the reserved rent, for the time such lessor or lessors of the plaintiff, landlord or landlords, held the said lands.".

Sec. 16–534 (4 Geo. 2, ch. 28, § 4)

"If the tenant or tenants, his, her, or their assignee or assignees, do or shall, at any time before the trial in such ejectment, pay or tender to the lessor or landlord, his executors or administrators, or his, her, or their attorney in that cause, or pay into the court where the same cause is depending, all the rent and arrears, together with the costs, then, and in such case, all further proceedings on the said ejectment shall cease, and be discontinued; and if such lessee or lessees, his, her, or their executors, administrators, or assigns, shall, upon such bill filed as aforesaid, be relieved in equity, he, she, and they, shall have, hold, and enjoy the demised lands, according to the lease thereof made, without any new lease to be thereof made to him, her, or them.".

A study of these provisions reveals that not all of section 2 of the British statute was carried into section 16–532 of D.C. Code, 1961 ed., and, if the provisions are to be preserved, apparently they are meaningless unless enough of the missing part is restored to the text to indicate the basis of the action by the landlord or lessor. This missing part of section 2 of the British statute, which was the beginning thereof, and which was also contained in the above-cited section 46 of Comp. Stat. D.C., p. 326, provided:

"And whereas great inconveniences do frequently happen to lessors and landlords, in cases of re-entry for non-payment of rent, by reason of the many niceties that attend re-entries at common law; and forasmuch as when a legal re-entry is made, the landlord or lessor must be at the expense, charge, and delay of recovering in ejectment, before he can obtain the actual possession of the demised premises; and it often happens that after such a re-entry made, the lessee or his assignee, upon one or more bills filed in the court of equity, not only holds out the lessor or landlord, by an injunction, from recovering the possession, but likewise, pending the said suit, do run much more in arrear, without giving any security for the rents due, when the said re-entry was made, or which shall and do afterwards incur: For remedy whereof:

"Be it enacted, That in all cases between landlord and tenant, as often as it shall happen that one half year's rent shall be in arrear, and the landlord or lessor, to whom the same is due, hath right by law to re-enter for the nonpayment thereof, such landlord or lessor shall and may, without any formal demand or re-entry, serve a declaration in ejectment for the recovery of the demised premises, or in case the same cannot be legally served, or no tenant be in actual possession of the premises, then to affix the same upon the door of any demised messuage, or in case such ejectment shall not be for the recovery of any messuage, then upon some notorious place of the lands, tenements, or hereditaments, comprised in such declaration in ejectment, and such affixing shall be deemed legal service thereof, which service, or affixing such declaration in ejectment, shall stand in the place and stead of a demand and re-entry; and in case of judgment against the casual ejector, or nonsuit for not confessing lease, entry, and ouster, it shall be made to appear to the court where the said suit is depending, by affidavit, or be proved upon the trial, in case the defendant appears, that half a year's rent was due before the said declaration was served, and that no sufficient distress was to be found on the demised premises, countervailing the arrears then due, and that the lessor or lessors in ejectment had power to re-enter; then, and in every such case, the lessor or lessors in ejectment shall recover judgment and execution, in the same manner as if the rent in arrear had been legally demanded, and a re-entry made; and [here commence the provisions set in section 16–532 of D.C. Code, 1961 ed.]".

The above-quoted provisions, including those contained in the missing part of section 2 of the British statute, are, in modified and modernized form, statutory law in other jurisdictions. See New York Civil Practice Act, § 997 et seq., and Ill. Rev. Stat. 1955, ch. 80, § 4.

In this revised section, the provisions, including those contained in the missing part of section 2 of the British statute, are consolidated. The language is modernized, and surplusage is omitted. Also omitted, are all provisions which are obsolete, or which can have no present application because of the merger, by the Federal Rules of Civil Procedure and the procedural Rules of the Court of General Sessions, of procedure in law and equity, and because there are no separate courts of equity in the District. Both the District Court and the Court of General Sessions have equitable as well as legal jurisdiction, and presumably whatever equitable relief is granted the defendant lessee or other persons mentioned under subsecs. (b) and (c) of this revised section, would be by application to the same court that had rendered judgment in favor of the plaintiff. Subsec. (b) provides for such an application (for an order), and all references to restoration of the property to the lessee, or to an injunction to stay the plaintiff's proceedings, by a separate "court of equity", are omitted.

Another provision of section 2 of the British statute, that was within the provisions carried into section 16–532 of D.C. Code, 1961 ed., but that was omitted from the latter section, followed the words (with respect to the defendant) "shall be barred and foreclosed from all relief or remedy in law or equity,", and read "other than by writ of error, for reversal of such judgment, in case the same shall be erroneous,". In subsec. (b) of this revised section, "appeal or certiorari" is substituted for "writ of error" in conformity with present procedure.

The provision in section 16–532 of D.C. Code, 1961 ed., for awarding costs to the defendant if "verdict shall pass" for him, or if plaintiff is nonsuited, is omitted, as this is a matter that is subject to rules of court. See rules

41 and 54(d) of the Federal Rules of Civil Procedure, and of the civil rules of the Court of General Sessions.

It is not intended that this section should confer upon the tenant or other person mentioned in subsec. (b), an absolute right, after execution on the plaintiff's judgment in ejectment, to have possession of the property restored to him if, within 6 months after the execution, he makes the payment or tender referred to in subsec. (c) and applies for an order granting relief from the judgment. Nor was this the purpose of the British statute. Prior to its enactment, where the ejectments after judgments in common-law courts were merely because of nonpayment of rent, courts of equity had been restoring tenants to possession on payment of arrears and interest. To such an extent had this practice been carried, that, in the British statute, the power of Equity to relieve, if it so wished in such cases, was restricted to a period of 6 months after the landlord had recovered the premises in ejectment. This is the object of subsecs. (b) and (c) of this section.

SUBCHAPTER II.—PROCEEDINGS TO DISCOVER THE DEATH OF A TENANT FOR LIFE

§ 16–1151. Petition by person entitled to claim; form and contents

(a) A person entitled to claim real property, after the death of another person who has a prior estate therein, may, not oftener than once a year, petition the court for an order directing the production of the tenant for life, as prescribed by this subchapter, by a person, named in the petition, against whom a civil action in ejectment to recover the real property can be maintained if the tenant for life is dead, or, if there is no such person, by the guardian, trustee, or other person who has, or is entitled to, the custody of the person of the tenant for life, or the care of his estate.

(b) A petition prescribed by subsection (a) of this section shall be verified by the affidavit of the petitioner, and shall contain an averment that the petitioner has cause to believe that the person, upon whose life the prior estate depends, is dead, and that his or her death is being concealed by the person named in the petition. (Dec. 23, 1963, 77 Stat. 569, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–527 (6 Ann, ch. 18, § 1, 1707; Kilty's Rept., p. 247; Alex. Br. Stat., p. 675; Comp. Stat. D.C., p. 356, § 6).

This section and sections 16–1152 and 16–1153 herein are based upon different parts of section 16–527 of D.C. Code, 1961 ed., cited above, which, as indicated above, was derived from a British statute of 1707, and which provided, as follows:

"Any person or persons who hath or shall have any claim or demand in or to any remainder, reversion or expectancy or in to any estate, after the death of any person within age, married woman, or any other person whatsoever, upon affidavit made in the court of chancery, by the person so claiming such estate, of his or her title, and that he or she hath cause to believe that such minor, married woman, or other person is dead, and that his or her death is concealed by such guardian, trustee, husband, or any other person, shall and may once a year, if the person aggrieved shall think fit, move the chancellor to order, and they are hereby authorized and required to order such guardian, trustee, husband, or other person, concealing or suspected to conceal such person, at such time and place as the said court shall direct, on personal or other due service of such order, to produce and shew to such person and persons (not exceeding two) as shall in such order be named by the party or parties prosecuting such order, such minor, married woman, or other persons, aforesaid; and if such guardian, trustee, husband, or such other person, as aforesaid, shall refuse or neglect to produce or shew such infant, married woman, or such other person, on whose life any such estate doth depend, according to the directions of the said order, that then the court of chancery is hereby authorized and required to order such guardian, trustee, husband, or other person, to produce such minor, married woman, or other person concealed, in the said court of chancery, or otherwise, before commissioners to be appointed by the said court, at such time and place as the court shall direct, two of which commissioners shall be nominated by the party or parties prosecuting such order, at his, her or their costs and charges; and in case such guardian, trustee, husband, or other person, shall refuse or neglect to produce such infant, married woman, or other person so concealed, in the court of chancery, or before such commissioners, whereof return shall be made by such commissioners, and that return filed, in either or any of the said cases, the said minor, married woman, or such other person so concealed, shall be taken to be dead, and it shall be lawful for any person claiming any right, title or interest in remainder or reversion, or otherwise after the death of such infant, married woman, or such other person so concealed, as aforesaid, to enter upon such lands, tenements and hereditaments, as if such infant, married woman, or other person, so concealed were actually dead."

In this section and sections 16–1152 and 16–1153 herein, and in sections 16–1154 to 16–1158, inclusive, herein, which are from other provisions of the same British statute, the language is modernized and every effort is made to conform the provisions with present practice under rules of court, and to simplify the meanings and implications of the older provisions, even to the extent of inserting material technically not contained in those sections (but implied therein), but without change of substance. The revised provisions are patterned to some extent upon some of the provisions of New York Real Property Law, § 570 et seq., that apparently were derived from the same original source.

In this section, "petition" is substituted for "affidavit", but subsec. (b) provides that the petition shall be verified by affidavit of the petitioner. It would seem that this would be in conformity with present practice, and yet would meet the requirements of the older law. Rule 7(a) of the Federal Rules of Civil Procedure, and rule 7(a) of the civil rules of the Court of General Sessions, provide, among other things that in ordinary civil actions (see rules 2, respectively, thereof) there shall be a "complaint". However, even under the Federal Rules of Civil Procedure, the term "petition" is used in connection with certain special proceedings. See, for example, rule 27 thereof, regarding the perpetuation of testimony. As the proceeding provided for herein is special in nature, resulting, not in a judgment, but in a court order, it is considered that "petition", rather than "complaint", is the proper term.

Words in this section, "by a person named in the petition, against whom a civil action in ejectment to recover the real property can be maintained if the tenant for life is dead", were not contained in section 11–527 of D.C. Code, 1961 ed., but they place no limitation on the proceeding which does not exist at present, and they are inserted for the purpose of clarification.

Throughout sections 16–1151 to 16–1158 herein, "court" is substituted for "court of chancery", as the latter is an obsolete term. Both the United States District Court for the District of Columbia, and the District of Columbia Court of General Sessions, have both law and equity jurisdiction, and law and equity procedure were merged by the Federal Rules of Civil Procedure, and the civil rules of the Court of General Sessions.

§ 16–1152. Order to produce life tenant; service of order

Upon the presentation of the petition and affidavit prescribed by section 16–1151, the court shall issue an order to the person named in the petition to produce and show to the persons named in the order by the petitioner not exceeding two in number, at such time and place as the court directs, the person

upon whose life the prior estate depends. A certified copy of the order shall be served upon the person required to produce the tenant for life in the manner provided by applicable rules of court. (Dec. 23, 1963, 77 Stat. 569, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on the D.C. Code, 1961 ed., § 16–527 (6 Ann, ch. 18, § 1, 1707; Kilty's Rept., p. 247; Alex. Br. Stat., p. 675; Comp. Stat. D.C., p. 356, § 6).

This section and sections 16–1151 and 16–1153 herein are based upon different parts of section 16–527 of D.C. Code, 1961 ed., cited above, which, as indicated above, was derived from a British statute of 1707. For the complete text of section 11–527, see revision note under section 16–1151 herein, and see that note also for explanation of the policy followed in restating the provisions carried into sections 16–1151 to 16–1158, inclusive, herein.

Section 16–527 of D.C. Code, 1961 ed., provided merely for "personal or other due services" of the order referred to. For the purpose of clarification, and to conform with applicable rules of court, this revised section provides that a certified copy of the order shall be served upon the person required to produce the tenant for life in the manner provided by applicable rules of court. See rules 4 and 5, respectively, of the Federal Rules of Civil Procedure, and the same numbered rules of the civil rules of the Court of General Sessions.

§ 16–1153. Failure to produce as ordered; subsequent proceedings; commissioners; presumption of death; right of possession

(a) If a person upon whom an order, as prescribed by section 16–1152, is served, refuses or neglects to produce the person upon whose life the prior estate depends in the manner provided by the order, the court shall order him to produce the person in court or before commissioners appointed by the court, at such time and place as the court directs. Two of the commissioners shall be nominated by the petitioner, and they shall serve at his expense. A certified copy of the order shall be served upon the person required to produce the tenant for life in the manner provided by applicable rules of court. The commissioners appointed shall make and file with the court a return showing the results of their investigation and their conclusions.

(b) If the person upon whom the second order prescribed by subsection (a) of this section is served refuses or neglects to produce, in court, or before the commissioners, as the case may be, the person upon whose life the prior estate depends, it shall be presumed that the latter person is dead, and the court shall issue an order permitting the petitioner to take possession of the property, as if that person were actually dead. (Dec. 23, 1963, 77 Stat. 569, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–527 (6 Ann, ch. 18, § 1, 1707; Kilty's Rept., p. 247; Alex. Br. Stat., p. 675; Comp. Stat. D.C., p. 356, § 6).

This section and sections 16–1151 and 16–1152 herein are based upon different parts of section 16–527 of D.C. Code, 1961 ed., cited above, which, as indicated above, was derived from a British statute of 1707. For the complete text of section 11–527, see revision note under section 16–1151 herein, and see that note also for explanation of the policy followed in restating the provisions carried into sections 16–1151 to 16–1158, inclusive, herein.

Section 16–527 of D.C. Code, 1961 ed., provided for service of the order referred to in section 16–1152 herein, but was silent with respect to service of the second order, that is, the order referred to in subsec. (a) of this section. Obviously, however, the second order would have to be served, and subsec. (a) of this section, in providing for such service, provides that a certified copy of it shall be served in the manner provided by rules of court. See revision note under section 16–1152.

Further, while section 16–527 of D.C. Code, 1961 ed., provided that if the life tenant was not produced, as required, it would be "lawful" for the petitioner to enter upon the property claimed, it did not provide for entry after order of court. It would seem that such an order would be a prerequisite to the entry, and, for the purpose of clarification, subsec. (b) of this revised section provides for it.

§ 16–1154. Investigation outside the District; report to court; presumption of death; right to possession

If before, or at the time of, the presentation of the commissioners' return provided for by section 16–1153, or, where commissioners are not appointed, at any time before a final order is made, the party upon whom the first or second order is served presents to the court presumptive proof, by affidavit, that the person, whose death was in question, is, or lately was, at a place certain, without the District of Columbia, the petitioner, at his own expense, may send one or both of the persons named in the first order to view him. If the person concealing or suspected of concealing the person upon whose life the prior estate depends, or the fact of his death, refuses or neglects to produce him or to procure him to be produced to the personal view of the persons sent for that purpose, the persons sent to view him shall make a true return of the refusal or neglect to the court, and the return shall be filed in the court. Thereupon, it shall be presumed that the tenant for life is dead, and the court shall issue an order permitting the petitioner to take possession of the real property, as if that person were actually dead. (Dec. 23, 1963, 77 Stat. 570, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–528 (6 Ann, ch. 18, § 2, 1707; Kilty's Rept., p. 247; Alex. Br. Stat., p. 675; Comp. Stat. D.C., p. 356, § 7).

As indicated above, section 16–528 of D.C. Code, 1961 ed., on which this section is based, was derived from a British statute of 1707. Section 16–528 provided, as follows:

"If it shall appear to the said court by affidavit, that such minor, married woman, or other persons, mentioned in section 16–527, for whose life such estate is holden, is, or lately was at some certain place beyond the seas in the said affidavit to be mentioned, it shall and may be lawful for the party or parties prosecuting such order, as aforesaid, at his, her, or their costs and charges, to send over one or both the said persons appointed by the said order, to view such minor, married woman, or other person, for whose life any such estate is holden; and in case such guardian, trustee, husband or other person concealing or suspected to conceal such persons, as aforesaid, shall refuse or neglect to produce or procure to be produced to such person or persons, a personal view of such infant, married woman, or other person, for whose life any such estate is holden, that then and in such case such person or persons are hereby required to make a true return of such refusal or neglect to the court of chancery, which return shall be filed, and thereupon such minor, married woman, or other person, for whose life any such estate is holden, shall be taken to be dead; and it shall be lawful for any person claiming any right, title or interest, in remainder, reversion or otherwise, after the death of such infant, married woman, or other person, for whose life any such estate is holden, to enter upon such lands, tenements and hereditaments, as if such infant, married woman, or other person, for whose life any such estate is holden, were actually dead".

For explanation of the policy followed in restating the provisions carried into this section and sections 16–1151 to 16–1153 and 16–1155 to 16–1158 herein, all of which are from provisions of the same British statute, see revision note under section 16–1151 herein.

While the provisions, as set out in this section, are completely rewritten, they do not make any change in substance, although, to clarify the provisions, words "without the District of Columbia" are substituted for "beyond the seas".

§ 16–1155. Restoration of property to life tenant

The possession of real property that has been awarded to a petitioner pursuant to this subchapter, upon the presumption of the death of the person upon whose life the prior estate depends, shall be restored, by an order of the court, to the person evicted, or to his heirs, or legal representatives, upon the petition of the latter, and proof, to the satisfaction of the court, that the person presumed to be dead is living. The proceedings upon such a petition are the same as those prescribed by this subchapter to be followed upon the petition of the person to whom possession is awarded. (Dec. 23, 1963, 77 Stat. 570, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–529 (6 Ann, ch. 18, § 3, 1707; Kilty's Rept., p. 247; Alex. Br. Stat., p. 676; Comp. Stat. D.C., p. 357, § 8).

This section and section 16–1156 herein are based upon different parts of section 16–529 of D.C. Code, 1961 ed., cited above, which, as indicated above, was derived from a British statute of 1707, and which provided, as follows:

"If it shall afterwards appear upon proof, in any action to be brought pursuant to sections 16–527, 16–528, that such infant, married woman, or other person, for whose life any such estate is holden, were alive at the time of such order made, then it shall be lawful for such infant, married woman, guardian or trustee, or other person having any estate or interest, determinable upon such life, to reenter upon the said lands, tenements or hereditaments, and for such infant, married woman, or other person, having any estate or interest determinable upon such life. their executors, administrators or assigns, to maintain an action against those who, since the said order, received the profits of such lands, tenements or hereditaments, or their executors or administrators, and therein to recover full damages for the profits of the same received, from the time that such infant, married woman, or other person, having any estate or interest determinable upon such life, were ousted of the possession of such lands, tenements or hereditaments".

For explanation of the policy followed in restating the provisions carried into sections 16–1151 to 16–1158, inclusive, herein, all of which are based upon different provisions of the same British statute, see revision note under section 16–1151 herein.

Section 16–529 of D.C. Code, 1961 ed., as indicated above, in providing for restoration of the property to the life tenant upon proof that the person presumed to be dead was still living, provided merely that it would be "lawful" for the person evicted to re-enter on the property. Presumably, however, an order of court would be a prerequisite to reentry, and the provisions, as herein revised, so provide.

The provisions, as herein set out, are completely rewritten, but they do not make any change in substance.

§ 16–1156. Recovery of profits by person evicted

A person evicted, as prescribed by this subchapter, may, when the presumption upon which he is evicted is erroneous, maintain a civil action against the person who has occupied the property, or his executor or administrator, to recover the full profits of the property during the occupation, while the person, upon whose life the prior estate depends, is or was living. (Dec. 23, 1963, 77 Stat. 570, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–529 (6 Ann, ch. 18, § 3, 1707; Kilty's Rept., p. 247; Alex. Br. Stat., p. 676; Comp. Stat. D.C., p. 357, § 8).

This section and section 16–1155 herein are based upon different parts of section 16–529 of D.C. Code, 1961 ed., cited above, which, as indicated above, was derived from a British statute of 1707. For the complete text of section 16–529, see revision note under section 16–1155 herein, and for explanation of the policy followed in restating the provisions carried into sections 16–1151 to 16–1158, inclusive, herein, all of which are based upon different provisions of the same British statute, see revision note under section 16–1151 herein.

The provisions, as set out herein, are completely rewritten, but they do not make any change in substance.

§ 16–1157. Preservation of life tenants' rights if living at time of return

When a guardian, trustee, or other person holding an estate or interest determinable upon the life of another person, shows by affidavit or otherwise to the satisfaction of the court, that:

(1) he has used his utmost efforts to procure the tenant for life to appear in the court or elsewhere, according to the order of the court;

(2) he can not procure or compel him so to appear; and

(3) the tenant for life is or was living at the time of the return made and filed, as prescribed by this subchapter—

he may continue in the possession of the estate, and receive the rents and profits for and during the infancy of the infant, or for and during the life of any other person on whose life the estate or interest depends. (Dec. 23, 1963, 77 Stat. 570, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–530 (6 Ann, ch. 18, § 4, 1707; Kilty's Rept., p. 247; Alex. Br. Stat., p. 677; Comp. Stat. D.C., p. 357, § 9).

As indicated above, section 16–530 of D.C. Code, 1961 ed., on which this section is based, was derived from a British statute of 1707. Section 16–530 provided, as follows:

"If any such guardian, trustee, husband or other person or persons, holding or having any estate or interest, determinable upon the life or lives of any other person or persons, shall by affidavit or otherwise, to the satisfaction of the said court of chancery, make appear, that he, she or they have used his, her, or their utmost endeavours to procure such infant, married woman, or other person or persons, on whose life or lives such estate or interest doth depend, to appear in the said court of chancery, or elsewhere, according to the order of the said court in that behalf made; and that he, she or they can not procure or compel such infant, married woman, or other person or persons so to appear, and that such infant, married woman, or other person or persons, on whose life or lives such estate or interest doth depend, is, are or were living at the time of such return made and filed, as aforesaid, then it shall be lawful for such person or persons to continue in the possession of such estate, and receive the rents and profits thereof for and during the infancy of such infant, and the life or lives of such married woman, or other person or persons, on whose life or lives such estate or interest doth or shall depend".

For explanation of the policy followed in restating the provisions carried into sections 16–1151 to 16–1158, inclusive, herein, all of which are based upon different

provisions of the same British statute, see revision note under section 16–1151 herein.

The provisions, as set out herein, are rewritten, but they do not make any change in substance.

§ 16–1158. Persons holding over after life estate; damages

A guardian or trustee for an infant, or other person having an estate determinable upon life or lives, who, after the determination of the particular estate or interest, without the express consent of the person or persons who is or are next and immediately entitled thereto, holds over and continues in possession of the real property, is a trespasser. Any person entitled to the real property upon or after the determination of the particular estate or interest, or his executor or administrator, may recover in damages against the person so holding over, or his executor or administrator, the full value of the profits received during the wrongful possession. (Dec. 23, 1963, 77 Stat. 571, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–531 (6 Ann, ch. 18, § 5, 1707; Kilty's Rept., p. 247; Alex. Br. Stat., p. 677; Comp. Stat. D.C., p. 357, § 10).

As indicated above, section 16–531 of D.C. Code, 1961 ed., on which this section is based, was derived from a British statute of 1707. Section 16–531 provided, as follows:

"Every person who, as guardian or trustee for any infant, and every husband seized in right of his wife only, and every other person having any estate determinable upon any life or lives, who after the determination of such particular estates or interests, without the express consent of him, her or them, who are or shall be next, and immediately entitled, upon and after the determination of such particular estates or interests, shall hold over and continue in possession of any manors, messuages, lands, tenements or hereditaments, shall be and are hereby adjudged to be trespassers; and every person and persons, his, her and their executors and administrators, who are or shall be entitled to any such manors, messuages, lands, tenements and hereditaments, upon or after the determination of such particular estates or interests, shall and may recover in damages against every such person or persons so holding over, as aforesaid, and against his, her or their executors or administrators, the full value of the profits received during such wrongful possession, as aforesaid".

For explanation of the policy followed in restating the provisions carried into sections 16–1151 to 16–1158, inclusive, herein, all of which are based upon different provisions of the same British statute, see revision note under section 16–1151 herein.

The provisions, as set out herein, are rewritten, but they do not make any change in substance.

Chapter 13.—EMINENT DOMAIN

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SUBCHAPTER I.—GENERAL PROVISIONS

§ 16–1301. Jurisdiction of District Court

The United States District Court for the District of Columbia has jurisdiction of all proceedings for the condemnation of real property authorized by this chapter, with full power to hear and determine all issues of law and fact that may arise in the proceedings. (Dec. 23, 1963, 77 Stat. 572, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 16–601, 16–615, 16–616, 16–619 (Mar. 3, 1901, ch. 854, § 483, 31 Stat. 1265; Mar. 1, 1929, ch. 416, § 1, 45 Stat. 1415; Mar. 1, 1929, ch. 439, 45 Stat. 1437; Apr. 11, 1935, ch. 57, §§ 4, 5, 59 Stat. 153; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Sections 16–601, 16–615, and 16–616 of D.C. Code, 1961 ed., did not contain jurisdictional language, but section 16–601, which is carried into section 16–1311 herein, provided that the condemnation proceedings referred to therein should be brought in the District Court; section 16–615, which is carried into section 16–1336 herein, provided that the condemnation proceedings referred to therein should be in accordance with section 16–601 et

seq.; and section 16–616, which is carried into section 16–1337 herein, provided that the condemnation proceedings referred to therein should be in accordance with section 16–619 et seq.

Only the jursidictional provisions of section 16–619 of D.C. Code, 1961 ed., are carried into this section. The remainder of section 16–619 is carried into section 16–1351 and 16–1352 herein.

Changes are made in phraseology.

§ 16–1302. Assignment of judge for condemnation cases

The chief judge of the United States District Court for the District of Columbia shall assign from time to time, and for such periods as he determines, one of the judges of the court to hear cases involving the condemnation of real property in the District of Columbia. In case of the disability of the judge so assigned, or for any other reason, the chief judge may assign any judge of the Court for service in condemnation cases. (Dec. 23, 1963, 77 Stat. 572, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–301 (Mar. 3, 1863, ch. 91, § 1, 12 Stat. 762; Mar. 3, 1901, ch. 854, § 60, 31 Stat. 1199; Dec. 20, 1928, ch. 41, 45 Stat. 1056; June 19, 1930, ch. 537, 46 Stat. 785; June 25, 1936, ch. 804, 49 Stat. 1921; May 31, 1938, ch. 290, § 5, 52 Stat. 584; June 25, 1948, ch. 646, §§ 24, 32(b), 62 Stat. 990, 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

The provision that only when the judge assigned to condemnation cases is "not engaged in such cases" shall he be subject to assignment to the other business of the court is omitted. It is the practice to assign one of the civil nonjury judges to hear condemnation proceedings, and the judge so assigned gives priority to condemnation proceedings over other cases. Ordinarily, however, condemnation proceedings are not sufficient to take the entire time of a judge, and to require him to do no other work while assigned to condemnation proceedings is wasteful and inefficient. This is a matter of internal administration and should not be governed by statute.

Changes are made in phraseology.

CROSS REFERENCE

Appointment of judges, see 28 U.S.C. § 88.

SUBCHAPTER II.—REAL PROPERTY FOR DISTRICT OF COLUMBIA

§ 16–1311. Condemnation proceedings by Board of Commissioners

When real property in the District of Columbia is needed by the Board of Commissioners of the District for sites of schoolhouses, fire or police stations, or for a right of way for sewers, or for any other municipal use authorized by Congress, and it can not be acquired by purchase from the owners thereof at a price satisfactory to the officers of the District authorized to negotiate for the property, a complaint may be filed in the United States District Court for the District of Columbia in the name of the Board for the condemnation of the property or right of way and the ascertainment of its value. (Dec. 23, 1963, 77 Stat. 572, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–601 (Mar. 3, 1901, ch. 854, § 483, 31 Stat. 1265; Mar. 1, 1929, ch. 439, 45 Stat. 1437; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1939, ch. 139, § 127, 63 Stat. 107).

The term "complaint" is substituted for "petition" to conform with the Federal Rules of Civil Procedure. See, particularly, rules 7(a) and 71A(c) thereof.

Changes are made in phraseology.

CROSS REFERENCES

Assessor of the District as expert witness, see § 14–308.

Assignment of special judge in cases involving condemnation of land for the District of Columbia, see § 16–1302.

Condemnation for right-of-way of water line from Dalecarlia Reservoir to Arlington County Sanitary District in Virginia, see § 43–1532.

Condemnation for streets, alleys, or highways, see § 7–201 et seq.

Condemnation of insanitary buildings, see § 5–616 et seq.

Condemnation of land for children's tuberculosis sanatorium, see § 32–312.

Condemnation of land for municipal center, see § 9–201.

Condemnation of land for United States, see § 16–1351 et seq.

Condemnation of lands for parks and playgrounds, see § 1–1011.

Condemnation of lands for sites for refuse incinerators, see § 6–505.

Condemnation of materials to make or repair public roads, see § 7–332.

Condemnation proceeding in cases concerning alleys and minor streets, see § 7–301 et seq.

Condemnation proceedings to close useless streets and alleys under Street Adjustment Act, see § 7–401 et seq.

Condemnation proceedings to establish building lines on streets, see § 5–203.

Condemnation proceedings under Alley Dwelling Act, see § 5–103.

Condemnation to open, widen, or straighten alleys or minor streets, see § 7–313 et seq.

Condemning land in excess of needs, see §§ 16–1331 to 16–1338.

No damages may be paid upon condemnation of telegraph company property for the right to lay conduits, see § 43–1417.

Proceeding by certain railroads to acquire land for railroad facilities, see § 7–1221.

Proceedings to acquire land for viaducts and subways, see § 7–1215.

NOTES TO DECISIONS UNDER PRIOR LAW

Abandonment of proceedings

The Commissioners have the right to discontinue and abandon a condemnation proceeding; and such abandonment need not be in toto, but may be in parte. *Johnson & Wimsatt* v. *Reichelderfer* (1933, 66 F. 2d 217, 62 App. D.C. 237).

Appropriation not made

The fact that Congress has made no appropriation for payment of the land condemned at the time condemnation proceedings are instituted is no defense. *MacFarland* v. *Elverson* (1908, 32 App. D.C. 81).

Commissioners

Commissioners of the District have no power to acquire land by condemnation, except by express authority of Congress. *Dougherty* v. *Galliher* (1928, 26 F. 2d 538, 58 App. D.C. 166).

Where power to condemn property for public use has been conferred on municipal offices, it rests with such officers to determine whether it shall be exercised and when and to what extent it shall be exercised, and so long as they do not abuse the power delegated to them, courts are powerless to inquire into motives which actuate them or the propriety of the contemplated improvement. *O'Hara* v. *District of Columbia* (1945, 147 F. 2d 146, 79 U.S. App. D.C. 302, certiorari denied 65 S. Ct. 1183, 325 U.S. 855, 89 L. Ed. 1975).

Construction

The words "authorized by Congress" limit only the preceding phrase "or for other municipal purposes," and have no reference to the preceding phrases. *MacFarland* v. *Elverson* (1908, 32 App. D.C. 81).

This statute must be strictly construed; if doubt exists as to authority of commissioners to condemn it must be resolved in favor of the landowner. *Id.*

Discretion of municipal officers

An appellate court will not interfere with the report of Commissioners to correct the amount of damages, ex-

cept in cases of gross error, showing prejudice or corruption. Hence, for an error in the judgment of Commissioners in arriving at the amount of damages there can be no correction, especially where the evidence is conflicting. *Seufferle* v. *Macfarland* (1906, 28 App. D.C. 94).

When power of condemnation is vested in municipal officers "it rests with such officers to determine whether it shall be exercised, and when and to what extent it shall be exercised." *MacFarland* v. *Everlson* (1908, 32 App. D.C. 81).

Fee simple estate

Where land is condemned for school purposes, in absence of special circumstances, it would be reasonable to presume that no estate less than obsolete title is sufficient. *O'Hara* v. *District of Columbia* (1945, 147 F. 2d 146, 79 U.S. App. D.C. 302, certiorari denied 65 S. Ct. 1183, 325 U.S. 855, 89 L. Ed. 1975).

High school athletic field

Land to be condemned for high school athletic field is to be used for "educational" purposes within the meaning of the zoning regulations, and such field may be located in a residential district. *Commissioners of District of Columbia* v. *Shannon & Luchs Constr. Co.* (1927, 17 F. 2d 219, 57 App. D.C. 67).

Appropriation for school athletic field authorizes condemnation proceedings by District. *Id.*

Historical

On Mar. 1, 1929, Congress changed the method of procedure in condemnation cases in the District of Columbia and different methods were provided for the United States (§§ 16–601 to 16–619). *Willis* v. *United States* (1938, 99 F. 2d 362, 69 App. D.C. 129).

Petitions, sufficiency of

Where District of Columbia's petition in condemnation proceeding alleged that land was necessary for purpose of acquiring a site for school purposes, error, if any, in failure to declare that fee simple estate was being condemned could not be raised by collateral attack on order of condemnation, in absence of record affirmatively showing that a lesser estate than a fee simple would have served the public purpose for which the land was sought. *O'Hara* v. *District of Columbia* (1945, 147 F. 2d 146, 79 U.S. App. D.C. 302, certiorari denied 65 S. Ct. 1183, 325 U.S. 855, 89 L. Ed. 1975).

School sites

To condemn land for school sites, district assessor may not testify as expert witness. *Johnson & Wimsatt* v. *Reichelderfer* (1931, 50 F. 2d 336, 60 App. D.C. 186).

Widening street

Under the provisions of this section, condemnation proceedings may be instituted for widening any street. *Nealy* v. *Hazen* (1934, 71 F. 2d 692, 63 App. D.C. 239, certiorari denied 55 S. Ct. 119, 293 U.S. 602, 79 L. Ed. 694).

§ 16–1312. Jury; special list; qualifications; procedure for drawing

(a) For the purposes of this subchapter, the jury commission shall:

(1) prepare a special list of persons who have the qualifications of jurors, as prescribed by section 11–2301, and who, in addition, are owners of real property in the District;

separate and similar pieces of paper, which shall be so folded or rolled that the names can not be seen, and place them in a special box to be pro-

(2) from time to time, as may be necessary, write the names contained in the special list on vided for the purpose;

(3) thereupon, seal and lock the special box, and, after thoroughly shaking the box, deliver it to the clerk of the United States District Court for the District of Columbia for safekeeping.

The box may not be unsealed or opened except by the jury commission.

(b) From time to time, as ordered by the court, the jury commission shall publicly break the seal of the box provided for by subsection (a) of this section, and proceed to draw therefrom by lot, without previous examination, the names of such number of persons as the court directs, to serve in condemnation proceedings brought pursuant to section 16–1311, and certify the names so drawn to the clerk of the court. At the time of each drawing, there shall be in the box the names of not less than one hundred persons possessing the qualifications prescribed by subsection (a) of this section.

(c) Except as provided by this section, chapter 23 of Title 11, in so far as it may be applicable, governs the qualifications of jurors in cases under section 16–1311 and the duties and conduct of the jury commissioners under this section.

(d) A person who has so served within one year may not serve as a condemnation juror under this section. (Dec. 23, 1963, 77 Stat. 572, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–603 (Mar. 3, 1901, ch. 854, §484a, as added Apr. 19, 1920, ch. 153, § 1, 41 Stat. 555 (565); Mar. 1, 1929, ch. 439, 45 Stat. 1437; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b) 62 Stat. 991; May 24, 1939, ch. 139, § 127, 63 Stat. 107).

While the Federal Rules of Civil Procedure now govern procedure in condemnation cases in the United States District Court for the District of Columbia (see, particularly rule 71A thereof), it would seem that if local law (in the case of the District of Columbia, federal law applied in the District) requires a jury trial of issues, that requirement shall be followed. Therefore, this section providing for the qualifications of, and manner of drawing, jurors, in connection with condemnation of real property for the use of the District, is retained. See rules 71A (h), (k) and 81(e) of the Federal Rules of Civil Procedure.

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS UNDER PRIOR LAW

Duty of court

The court has the duty of guiding and directing the jury commission to the end that proper representation is had of all eligible citizens on general juries and also on the special panels in eminent domain proceedings. *In re Condemnation of Lots Nos. 2, 27, 803, etc., in Square 3960* (D.C.D.C. 1945, 58 F. Supp. 832).

Jury, definition of

The "jury" in eminent domain proceedings in the District of Columbia is an inquest or commission appointed by the court under this section and differs from an ordinary jury in that its members must be freeholders, need not be unanimous, and may number more or less than 12. *In re Condemnation of Lots Nos. 2, 27, 803, etc., in Square 3960* (D.C.D.C. 1945, 58 F. Supp. 832).

Powers of discretion

This section requiring the jury commission to prepare for eminent domain proceedings a special list of freeholders of the District of Columbia having the qualifications of jurors imports a broad discretion in the commission. *In re Condemnation of Lots Nos. 2, 27, 803, etc., in Square 3960* (D.C.D.C. 1945, 58 F. Supp. 832).

Preparation of jury lists

The jury commission should prepare with great care not only the general jury lists but also the lists of jurors for eminent proceedings and keep the lists fluid so that some persons will not be frequently re-called while others, including Negroes, are not called. *In re Condemnation of Lots Nos. 2, 27, 803, etc., in Square 3960* (D.C.D.C. 1945, 58 F. Supp. 832).

§ 16–1313. Selection of jury; oath of jurors

In each action brought pursuant to this subchapter, the court shall appoint, from among the persons whose names are drawn pursuant to section 16–1312, a jury of five capable and disinterested persons, and shall administer to the persons so drawn an oath or affirmation that they:

(1) are not interested in any manner in the real property to be condemned;

(2) are not related to the parties interested in the property; and

(3) without favor or partiality, and to the best of their judgment, will appraise the value of the respective interests of all persons concerned in the property.

(Dec. 23, 1963, 77 Stat. 573, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–604 (Mar. 3, 1901, ch. 854, § 485, 31 Stat. 1265; Apr. 19, 1920, ch. 153, 41 Stat. 555 (565); Mar. 1, 1929, ch. 439, 45 Stat. 1437).

Words "The said court holding a District Court of the United States" are omitted as obsolete. They had reference, originally, to the Supreme Court of the District of Columbia, which court, under prior law, held certain "special terms", one of which was designated the "district court of the United States". The court was redesignated the "District Court of the United States for the District of Columbia" by act June 25, 1936, ch. 804, 49 Stat. 1921. The District of Columbia was made a judicial district upon the enactment, in 1948, of Title 28 of the United States Code, and the correct name of the court is now "United States District Court for the District of Columbia." In this revised section, only the term "the court" is used. This is sufficient, in view of the provisions of sections 16–1311 and 16–1312 herein, in which the full name of the court is used.

The provision "shall thereupon cite all the owners and others persons interested to appear in said court, at a time to be fixed by the court, to answer said petition;", is omitted as covered by rule 71A (c)(2), (d) of the Federal Rules of Civil Procedure; and the provision "and if it shall appear to the court that there are any owners or other persons interested who are under disability, the court shall give public notice of the time at which it will proceed with the matter of condemnation; and at such time, if it shall appear that there are any persons under disability who have appeared or who have not appeared, the court shall appoint a guardian ad litem for each such person," is omitted as covered by rule 71A of the Federal Rules of Civil Procedure. See, particularly subd. (g) thereof. See, also, rule 17(c) of such rules.

The remaining provisions of section 16–604 of D.C. Code, 1961 ed., relating to selection of the jury, and oath of jurors, are retained for the same reason stated in revision note under section 16–1312 herein.

Changes are made in phraseology and arrangement.

§ 16–1314. Declaration of taking; contents; deposit; transfer of title; determination; interest

(a) In an action pursuant to this subchapter, the plaintiffs may file in a cause, with the complaint or at any time before judgment, a declaration of taking, signed by the members of the Board of Commissioners, declaring that the property is thereby taken for use of the District of Columbia. The declaration of taking shall contain or have annexed thereto a—

(1) statement of the authority under which and the public use for which the property is taken;

(2) description of the property taken sufficient for the identification thereof;

(3) statement of the estate or interest in the property taken for public use;

(4) plan showing the property taken; and

(5) statement of the sum of money estimated by the Commissioners to be just compensation for the property taken.

(b) Notwithstanding section 16–1319, upon the filing of the declaration of taking and the deposit in the registry of the court, to the use of the persons entitled thereto, of the amount of the estimated compensation stated in the declaration, title to the property in fee simple absolute, or such less estate or interest therein as is specified in the declaration, shall vest in the District of Columbia, and the property shall be deemed to be condemned and taken for the use of the District, and the right to just compensation therefor shall vest in the persons entitled thereto. The compensation shall be ascertained and awarded in the proceedings and established by judgment therein, and the judgment shall include, as part of the just compensation awarded, interest at the rate of 6 per centum per annum on the amount finally awarded as the value of the property as of the date of taking, from that date to the date of payment. Interest may not be allowed on as much thereof as has been paid into the registry. A sum so paid into the registry may not be charged with commissions or poundage. (Dec. 23, 1963, 77 Stat. 573, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–605 (Mar. 3, 1901, ch. 854, § 485a, as added July 8, 1932, ch. 462, 47 Stat. 647).

Section is based on part of section 16–605 of D.C. Code, 1961 ed. Remainder of section 16–605 is carried into sections 16–1315 and 16–1316 herein.

The term "plaintiffs" is substituted for "petitioners", and the term "complaint" is substituted for "petition", to conform with the Federal Rules of Civil Procedure. See rule 71A thereof.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Abandonment

Where a fee simple estate is acquired in condemnation proceeding, the doctrine of abandonment does not apply. *O'Hara* v. *District of Columbia* (1945, 147 F. 2d 146, 79 U.S. App. D.C. 302, certiorari denied 65 S. Ct. 1183, 325 U.S. 855, 89 L. Ed. 1975).

Nonuse, effect of

Where District of Columbia's petition in condemnation proceeding alleged that land was necessary for purpose of acquiring a site for school purposes, the District obtained a fee simple absolute upon deposit in court of the damages awarded to the owners and title to premises did not revert back to the original owners because of nonuse by the District for school purposes. *O'Hara* v. *District of Columbia* (1945, 147 F. 2d 146, 79 U.S. App. D.C. 302, certiorari denied 65 S. Ct. 1183, 325 U.S. 855, 89 L. Ed. 1975).

Use, immediately after taking

Congress intended to allow public use to proceed immediately upon taking in condemnation proceeding. *B. M. Scholl et al.* v. *District of Columbia* (1964, 331 F. 2d 1018, 118 U.S. App. D.C. 98).

§ 16–1315. Distribution of money deposited on declaration of taking; judgment for deficiency or overpayment; execution

After the filing of the declaration of taking, and the deposit of the money in the registry of the court, as provided for by section 16–1314, the court, upon the application of the parties in interest, may order that the money so deposited, or any part thereof, be

paid forthwith for or on account of the just compensation to be awarded in the proceeding. Upon the final award of compensation, the court shall enter judgment for the amount of any deficiency or overpayment in the manner provided by subdivision (j) of rule 71A of the Federal Rules of Civil Procedure. A writ of execution may be issued on the judgment within the same time, and it shall have the same effect as a lien, and shall be executed and returned in the same manner, as if issued on any other judgment. (Dec. 23, 1963, 77 Stat. 573, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–605 (Mar. 3, 1901, ch. 854, § 485a, as added July 8, 1932, ch. 462, 47 Stat. 647).

Section is based on part of section 16–605 of D.C. Code, 1961 ed. Remainder of section 16–605 is carried into sections 16–1314 and 16–1316 herein.

The provision that, after the final award, judgment shall be entered for the amount of any deficiency or overpayment in the manner provided by subdivision (j) of rule 71A of the Federal Rules of Civil Procedure is substituted for the detailed provisions relating thereto in section 16–605 of D.C. Code, 1961 ed. The latter were substantially similar to those in subdivision (j) of rule 71A, and the latter governs on that point.

Changes are made in phraseology.

§ 16–1316. Time for surrender of possession under declaration of taking; adjustment of charges

Upon the filing of the declaration of taking provided for by section 16–1314, the court may fix the time within which and the terms upon which the parties in possession shall be required to surrender possession to the plaintiffs. The court may make such orders in respect of incumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as it deems just and equitable. (Dec. 23, 1963, 77 Stat. 574, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–606 (Mar. 3, 1901, ch. 854, § 486, 31 Stat. 1266; Mar. 1, 1929, ch. 439, 45 Stat.

Section is based on part of section 16–605 of D.C. Code, 1961 ed. Remainder of section 16–605 is carried into sections 16–1314 and 16–1315 herein.

Changes are made in phraseology.

§ 16–1317. Objections to jurors; appraisement

The court, before accepting the jury in a condemnation proceeding pursuant to this subchapter, shall hear any objections that may be made to any member thereof, and may pass upon any objection, and may excuse any juror or cause any vacancy in the jury, when empaneled, to be filled. After the jury is organized and have viewed and examined the land and premises affected by the condemnation proceeding, they shall proceed, in the presence of the court, to hear and receive any evidence offered or submitted on behalf of the District of Columbia and by any person having an interest in the proceeding. When the hearing is concluded, the jury, or a majority of them, shall return to the court, in writing, their appraisement of the value of the interests of all persons, respectively, in the real property, where the appraisement shall be recorded. In making their decision, the jury shall take into consideration, when a part only is taken, the benefit to the remainder of the tract, and shall give their appraisement accordingly. (Dec. 23, 1963, 77 Stat. 574, Pub L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed. § 16–606 (Mar. 3, 1901, ch. 854, § 486, 31 Stat. 1266; Mar. 1, 1929, ch. 439, 45 Stat. 1438).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Fair market value

Because there was a clash of credible testimony relating to possibility of change in zoning of land being taken, judge should have submitted possibility of zoning change as a factor in determining value to jury for its decision under proper instructions. *H. & R. Corporation* v. *District of Columbia* (1965, 351 F. 2d 740, 122 U.S. App. D.C. 43).

Report of zoning advisory group relating to need for rezoning, written after declarations of taking as to two parcels had been filed, would not be admissible on issue of market value of those two parcels. *Id.*

Measure of compensation for taking of property is the fair market value of property just prior to taking. *Id.*

Where evidence was conflicting, court erred in giving charge which had the net result of leaving jury with the mistaken impression that it could not consider possibility of rezoning of land taken in determining its fair market value. *Id.*

Instructions

In condemnation proceeding, instruction authorizing jury to appraise property at its full market value is not appropriate if anything less than fee is condemned. *O'Hara* v. *District of Columbia* (1945, 147 F. 2d 146, 79 U.S. App. D.C. 302, certiorari denied 65 S. Ct. 1183, 325 U.S. 855, 89 L. Ed. 1975).

Payment as condition precedent

Owner cannot be divested of his property until payment has been made. *MacFarland* v. *Elverson* (1908, 32 App. D.C. 81).

Persons in interest

In the proceeding before the appraisal commissioners, the District has a right to be heard and therefore is one of the "persons in interest" therein mentioned. *Beyer* v. *Brownlow* (1922, 276 F. 460, 51 App. D.C. 92).

Witnesses

It was error to allow a District assessor to testify as an expert witness in proceedings to condemn land for school sites, and certain other municipal purposes. *Johnson & Wimsatt* v. *Reichelderfer* (1931, 50 F. 2d 336, 60 App. D.C. 186).

§ 16–1318. Objections or exceptions to appraisement; new jury

(a) Objections or exceptions to an appraisement of the jury pursuant to section 16–1317 may be filed within twenty days after the return of the appraisement to the court. The court shall hear and determine any objections or exceptions so filed, and may vacate and set aside the appraisement, in whole or in part, when satisfied that it is unjust or unreasonable. If the appraisement is vacated and set aside, the court shall order the jury commission to draw from the special box the names of as many persons as the court directs, and, from among the persons so drawn, shall thereupon appoint a new jury of five capable and disinterested persons, who shall proceed as in the case of the first jury. The appraisement of the new jury shall be final when confirmed by the court.

(b) When an appraisement is vacated in part, the residue thereof as to the property condemned is not affected thereby. (Dec. 23, 1963, 77 Stat. 574, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–607 (Mar. 3, 1901, ch. 854, § 487, 31 Stat. 1266; Apr. 19, 1920, ch. 153, 41 Stat. 566; Mar. 1, 1929, ch. 439, 45 Stat. 1438).

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS UNDER PRIOR LAW

In general

This section is mandatory and was intended by Congress to require a party in a condemnation proceeding to bring his objections and exceptions to the attention of the court within twenty days, the time limit prescribed, or else be taken to have waived them. *Walker* v. *Hazen* (1937, 90 F. 2d 502, 67 App. D.C. 188, certiorari denied 58 S. Ct. 44, 302 U.S. 723, 82 L. Ed. 559).

This section provides for the summoning of a jury by the marshal and requires the jury to take certain benefits into consideration in returning their verdict. *Beyer* v. *Brownlow* (1922, 276 F. 460, 51 App. D.C. 92).

It was the intent of Congress to make these proceedings adversary throughout and allow either party to invoke the jury hearing provided by this section. *Id.*

Appeal

Pending an appeal, the lower court may prevent removal or disturbance of improvements until after a view thereof may be had by the jury impaneled or to be impaneled in a condemnation case. *In re Acquisition of Original Lot 14, and Assessment and Taxation Lot in Washington, D.C.* (1931, 50 F. 2d 981, 60 App. D.C. 216).

Appraisal by jury

Jury award of almost $2,000 less than the lowest estimate of the District experts was unjust and unreasonable and sufficient grounds for authorizing reversal for new appraisal. *Branson* v. *Reichelderfer* (1933, 65 F. 2d 280, 62 App. D.C. 129).

It was the province of the jury to weigh the evidence after seeing and hearing all the witnesses and viewing the premises, and trial court did not abuse its discretion in refusing to set aside verdict. *Willis* v. *United States* (1938, 99 F. 2d 362, 69 App. D.C. 129).

Interested parties

The words "any of the parties interested" in this section were not to be given such a restricted meaning as to include only owners of the land and to exclude the party equally interested in the proceeding, namely, the District. *Beyer* v. *Brownlow* (1920, 276 F. 460, 51 App. D.C. 92).

Setting aside verdict

In condemnation proceeding, the court does not have the power to set aside the verdict of a jury in the absence of plain errors of law, misconduct, or grave error of fact indicating plain partiality or corruption. *Johnson & Wimsatt* v. *Hazen* (1938, 99 F. 2d 384, 69 App. D.C. 151).

§ 16–1319. Payment of award; transfer of title

If the appraisement of the jury pursuant to section 16–1317 is not objected to by the parties interested, it shall be confirmed by the court, or, if the appraisement of the new jury is confirmed by the court, the Board of Commissioners shall pay the amount awarded by the jury out of the appropriation made therefor or deposit it in the manner as directed by section 7–215, and thereupon the title to the property condemned shall vest in the District of Columbia. (Dec. 23, 1963, 77 Stat. 574, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–608 (Mar. 3, 1901, ch. 854, § 488, 31 Stat. 1266; Mar. 1, 1929, ch. 439, 45 Stat. 1438).

Changes are made in phraseology.

§ 16–1320. Fixing time for return of verdict

In every case involving the condemnation of real property under this subchapter, at the close of the hearing thereof, the court shall fix a time in which the jury shall return its verdict or the report to the court the reasons why the verdict or appraisement can not be returned by the time fixed. The court has discretion to extend the time for the return of the verdict or appraisement. (Dec. 23, 1963, 77 Stat. 575, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–609 (Mar. 3, 1901, ch. 854, § 489, 31 Stat. 1266; Mar 1, 1929, ch. 439, 45 Stat. 1438).

Changes are made in phraseology.

§ 16–1321. Abandonment of proceedings; liability

In a condemnation proceeding pursuant to this subchapter, it is optional with the Board of Commissioners to abide by the verdict of the jury and occupy the property appraised by them, or, within a reasonable time to be fixed by the court in its order confirming the verdict, to abandon the proceeding. If the proceeding is abandoned, the court shall award to the owner or owners of the property involved therein such sum or sums as will in the opinion of the court reimburse the owner or owners for all reasonable costs and expenses, including reasonable counsel fees, incurred by him or them in the proceeding. The sum or sums so awarded constitute a judgment or judgments against the District of Columbia. An owner is not entitled to the reimbursement in any case where the proceeding is abandoned at the request, or with the consent, of the owner of the property. (Dec. 23, 1963, 77 Stat. 575, Pub. L. 88–241, §1 , eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–610 (Mar. 3, 1901, ch. 854, § 490, 31 Stat. 1266; Mar. 1, 1929, ch. 439, 45 Stat. 1439; July 11, 1947, ch. 228, 61 Stat. 312).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Abandonment of proceeding

This section makes it optional with the Commissioners to abide by the verdict of the jury or, within a reasonable time to be fixed by the court, to abandon the proceeding. *Beyer* v. *Brownlow* (1922, 276 F. 460, 51 App. D.C. 92).

SUBCHAPTER III.—EXCESS PROPERTY FOR DEVELOPMENT OF SEAT OF GOVERNMENT

§ 16–1331. Acquisition of property in excess of needs

In order to promote the orderly and proper development of the seat of government of the United States, the Board of Commissioners of the District of Columbia, and agencies of the United States authorized by law to acquire real property may acquire, in the public interest, by gift, dedication, exchange, purchase, or condemnation, fee simple title to land, or rights in or on land or easements or restrictions therein, within the District, for public uses, works, and improvements authorized by Congress, in excess of that actually needed for and essential to their usefulness, in order to preserve the view, appearance, light, and air and to enhance their usefulness to prevent the use of private property adjacent to them in such a manner as to impair the public benefit derived from the construction thereof, or to prevent inequities or hardship to the owners of adjacent private property by depriving them of the beneficial use of their property. (Dec. 23, 1963, 77 Stat. 575, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–612 (Apr. 11, 1935, ch. 57, § 1, 49 Stat. 152).

Minor changes are made in phraseology.

CROSS REFERENCES

Sale of public lands, see § 9–301 et seq.

Use of certified mail, see § 14–506.

§ 16–1332. Sale of excess property; restrictions on use; fair market value; disposition of moneys

(a) The Board of Commissioners of the District of Columbia and agencies of the United States authorized by law to acquire real property may, upon completion of public improvements:

(1) subdivide, and sell, at public or private sale, or exchange, any excess real property acquired pursuant to this subchapter; and

(2) to carry out such purposes, convey any property acquired in excess of that actually needed and which is not essential to the usefulness of the public works—

with such reservations concerning the future use and occupation of the property as, in their discretion, may be necessary to protect the public improvements.

(b) Property sold under this section shall be sold at not less than the fair market value at the time sold, as determined by appraisement of the assessor of the District of Columbia.

(c) Moneys received from sales or transfers of properties pursuant to this subchapter shall be covered into the Treasury of the United States, and where the property sold was acquired under an appropriation authorized for the use of the District of Columbia, moneys received from the sale shall be deposited in the Treasury to the credit of the revenues of the District of Columbia. (Dec. 23, 1963, 77 Stat. 575, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–613 (Apr. 11, 1935, ch. 57, § 2, 49 Stat. 152).

Section is based on part of section 16–613 of D.C. Code, 1961 ed. Remainder of section 16–613 is carried into sections 16–1333 and 16–1334 herein.

Changes are made in phraseology.

§ 16–1333. Notice of sale of excess property

When excess real property is to be sold pursuant to section 16–1332, notice of not less than twenty days before the sale shall be published in a daily newspaper published in the District of Columbia, and notice shall be sent before the sale, by registered mail or by certified mail, to the last-known address of the persons listed on the records of the assessor of the District as the owners of the property abutting on the property to be sold. (Dec. 23, 1963, 77 Stat. 576, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–613 (Apr. 11, 1935, ch. 57, § 2, 49 Stat. 152; June 11, 1960, Pub. L. 86–507, § 1(47), 74 Stat. 203).

Section is based on part of section 16–613 of D.C. Code, 1916 ed. Remainder of section 16–613 is carried into sections 16–1332 and 16–1334 herein.

Changes are made in phraseology.

§ 16–1334. Retention, for public use, of excess property

When the authorities of the District of Columbia or the United States having jurisdiction of real property, rights, or easements acquired pursuant to this subchapter, elect to retain any of them for the use of the District or the United States, they may use the property, rights or easements for park, playground, highway, or alley purposes, or for any other lawful purpose that they deem advantageous or in the public interest. (Dec. 23, 1963, 77 Stat. 576, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–613 (Apr. 11, 1936, ch. 57, § 2, 49 Stat. 152).

Section is based on part of section 16–613 of D.C. Code, 1961 ed. Remainder of section 16–613 is carried into sections 16–1332 and 16–1333 herein.

Changes are made in phraseology.

§ 16–1335. Availability of appropriations for purchase of excess property

When real property is purchased pursuant to this subchapter in excess of that needed for a particular project or improvement, appropriations available for the payment of the purchase price, costs, and expenses incident to the project or improvement may be used in the payment of the purchase price, costs, and expenses of excess real property purchased in connection with the project or improvement, as provided by this subchapter. (Dec. 23, 1963, 77 Stat. 576, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–614 (Apr. 11, 1935, ch. 57, § 3, 49 Stat. 153).

Changes are made in phraseology.

§ 16–1336. Condemnation of excess real property by Board of Commissioners; payment of awards, damages, and costs; no assessments for benefits

(a) When, pursuant to this subchapter, excess real property is condemned by the Board of Commissioners, the condemnation proceedings for the acquisition of the property shall be in accordance with subchapter I of this chapter, sections 7–202 to 7–212, 7–213a, 7–214, 7–215, or sections 7–301 to 7–305, 7–313 to 7–318, 7–320, 7–321 and 7–323.

(b) Appropriations available for the payment of awards, damages, and condemnation proceedings pursuant to subchapter I of this chapter may be used in the payment of awards, damages, and costs in condemnation proceedings under the sections referred to by subsection (a) of this section for the acquisition of excess real property, as provided by this subchapter.

(c) Appropriations available for the payment of awards, damages, and costs in condemnation proceedings pursuant to subchapter I of this chapter or sections 7301 to 7–305, 7–313 to 7–318, 7–320, 7–321 and 7–323 may be used in the payment of awards, damages, and costs in condemnation proceedings thereunder for the acquisition of excess real property as provided by this subchapter.

(d) In all cases where excess real property is condemned, assessments for benefits may not be levied by the jury in respect to the acquisition of the property. (Dec. 23, 1963, 77 Stat. 576, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–615 (Apr. 11, 1935, ch. 57, § 4, 49 Stat. 153).

In subsec. (a), the reference to section 7–213a (of D.C. Code, 1961 ed.) is substituted for the references in section 16–615 of D.C. Code, 1961 ed., to sections 7–213

and 7–322 (of that Code), as the latter two sections were repealed in 1951 by the same act that enacted section 7–213a, which related to the same subject (compensation of jurors in condemnation cases). It was the legislative intent that any references in other laws to the provisions set out in sections 7–213 and 7–322 should, after the repeal thereof, mean the provisions set forth in section 7–213a.

Changes are made in phraseology and arrangement.

§ 16–1337. Condemnation of excess real property by United States agencies; payment of awards, damages, and costs

When excess real property is condemned by agencies of the United States, other than the Board of Commissioners of the District of Columbia, as provided by this subchapter, the condemnation proceedings for the acquisition of the property shall be in accordance with subchapter IV of this chapter, or any laws in effect at the time of the commencement of condemnation proceedings for the acquisition of real property in the District of Columbia for the use of the United States.

Appropriations available for the condemnation of property pursuant to subchapter IV of this chapter may be used in the payment of awards, damages, and costs in condemnation proceedings pursuant to that subchapter for the acquisition of excess real property as provided by this subchapter. (Dec. 23, 1963, 77 Stat. 577, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–616 (Apr. 11, 1935, ch. 57, § 5, 49 Stat. 153).

Changes are made in phraseology.

§ 16–1338. Construction of subchapter

This subchapter does not repeal any provisions of existing law pertaining to the condemnation or acquisition of streets, alleys, or land, or the law or laws relating to the subdividing of lands in the District of Columbia. (Dec. 23, 1963, 77 Stat. 577, Pub. L 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–617 (Apr. 11, 1935, ch. 57, § 7, 49 Stat. 154).

Changes are made in phraseology.

SUBCHAPTER IV.—REAL PROPERTY FOR UNITED STATES

§ 16–1351. Definition

As used in this subchapter, "acquiring authority" means the head of an executive department or agency of the United States, or other officer of the United States, or board or commission of the United States, authorized by law to acquire real property in the District of Columbia for the construction of public building or work, or for parks, parkways, public playgrounds, or other public purpose. (Dec. 23, 1963, 77 Stat. 577, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–619 (Mar. 1, 1929, ch. 416, § 1, 45 Stat. 1415).

Section is based on part of section 16–619 of D.C. Code, 1961 ed. Remainder of section 16–619 is carried into sections 16–1301 and 16–1352 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Commission's authority to condemn

The acts of Congress establishing the National Capital Planning Commission constituted authority for acquisition by the Commission by condemnation of property for comprehensive development of the park, parkway and playground system of the National Capital. *United States* v. *Lots 800 in Square 1928 etc., et al.* (D.C.D.C. 1959, 169 F. Supp. 904).

Constitutionality

Act permitting head of executive department to obtain realty in the District of Columbia for public buildings is constitutional as against the contention that it is invalid in that "it does not provide for the payment of damages to the owner of the land and the vesting of title in the United States contemporaneously." *Potomac Elec. Power Co.* v. *United States* (1936, 85 F. 2d 243, 66 App. D.C. 77, certiorari denied 57 S. Ct. 27, 299 U.S. 565, 81 L. Ed. 416).

Just compensation

United States government's right to take over private property under its power of eminent domain is subject to constitutional requirement that private property shall not be taken for public use without just compensation. *United States* v. *One Parcel of Land etc.* (D.C.D.C. 1955, 131 F. Supp. 443).

Principles of equity in condemnation

Determination of issues in a condemnation case rests upon broad principles of equity which go beyond technical requirements of local landlord and tenant law. *United States* v. *One Parcel of Land etc.* (D.C.D.C. 1955, 131 F. Supp. 443).

Fifth Amendment of the federal Constitution contemplates that monies paid into common treasury by taxpayer shall be jealously guarded as a public trust against unfounded and unjust claims, but it also guarantees that government shall have regard for rights and welfare of its citizens and respect for restraints on its authority and shall deal fairly and equitably with each of them. *Id.*

Sites for government buildings

Under authority of this section and sections 16–620 to 16–644 and other acts the Secretary of the Treasury was authorized to acquire site for Department of Interior building. *Potomac Elec. Power Co.* v. *United States* (1936, 85 F. 2d 243, 66 App. D.C. 77, certiorari denied 57 S. Ct. 27, 299 U.S. 565, 81 L. Ed. 416).

Summary judgment

In government's action for taking of property, government's motions in the alternative for judgment on pleadings, to dismiss the answer for failure to state a claim, to strike the answer except one paragraph, or for summary judgment would be treated as a motion for summary judgment. *United States* v. *Lot 800 In Square 1928, etc., et al.* (D.C.D.C. 1959, 169 F. Supp. 904).

In proceeding by the United States at the request of National Capital Planning Commission to condemn property for park, parkway and playground system of National Capital, wherein the United States filed a motion for summary judgment, and fact issues claimed to exist were not properly set forth in answer or by means of affidavit but were merely listed on a page of defendant's memoranda, and list did not consist of specific allegations or statements of fact but contained speculative questions as to what procedures might or might not have been followed by Commission in instituting the action, by reason of their source and their nature, such questions did not form a sound basis for determining that a genuine issue of material fact existed so as to preclude granting of summary judgment. *Id.*

§ 16–1352. Condemnation proceedings by Attorney General

When, for the purposes specified by section 16–1351, it is deemed necessary or advantageous to do so, the acquiring authority may acquire real property in the District of Columbia in the name of the United States by condemnation under judicial process. The Attorney General of the United States, upon the request of the acquiring authority, shall institute a proceeding for the condemnation of the property in the United States District Court for the

District of Columbia. (Dec. 23, 1963, 77 Stat. 577, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–619 (Mar. 1, 1929, ch. 416, § 1, 45 Stat. 1415; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1994, ch. 139, § 127, 63 Stat. 107).

Section is based on part of section 16–619 of D.C. Code, 1961 ed. Remainder of section 16–619 is carried into sections 16–1301 and 16–1351 herein.

Words with reference to institution of the proceeding in the District Court, "holding a special term as a District Court of the United States,", are omitted as obsolete Terms of the United States District Court for the District of Columbia are now governed by sections 138—141 of Title 28, United States Code.

The provision that the condemnation proceeding shall be "in rem" is omitted as unnecessary, as any proceeding to condemn property is a proceeding in rem. See, for example, note of the Advisory Committee on subdivision (g) of rule 71A of the Federal Rules of Civil Procedure which rule was formulated by that committee.

Changes are made in phraseology.

CROSS REFERENCE

Condemnation proceedings in cases concerning alleys and minor streets, see § 7–301 et seq.

NOTES TO DECISIONS UNDER PRIOR LAW

Discretionary authority

Statute authorizing District of Columbia Redevelopment Land Agency to acquire property in the name of the United States by condemnation under judicial process whenever in the opinion of the Authority it was necessary or advantageous to do so, was a grant of discretionary authority as to time of taking. *C. R. Goddard* v. *District of Columbia Redevelopment Land Agency etc.* (1961, 287 F. 2d 343, 109 U.S. App. D.C. 304).

Tort actions

The District of Columbia Redevelopment Land Agency is a Federal agency within the meaning of the Federal Tort Claims Act, and suits based on torts allegedly committed by the Agency or its employees acting in an official capacity are maintainable, if at all, under the Tort Claims Act, and must name the United States as defendant. *C. R. Goddard* v. *District of Columbia Redevelopment Land Agency etc.* (1961, 287 F. 2d 343, 109 U.S. App. D.C. 304).

§ 16–1353. Declaration of taking; contents; deposit; transfer of title; determination; interest

(a) In an action pursuant to this subchapter, the plaintiff may file in the cause, with the complaint or at any time before judgment, a declaration of taking signed by the acquiring authority empowered by law to acquire the property described in the complaint, declaring that the property is thereby taken for the use of the United States. The declaration of taking shall contain or have annexed thereto a—

(1) statement of the authority under which and the public use for which the lands are taken;

(2) description of the lands taken sufficient for the identification thereof;

(3) statement of the estate or interest in the lands taken for public use;

(4) plan showing the lands taken; and

(5) statement of the sum of money estimated by the acquiring authority to be just compensation for the property taken.

Upon the filing of the declaration of taking and of the deposit in the registry of the court, to the use of the persons entitled thereto, of the amount of the estimated compensation stated in the declaration, title to the property in fee simple absolute, or such less estate or interest therein as is specified in the declaration, vests in the United States of America, and the property shall be deemed to be condemned and taken for the use of the United States, and the right to just compensation therefor vests in the persons entitled thereto. The compensation shall be ascertained and awarded in the proceedings and established by judgment therein, and the judgment shall include, as part of the just compensation awarded, interest at the rate of 6 per centum per annum on the amount finally awarded as the value of the property as of the date of taking, from that date to the date of payment. Interest may not be allowed on as much thereof as has been paid into the registry. A sum so paid into the registry may not be charged with commissions or poundage. (Dec. 23, 1963, 77 Stat. 577, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–628 (Mar. 1, 1929, ch. 416, § 10, 45 Stat. 1417).

Section is based on part of section 16–628 of D.C. Code, 1961 ed. Remainder of section 16–628 is carried into sections 16–1354 and 16–1355 herein.

The term "plaintiff" is substituted for "petitioner", and the term "complaint" is substituted for "petition", to conform with the Federal Rules of Civil Procedure. See rule 71A thereof.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

In general

When a declaration of taking is filed and estimated amount of compensation is deposited, title to condemned property vests in United States and court may make such orders in respct of encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as it deems just and equitable. *Certain Land in City of Washington, D.C.* v. *United States* (1965, 355 F. 2d 825, 122 U.S. App. D.C. 400).

Constitutionality

Section permitting the advance taking of property for public use and providing for judgment against the United States with six per cent, interest until paid does not violate the Fifth Amendment to the Constitution. *Lee* v. *United States* (1932, 58 F. 2d 879, 61 App. D.C. 153).

Controlling statute

Section 16–619 relating to acquisition of property for public purposes, and not the Act Aug. 30, 1890, 26 Stat. 412 which had been eliminated from the Code as being obsolete and superseded, was controlling for purpose of authorizing National Capital Planning Commission to condemn property for park, parkway and playground system of the National Capital and such statute authorized declaration of taking by the Commission. *United States* v. *Lot 800 in Square 1928, etc., et al.* (D.C.D.C. 1959, 169 F. Supp. 904).

Damages

"Just compensation" is the value of the interest taken; this is not the value to the owner for his particular purposes or to the condemnor for some special use but a so-called "market value." *Certain Land in City of Washington, D.C.* v. *United States* (1965, 355 F. 2d 825, 122 U.S. App. D.C. 400).

"Consequential losses" are not compensable in federal condemnation proceedings. *Id.*

Dollar amount of tax liability for which owners are liable for portion of year in respect of which property owners have been deprived of use of their property by condemnation is admissible as element of damages. *District of Columbia* v. *Sussman* (1965, 352 F. 2d 683, 122 U.S. App. D.C. 207).

Declaration of taking

Where government has not filed a declaration of taking, and judgment has not been entered nor has payment or deposit been made of an award of just compensation, title has not vested in the United States, and United

States is free to abandon the taking or reduce the estate at any time, even if it has taken possession, and be liable only for actual use and occupancy or premises involved and for restoration damage. *United States* v. *One Parcel of Land etc.* (D.C.D.C. 1955, 131 F. Supp. 443).

Where United States had been in possession of apartment building for more than three years, and title had vested in earlier proceeding by which such possession had been obtained, and judgment entered therein served as fair indication of amount of rental as might be expected to be awarded as just compensation, and United States had defined terms whereby it could terminate the estate, United States could not abandon the estate except pursuant to terms of the taking. *Id.*

Where, in notices by government to terminate estate obtained in prior proceeding in regard to use and occupancy of apartment building, there was uncertainty on part of government regarding plans to surrender premises, such notices were not effective. *Id.*

Effectiveness of declaration

A declaration of taking by National Capital Planning Commission was not ineffective on ground that commission did not presently have appropriated fund in order to convert land for authorized public purposes, where there was on deposit in registry of court a sum which was the amount of money estimated by the commission to be just compensation for the property taken, which money undoubtedly was intended by Congress for purchase of land involved. *United States* v. *Lot 800 In Square 1928, etc., et al.* (D.C.D.C. 1959, 169 F. Supp. 904).

Judgment against United States

Judgment may be obtained against the United States in condemnation case, not enforceable by execution and levy. *Lee* v. *United States* (1932, 58 F. 2d 879, 61 App. D.C. 153).

Liability for local assessment

Where landowners contended that while proceeding to condemn land for street purposes instituted by District of Columbia was pending, Federal Government filed declaration of taking against their property and took title thereto whereupon compensation was paid to them by the Federal Government and that thereafter land was no longer subject to assessment for benefits by District of Columbia, issue thus tendered was not appropriate for decision in the condemnation proceeding. *Brown* v. *District of Columbia* (1944, 143 F. 2d 374, 79 U.S. App. D.C. 148).

Liability for taxes

When Federal Government took possession of real estate in District of Columbia, prior owner's liability to District for real estate taxes assessed preceding July 1 could not be prorated so as to relieve property of such taxation for that part of taxing period succeeding the seizure. *District of Columbia* v. *Sussman* (1965, 352 F. 2d 683, 122 U.S. App. D.C. 207).

Rent

Court properly ordered payment of $1,200 per month rent to government, after filing of declaration of taking and deposit of estimated amount of compensation, so long as former owner of hotel taken by federal government remained in possession and continued to operate it. *Certain Land in City of Washington, D.C.* v. *United States* (1965, 355 F. 2d 825, 122 U.S. App. D.C. 400).

Summary judgment

Claim by property owner that action of District of Columbia redevelopment land agency was arbitrary and capricious in that purpose for which her property was seized was not a public purpose and that the taking was therefore illegal, presented no issue of fact precluding the granting of summary judgment. *Mamer* v. *District of Columbia Redevelopment Land Agency* (1960, 284 F. 2d 221, 109 U.S. App. D.C. 87).

§ 16–1354. Distribution of money deposited on declaration of taking; judgment for deficiency

After the filing of the declaration of taking, and the deposit of the money in the registry of the court, as provided for by section 16–1353, the court, upon the application of the parties in interest, may order that the money so deposited, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in the proceeding. Upon the final award of compensation, the court shall enter judgment for the amount of any deficiency in the manner provided by rule 71A(j) of the Federal Rules of Civil Procedures. (Dec. 23, 1963, 77 Stat. 578, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–628 (Mar. 1, 1929, ch. 416, § 10, 45 Stat. 1417).

Section is based on part of section 16–628 of D.C. Code, 1961 ed. Remainder of section 16–628 is carried into sections 16–1353 and 16–1355 herein.

The provision that, after the final award, judgment shall be entered for the amount of any deficiency in the manner provided by subdivision (j) of rule 71A of the Federal Rules of Civil Procedure is substituted for the provision that "If the compensation finally awarded in respect of said lands or any parcel thereof shall exceed the amount of the money so received by any person entitled, the court shall enter judgment against the United States for the amount of the deficiency". Subdivision (j) of rule 71A now governs on this point.

Changes are made in phraseology.

§ 16–1355. Time for surrender of possession under declaration of taking; adjustment of charges

Upon the filing of a declaration of taking provided for by section 16–1353, the court may fix the time within which and the terms upon which the parties in possession shall be required to surrender possession to the plaintiff. The court may make such orders in respect of encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as it deems just and equitable. (Dec. 23, 1963, 77 Stat. 578, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–628 (Mar. 1, 1929, ch. 416, § 10, 45 Stat. 1417).

Section is based on part of section 16–628 of D.C. Code, 1961 ed. Remainder of section 16–628 is carried into sections 16–1353 and 16–1354 herein.

Changes are made in phraseology.

NOTES TO DECISIONS

In general

When a declaration of taking is filed and estimated amount of compensation is deposited, title to condemned property vests in United States and court may make such orders in respect of encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as it deems just and equitable. *Certain Land in City of Washington, D.C.* v. *United States* (1965, 355 F. 2d 825, 122 U.S. App. D.C. 400).

Damages

"Just compensation" is the value of the interest taken; this is not the value to the owner for his particular purposes or to the condemnor for some special use but a so-called "market value." *Certain Land in City of Washington, D.C.* v. *United States* (1965, 355 F. 2d 825, 122 U.S. App. D.C. 400).

"Consequential losses" are not compensable in federal condemnation proceedings. *Id.*

Dollar amount of tax liability for which owners are liable for portion of year in respect of which property owners have been deprived of use of their property by condemnation is admissible as element of damages. *District of Columbia* v. *Sussman* (1965, 352 F. 2d 683, 122 U.S. App. D.C. 207).

Liability for taxes

When Federal Government took possession of real estate in District of Columbia, prior owner's liability to

District for real estate taxes assessed preceding July 1 could not be prorated so as to relieve property of such taxation for that part of taxing period succeeding the seizure. *District of Columbia* v. *Sussman* (1965, 352 F. 2d 683, 122 U.S. App. D.C. 207).

Rent

Court properly ordered payment of $1,200 per month rent to government, after filing of declaration of taking and deposit of estimated amount of compensation, so long as former owner of hotel taken by federal government remained in possession and continued to operate it. *Certain Land in City of Washington, D.C.* v. *United States* (1965, 355 F. 2d 825, 122 U.S. App. D.C. 400).

§ 16–1356. Setting date for trial

In a proceeding pursuant to this subchapter, after all defendants have been served with notice, and there has been return of service, as provided by rule 71A(d) of the Federal Rules of Civil Procedure, and after defendants have appeared or answered in the manner provided by rule 71A(e) thereof, either personally or by their guardians ad litem or other legal representatives, or are in default, the case shall be regarded as ready for trial, and, upon the application of any party to the proceeding, the court shall forthwith set an early date to be fixed by it, not less than ten nor more than twenty days from the date of the application, for the trial of the issues of law and fact raised in the case, and the ascertainment of the compensation or damages to be awarded for the taking of the property to be condemned. (Dec. 23, 1963, 77 Stat. 578, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–629 (Mar. 1, 1929, ch. 416, § 11, 45 Stat. 1418).

Section is based on the first sentence of section 16–629 of D.C. Code, 1961 ed. Remainder of section 16–629 is carried into section 16–1357 herein.

In order to conform the provisions with the Federal Rules of Civil Procedure, which apply to condemnation proceedings in all United States district courts, the provisions of this section from the beginning to and through the word "default" are substituted for the following provisions of section 16–629 of D.C. Code, 1961 ed.: "When all the persons who have been summoned or published against in said case, as hereinbefore provided, have either answered or are in default as aforesaid, and all persons under legal disability have answered by their guardians ad litem, or in the judgment of the court ample opportunity has been given for the same". The words "as herein before provided", and "as aforesaid", in the preceding quoted provisions, refer to provisions of sections of D.C. Code, 1961 ed., which in this revision are omitted as superseded by some of the Federal Rules of Civil Procedure. Sections 16–621 to 16–624 thereof related to public notice of the proceeding by order of citation, contents of the order, publication, and notice thereof. These matters are now covered by rule 71A of the Federal Rules of Civil Procedure, and other rules thereof to which that rule refers. Sections 16–625 and 16–626 of the Code related to default in appearance, presumption of consent to the condemnation, and appearance after default, and were superseded by those rules (see particularly, rules 24, 55, and 71A(e) thereof). Section 16–627 of the Code related to the appointment of guardians ad litem for infants or incompetent persons, and was also superseded by the rules. See, particularly, rules 17(c) and 71A(g).

This section retains the provisions of section 16–629 of D.C. Code, 1961 ed., relating to the fixing of the date of trial, as they are not covered by the above-mentioned rules. Rule 40 relates to assignment of cases for trial, but the second sentence thereof provides that precedence shall be given to actions entitled thereto by any statute of the United States.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Valuation of property

Instruction was proper which stated that recent bona fide sales under fair market conditions, or recent contracts of sale under like conditions of any lot or lots, parcel or parcels within the limits of the area to be condemned, or in the vicinity thereof, or so situated as to have a bearing upon the market value of the land to be condemned, may be considered by the jury in so far as such sales or sale contracts may reasonably be regarded as throwing light upon the fair market value of the land to be condemned. *Loughran* v. *United States* (1933, 64 F. 2d 555, 62 App. D.C. 57).

§ 16–1357. Drawing of jurors, and selection of jury; qualifications

When the date for trial has been set, as provided by section 16–1356, the court shall thereupon order the jury commission to draw from the special box provided for by law the names of as many persons, not less than twenty, as the court directs, and to certify the names to the clerk of the United States District Court for the District of Columbia as a panel of prospective jurors. The persons so certified shall be thereupon summoned by the United States marshal for the District of Columbia to appear in the court on the day specially fixed for the trial of the cause. Before selecting or impaneling the jury, the court may cause a second, third, or other further list of prospective jurors to be drawn, certified and summoned in like manner. From the persons so certified and summoned, the court, after examination on oath and in open court as to their qualifications, shall select and impanel a jury of five capable and disinterested persons who have the qualifications of jurors as prescribed by law for the courts of the District of Columbia, and in addition thereto are real property owners in the District and are not in the service or employment of the United States or of the District of Columbia. (Dec. 23, 1963, 77 Stat. 578, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–629 (Mar. 1, 1929, ch. 416, § 11, 45 Stat. 1418; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Section is based on all of section 16–629 of D.C. Code, 1961 ed., except the provisions thereof that are carried into section 16–1356 herein.

Changes are made in phraseology.

§ 16–1358. Oath of jurors

The jurors selected and impaneled, as provided by section 16–1357, shall take an oath or affirmation, administered by the court, that they:

(1) are not interested in any manner in the property to be condemned;

(2) are not, to their knowledge, related to any person interested in the property; and

(3) will, impartially and to the best of their judgment, ascertain, appraise, and award just compensation for the property to be condemned and taken in the proceeding.

(Dec. 23, 1963, 77 Stat. 579, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–630 (Mar. 1, 1929, ch. 416, § 12, 45 Stat. 1418).

Changes are made in phraseology.

§ 16–1359. Inspection of property by jury; presence of parties

After being selected, impaneled, and sworn, as provided by sections 16–1357 and 16–1358, and before hearing the evidence, the jury, in order to inspect the property to be acquired, shall be taken upon the property by the United States marshal at a time fixed by the court. All parties in interest, their attorneys, and representatives have the right to be present at the inspection. (Dec. 23, 1963, 77 Stat. 579, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–631 (Mar. 1, 1929, ch. 416, § 13, 45 Stat. 1418).

Changes are made in phraseology.

§ 16–1360. Trial; evidence; measure of compensation

After the inspection provided for by section 16–1359, and the jury has returned to the court, the trial of the cause shall be proceeded with before the court and jury. Any person who has appeared in the cause claiming any right, title, interest, or estate in the land to be taken, or compensation on account of its taking, has the right to submit evidence concerning the value of the property, parcel by parcel, the nature and extent of his right, interest, or estate therein, and the compensation justly due for the taking of the property. A new structure or substantial alteration of a permanent nature, the purpose or natural effect of which is to enhance the value of the property to be taken, erected, or made thereon after the institution of the condemnation proceedings may not be taken into consideration in assessing and awarding compensation for the property. When the property to be valued has been taken by virtue of a declaration of taking, as provided by section 16–1353, it shall be valued for the purposes of compensation as of the date of the taking. When, by act of the owner or other party claiming to be entitled to compensation, the value of the property for the use for which it is to be taken has been diminished, as by cutting trees, excavating, grading, or otherwise altering its physical condition, allowance, if the plaintiff so elects, shall be made in accessing [1] compensation for the diminution in value. (Dec. 23, 1963, 77 Stat. 579, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–632 (Mar. 1, 1929, ch. 416, § 14, 45 Stat. 1418).

The term "plaintiff" is substituted for "petitioner" to conform with terminology in the Federal Rules of Civil Procedure, which, under rule 71A thereof, generally apply in condemnation proceedings.

The final sentence of section 16–632 of D.C. Code, 1961 ed., provided as follows: "Every party, whether petitioner or respondent, may except to any ruling of the court admitting or excluding evidence, granting, rejecting, or modifying prayers for instruction, or other ruling made in the cause in like manner as in other civil trials". This sentence is omitted as obsolete and superseded by rule 46 of the Federal Rules of Civil Procedure, which provides that: "Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him". This rule, under rule 71A, applies to condemnation proceedings, as well as to other civil actions.

Changes are made in phraseology.

Additional provisions relating to the right to the presentation of evidence are contained in subdivision (e) of rule 71A of the Federal Rules of Civil Procedure, referred to above, which among other things provides that a defendant waives all defenses and objections not presented in his answer, but that "at the trial of the issue of just compensation, whether or not he has previously appeared or answered, he may present evidence as to the amount of the compensation to be paid for his property, and he may share in the distribution of the award".

NOTES TO DECISIONS UNDER PRIOR LAW

Burden of proof

In a condemnation proceeding, the party who offers evidence to prove the price paid for parcels other than those involved following negotiation and purchase, has the burden of establishing as a preliminary fact that purchase was made without compulsion, coercion, or compromise. *Hannan* v. *United States* (1943, 131 F. 2d 441, 76 U.S. App. D.C. 118).

Evidence

In proceeding to condemn property under urban redevelopment plan, evidence sustained amount of verdict. *Brabner-Smith* v. *District of Columbia Redevelopment Land Agency* (1960, 284 F. 2d 229, 109 U.S. App. D.C. 95).

In condemnation proceeding for acquisition of land in the District of Columbia for use of the United States, opinion evidence concerning whether price paid by defendant for one lot in issue was reasonable was properly excluded, where evidence related to a sale made 15 years before commencement of proceeding, and record failed to reveal witness' qualifications to testify concerning changed conditions or to give other than hearsay testimony. *Hannan* v. *United States* (1943, 131 F. 2d 441, 76 U.S. App. D.C. 118).

In a condemnation proceeding, the reception of evidence offered to prove the price paid for parcels other than those involved following negotiation and purchase calls for the exercise of discretion by the trial court. *Id.*

In condemnation proceeding for acquisition of land in the District of Columbia for use of the United States, exclusion of evidence of an offer to purchase made to property owner by a third person was not error where consideration offered consisted in part of other property and consequently involved collateral issues concerning its value. *Id.*

In condemnation proceeding for acquisition of land in the District of Columbia for use of the United States, even if evidence offered to prove price paid by the United States following negotiation and purchase for parcels other than those of defendants was admissible, exclusion of that evidence was not error where defendants did not establish as a preliminary fact that purchase was made without compulsion, coercion, or compromise. *Id.*

§ 16–1361. Verdict

At the close of the evidence in a proceeding pursuant to this subchapter, the court shall charge the jury and furnish them with a written form to be used in returning their verdict. The members of the jury may separate when not engaged in the consideration of their verdict. When the jury, or a majority thereof, have agreed upon their verdict they shall, through their foreman, so notify the court, which shall thereupon pass an order setting a day for the return of the verdict in open court The verdict shall be in writing subscribed by the jurors concurring therein, and shall set forth, parcel by parcel, the compensation to be paid for the taking of the lands to be condemned. (Dec. 23, 1963, 77 Stat. 579, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

[1] So in original. Probably should read "assessing".

REVISION NOTES

Based on D.C. Code, 1951 ed., § 16–633 (Mar. 1, 1929. ch. 416, § 15, 45 Stat. 1419).

Minor changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Motion for new trial

Where in a proceeding by the United States to condemn property in the District of Columbia, appellant did not file motion for a new trial, but objected to the finding of the jury as if action had been brought by the District; said objection was treated as motion for new trial. *Willis* v *United States* (1938, 99 F. 2d 362, 69 App. D.C. 129)

Permissive nature of proceedings

The provisions appearing in § 16–634 et seq. relating to acquisition of land in the District of Columbia for use of the United States concerning motions for new trial and other proceedings after verdict are "permissive", in sharp contrast to corresponding provisions appearing in § 16–607 relating to acquisition of land for the District of Columbia. *Hannan* v. *United States* (1943, 131 F. 2d 441, 76 U.S. App. D.C. 118).

§ 16–1362. Fixing date for new trial; new jurors

If a verdict rendered pursuant to section 16–1361, or any award contained therein, is set aside or vacated, the court shall—

(1) grant a new trial with respect to the property as to which the verdict or award is set aside or vacated;

(2) fix a date for the new trial; and

(3) order a new panel of prospective jurors to be drawn, certified, or summoned as provided by section 16–1357.

The court shall then proceed with the cause as if a verdict or award had not been rendered. (Dec. 23, 1963, 77 Stat. 580, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–634 (Mar. 1, 1929, ch. 416, § 16, 45 Stat. 1419).

The first sentence of section 16–634 of D.C. Code, 1961 ed., provided, as follows: "The court shall have power to set aside or vacate the verdict of the jury, or any award contained therein, and to grant a new trial upon the same grounds as in other trials at law and upon the ground that said verdict, or any award contained therein is, in the judgment of the court, grossly excessive, or inadequate, or otherwise unreasonable or unjust". This sentence is omitted as covered by the Federal Rules of Civil Procedure, which under rule 71A thereof, generally apply to condemnation proceedings. See, particularly, rules 50, 58–62.

Changes are made in phraseology.

§ 16–1363. Judgment

Judgment upon a verdict returned pursuant to section 16–1361 or any award contained therein shall be entered against the United States in favor of the parties entitled for the sums awarded as just compensation, respectively, for the property condemned for the use of the United States. (Dec. 23, 1963, 77 Stat. 580, Pub. L. 88–241, § 1.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–636 (Mar. 1, 1929, ch. 416, § 18, 45 Stat. 1420).

Words "Judgment upon a verdict returned under section 16–1361 or any award contained therein shall be entered against" are substituted for words "In the event that any verdict or any award contained therein shall become final by lapse of time or that any motion filed to set aside or vacate the same or to grant a new trial in respect thereof shall have been denied, or overruled, the court shall enter judgment against" as the time for entry of judgment, and other matters relating thereto, are now covered by the Federal Rules of Civil Procedure which, under rule 71A thereof, now generally apply to condemnation proceedings. See rule 58 of the rules. See, also, rules 59—62 thereof relating to new trials, amendments to judgments, relief from judgment or order, harmless error, and stay of proceedings to enforce a judgment.

Changes are made in phraseology.

§ 16–1364. Force and effect of judgment; payment

A final judgment rendered against the United States pursuant to this subchapter has like force and effect as a money judgment rendered against the United States by the Court of Claims in a suit in respect of which the United States has expressly consented to be sued. The amount of the final judgment shall be paid out of any specific appropriation applicable to the case. If a specific appropriation does not exist, the judgment shall be paid in the same manner (except with respect to interest) as judgments rendered by the Court of Claims in cases under its general jurisdiction. (Dec. 23, 1963, 77 Stat. 580, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–637 (Mar. 1, 1929, ch. 416, § 19, 45 Stat. 1420).

Changes are made in phraseology.

§ 16–1365. Appeal; deficiency judgment

A party aggrieved by a final judgment in a proceeding pursuant to this subchapter may appeal therefrom to the United States Court of Appeals for the District of Columbia Circuit. The appeal, or any bond or undertaking given therein, does not operate to prevent or delay the vesting of title to the property in the United States, but upon the filing of a declaration of taking, or, if a declaration of taking is not filed, upon payment to the party entitled, or deposit in the registry of the court, of the amount awarded by the judgment, title vests in the United States, saving to all parties their right to just compensation. If the compensation finally awarded and adjudged for the property exceeds the amount awarded and adjudged by the judgment appealed from, the court shall enter judgment for the deficiency with interest as provided by this subchapter. (Dec. 23, 1963, 77 Stat. 580, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–638 (Mar. 1, 1929, ch. 416, § 20, 45 Stat. 1420; June 7, 1934, ch. 426, 48 Stat. 926).

The provision that, upon the appeal, the U.S. Court of Appeals should have power to review the judgment and affirm, reverse, or modify the same as on appeals in other actions at law, is omitted as unnecessary and covered by section 2106 of Title 28, United States Code.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Right to appeal

Defendants were not foreclosed from maintaining an appeal from judgment entered in condemnation proceeding by their failure to move to set aside the verdict and for a new trial, where proceeding was brought to acquire land in the District of Columbia for use of the United States. *Hannan* v. *United States* (1943, 131 F. 2d 441, 76 U.S. App. D.C. 118).

§ 16–1366. Payment of compensation into court; vesting of title

Payment into the registry of the court for the use of the parties entitled of the sum adjudged to be just

compensation for the property to be condemned and taken, or for any parcel thereof, or any interest therein, pursuant to this subchapter, constitutes payment of the compensation. Upon the payment, the plaintiff is entitled to an order declaring that the title to the property in respect of which the compensation is so paid is vested in the United States of America. The money so paid into the registry of the court shall be deemed to be vested in the persons owning or interested in the property, according to their respective estates and interest, and the money shall take the place and stand in lieu of the property condemned. The court, upon the application of the plaintiff or of any party in interest, may determine and direct who is entitled to receive payment of the money so paid into the registry, and, in its discretion, order a reference to the auditor of the court or a special master to ascertain the facts on which the determination and direction are to be made. (Dec. 23, 1963, 77 Stat. 580, Pub L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–639 (Mar. 1, 1929, ch. 416, § 21, 45 Stat. 1420).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Interest

Where judgment was entered June 30 ratifying condemnation award returned by jury on June 28 but full amount of award was not deposited in registry of court until October 20 and owners continued to hold title as well as possession of property and receive income from it until that time, and proceedings were taken under statute which did not vest title in government until payment of award was made into registry of court, owners were not entitled to have interest added as part of just compensation to amount awarded by jury. *K. Gould et al.* v. *United States* (1962, 301 F. 2d 557, 112 U.S. App. D.C. 233).

§ 16–1367. Delivery of possession

Where possession has not been awarded pursuant to a declaration of taking, and the adjudged compensation has been paid into the registry as directed by the judgment of the court and a certified copy of the judgment, with a certificate of the clerk of the court showing the payment, has been served upon the person in possession of the property, he shall, upon demand, deliver possession thereof to the plaintiff. If possession is not delivered when so demanded, the plaintiff may apply to the court without notice, unless the court requires notice to be given, for a writ of assistance, and the court, upon proof of the service of the copy of the final order or judgment and certificate of the clerk showing payment as referred to in this section, shall thereupon cause the writ to be issued, which shall be executed in the same manner as when issued in other cases for the delivery of possession of real property. (Dec. 23, 1963, 77 Stat. 581, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–640 (Mar. 1, 1929, ch. 416, § 22, 45 Stat. 1421).

Changes are made in phraseology.

§ 16–1368. Additional powers of court

Where the mode or manner of conducting a proceeding pursuant to this subchapter is not expressly provided for by law or rules of court in force under authority of law, the court may make all necessary orders and give all necessary directions to carry into effect the object and intent of this subchapter or any other laws conferring authority to acquire real property for the use of the United States. (Dec. 23, 1963, 77 Stat. 581, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–642 (Mar. 1, 1929, ch. 416, § 24, 45 Stat. 1421).

Words "or rules of court in force under authority of law" are inserted because, under rule 71A of the Federal Rules of Civil Procedure, those rules now generally apply in condemnation proceedings. Rule 71A, itself, contains a number of provisions relating to practice and procedure in such proceedings. Further, rule 83 of the rules permits district courts to make and amend rules governing their practice and to regulate their practice in any manner, not inconsistent with the said Federal Rules of Civil Procedure.

Changes are made in phraseology.

Chapter 15.—FORCIBLE ENTRY AND DETAINER

Sec.
16–1501. Definition; summons.
16–1502. Service of summons.
16–1503. Judgment and execution for possession.
16–1504. Certification to District Court upon plea of title; undertaking.
16–1505. Conclusiveness of judgment.

§ 16–1501. Definition; summons

When a person detains possession of real property without right, or after his right to possession has ceased, the District of Columbia Court of General Sessions, on complaint under oath verified by the person aggrieved by the detention, or by his agent or attorney having knowledge of the facts, may issue a summons to the party complained of to appear and show cause why judgment should not be given against him for the restitution of possession. (Dec. 23, 1963, 77 Stat. 581, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–735, 11–751a (Mar. 3, 1901, ch. 854, § 20, 31 Stat. 1193; Apr. 19, 1920, ch. 153, § 1, 41 Stat. 555; June 18, 1953, ch. 130, § 1, 67 Stat. 66; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Minor changes are made in phraseology.

CROSS REFERENCES

Procedure, see § 13–101.

See also, §§ 22–3101, 45–820 to 45–910.

NOTES TO DECISIONS

I. UNDER PRIOR LAW

Agreements as precluding recovery

Where tenant agreed to rent basement to landlord's grantee, entry of landlord's grantee into basement was not forcible so as to authorize tenant to recover, against landlord's grantee as for forcible entry. *Bedrosian* v. *Wong Kok Chung* (D.C. Mun. App. 1943, 33 A. 2d 811).

In owner's action to recover apartment from former tenant's estranged wife who had moved out of apartment during marital difficulties and who had resumed occupancy after tenant had surrendered his tenancy, evidence relating to manner in which wife re-entered apartment warranted finding that wife's re-entry and detention of

possession was "forcible" within this section. *Tate* v. *Brawner* (D.C. Mun. App. 1948, 58 A. 2d 307).

Appeal

Proceedings in appeal in cases of forcible entry and detainer, which are regulated by §§ 1232, 1233 of the 1901 Code, are different from those which govern appeals in ordinary cases. *Dowling* v. *Buckley* (1906, 27 App. D.C. 205).

The complaint should be sufficient to advise the tenant of the breach which the landlord claims gives him a right to recover possession of the property, and if the complaint states only one ground, the landlord must be confined to that ground on appeal. *Davis* v. *Taylor* (1922, 276 F. 619, 51 App. D.C. 97).

In forcible entry and detainer action, exclusion of witnesses was discretionary with the trial judge, and, where it was not shown that denial of motion was prejudicial to appellant, there was no basis for review by appellate court. *Bedrosian* v. *Wong Kok Chung* (D.C. Mun. App. 1943, 33 A. 2d 811).

Bond

Defendant, in order to perfect his appeal from justice of peace, in landlord and tenant case, need not give supersedeas bond. *Dowling* v. *Buckley* (1906, 27 App. D.C. 205).

Bond given on appeal from justice of peace in a landlord and tenant case must be entered by two sureties in order to operate as a supersedeas. *Id.*

Concurrent actions

A landlord could maintain action against tenant in District of Columbia District Court for arrears of rent and an action against tenant in the municipal court for possession of leased premises. *Service Parking Corp.* v. *Trans-Lux Radio City Corp.* (D.C. Mun. App. 1946, 47 A. 2d 400).

Construction of prior law

Code provision applicable, although title is claimed under instrument executed prior to adoption of code. *Green* v. *McIntire* (1914, 42 App. D.C. 250).

Counterclaims

Court should not have entertained the counterclaims of defendant in suit in which possession was sought on the grounds of unlawful entry and detainer. Though it has been held that where a tenant is sued for possession for nonpayment of rent, he may defend by an equitable defense sufficient to defeat the claim for rent or may defend by way of recoupment for a total or partial failure of consideration in order to avoid circuity of action, and where, as here, the suit was not for nonpayment and the counterclaim sounded in tort, this rule does not apply. *Bellmore* v. *Baum* (D.C. Mun. App. 1949, 68 A. 2d 588).

Damages

Quaere: Whether landlord can recover damages for loss of rental of entire building when tenant leases only a part thereof. Such action, however, cannot be maintained under this section. *Desio* v. *Hutchinson* (1910, 36 App. D.C. 68).

Directed verdict

Where subtenant claimed in opening statement that tenant in consideration of increased rent had orally agreed that subtenant might remain in possession as long as tenant's lease remained in effect, and that subtenant had thereafter paid such increased rent and had made certain substantial improvements on the premises, direction of verdict for tenant was error. *De Grazia* v. *Anderson* (D.C. Mun. App. 1948, 62 A. 2d 194).

Discretion of court

In forcible entry and detainer action against a Chinese, appointment of principal defendant's niece as his interpreter rested in trial court's discretion. *Bedrosian* v. *Wong Kok Chung* (D.C. Mun. App. 1943, 33 A. 2d 811).

In forcible entry and detainer action against a Chinese, trial court did not abuse its discretion in appointing principal defendant's niece as his interpreter when his testimony had no substantial bearing upon the factual issues. *Id.*

Emergency Rent Control Act

The effect of Emergency Rent Control Act, § 45–1605, restricting landlord's right to recover possession of housing accommodations is to create a noncontractual statutory right of possession in tenant, continuing at his option beyond expiration of his lease or rental agreement by depriving landlord, unless he claims under one of the permitted grounds, of right to maintain an action for possession. *Warthen* v. *Lamas* (D.C. Mun. App. 1945, 43 A. 2d 759).

Under the Emergency Rent Control Act, § 45–1605, the procedure in landlord's action against tenant for possession of premises, except for restrictions as to ground upon which landlord may claim right of possession, remains the same as it was previously. *Id.*

A roomer, although a tenant under Emergency Rent Control Act, § 45–1611(f), who had allegedly failed to pay rent could be evicted without institution of court proceedings for possession, in absence of any reference to roomers in this section relating to summary proceedings for possession. *Tamamian* v. *Gabbard* (D.C. Mun. App. 1947, 55 A. 2d 513).

Equitable relief

Equity will relieve against a forfeiture caused by nonpayment of rent unless it is unjust or was inequitable to do so; the only condition precedent to such relief being the tender or payment of the arrears with accrued interest and tender, here, avoided forfeiture of the lease. *Burrows Motor Company* v. *Davis* (D.C. Mun. App. 1950, 76 A. 2d 163).

Evidence

Evidence in eviction proceeding supported finding that defendant was a roomer, rather than a tenant, and thus subject to eviction by summary proceeding. *Levy* v. *Parks et ano.* (D.C. Mun. App. 1960, 157 A. 2d 462).

In forcible entry and detainer action by tenant against landlord's grantee, tenant's denial that he had made any "agreement" with agent of landlord's grantee to rent basement to him was a "conclusion" insufficient to contradict testimony of landlord's grantee. *Bedrosian* v. *Wong Kok Chung* (D.C. Mun. App. 1943, 33 A. 2d 811).

Evidence supported finding that there was no unlawful delegation of authority to vice president of real estate company serving as agent of insurance company in managing building owned by insurance company by president of insurance company in authorizing vice president of realty company to verify complaint in action to recover one of storerooms in building from tenant after expiration of lease. *Fowel* v. *Continental Life Ins. Co.* (D.C Mun. App. 1947, 55 A. 2d 205).

Force, necessity of

In action brought under this section giving Municipal Court for District of Columbia jurisdiction of action brought against person charged with having forcibly entered and detained real property, there must be actual force employed in the entry or in detention of possession or such threats and menaces of personal violence as will prevent one through fear from asserting his rights. *Thurston* v. *Anderson* (D.C. Mun. App. 1945, 40 A. 2d 342).

Forfeiture of leasehold

Forfeiture of a leasehold for conditions broken, and restrictions upon the right to assign are looked upon with disfavor. *Burrows Motor Company* v. *Davis* (D.C. Mun. App. 1950, 76 A. 2d 163).

The transfer of a portion of a tenant corporation's stock did not constitute an assignment of its lease in violation of its covenant not to assign without the lessor's consent, and judgment awarded to landlord must be reversed. *Id.*

Improvements

Where tenant of a row house, shortly before expiration of a five-year lease, made improvements on the property at a cost of more than $200, but the only improvement landlord was cognizant of was the painting of front porch by tenant, such repairs were not sufficient to have bound tenant for a renewal term of five years, and hence did not constitute notice to landlord that tenant was exercising option contained in lease to renew for a five-year period, and landlord was at liberty, after expiration of lease, to terminate the tenancy and recover possession for landlord's personal occupancy. *Warthen* v. *Lamas* (D.C. Mun. App. 1945, 43 A. 2d 759).

Issues triable

Landlord's suit for possession of leased premises on ground of nonpayment of rent under this section is statutory substitute for ancient action of ejectment, and issue to be tried is the right to possession. *Shipley* v. *Major* (D.C. Mun. App. 1945, 44 A. 2d 540).

Jurisdiction

Municipal court had jurisdiction of subject-matter involved in landlord and tenant proceeding and also over the person of defendant in the case, who appeared and made a defense, and the judge was not liable in civil action for the issuance of writ of restitution. *Spruill* v. *O'Toole* (1934, 74 F. 2d 559, 64 App. D.C. 85, certiorari denied 55 S. Ct. 406, 294 U.S. 707, 79 L. Ed. 1242, rehearing denied 55 S. Ct. 510, 294 U.S. 732, 79 L. Ed. 1261).

The jurisdiction of Municipal Court for District of Columbia to render judgment for possession of real estate is limited to those cases provided for by this section. *Thurston* v. *Anderson* (D.C. Mun. App. 1945, 40 A. 2d 342).

The District of Columbia Municipal Court has jurisdiction to try actions involving possession of realty. *Service Parking Corp.* v. *Trans-Lux Radio City Corp.* (D.C. Mun. App. 1946, 47 A. 2d 400, modified on other grounds, 54 A. 2d 144).

The jurisdiction of the Municipal Court over summary suits to recover possession of real property under this section is limited explicitly to actions by landlords against tenant. *Spruill* v. *Brooks* (D.C. Mun. App. 1949, 68 A. 2d 204).

Municipal court should not reject jurisdiction unless and until it is made to appear that the title to land is necessarily directly in issue between the parties, since this is a mandatory requirement provided for by statute. *Mindell* v. *Glenn* (D.C. Mun. App. 1949, 65 A. 2d 340). See, also, *Mindell* v. *Glenn* (D.C. Mun. App. 1950, 74 A. 2d 835).

Liability for marshal's negligence

If United States Marshal, acting within order of Municipal Court for District of Columbia issuing writ of restitution, negligently damaged property of tenant in moving it to sidewalk, neither landlord nor landlord's agent would be liable for the results of this negligence unless landlord or its agent participated in the wrongful act. *O'Neill Wilson* v. *Bittinger et al.* (1958, 262 F. 2d 714, 104 U.S. App. D.C. 403).

"Lodger," "tenant," distinguished

Where apartment hotel had been licensed as a "hotel" by superintendent of licenses, full hotel service was furnished all occupants without extra charge, all rates were by the day with discount in case an apartment was occupied a week or more, and when defendant rented first furnished apartment he signed usual type of registration card used by hotels agreeing to pay certain sum per day, and thereafter moved to another furnished apartment without signing a new registration card and agreed to pay an increased rate, status of defendant was that of a "lodger" rather than a "tenant" and hence he was not entitled to notice to quit because of nonpayment. *Davis* v. *Francis Scott Key Apartments* (D.C. Mun. App. 1958, 140 A. 2d 188).

Merits

Where there was a voluntary dismissal by landlord of his action to recover possession of leased premises, prior to trial, and no issue was adjudicated, intervenor was not entitled to a judgment on the merits. *Schwaner* v. *George* (D.C. Mun. App. 1948, 56 A. 2d 161).

Money judgment

The recovery of a money judgment for rent in landlord's action for possession of leased premises on ground of nonpayment of rent is but incidental to the main action, which remains basically one for possession. *Shipley* v. *Major* (D.C. Mun. App. 1945, 44 A. 2d 540).

Nature of possessory action

A landlord's action for possession of leased premises for nonpayment of rent is statutory substitute for the ancient remedy of ejectment. *Service Parking Corp.* v. *Trans-Lux Radio City Corp.* (D.C. Mun. App. 1946, 47 A. 2d 400, modified on other grounds 54 A. 2d 144).

Notice

Tenant is entitled to 30-day notice to quit before institution of summary proceedings for possession. *Thornhill* v. *Atlantic Life Ins. Co.* (1934, 70 F. 2d 846, 63 App. D.C. 184).

Where landlord served notice to quit on tenant but shortly thereafter commenced suit for possession before such notice had run its statutory time, and suit was dismissed on tenant's motion for failure to give notice to quit, dismissal of action did not prevent bringing of subsequent action based on said notice. *Royall* v. *Weitzman* (D.C. Mun. App. 1956, 125 A. 2d 680).

Sufficient notice of termination of a month to month tenancy does not in and of itself allow institution of an action for possession, since notice merely cuts off future expectancy of a continuation of the tenancy for one or more terms, and thereupon a tenancy for the terminal month runs its course, and upon the occurrence of both events landlord may maintain action for possession, as tenant is then holding over. *Zoby* v. *Kosmadakes* (D.C. Mun. App. 1948, 61 A. 2d 618).

A notice to quit is a condition precedent to filing of action by landlord to recover possession of premises from tenant, but is not jurisdictional. *Zindler* v. *Buchanon* (D.C. Mun. App. 1948, 61 A. 2d 616).

Parties

A realty dealer acting as owner's rental agent for percentage of rents is not a party in interest such as is entitled to conduct a landlord and tenant proceeding. *Heiskell* v. *Mozie* (1936, 82 F. 2d 861, 65 App. D.C. 255).

In action by purchaser of dwelling house against vendors to recover possession, wherein certain persons living in the house intervened, claiming to be tenants, intervenors to establish their right to intervene, as well as their defense, were required to prove that they were tenants, since, if they were merely roomers, they had no standing in action. *Taylor* v. *Dean et al.* (D.C. Mun. App. 1951, 78 A. 2d 382).

Where husband and wife own property by the entireties, a possessory action against a tenant may be brought by either, and a judgment in such an action inures equally to benefit of both. *Zoby* v. *Kosmadakes* (D.C. Mun. App. 1948, 61 A. 2d 618).

In owner's action to recover possession of apartment rented by defendant's husband, defendant was a proper party and owner was not required to name husband as a party defendant, where husband had surrendered key after defendant removed furniture and left apartment at time of marital difficulties and had stated to owner's representative that husband was finished with apartment and owner in reliance thereon had rented apartment to third party. *Tate* v. *Brawner* (D.C. Mun. App. 1948, 58 A. 2d 307).

Person aggrieved

Where lessees under concurrent lease, which had been executed by lessors during continuance of monthly tenancy under prior lease of same premises and simultaneously with assignment of prior lease to the new lessees, gave notice to monthly tenant pursuant to provisions of prior lease, such lessees were entitled to possession of premises, and were therefore "persons aggrieved" who were by statute entitled to bring summary proceedings to obtain possession *Gulf Motors Inc. et ano.* v. *Fenner et ano.* (D. C. Mun. App. 1955, 114 A. 2d 543).

One suing under this section for recovery of leased premises was only obliged to establish that he was the person aggrieved by tenant's failure to vacate. *J. & J. Slater, Inc.* v. *Brainerd* (D.C. Mun. App. 1945, 43 A. 2d 714).

Provision in lease for abatement of rent if lessor should be unable to deliver possession did not prevent lessor from being "person aggrieved" who could sue former tenant for possession, in absence of evidence that lessor had yielded right to sue to new tenant or had done anything to extinguish his own title. *Id.*

Owner was proper party to maintain suit against tenant to recover business premises at expiration of term lease, since he was a "person aggrieved" within this section authorizing municipal court to issue summons on complaint under oath of "person aggrieved" to recover prem-

ises detained, notwithstanding lease was made in the name of owner's agent. *Bell* v. *Westbrook* (D.C. Mun. App. 1947, 50 A. 2d 264).

Petition

Complaint alleging that defendant obtained possession of premises by fraud and had trespassed thereon and that he had refused to surrender possession, but not alleging that defendant entered by actual force or that he retained possession by force, or by menaces or other acts legally equivalent to force, did not state a case of forcible entry and detainer within jurisdiction of Municipal Court for District of Columbia. *Thurston* v. *Anderson* (D.C. Mun. App. 1945, 40 A. 2d 342).

Pleading

Although proceedings in landlord and tenant actions are informal, tenant is entitled to be informed by complaint of nature of recovery sought against him. *Shipley* v. *Major* (D.C. Mun. App. 1945, 44 A. 2d 540).

If a landlord seeks a money judgment for rent in action to recover leased premises on ground of nonpayment of rent, he must set forth his claim for such in his complaint. *Id.*

Where action by husband and wife as landlords for possession of housing accommodations was brought as a summary proceeding, the verification of complaint by husband, for himself and as agent for his wife, was authorized by this section providing that complaint shall be verified by person aggrieved or by his agent or attorney having knowledge of the facts. *Wynn* v. *Washington* (D.C. Mun. App. 1947, 53 A. 2d 275).

Purpose

This section giving Municipal Court for District of Columbia jurisdiction of actions of forcible entry and detainer is intended to provide a summary remedy in definitely limited classes of cases, and is not a substitute for action of ejectment. *Thurston* v. *Anderson* (D.C. Mun. App. 1945, 40 A. 2d 342).

Reentry without legal process

This section providing that whenever any person shall detain possession of realty without right, or after his right to possession shall have ceased, it shall be lawful for municipal court, on complaint under oath verified by person aggrieved by such detention or by his agent or attorney having knowledge of the facts, to issue a summons to party complained of to appear and show cause why judgment should not be given against him for restitution of possession, does not abolish the common law right of a landlord, when tenant's right to possession has ceased, to enter on leased premises and take possession thereof without use of legal process. *Snitman* v. *Goodman et al.* (D.C. Mun. App. 1955, 118 A. 2d 394).

Res judicata

Where suit filed on March 17, 1942, was essentially one for trespass with conversion of personal property laid in aggravation of damages, in subsequent statutory action to recover possession allegedly withheld since April, 1942, evidence was insufficient to sustain defendant's plea of res judicata based on judgment in the former suit. *Kincade* v. *Wah* (D.C. Mun. App. 1944, 38 A. 2d 112).

A consent judgment awarding plaintiff husband possession of premises, in action brought by husband alone against defendant as tenant of property owned by husband and wife as tenants by the entireties, which judgment necessarily determined defendant's status as a tenant, was res judicata on that issue in subsequent suit brought by husband and wife against defendant to recover rent. *David* v. *Nemerofsky* (D.C. Mun. App. 1945, 41 A. 2d 838).

Where husband and wife owned realty as tenants by the entireties, as respects doctrine of res judicata, the wife should be regarded as in "privity" with husband, which denotes mutual or successive relationship to the same rights of property. *Id.*

Right to possession

Where party occupying landowner's premises had no right to possession but his original entry had been lawful, and where action under this section was not available because relation of landlord and tenant had not existed, ejectment was only appropriate remedy. *Shapiro* v. *Christopher* (1952, 195 F. 2d 785, 90 U.S. App. D.C. 114).

Where plaintiff sued for possession of property, which it had purchased at foreclosure sale, against defendant who had previously owned the property but had defaulted on the second trust note, the defense that, when the deed of trust was foreclosed, defendants automatically became tenants at will under § 45–822 and could not be ousted by reason of § 45–1605, is not applicable where premises are not housing accommodations within the meaning of § 45–1611. *Surratt* v. *Real Estate Exchange, Inc.* (D.C. Mun. App. 1950, 76 A. 2d 587).

Summary proceedings

Summary proceedings under R.S., D.C. 684, cannot be maintained unless conventional relation of landlord and tenant exists between the parties. *Willis* v. *Eastern Trust & B. Co.* (1898, 18 S. Ct. 347, 169 U.S. 295, 42 L. Ed. 752).

Under this section providing that whenever any person shall retain possession of realty without right, or after his right to possession shall have ceased, Municipal Court of District of Columbia may issue summons to party complained of to appear and show cause why judgment should not be given against him for restitution of possession, remedy is summary in character, and the issue to be tried in such cases is the right of possession. *Rudder* v. *United States* (D.C. Mun. App. 1954, 105 A. 2d 741, reversed on other grounds, 226 F. 2d 51, 96 U.S. App. D.C. 329).

Surrender of tenancy

Where wife removed furniture and left apartment and husband, who was the tenant, surrendered his tenancy, wife had no further rights in premises and her forcible re-entry and detention of possession was unlawful so as to entitle owner to recover possession under this section. *Tate* v. *Brawner* (D.C. Mun. App. 1948, 58 A. 2d 307).

Tenant in common

Where decedent died intestate, left no children or no descendants of children or father or mother, plaintiff as a child of one of the deceased sisters of the decedent became a tenant in common with other heirs of realty owned by the decedent and had a right to maintain proceedings for recovery or possession of the realty in her own name. *Bagby* v. *Honesty* (D.C. Mun. App. 1959, 140 A. 2d 786).

Title not issue

If complaint were forcible entry and detainer, a claim of title by the defendant would be a proper defense to the action. *Loring* v. *Bartlet* (1894, 4 App. D.C. 1).

In proceedings for forcible entry and detainer, the title is not tried and is not at issue, but solely the right to the possession. *Brown* v. *Slater* (1904, 23 App. D.C. 51).

Right to possession of alleged purchaser at trustee's sale, not proved where tenant under 5-year lease continued to comply with said lease and dealt throughout with the same agent and knew nothing of the sale. *Capital Apartment Corp.* v. *Vassos* (1933, 65 F. 2d 482, 62 App. D.C. 136).

Trespass, action for

The action of trespass to realty contemplated by section 11–704 is one for damages, and said section was not applicable to give Municipal Court for District of Columbia jurisdiction of action to obtain possession of realty. *Thurston* v. *Anderson* (D.C. Mun. App. 1945, 40 A. 2d 342).

Forcible entry and detainer is not a substitute for trespass, and the actions are not the same. *Id.*

Verification

Where affidavit in action for possession of realty purported to be the affidavit of plaintiff corporation, affidavit contained no mention of any individual, making the affidavit as agent for the corporation, and signature of officer was not made as officer's individual signature, but as signature of corporate officer, the affidavit was fatally defective. *Strand Restaurant Co.* v. *Parks Engineering Co.* (D.C. Mun. App. 1952, 91 A. 2d 711).

II. Under Present Law

Jurisdiction

An agreement whereby defendant agreed to pay certain sum per month for right to place his boat in a slip at boatyard of plaintiff and to receive water and electricity, under which agreement defendant's family used the moored vessel as a residence was essentially "non-maritime" in purpose and objective and hence the Landlord

and Tenant Branch of the trial court had power to return possession of the slip and direct seizure of the vessel for nonpayment of rent. *In re Rice* (D.C. App. 1966, 217 A. 2d 596).

§ 16–1502. Service of summons

The summons provided for by section 16–1501 shall be served seven days, exclusive of Sundays and legal holidays, before the day fixed for the trial of the action. If the defendant has left the District of Columbia, or cannot be found, the summons may be served by delivering a copy thereof to the tenant, or by leaving a copy with some person above the age of sixteen years residing on or in possession of the premises sought to be recovered, and if no one is in actual possession of the premises, or residing thereon, by posting a copy of the summons on the premises where it may be conveniently read. (Dec. 23, 1963, 77 Stat. 581, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–736 (Mar. 3, 1901, ch. 854, § 21, 31 Stat. 1193).

Minor changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Challenging service of process

It is a general rule, with limited exceptions, that the question of defective service can be raised only by one on whom the attempted service was made and that one defendant has no standing to question the service on a co-defendant. Therefore, a motion to quash service made by one not even a party ought not to be heard. *Everett* v. *Miller* (D.C. Mun. App. 1949, 67 A. 2d 399).

Confession of judgment

A judgment in favor of landlord suing tenant for possession of leased premises was void for failure of court to acquire jurisdiction over tenant who was not served with process and who did not voluntarily appear, notwithstanding that tenant had signed "confession of judgment", where "confession of judgment" did not purport to contain a power of attorney authorizing landlord's attorney to appear for tenant and confess judgment. *Sandler* v. *Kass Realty Co.* (D.C. Mun. App. 1946, 48 A. 2d 617).

Construction

For the purpose of this section, a person below the age of sixteen years does not come within the term "any one". *Dewey* v. *Clark* (1950, 180 F. 2d 766, 86 U.S. App. D.C. 137).

Requirements of the statutory phrase "cannot be found" were met by the deputy marshal in posting summons on door. *Id.*

Delay in motion to vacate judgment

Where extenant's motion to vacate default judgment in action for possession of property was filed more than a year after she had been evicted pursuant to the judgment and writ of restitution, trial court was justified in denying motion. *Renshaw* v. *Swift et ano.* (D.C. Mun. App. 1956, 123 A. 2d 618).

Posting on door

In suit to recover possession of house, process was not defective on ground that marshal, without using diligent effort to obtain personal service, posted summons on door, where record disclosed service in strict compliance with this section. *Gordon* v. *Tino* (D.C. Mun. App. 1946, 50 A. 2d 593).

Where deputy marshal returned to premises three times with no response, and finally fastened the two summonses flat against the door, valid service was made, since defendant was not to be found and no one over sixteen could be said to be in possession. *Dewey* v. *Clark* (1950, 180 F. 2d 766, 86 U.S. App. D.C. 137).

Return

Where a valid service had been effected in landlord's action against tenant for possession of realty, either by delivery of copy to one in possession of realty, or by posting copy on realty, service was valid regardless of whether marshal's return correctly showed the method by which the service was effected. *Etelson* v. *André* (D.C. Mun App. 1948, 61 A. 2d 806).

Substantial compliance

Service of summons by leaving a copy with a person over 16 years of age in possession of the premises and a return to that effect by the marshal was a substantial compliance with this section. *Bliss* v. *Duncan* (1915, 44 App. D.C. 93). See, also, *Settlemier* v. *Sullivan* (1878, 97 U.S. 444, 7 Otto 444, 24 L. Ed. 1110).

Substitute service

Where marshal returned in afternoon after receiving no response when he had rung bell several times on morning visit, and maid refused to take paper marshal requested her to take, and marshal tacked it on the door, failure to make more than two attempts to effect personal service was not as a matter of law a lack of due diligence to effect personal service so as to invalidate substituted service under this section prescribing methods of service available in summary actions for possession of realty. *Etelson* v. *André* (D.C. Mun. App. 1948, 61 A. 2d 806).

Voluntary appearance

The voluntary appearance of tenant, through its attorney, gave the court jurisdiction to enter judgment in favor of landlord suing for possession of leased premises, notwithstanding that tenant was not served with process. *Crescent Cafe Co.* v. *Kass Realty Co.* (D.C. Mun. App. 1946, 48 A. 2d 618).

§ 16–1503. Judgment and execution for possession

When, upon a trial in a proceeding pursuant to this chapter, it appears that the plaintiff is entitled to the possession of the premises, judgment and execution for the possession shall be awarded in his favor, with costs; and if the plaintiff becomes nonsuit or fails to prove his right to the possession, the defendant shall have judgment and execution for his costs. (Dec. 23, 1963, 77 Stat. 581, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–737 (Mar. 3, 1901, ch. 854, § 22, 31 Stat. 1193).

Minor changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Attorney's fee

Where landlord in his suit for possession of leased premises on ground of nonpayment of rent made no claim in his complaint for a money judgment, trial court was justified in denying landlord's claim for attorney's fee pursuant to provision in lease. *Shipley* v. *Major* (D.C. Mun. App. 1945, 44 A. 2d 540).

Attorney's fees were not taxable as costs in landlord's action to recover possession of leased premises on ground of nonpayment of rent. *Id.*

Intervention

Where landlord took a voluntary nonsuit in a summary proceeding by landlord against tenant, intervenor who, though not specifically allowed to intervene as a defendant, intervened for the purpose of contesting landlord's right to possession, was entitled as a matter of law to judgment for her costs. *Schwaner* v. *George* (D.C. Mun. App. 1948, 56 A. 2d 161).

Law governing

Where there was a conflict between Landlord and Tenant Rule 6 and this section dealing with costs in a summary proceeding between landlord and tenant, this section would prevail. *Schwaner* v. *George* (D.C. Mun. App. 1948, 56 A. 2d 161).

Mandatory

This section providing that if it appears that plaintiff is entitled to possession of leased premises in summary proceeding between landlord and tenant, judgment and execution for possession shall be awarded in plaintiff's favor with costs, and that if plaintiff becomes nonsuit or fails to prove his right to possession, defendant shall

have judgment and execution for his costs, is mandatory. *Schwaner* v. *George* (D.C. Mun. App. 1948, 56 A. 2d 161).

§ 16–1504. Certification to District Court upon plea of title; undertaking

When, upon a trial in a proceeding pursuant to this chapter, the defendant pleads title to the premises, in himself or in another under whom he claims, setting forth the nature of the title, under oath, and enters into an undertaking, with sufficient surety, to be approved by the court, to pay all intervening damages and costs and reasonable intervening rent for the premises, the court shall certify the proceedings to the United States District Court for the District of Columbia, and the proceeding shall be further continued in the District Court according to its rules. (Dec. 23, 1963, 77 Stat. 482, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–738 (Mar. 3, 1901, ch. 854, § 23, 31 Stat. 1193; Feb. 17, 1909, ch. 134, 35 Stat. 623; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Changes are made in phraseology.

NOTES TO DECISIONS

I. Under Prior Law

Directed verdict

Where claimant, who sought possession of commercial property, alleged that tenant held possession under expired leasehold, and tenant filed sworn answer denying claimant was entitled to possession and alleging that tenant was entitled to title and possession because of valid contract to purchase property which was entered into prior to alleged sale of premises to claimant, and tenant requested that case be certified to District Court for trial, directing verdict in claimant's favor on opening statements was improper since tenant's sworn answer was sufficient claim of title to entitle tenant to present such evidence of title so that trial court might determine whether title to real estate was necessarily involved in case. *Nickles* v. *Sullivan* (D.C. Mun. App. 1951, 83 A. 2d 283).

Estoppel

Where defendant in ejectment action claimed right of possession under lease from plaintiff, he was thereby estopped to deny plaintiff's title. *Shapiro* v. *Christopher* (1952, 195 F. 2d 785, 90 U.S. App. D.C. 114).

Jurisdiction

District of Columbia Court of General Sessions lacked jurisdiction of action for possession of certain realty allegedly held without right by defendant and defendant denied that the plaintiff had any right, title, or interest in the property. *A. A. Zabarah* v. *Yemen Arab Republic* (D.C. App. 1964, 198 A. 2d 906).

The Municipal Court of the District of Columbia has no jurisdiction to try title to real property. *Ourisman Chevrolet, Inc.* v. *Suber* (D.C. Mun. App. 1954, 104 A. 2d 252).

Rejection of jurisdiction

The Municipal Court of the District of Columbia should not reject jurisdiction in cases involving title to realty unless and until it is made to appear that title to land is necessarily and directly in issue between the parties. *Nickles* v. *Sullivan* (D.C. Mun. App. 1951, 83 A. 2d 283).

Generally, the municipal court will not reject jurisdiction until it is made to appear that the title to land is necessarily and directly in issue between the parties. *Knowles* v. *Mosher* (D.C. Mun. App. 1946, 45 A. 2d 755).

Review

In suit in municipal court for District of Columbia for possession of realty, where question of title was interjected by defendant by attaching to his motion for a stay a copy of his complaint in district court for specific performance of alleged contract to purchase disputed property and such interjection was in violation of plaintiff's right to have title pleaded in method prescribed by this section, stay order of Municipal Court was appealable. *Ourisman Chevrolet, Inc.* v. *Suber* (D.C. Mun. App. 1954, 104 A. 2d 252).

In suit in Municipal Court for District of Columbia for possession of realty, where defendant attempted to put title in issue but failed to comply with mandatory provisions of this section requiring plea under oath accompanied by an undertaking, plaintiff had right to a trial of his claim for possession, and stay of proceeding pending final disposition of defendant's suit in District Court for specific performance of alleged contract to purchase disputed property was error. *Id.*

Special plea, necessity for

The statute providing that title in action for possession of realty must be put in issue by plea under oath, accompanied by an undertaking, is mandatory; if defendant fails to perform any of the requirements the court is without authority to dismiss for lack of jurisdiction and must proceed to hear case on issue of possession. *S. V. Watwood* v. *W. W. Morrison et ano.* (D.C. App. 1963, 193 A. 2d 71). Defendant sued for possession of realty did not adequately plead title, where defendant failed to furnish undertaking and her plea was merely an assertion of undermined rights under contract. *Id.*

The question of title is not automatically in issue in every action for possession of real estate; it becomes an issue only when plaintiff's title is challenged by the defendant; such challenge must follow statutory requirements. *Id.*

Plea of title purportedly filed by defendant sued for possession of realty did not serve to oust court of jurisdiction under statute dealing with actions for trespass or injury to realty and not with possessory actions. *Id.*

Pendency in District Court of suit for specific performance of contract of sale of residential property did not deprive Court of General Sessions of jurisdiction in action for possession of the residential property. *Id.*

This section, prescribing procedure to be followed when title is put in issue by defendant in summary proceeding for possession of real property and requiring that the litigant must file written plea setting forth nature of title claimed, accompanied by an undertaking, is mandatory, and question of title can enter case only by special plea of defendant and if not perfected in accordance with statutory requirements, court is without authority to dismiss for lack of jurisdiction, but must proceed to hear case on issue of possession. *Sayles* v. *Eden* (D.C. Mun. App. 1958, 144 A. 2d 895).

This section providing that title in summary proceedings shall be put in issue by plea under oath, accompanied by an undertaking, is mandatory and if not complied with, no question of title can be brought into case. *Ourisman Chevrolet, Inc.* v. *Suber* (D.C. Mun. App. 1954, 104 A. 2d 252).

If tenant holding over after expiration of lease wished to dispute purchaser's title in suit instituted by purchaser in Municipal Court to obtain possession of dwelling for use as a residence, a special plea was required to be filed and undertaking given whereupon the case would be certified to district court. *Miller* v. *Prophet* (D.C. Mun. App. 1944, 37 A. 2d 450).

In a summary proceeding brought in municipal court, question of title can enter the case only by special plea but defendant in such a plea must comply with this section, and if no plea of title is filed the court is free to proceed and try the issue of possession. *Knowles* v. *Mosher* (D.C. Mun. App. 1946, 45 A. 2d 755).

This section providing that title in summary proceedings be put in issue by plea under oath, accompanied by an undertaking, is mandatory, since in such action the issue to be tried is one of possession and not of title. *Id.*

Questions of title can enter the case only by special plea of the defendant and such a plea must comply with this section, and if no plea of title is filed, there is no question of title, and the court is free to proceed to try the issue of possession. *Mindell* v. *Glenn* (D.C. Mun. App. 1949, 65 A. 2d 340). See, also, *Mindell* v. *Glenn* (D.C. Mun. App. 1950, 74 A. 2d 835).

Undertaking

Statute providing that if defendant pleads title to premises to which plaintiff claims right of possession, defendant must file undertaking and case must be certified to United States District Court applies only to cases wherein defendant injects question of title into case, not where plaintiff commences action requiring him as essential element of his claim of possession to prove title. *A. A. Zabarah* v. *Yemen Arab Republic* (D.C. App. 1964, 198 A. 2d 906).

Rule requiring that defendant who claims title to premises in a possessory action "accompany" his plea with an undertaking and that action then be certified to the United States District Court does not preclude Municipal Court from allowing an enlargement of 4-day period for filing such undertaking. *J. G. Sutton* v. *E. B. Jones* (D.C. Mun. App. 1962, 180 A. 2d 470).

Provisions of this section relating to certification of case involving title to realty to federal district court are mandatory, and defendant filing such a plea must comply with this section, and if plea of title is not perfected in compliance with this section, the municipal court has no alternative except to try the issue of possession. *Nickles* v. *Sullivan* (D.C. Mun. App. 1953, 97 A. 2d 920).

Municipal Court of District of Columbia did not abuse discretion in requiring $7,500 undertaking to be posted by defendant who sought certification of case involving title to realty to federal district court. *Id.*

The amount of undertaking required in order to obtain certification of case involving title to realty to federal district court is a matter within sound discretion of Municipal Court of District of Columbia, and is not subject to reversal unless abuse of discretion is shown. *Id.*

Where defendant, in action for recovery of possession of realty, put title in issue and sought certification of case to federal district court, but failed to post undertaking required by District of Columbia Code, municipal court did not err in striking plea of title and in refusing to certify case. *Id.*

II. Under Present Law

Stipulation

Stipulation entered into between plaintiff and defendant, whereby defendant was to make monthly payments to plaintiff in lieu of statutory bond until issue between them as to possession of real estate was finally adjudicated but plaintiff was entitled to possession if payments were not timely made, was properly enforced against defendant so that plaintiff was entitled to possession of real estate when defendant missed payment and offered no excuse for failure to perform. *Costen* v. *Buschow* (D.C. App. 1965, 213 A. 2d 760).

§ 16–1505. Conclusiveness of judgment

A judgment of the District of Columbia Court of General Sessions in a proceeding pursuant to this chapter is not a bar to any afteraction brought by either party, and does not conclude any question of title between them, where title is not pleaded by the defendants. (Dec. 23, 1963, 77 Stat. 582, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., §§ 11–739, 11–751a (Mar. 3, 1901, ch. 854, § 24, 31 Stat. 1193; Feb. 17, 1909, ch. 134, 35 Stat. 623; Mar. 3, 1921, ch 125, § 12, 41 Stat. 1312; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11–751a, enacted by the act of Oct. 23, 1962, changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.,

NOTES TO DECISIONS UNDER PRIOR LAW

Termination of tenancy

An agreement whereby property was conveyed to holder of a deed of trust did not affect lease of the premises previously made by owner, but the title taken was subject to the lease, in absence of foreclosure of the deed of trust, even though the lease was not of record, and to terminate the tenancy it was necessary that notice to quit expire on the day on which the tenancy commenced to run. *Knowles* v. *Mosher* (D.C. Mun. App. 1946, 45 A. 2d 755).

Chapter 17.—GAMING TRANSACTIONS

Sec.
16–1701. Invalidity of gaming contracts.
16–1702. Recovery of losses at gaming.
16–1703. Relief from further penalty upon discovery and repayment of losses.
16–1704. Cheating at gambling.

§ 16–1701. Invalidity of gaming contracts

(a) A thing in action, judgment, mortgage, or other security or conveyance made and executed by a person in which any part of the consideration is for money or other valuable things won by playing at any game whatsoever, or by betting on the sides or hands of persons who play, or for the reimbursement or payment of any money knowingly lent or advanced for the purpose, or lent or advanced at the time and place of the play or bet, to a person so playing or betting or who, during the play, so plays or bets, is void except as provided by subsection (b) of this section.

(b) If the mortgage, security, or other conveyance affects real property, it shall inure to the sole benefit of, and devolve upon, the persons who might have, or be entitled to, the property, as if the person who executed the instrument had died immediately after its execution, or as if the instrument had been made to the persons so entitled after the death of the person who executed it. A grant or conveyance made for the purpose of preventing the real property from coming to, or devolving upon, the persons intended by this section to enjoy the property as herein provided is fraudulent and void.

(c) This section does not affect the validity of negotiable instruments embraced by chapters 1 to 10 of Title 28. (Dec. 23, 1963, 77 Stat. 582, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–701 (9 Ann, 14, § 1, 1710; Kilty's Rept., p. 248; Alex. Brit. Stat., p. 689; Comp. Stat. D.C., p. 243, § 12).

The provisions set out in subsec. (c) are inserted for the purpose of clarification. See the case of *Wirt* v. *Stubblefield,* 17 App. D.C. 283.

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS UNDER PRIOR LAW

Credit transactions

Contracts growing out of gaming transactions are declared by law to be void, but credit transactions could not be deemed gaming within the meaning of this section in absence of rule of law which says that one who sells on credit has no standing in court because he knew or should have known that the purchaser was a bad credit risk. *Universal Jewelry Company, Inc.* v. *McIver* (D.C. Mun. App. 1949, 68 A. 2d 226).

Effect of negotiable instruments law

Insofar as this chapter may or would, if in force, affect the validity of negotiable instruments embraced by the Negotiable Instruments Law they are inconsistent with the provisions of the last-mentioned act, and are to that extent repealed and are no longer, as to negotiable instruments in force in the District of Columbia. *Wirt* v. *Stubblefield* (1900, 17 App. D.C. 283).

§ 16–1702. Recovery of losses at gaming

A person who, at any time or sitting, by playing at cards, dice or any other game, or by betting on the

sides or hands of persons who play, loses to a person so playing or betting, a sum of money, or other valuable thing, amounting to $25 or more, and pays or delivers the money or thing, or any part thereof, may, within three months after the payment or delivery, sue for and recover the money, goods or other valuable thing, so lost and paid or delivered, or any part thereof, or the full value thereof, by a civil action, from the winner thereof, with costs. If the person who loses the money or other thing, does not, within three months actually and bona fide, and without collusion, sue, and with effect prosecute, therefor, any person may sue for, and recover treble the value of the money, goods, chattels, and other things, with costs of suit, by a civil action against the winner, one-half to the use of the plaintiff, the remainder to the use of the District of Columbia. (Dec. 23, 1963, 77 Stat. 582, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–702 (9 Ann, ch. 14, § 2, 1710; Kilty's Rept., p. 248; Alex. Brit. Stat., p. 690; Md. Act 1781, ch. 16, § 1; Comp. Stat. D.C., p. 244, § 13; R.S., D.C., § 837; Md. Act 1777, ch. 6, § 1).

The amount of "twenty-six dollars and sixty-seven cents" is rounded to the amount of $25, which is the approximate American equivalent of the British sum specified by the original statute.

The term "civil action" is substituted for "action of debt" to conform with rule 2 of the Federal Rules of Civil Procedure and of the civil rules of the Court of General Sessions; and words "in which actions or suits no more than one imparlance shall be allowed; in which actions it shall be sufficient for the plaintiff to allege, that the defendant or defendants are indebted to the plaintiffs, or received to the plaintiff's use, the monies so lost and paid, or converted the goods won by the plaintiff's to the defendant's use, whereby the plaintiff's action accrued to him, according to the form of this section, without setting forth the special matter" are omitted as covered or superseded by, or inconsistent with, rules of pleading as set forth in rules of court. See, particularly, rules 7–9 of the Federal Rules of Civil Procedure, and of the civil rules of the Court of General Sessions, and rule 4 of the small claims rule of Court of General Sessions.

The provision that the action may "be prosecuted in any court of record" is omitted as inconsistent with provisions governing civil jurisdiction of the District Court and the Court of General Sessions. See sections 11–521(a)(1), 11–961, and 11–1341 herein.

Changes are made in phraseology.

§ 16–1703. Relief from further penalty upon discovery and repayment of losses

Upon the discovery and repayment of the money or other thing to be discovered and repaid as provided by section 16–1702, the person who so discovers and repays shall be acquitted, indemnified, and discharged from any further or other punishment, forfeiture, or penalty, that he may have incurred by the playing for, or winning, the money or other thing so discovered and repaid. (Dec. 23, 1963, 77 Stat. 583, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–703 (9 Ann, ch. 14, § 4, 1710; Kilty's Rept., p. 248; Alex. Brit. Stat., p. 691; Comp. Stat. D.C., p. 244, § 15).

Minor changes are made in phraseology.

§ 16–1704. Cheating at gambling

Whoever, at any one time or sitting, by fraud or false pretense, while playing any game, or while having a share in a wager played for, or while betting on the sides or hands of persons who play, wins, or acquires to himself or to any other person, above the sum or value of $25, shall, upon conviction of the offense, forfeit five times the value of the sum of money or other thing so won, and shall be deemed infamous.

The penalty prescribed by this section may be recovered in a civil action by the persons specified by, and in the manner provided by, section 16–1702. (Dec. 23, 1963, 77 Stat. 583, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–704 (9 Ann, ch. 14, § 5, 1710; Kilty's Rept., p. 248; Alex. Brit. Stat., p. 691; Md. Act 1780, ch. 23, § 3; Md. Act 1781, ch. 16, § 1; Comp. Stat. D.C., p. 245, § 16).

Surplusage is omitted, and changes are made in phraseology.

Chapter 19.—HABEAS CORPUS

Sec.
16–1901. Petition to District Court; issuance of writ.
16–1902. Service of writ; return.
16–1903. Suspected evasion or disobedience of writ; procedure.
16–1904. Forfeiture and penalty for failure to produce.
16–1905. Right to copy of commitment; forfeiture.
16–1906. Inquiry into cause of detention; bail; bond.
16–1907. Traversing return; pleading; witnesses.
16–1908. Right of other persons to writ.
16–1909. Construction of chapter.

§ 16–1901. Petition to District Court; issuance of writ

A person committed, detained, confined, or restrained from his lawful liberty within the District, under any color or pretense whatever, or a person in his behalf, may apply by petition to the United States District Court for the District of Columbia, or a judge thereof, for a writ of habeas corpus, to the end that the cause of the commitment, detainer, confinement, or restraint may be inquired into. The court or the judge applied to, if the facts set forth in the petition make a prima facie case, shall forthwith grant the writ, directed to the officer or other person in whose custody or keeping the party so detained is, returnable forthwith before the court or judge. (Dec. 23, 1963, 77 Stat. 583, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–801 (Mar. 3, 1901, ch. 854, § 1143, 31 Stat. 1372; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32 (a), (b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Minor changes are made in phraseology.

CROSS REFERENCE

Special proceedings for commitment or discharge of feeble-minded person do not abridge right to petition for writ of habeas corpus, see § 21–1113.

NOTES TO DECISIONS UNDER PRIOR LAW

Aliens

Immigration officers have jurisdiction to exclude an alien who is not entitled under some statute or treaty to come into the United States, yet if the alien is entitled, of right, by some law or treaty, to enter this country, but is nevertheless excluded by such officers, the latter exceed their jurisdiction; and their illegal action, if it results in restraining the alien of his liberty, presents a judicial question for the decision of which the courts may intervene upon a writ of habeas corpus. *Lem Moon Sing* v. *United States* (1895, 15 S. Ct. 967, 158 U.S. 538, 39 L. Ed. 1082).

A petition for habeas corpus ought not to be entertained unless the court is satisfied that the petitioner

can make out at least a prima facie case. *United States* v. *Sing Tuck* (1904, 24 S. Ct. 621, 194 U.S. 161, 48 L. Ed. 917).

Habeas corpus will lie to test the legal authority of the Secretary of Labor to deport alien contract laborers and to revoke the permit of entry. *Bata Shoe Co.* v. *Perkins* (D.C.D.C. 1940, 33 F. Supp. 508).

Allegations of petition

Habeas corpus petition alleging unlawful confinement of petitioner because he was incompetently represented by counsel who advised him to plead guilty due to arrangement for a light sentence, but not alleging that petitioner misunderstood the nature of the charges or that he did not knowingly plead guilty or was coerced by judge or prosecutor to enter the plea, was properly dismissed. *Thomson* v. *Huff* (1945, 149 F. 2d 842, 80 U.S. App. D.C. 165).

If prior application for writ of habeas corpus has been made, in same case, by petitioner or in his behalf, petition should so state and such other facts and documents should be set out as will allow judge properly to determine whether issues presented by present petition were decided in former proceeding. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

Mere general assertions of incompetency or disinterest on part of counsel do not constitute prima facie showing required by this section to support a petition for writ of habeas corpus. *Id.*

Petition for writ of habeas corpus should state by what authority respondent purports to detain petitioner, and, if that authority is a warrant of commitment, a copy of it, together with the transcript of record, or its essential parts, in proceeding which resulted in the commitment should be attached to or set out in the petition. *Id.*

Mere mistakes of counsel cannot be reviewed on a petition for habeas corpus and, to justify a writ on allegations regarding incompetency of attorney, an extreme case must be disclosed. *Jones* v. *Huff* (1946, 152 F. 2d 14, 80 U.S. App. D.C. 254). See, also, *Council* v. *Clemmer* (1948, 165 F. 2d 249, 83 U.S. App. D.C. 42); *Council* v. *Clemmer* (1949, 177 F. 2d 22, 85 U.S. App. D.C. 74, certiorari denied 70 S. Ct. 150, 338 U.S. 880, 94 L. Ed. 540).

Petition for writ of habeas corpus alleging that, prior to trial in criminal prosecution, petitioner was brought from Virginia to the District of Columbia without extradition proceedings in spite of his protest and his unwillingness to waive extradition, presented no substantial question, and denial of petition without appointment of counsel for defendant was not error. *Sheehan* v. *Huff* (1944, 142 F. 2d 81, 78 App. D.C. 391, certiorari denied 64 S. Ct. 1287, 322 U.S. 764, 88 L. Ed. 1591).

Amendment of petition

If petition for writ of habeas corpus is insufficient in substance, the judge to whom it is presented may, in interest of justice, permit or require its amendment, especially where petition is product of petitioner's own inexpert draftsmanship. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

Appointment of counsel

Court passing on sufficiency of petition for writ of habeas corpus is not required to appoint an attorney for petitioner and no deprivation of constitutional rights results from failure to do so. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

A prisoner may not obtain a writ of habeas corpus on sole ground that counsel, properly appointed by court to defend him, acted incompetently or negligently during the criminal proceeding. *Diggs* v. *Welch* (1945, 148 F. 2d 667, 80 U.S. App. D.C. 5, certiorari denied 65 S. Ct. 1576, 325 U.S. 889, 89 L. Ed. 2002).

Where petition for a writ of habeas corpus charged, in effect, that attorney appointed by court to represent petitioner in a criminal case gave petitioner such bad advice through negligence or ignorance in connection with entering his plea that he could not be said to have been represented by competent counsel, but there was no allegation that court did not select counsel with care, and with due regard for petitioner's constitutional rights, appellate court was required to presume that court appointed a reputable member of bar in whom it had confidence. *Id.*

Where petition for writ of habeas corpus stated a cause of action entitling petitioner to discharge from custody if allegations thereof were true and petitioner made affidavit stating that he was a poor person unable to pay costs, petitioner was entitled to appointment of competent counsel under the forma pauperis statute, 28 U.S.C. §§ 832 to 836. *Ex parte Rosier* (1943, 133 F. 2d 316, 76 U.S. App. D.C. 214).

Where a petition for writ of habeas corpus has been presented, legally sufficient on its face to start the court's machinery in motion, the judge should appoint either a guardian or counsel to represent the petitioner in the further stages of the proceeding. *Overholser* v. *Treibly* (1945, 147 F. 2d 705, 79 U.S. App. D.C. 389, certiorari denied 66 S. Ct. 38, 326 U.S. 730, 90 L. Ed. 434).

Coercion or restraint

Alleged fact that petitioner had been seized and deprived of his liberty by police force and had been lodged in a cell and held in custody incommunicado and brutally beaten for purpose of having petitioner make confession of guilt, was not sufficient to justify issuance of writ of habeas corpus, where no confession had been received or offered in evidence in criminal trial and petitioner was under no coercion when he appeared in court at criminal trial. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

Consideration of petition

A petition for writ of habeas corpus must be carefully considered by judge regardless of source of the petition, and the petition should not be scrutinized with technical nicety nor duty of consideration discharged as a mere matter of routine. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

Construction

This section must be so interpreted as to preserve, in full vigor, the writ of habeas corpus, but it is necessary to give full meaning to all the language of the section and thus protect the writ from abuse. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

Duty of court

Where prisoner filed letter as petition for writ of habeas corpus, action of court in designating competent counsel to take such steps as might seem advisable in protection of rights of prisoner was proper and fully within court's discretion, but views of counsel could not be a substitute for duty of court to determine its action in respect to the writ from petition itself and return and traverses filed thereto. *Jones* v. *Huff* (1946, 152 F. 2d 14, 80 U.S. App. D.C. 254).

Federal prisoner

A court in the District of Columbia does not have jurisdiction to issue a writ of habeas corpus against Attorney General of the United States or his representative on petition of a federal prisoner confined outside the District, although Attorney General designates place of confinement of person convicted of an offense against the United States. *Sanders* v. *Bennett* (1945, 148 F. 2d 19, 80 U.S. App. D.C. 32).

Insanity cases

Habeas corpus is available to inmate of hospital for insane, not for purpose of determining inmate's mental condition, but as a method of initiating an appropriate procedure for determination of the inmate's mental condition. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

"Habeas corpus" is a proper remedy to challenge the continued confinement in mental hospital of persons who claim to be restored to mental health. *De Marcos* v. *Overholser* (1943, 137 F. 2d 698, 78 U.S. App. D.C. 131, certiorari denied 64 S. Ct. 157, 320 U.S. 785, 88 L. Ed. 472, rehearing denied 64 S. Ct. 204, 320 U.S. 813, 88 L. Ed. 491).

Issuance by court of appeals

Application for habeas corpus to the various District Judges within District must first be shown before justice of federal appellate court will entertain application for writ of habeas corpus. *In re Gersing* (1945, 145 F. 2d 481, 79 U.S. App. D.C. 245).

The United States Court of Appeals for the District of Columbia cannot entertain an original petition for writ of habeas corpus, since no statute confers such jurisdiction upon the court. *In re Greene* (1944, 140 F. 2d 175, 78 U.S. App. D.C. 320).

Appropriate procedure to procure writ of habeas corpus in District of Columbia should have been to address petition to District Court or one of the twelve judges thereof, and petition addressed to one of the justices of the United States Court of Appeals would be denied. *In re Holzworth* (D.C.D.C. 1935, 74 F. Supp. 388).

Issuance of writ, generally

When a petition for writ of habeas corpus is presented to a judge with a request for leave to file it, the judge may, if petitioner is not entitled to a writ, deny leave to file it. *Young* v. *Gill* (1945, 149 F. 2d 843, 80 U.S. App. D.C. 166).

Alleged inconsistencies in the proof and insufficiency of evidence on which to sustain conviction were matters reviewable only on appeal and would not support issuance of writ of habeas corpus. *Id.*

After a petition for writ of habeas corpus has been filed, if it satisfies statutory requirements, the judge should issue the writ forthwith. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

Jurisdiction

A federal district court is without jurisdiction to issue a writ of habeas corpus if the person detained is not within the territorial jurisdiction of the court when the petition is filed. *Ahrens et al.* v. *Clark* (1948, 68 S. Ct. 188, 325 U.S. 188, 92 L. Ed. 1898).

The jurisdiction requirement that the person for whose relief a petition for a writ of habeas corpus is intended must be within the territorial jurisdiction of the district court is one which Congress has imposed on the power of the district court to act, and it may not be waived by the parties. *Id.*

Petition for habeas corpus by prisoner confined in District of Columbia Reformatory at Lorton, Va., was not within territorial jurisdiction of District Court for District of Columbia. *McAffee* v. *Clemmer* (1948, 171 F. 2d 131, 84 U.S. App. D.C. 57).

Courts in the District of Columbia may issue writs of habeas corpus directed to those in direct charge of penal institutions of the District which happen to be located just outside its borders, since it is the duty of the District to adjudicate matters arising out of the conduct of its own institutions. *Sanders* v. *Bennett* (1945, 148 F. 2d 19, 80 U.S. App. D.C. 32).

Petition for writ of habeas corpus can challenge jurisdiction of court which committed petitioner by showing either that court had no jurisdiction to try petitioner or that during its proceeding his constitutional rights were so far denied that the court lost jurisdiction. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

Petition for writ of habeas corpus should establish jurisdiction of court by showing place of petitioner's confinement, that it is within territorial jurisdiction of court, name, and address of person in whose custody petitioner is restrained, and any other jurisdictional facts which nature of case may require. *Id.*

District Court has jurisdiction of habeas corpus proceedings filed by inmates of the District of Columbia Reformatory at Lorton, Virginia, despite the fact that the institution is not within the District. *Burns* v. *Welch* (1947, 159 F. 2d 29, 81 U.S. App. D.C. 384).

District court was without jurisdiction to entertain petition for writ of habeas corpus attacking petitioner's original conviction, where petitioner was held in jurisdiction solely by reason of writ of habeas corpus ad prosequendum. *Pelly* v. *Mathews U.S. Marshal* (1947, 163 F. 2d 700, 82 U.S. App. D.C. 264, certiorari denied 68 S. Ct. 113, 392 U.S. 811, 92 L. Ed. 388, rehearing denied 68 S. Ct. 207, 332 U.S. 832, 92 L. Ed. 406).

United States District Court for District of Columbia has authority to entertain petitions for habeas corpus on behalf of persons confined in the District workhouse at Occoquan, Virginia, or in the District of Columbia Reformatory at Lorton, Virginia, though located outside the District. *Ex parte Flick* (D.C.D.C. 1948, 76 F. Supp. 979, affirmed 174 F. 2d 983, 85 U.S. App. D.C. 70, certiorari denied 70 S. Ct. 158, 338 U.S. 879, 94 L. Ed. 539, rehearing denied 70 S. Ct. 343, 338 U.S. 940, 94 L. Ed. 579).

United States District Court for District of Columbia is without jurisdiction to issue habeas corpus to test legality of imprisonment of a person incarcerated in the American Occupation Zone of Germany by judgment of a United States Military Tribunal, though there might be no other tribunal in which relief could be had. *Id.*

Justices may issue

The justices of the United States Court for the District of Columbia have power to issue writ of habeas corpus ad prosequendum. *Downey* v. *United States* (1937, 91 F. 2d 223, 67 App. D.C. 192).

Nature of writ

The writ of habeas corpus in respect of lunacy is one of relief rather than of original adjudication. *Barry* v. *Hall* (1938, 98 F. 2d 222, 68 App. D.C. 350).

"Habeas corpus" can be sought only to effectuate a prisoner's immediate release, and not to test the legality of imprisonment at some future time. *Pope* v. *Huff* (1941, 117 F. 2d 779, 73 App. D.C. 170, certiorari denied 62 S. Ct. 134, 314 U.S. 669, 86 L. Ed. 535, rehearing denied 62 S. Ct. 299, 314 U.S. 713, 86 L. Ed. 568, rehearing denied 62 S. Ct. 358, 314 U.S. 714, 86 L. Ed. 569).

Habeas corpus proceeding is not a "criminal proceeding" within provisions of U.S. Const. Amend. Six for assistance of counsel. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

The use of writ of habeas corpus extends to those exceptional cases where conviction has been in disregard of constitutional rights of accused and where writ is only effective means of preserving his rights. *Jones* v. *Huff* (1945, 152 F. 2d 14, 80 U.S. App. D.C. 254).

Parole eligibility

Eligibility to parole cannot be tried in habeas corpus. *Jones* v. *Welch* (1945, 151 F. 2d 769, 80 U.S. App. D.C. 253).

Where allegations of petition for habeas corpus related to manner in which parole board arrived at its decision not to admit petitioner to parole, the petition was properly denied. *Id.*

Procedure on application

It is the usual procedure on an application for a writ of habeas corpus in a Federal court for the court to issue the writ and on the return, to hear and dispose of the case but it may without issuing the writ consider and determine whether the facts alleged by the petition, if proved, would warrant discharge of the prisoner. *Ex parte Quirin* (1942, 63 S. Ct. 2, 317 U.S. 1, 87 L. Ed. 3).

Where petition for writ of habeas corpus stated a cause of action entitling petitioner to discharge from custody if allegations were true, failure to accord petitioner a hearing in respect of the merits of his petition was error. *Ex parte Rosier* (1943, 133 F. 2d 316, 76 U.S. App. D.C. 214).

Representation by counsel

The mere fact that an accused was not represented by counsel is not in itself a sufficient basis for granting a writ of habeas corpus. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

Rule to show cause

If, upon consideration of a petition which has been filed, it appears that petitioner is not entitled to writ of habeas corpus, the court should refuse to issue it, but, if allegations of petition are inconclusive, the judge may issue rule to show cause why writ should not be granted. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

Where rule to show cause why writ of habeas corpus should not be granted has been issued and judge finds

from facts exhibited by opposing party that no issue of fact or law is involved, the judge may refuse to grant the writ, in which event it is not necessary to hold a hearing. *Id.*

Service

The proper person to be served in ordinary habeas corpus proceeding by a federal prisoner confined outside the District of Columbia is warden of penitentiary in which prisoner is confined, rather than an official in District of Columbia who supervises the warden. *Sanders* v. *Bennett* (1945, 148 F. 2d 19, 80 U.S. App. D.C. 32).

Subsequent petitions

Where judge to whom is presented a petition for writ of habeas corpus, together with a request for leave to file, ascertains that petitioner has on a previous petition had a full hearing on same identical allegations, leave to file second petition should be denied. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

Where comparison of present habeas corpus petition with prior petition disclosed that all matters sought to be raised on the second petition with one exception were raised on the prior petition district court would not grant the writ raising the same points tried out in the prior proceeding where there were no extraordinary circumstances. *Jordan* v. *Clemmer* (D.C.D.C. 1948, 80 F. Supp. 539).

Sufficiency of petition

Petition for writ of habeas corpus, on the ground that petitioner's confinement after expiration of his sentence was illegal, was denied where petitioner had committed a crime while on parole, and the judge imposing the second sentence had no power to make it and the unexpired portion of the first sentence run concurrently. *Hammer* v. *Huff* (1940, 110 F. 2d 113, 71 App. D.C. 246).

A petition alleging that petitioner was restrained of his liberty, describing the person detaining him and the place of the detention, and asserting illegality of the restraint by alleging that the petitioner was at the time of the filing of the petition of sound mind and that his original criminal sentence had expired, stated a cause of action for discharge or issuance of a rule to show cause. *Ex parte Rosier* (1943, 133 F. 2d 316, 76 U.S. App. D.C. 214).

A petitioner seeking a writ of habeas corpus must make a prima facie case. that is, his petition must show he is entitled to the writ. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

Judgment under which petitioner seeking writ of habeas corpus is detained in penal institution is impervious to collateral attack unless his petition sufficiently challenges the jurisdiction of the court which committed him. *Id.*

Petition for writ of habeas corpus on ground that conviction had been obtained by use of improper evidence and that petitioner had been deprived of effective assistance of counsel was properly denied without hearing, where there was no transcript of proceedings in the criminal trial and petition did not disclose exceptional circumstances. *Strong* v. *Huff* (1945, 148 F. 2d 692, 80 U.S. App. D.C. 89, followed in 149 F. 2d 30, 80 U.S. App. D.C. 411, certiorari denied 66 St. Ct. 165, 326 U.S. 768, 90 L. Ed. 463).

Petition for writ of habeas corpus charging, in effect, that attorney appointed by court to represent petitioner in criminal prosecution gave him such bad advice through negligence or ignorance in connection with entering his plea that petitioner did not have effective or competent representation by counsel, was insufficient to require a hearing. *Diggs* v. *Welch* (1945, 148 F. 2d 667, 80 U.S. App. D.C. 5, certiorari denied 65 S. Ct. 1576, 325 U.S. 889, 89 L. Ed. 2002).

Petition for writ of habeas corpus, alleging in substance that attorney representing defendant, at trial on charge of forgery, failed to object to admission in evidence of an involuntary confession, failed to call witnesses who would have established innocence of defendant, failed to offer defense although defendant was innocent, and failed to take such steps as would have permitted jury to see a sample of defendant's handwriting after a request for such evidnce had been made by a juror, was sufficient and denial of petition without hearing was improper. *Jones* v. *Huff* (1946, 152 F. 2d 14, 80 U.S. App. D.C. 254).

Time for application

Before trial in District Court where indictment is pending, accused may not test, by means of habeas corpus proceeding, validity of statute which he is charged with having violated. *Pelley* v. *Botkin* (1946, 152 F. 2d 12, 80 U.S. App. D.C. 251).

Where application for writ of habeas corpus showed that petitioner was held in custody to await trial under an indictment which accused him of violating U.S. Code, title 18, §§ 9 to 13 and that petitioner sought to be released solely because of alleged unconstitutionality of said sections, the application was premature. *Id.*

Waiver of counsel

Where court granted four successive continuances at request of accused, and thereafter accused reported his attempts made to employ certain counsel, declined the court's offer to appoint counsel, did not request another continuance, and said he preferred to represent himself, which he proceeded to do competently, accused waived right to counsel and allegation in support of petition for writ of habeas corpus that he was denied right to have assistance of counsel was frivolous. *Koehne* v. *Matthews* (1948, 169 F. 2d 889, 83 U.S. App. D.C. 401, certiorari denied 69 S. Ct. 654, 336 U.S. 924, 93 L. Ed. 1086, rehearing denied 69 S. Ct. 810, 336 U.S. 947, 93 L. Ed. 1103).

Writ as an appeal

The writ of habeas corpus cannot be used for purpose of an appeal, or to retry issues, whether of law or of fact. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

The writ of habeas corpus is not intended to serve the purposes of an appeal. *Eury* v. *Huff* (1945, 146 F. 2d 17, 79 U.S. App. D.C. 289). See, also, *Fowler* v. *Gill* (1946, 156 F. 2d 565, 81 U.S. App. D.C. 167, certiorari denied 67 S. Ct. 352, 329 U.S. 791, 91 L. Ed. 677, rehearing denied 67 S. Ct. 488, 329 U.S. 832, 91 L. Ed. 705).

Petition for writ of habeas corpus may not be used as a substitute for an appeal or writ of error. *Council* v. *Clemmer* (1948, 165 F. 2d 249, 83 U.S. App. D.C. 42). See, also, *Council* v. *Clemmer* (1949, 177 F. 2d 22, 85 U.S. App. D.C. 74, certiorari denied 70 S. Ct. 150, 338 U.S. 880, 94 L. Ed. 540).

§ 16–1902. Service of writ; return

A writ of habeas corpus issued pursuant to this chapter shall be served by delivering it to the officer or other person to whom it is directed, or by leaving it at the prison or place at which the party suing it out is detained. The officer or other person shall forthwith, or within such reasonable time as the court or judge directs:

(1) make return of the writ and cause the person detained to be brought before the court or judge, according to the command of the writ; and

(2) certify the true cause of his detainer or imprisonment, if any, and under what color or pretense he is confined or restrained of his liberty. (Dec. 23, 1963, 77 Stat. 583, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–802 (Mar. 3, 1901, ch. 854, § 1144, 31 Stat. 1372; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Minor changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Jurisdiction

Service on the commissioners of the District, the Director of Public Welfare, and the Superintendent of Penal Institutions, was sufficient to give the District Court jurisdiction to issue habeas corpus in District of Columbia workhouse located outside of the District. *Sanders* v. *Allen* (1939, 100 F. 2d 717, 69 App. D.C. 307).

Although District Court had jurisdiction of habeas corpus proceeding filed by inmate of the District Reformatory at Lorton, Virginia, the court had no jurisdiction to issue writ directed to the Superintendent of the Reformatory who had neither home nor office in the District but resided at Lorton. *Burns* v. *Welch* (1947, 159 F. 2d 29, 81 U.S. App. D.C. 384).

Privileged communications

Statements made by superintendent of hospital, in response to writ of habeas corpus, that petitioner was insane and dangerous, were entitled to immunity of absolute privilege, and could not be made basis of a libel complaint. *Cassel* v. *Overholser* (1948, 169 F. 2d 683, 83 U.S. App. D.C. 350, certiorari denied 69 S. Ct. 741, 336 U.S. 939, 93 L. Ed. 1097).

§ 16–1903. Suspected evasion or disobedience of writ; procedure

On an application for a writ of habeas corpus, if probable cause is shown for believing that the person charged with confining or detaining the person applying therefor, or on whose behalf the application is made:

(1) is about to remove the person so detained from the place where he is then detained, for the purpose of evading a writ of habeas corpus, or for other purposes; or

(2) he would evade or not obey a writ of habeas corpus—

the court or judge shall insert in the writ a clause commanding the United States marshal to serve the writ on the person to whom it is directed and cause him immediately to appear before the court or judge, together with the person so confined or detained. Thereupon, the marshal shall immediately carry those persons before the court or judge, and the court or judge shall proceed to inquire into the matter. (Dec. 23, 1963, 77 Stat. 583, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–803 (Mar. 3, 1901, ch. 854, § 1145, 31 Stat. 1372; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

§ 16–1904. Forfeiture and penalty for failure to produce

If an officer or other person to whom a writ of habeas corpus is directed neglects or refuses to:

(1) make return of the writ; or

(2) bring the body of the person detained—

according to the command of the writ, he shall forfeit to the person detained the sum of $500, and be liable to attachment and punishment as for a contempt. (Dec. 23, 1963, 77 Stat. 584, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–804 (Mar. 3, 1901, ch. 854, § 1146, 31 Stat. 1372).

Changes are made in phraseology.

NOTES TO DECISIONS

Nature of liability

Statute imposing penalty on person who neglects or refuses to respond to writ of habeas corpus is intended to impose personal as distinct from official liability. *M. N. Whittington* v. *D. C. Cameron, M.D. Sup't etc.* (1965, 344 F. 2d 564, 120 U.S. App. D.C. 179).

Action to collect penalty for neglect or refusal to respond to writ or habeas corpus naming as respondent present superintendent of hospital was fatally defective where actions complained of were those of superintendent since retired. *Id.*

§ 16–1905. Right to copy of commitment; forfeiture

A person committed or detained, or a person in his behalf, may demand a true copy of the warrant of commitment or detainer. An officer or other person detaining a person, who refuses or neglects to deliver to him or to a person in his behalf a true copy of the warrant of commitment or detainer, if one exists, within six hours after the demand, shall forfeit to the party so detained the sum of $500. (Dec. 23, 1963, 77 Stat. 584, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–805 (Mar. 3, 1901, ch. 854, § 1147, 31 Stat. 1372).

Changes are made in phraseology.

§ 16–1906. Inquiry into cause of detention; bail; bond

On the return of a writ of habeas corpus issued pursuant to this chapter and the production of the person detained, the court or judge shall immediately inquire into the legality and propriety of the confinement or detention. If it appears that the person is detained without legal warrant or authority, the court or judge shall immediately release or discharge him. If the court or judge deems his detention to be lawful and proper, the court or judge shall remand him to the same custody, or, in a proper case, admit him to bail, if he is confined on a charge of having committed a bailable criminal offense. If he is bailed, the court or judge shall require a sufficient bond or recognizance to answer in the proper court, and transmit it to that court. (Dec. 23, 1963, 77 Stat. 584, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–806 (Mar. 3, 1901, ch. 854, § 1148, 31 Stat. 1373; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Changes are made in phraseology.

NOTES TO DECISIONS

I. UNDER PRIOR LAW

Admissibility of evidence

Official hospital records concerning a shooting in a Maine hospital were properly received in evidence in habeas corpus proceeding where issue was whether petitioner was sane or insane. *Williams* v. *Overholser* (1945, 151 F. 2d 457, 80 U.S. App. D.C. 235, certiorari denied 66 S. Ct. 957, 327 U.S. 808, 90 L. Ed. 1032).

Examination in mental cases

Where petitioner seeks writ of habeas corpus to obtain release from confinement in mental hospital on ground that his mental health is restored, and petitioner demands an examination by independent experts, or in a doubtful case, even in absence of such a demand, it is the right of court to seek assistance of Commission on Mental Health in determining sanity of petitioner. *De Marcos* v. *Overholser* (1943, 137 F. 2d 698, 78 U.S. App. D.C. 131, certiorari denied 64 S. Ct. 157, 320 U.S. 785, 88 L. Ed. 472, rehearing denied 64 S. Ct. 204, 320 U.S. 813, 88 L. Ed. 491).

In habeas corpus proceeding where petitioner sought release from confinement on ground that his mental health was restored, and requested that court provide expert witnesses in petitioner's behalf, not members of Commission on Mental Health, court denying request should have offered petitioner an examination by the Commission, but defect was cured by petitioner's insistence in appellate court that such relief if offered would be refused. *Id.*

Section 21–308 establishing the Commission of Mental Health vests a discretion in court to require the Commission's expert assistance in a habeas corpus proceeding

in which by reason of his poverty petitioner is unable to secure the testimony of other professional witnesses. *Id.*

In habeas corpus proceeding by petitioner who has been duly committed to hospital for insane, the issue which must ultimately be decided is whether petitioner has sufficiently recovered from mental disease so that he may safely be released, and if despite judgment of hospital staff that petitioner has not recovered, there is substantial doubt on the question, it becomes duty of court to see that a new judgment on petitioner's sanity is made according to statutory procedure. *Overholser* v. *De Marcos* (1945, 149 F. 2d 23, 80 U.S. App. D.C. 91, certiorari denied 65 S. Ct. 1579, 325 U.S. 889, 89 L. Ed. 2002, rehearing denied 66 S. Ct. 16, 326 U.S. 805, 90 L. Ed. 490).

If proceeding to determine mental condition of a civilian committed to hospital for insane was originally commenced but was not properly carried out and if judge, to whom petition for writ of habeas corpus is presented, is satisfied that, as a consequence, the petitioner was improperly committed, the judge should order that proceedings be reopened and a proper determination made of the petitioner's present mental condition. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

The frequency with which reexamination regarding present mental condition of a person committed to hospital for insane should be required must depend, in each case, upon the petition presented, the type of insanity for which petitioner was originally committed, time elapsed since last inquiry, and other considerations on record, of which judge is required to take judicial notice. *Id.*

In habeas corpus proceeding by petitioner who had been duly committed to hospital for insane pursuant to statutory provisions therefor, the only question before court was whether record raised sufficient doubt as to petitioner's insanity at present time to justify reopening commitment proceeding. *Ex parte De Marcos* (D.C.D.C. 1946, 65 F. Supp. 231).

Expert testimony

An inmate of hospital for insane, petitioning for writ of habeas corpus, may demand the expert testimony of members of the Commission on Mental Health, or court of its own motion may require such testimony. *Overholser* v. *De Marcos* (1945, 149 F. 2d 23, 80 U.S. App. D.C. 91, certiorari denied 65 S. Ct. 1579, 325 U.S. 889, 89 L. Ed. 2002, rehearing denied 66 S. Ct. 16, 326 U.S. 805, 90 L. Ed. 490).

Insane persons

In habeas corpus proceeding, it is not function of judge to determine mental condition of a person who has been committed for insanity, but purpose of such proceeding is rather to determine whether substantial doubt of insanity exists which requires an order reopening proceeding under which petitioner was originally committed to hospital. *Overholser* v. *De Marcos* (1945, 149 F. 2d 23, 80 U.S. App. D.C. 91, certiorari denied 65 S. Ct. 1579, 325 U.S. 889, 89 L. Ed. 2002, rehearing denied 66 S. Ct. 16, 326 U.S. 805, 90 L. Ed. 490).

If original commitment to hospital for insane was made under U.S. Code, title 24, § 191, which authorizes detention of insane persons in military service on order of military authority, and the judge, to whom petition for writ of habeas corpus is presented, is satisfied that a sufficient showing of present sanity is made, the judge should order that petitioner be released unless, within a reasonable time specified, the proper military authority orders his recommitment. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

Where there was evidence in habeas corpus proceeding that petitioner, who had been convicted of manslaughter in Canada and sentenced to life imprisonment prior to his removal to United States, continued to be a person of unsound mind and was not a proper person to be at large, he should be committed to custody of superintendent of hospital of which he had been an inmate pending disposition of appeal from order discharging him, or further order of court *Overholser* v. *De Marcos* (1945, 147 F. 2d 145, 79 U.S. App. D.C. 397).

Involuntary confessions

The question whether an involuntary confession was received in evidence in criminal prosecution could not be retried by habeas corpus. *Eury* v. *Huff* (1945, 146 F. 2d 17, 79 U.S. App. D.C. 289).

Judicial notice

In ruling on petition for writ of habeas corpus, court could take judicial notice of its record showing a denial of a prior petition for habeas corpus. *Rookard* v. *Huff* (1945, 145 F. 2d 708, 79 U.S. App. D.C. 291).

In habeas corpus proceeding by bankrupts who had been committed to jail for failure to comply with order directing them to turn over certain assets to bankruptcy trustee, justice of federal appellate court could take judicial notice of fact that on former appeals of the bankrupts it was clearly made to appear that bankrupts had been guilty of gross fraud upon bankruptcy court. *In re Gersing* (1944, 145 F. 2d 481, 79 U.S. App. D.C. 245).

Jurisdiction of military commission

Charge that enemies with purpose of destroying war materials and utilities entered or after entry remained in United States territory without uniform alleged an offense which the President was authorized to order tried by military commission and the President's order convening the commission and laying down the procedure to be followed on trial before the commission and for review of its findings and sentence and the procedure followed by the commission were lawful so that the accused were not entitled to discharge on habeas corpus. *Ex parte Quirin* (1942, 63 S. Ct. 2, 317 U.S. 1, 87 L. Ed. 3).

Writs of habeas corpus were properly denied petitioners held in custody for trial before military commission appointed by the President, on grounds that the President was authorized to order trial before commission, that commission was lawfully constituted and that petitioners were held in lawful custody. *Id.*

Moot questions

Where husband had been improperly imprisoned for contempt for noncompliance with order awarding maintenance pendente lite and suit money, in wife's suit for maintenance, the fact that he had been released from custody on giving bond for satisfaction of contempt judgment did not require dismissal of appeal from order denying writ of habeas corpus as "moot", since husband was in custody of law and was restrained of his liberty. *Bates* v. *Bates* (1944, 141 F. 2d 723, 79 U.S. App. D.C. 14).

New evidence

Contention on habeas corpus petition that the murder for which petitioner was convicted did not take place as alleged could not be raised by writ of habeas corpus but only on a motion for new trial on the ground of newly discovered evidence. *Jordon* v. *Clemmer* (D.C.D.C. 1948, 80 F. Supp. 539).

Presumptions

Presumption existed that staff of hospital for insane was competent and that its opinion regarding sanity of an inmate, based on observation and treatment, was correct. *Overholser* v. *De Marcos* (1945, 149 F. 2d 23, 80 U.S. App. D.C. 91, certiorari denied 65 S. Ct. 1579, 325 U.S. 889, 89 L. Ed. 2002, rehearing denied 66 S. Ct. 16, 326 U.S. 805, 90 L. Ed. 490).

In determining whether evidence in habeas corpus proceeding by petitioner who had been duly committed to hospital for insane raised doubt regarding validity of judgment of hospital staff sufficient to require reopening of commitment proceeding, presumption that persons legally committed to hospital for insane are insane was to be considered. *Id.*

The presumption in favor of regularity of judicial proceeding must be fully indulged in habeas corpus proceeding. *Jones* v. *Huff* (1946, 152 F. 2d 14, 80 U.S. App. D.C. 254).

Purpose

A hearing on habeas corpus is not intended as a substitute for functions of a trial court. *Pelley* v. *Botkin* (1946, 152 F. 2d 12, 80 U.S. App. D.C. 251).

Release of petitioner

In habeas corpus proceeding, judgment should not order unconditional release of a person committed for

insanity. *Overholser* v. *De Marcos* (1945, 149 F. 2d, 23, 80 U.S. App. D.C. 91, certiorari denied 65 S. Ct. 1579, 325 U.S. 889, 89 L. Ed. 2002, rehearing denied 66 S. Ct. 16, 326 U.S. 805, 90 L. Ed. 490).

A person held in hospital for insane because of insanity should not be ordered released, unconditionally, in a habeas corpus proceeding. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

If a civilian is committed to hospital for insane without a judicial determination of his mental condition, the judge in habeas corpus proceeding, should order that the petitioner be released unless, within a reasonable time specified, a proper proceeding shall have been commenced to secure such a judicial determination. *Id.*

A parole violator, who was returned to prison without permitting counsel who had previously represented prisoner to appear in his behalf or permitting his employer to testify, was entitled to release in habeas corpus proceeding. *Fleming* v. *Tate* (1946, 156 F. 2d 848, 81 U.S. App. D.C. 205).

Remand

Where petition for habeas corpus was inexpertly drawn by unschooled petitioner but petition did allege as defects in proceedings leading to imprisonment that petitioner was denied assistance of counsel at preliminary hearing and arraignment, that he was innocent of alleged crime, that his prior prison record was called to jury's attention and that his counsel failed to take promised appeal, order dismissing petition would be reversed and case remanded for amendment of petition and hearing on the merits. *Council* v. *Clemmer* (1948, 165 F. 2d 249, 83 U.S. App. D.C. 42). See, also, *Council* v. *Clemmer* (1949, 177 F. 2d 22, 85 U.S. App. D.C. 74, certiorari denied 70 S. Ct. 150, 338 U.S. 880, 94 L. Ed. 540).

Res judicata

The rule of res judicata does not apply in habeas corpus proceedings but the trial judge to whom petition is presented may examine the record in making his determination whether its allegations are sufficient, and he may do so even without issuing a rule to show cause. *Rookard* v. *Huff* (1945, 145 F. 2d 708, 79 U.S. App. D.C. 291).

Where contention that jurors in second criminal trial were not impartial was made and supported by evidence in second habeas corpus proceeding which was dismissed and third petition for writ of habeas corpus showed that new evidence was in petitioner's possession when he filed second petition, and no reason was offered for not presenting the proof in second proceeding, controlling weight was properly given to the prior adjudication, and third petition was properly dismissed. *Pope* v. *Huff* (1944, 141 F. 2d 727, 79 U.S. App. D.C. 18).

The doctrine of res judicata does not apply to habeas corpus proceedings, but the fact that same issues have been decided in a former proceeding may, as a matter of judicial discretion, be given controlling weight. *Pope* v. *Huff* (1944, 141 F. 2d 727, 79 U.S. App. D.C. 18). See, also, *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

Where District Court had jurisdiction in first instance to try petitioner and, before trial, had denied a motion to suppress evidence, the admission of the evidence was not such a denial of constitutional rights as to cause district court to lose jurisdiction, and writ of habeas corpus sought on theory that court had lost jurisdiction was properly denied. *Fowler* v. *Gill* (1946, 156 F. 2d 565, 81 U.S. App. D.C. 167, certiorari denied 67 S. Ct. 352, 329 U.S. 791, 91 L. Ed. 677, rehearing denied, 67 S. Ct. 488, 329 U.S. 832, 91 L. Ed. 705).

A determination in habeas corpus proceeding is not strictly res judicata but the court will not grant a second writ raising the same point that was thoroughly tried out and determined in the prior proceeding, except under extraordinary circumstances. *Jordon* v. *Clemmer* (D.C. D.C. 1948, 80 F. Supp. 539).

Review

Presentation for judicial review of petition for writ of habeas corpus is the "institution of a suit" so that the denial by federal district court of leave to file the petition was a "judicial determination" reviewable on appeal to the United States Court of Appeals for the District of Columbia and reviewable in the Supreme Court by certiorari. *Ex parte Quirin* (1942, 63 S. Ct. 2, 317 U.S. 1, 87 L. Ed. 3).

On application for leave to file petition for habeas corpus to determine authority of the President to order accused charged with violating the law of war tried by military tribunal and on petition for certiorari to review orders of district court denying application for leave to file petition for habeas corpus, the Supreme Court was not concerned with any question of guilt or innocence of the petitioners. *Id.*

Where first specification of charge against accused set forth violation of the law of war triable by military commission on application for leave to file petitions for habeas corpus and for certiorari to review orders of district court denying applications for such leave, the Supreme Court would not consider whether other charges were sufficient. *Id.*

Allegedly erroneous rulings on questions of evidence could be considered only on an appeal from the criminal sentence itself and could not be availed of in a habeas corpus proceeding, since the "writ of habeas corpus" is not a substitute for such an appeal. *Curtis* v. *Rives* (1942, 123 F. 2d 936, 75 U.S. App. D.C. 66).

Where charges that accused was not adequately represented in criminal trial and that he was denied the right of the assistance of counsel in perfecting appeal from judgment of conviction were not within the issues in habeas corpus hearing, and there was no finding of fact in respect of either of them, the reviewing court could not consider those charges on appeal from final order entered in habeas corpus proceeding. *Id.*

Where evidence was conflicting as to whether person seeking discharge on writ of habeas corpus was insane, conclusions of trial court which discharged the writ on ground that petitioner was still insane could not be disturbed on appeal. *Williams* v. *Overholser* (1945, 151 F. 2d 457, 80 U.S. App. D.C. 235, certiorari denied 66 S. Ct. 957, 327 U.S. 808, 90 L. Ed. 1032).

Right to jury trial

In habeas corpus for release from an insane asylum petitioner is not entitled to jury trial, although the court may call a jury to render an advisory verdict. *Barry* v. *White* (1933, 64 F. 2d 707, 62 App. D.C. 69).

The right to a jury trial does not exist on the issue of insanity in a habeas corpus proceeding. *De Marcos* v. *Overholser* (1943, 137 F. 2d 698, 78 U.S. App. D.C. 131, certiorari denied 64 S. Ct. 157, 320 U.S. 785, 88 L. Ed. 472, rehearing denied 64 S. Ct. 204, 320 U.S. 813, 88 L. Ed. 491).

In habeas corpus proceeding by petitioner who had been duly committed to hospital for insane pursuant to statutory provisions therefor, the record raised sufficient doubt as to petitioner's insanity at present time to require a reexamination of his mental condition by the Commission on Mental Health in accordance with § 21–308 et seq. under which he was committed. *Ex parte De Marcos* (D.C.D.C. 1946, 65 F. Supp. 231).

Scope of review

The scope of review on habeas corpus is limited to examination of the jurisdiction of the court whose judgment of conviction is challenged and does not include the consideration of guilt or innocence of the petitioner. *Evans* v. *Rives* (1942, 126 F. 2d 633, 75 U.S. App. D.C. 242).

A judgment of conviction in criminal case cannot be attacked in habeas corpus proceeding except on jurisdictional grounds. *Blount* v. *Huff* (1944, 144 F. 2d 21, 79 U.S. App. D.C. 204, certiorari denied 65 S. Ct. 276, 323 U.S. 789, 89 L. Ed. 628).

Facts of record with regard to what occurred at a trial cannot be attacked on habeas corpus. *Williams* v. *Huff* (1944, 142 F. 2d 91, 79 U.S. App. D.C. 31).

Even if postponement of sentence under first conviction until after second conviction vitiated sentence imposed under first conviction, eligibility to parole, which might be affected, could not be tried in habeas corpus. *Pope* v. *Huff* (1944, 141 F. 2d 727, 79 U.S. App. D.C. 18).

In habeas corpus proceeding by petitioner who had been duly committed to hospital for insane, the only question before court was whether evidence raised a doubt regarding validity of judgment of hospital staff sufficient to

require reopening of commitment proceeding. *Overholser* v. *De Marcos* (1945, 149 F. 2d 23, 80 U.S. App. D.C. 91, certiorari denied 65 S. Ct. 1579, 325 U.S. 889, 89 L. Ed. 2002, rehearing denied 66 S. Ct. 16, 326 U.S. 805, 90 L. Ed. 490).

Where writ of habeas corpus is sought on ground that court which committed petitioner lost jurisdiction because of denial of petitioner's constitutional rights, the writ may be used not only to search record, but to inquire into facts regardless of whether they appear on record, thus giving to person in custody a judicial inquiry into truth and essence of the causes of his detention. *Dorsey* v. *Gill* (1945, 148 F. 2d 857, 80 U.S. App. D.C. 9, certiorari denied 65 S. Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003).

Where petitioner had been brought to the District of Columbia from a federal penitentiary outside the District on a writ of habeas corpus ad prosequendum, petitioner could not in habeas corpus proceeding to obtain his release under the prior writ have the court examine alleged errors in the prior trial which resulted in his confinement in penitentiary. *Noble* v. *Botkin* (1946, 153 F. 2d 228, 80 U.S. App. D.C. 354).

On writ of habeas corpus, District Court had no jurisdiction to review on merits a revocation of a parole by the Board of Indeterminate Sentence and Parole of District of Columbia, and only issue was whether petitioner had been deprived of his legal rights by manner in which revocation hearing was conducted. *In re Tate* (D.C.D.C. 1946, 63 F. Supp. 961).

When directed to an inquiry into cause of imprisonment in judicial proceedings, scope of review on habeas corpus extends only to questions affecting jurisdiction of the court and sufficiency in point of law of the proceedings. *Council* v. *Clemmer* (1948, 165 F. 2d 249, 93 U.S. App. D.C. 42). See, also, *Council* v. *Clemmer* (1949, 177 F. 2d 22, 85 U.S. App. D.C. 74, certiorari denied 70 S. Ct. 150, 338 US. 880, 94 L. Ed. 540).

The guilt or innocence of the petitioner is a matter that cannot be reviewed in a habeas corpus proceeding which is limited to questions of jurisdiction and questions of constitutional rights. *Jordon* v. *Clemmer* (D.C.D.C. 1948, 80 F. Supp. 539).

Sufficiency of evidence

Sufficiency of evidence to support a conviction is not jurisdictional and is not open to review in habeas corpus proceeding. *Eury* v. *Huff* (1945, 146 F. 2d 17, 79 U.S. App. D.C. 289).

Evidence was insufficient to sustain order in habeas corpus proceeding discharging petitioner from custody of hospital for insane on ground that petitioner was sane. *Overholser* v. *De Marcos* (1945, 149 F. 2d 23, 80 U.S. App. D.C. 91, certiorari denied 65 S. Ct. 1579, 325 U.S. 889, 89 L. Ed. 2002, rehearing denied 66 S. Ct. 16, 326 U.S. 805, 90 L. Ed. 490).

In habeas corpus proceeding by inmate of hospital for insane, that inmate's conduct in hospital was orderly, was not, standing alone, evidence that inmate should be released. *Id.*

Evidence was insufficient to sustain finding in habeas corpus proceeding that seventeen-year-old boy intelligently waived his constitutional right to counsel in criminal case. *Williams* v. *Huff* (1945, 146 F. 2d 867, 79 U.S. App. D.C. 326).

In habeas corpus proceeding, record sustained determination that petitioner continued to be of unsound mind and justified judgment recommitting her to custody of authorities at hospital. *Anders* v. *Overholser* (1948, 168 F. 2d 151, 83 U.S. App. D.C. 394).

Trial procedure

Where petitioner founded his habeas corpus petition on U.S. Const. Amend. 6, charging that he was not confronted with witnesses against him, in that police deliberately withheld certain persons from testifying, but it appeared that petitioner was present at trial when government witnesses were called and that his counsel cross-examined those witnesses, petitioner's real charge was not denial of the right of confrontation as such, but suppression or concealment of evidence or favorable witnesses, which the reviewing court could assume would have been a denial of "due process of law" in violation of U.S. Const. Amend. 5. *Curtis* v. *Rives* (1942, 123 F. 2d 936, 75 U.S. App. D.C. 66).

Evidence, including uncontradicted showing that names of certain witnesses were not only known to accused's counsel at time of criminal trial, but also that "police incidental" on which those names were written was in possession of his counsel at that time, refuted accused's charges, made the basis of a petition for habeas corpus, that accused was not confronted with witnesses against him, in that police deliberately withheld certain persons from testifying, and that jurisdiction to convict and sentence accused was lost through denial of a constitutional right under U.S. Const. Amend. 5. *Id.*

In habeas corpus proceeding, evidence was insufficient to show that subpoenas issued to witnesses in accused's behalf were not served and that thereby accused was denied compulsory process for obtaining witnesses in his own behalf. *Id.*

An accused could not properly through his counsel argue to the jury in a criminal case that the testimony of named witnesses not called by the government must have been unfavorable to the government and contend in habeas corpus proceeding that he did not know of those witnesses. *Id.*

Where substance of petitioner's allegation was that he pleaded guilty on advice of his counsel and received a longer sentence than both hoped would be imposed, the petition was not sufficient to show that petitioner did not intelligently consent to waiver of jury trial and summary denial of petition for writ of habeas corpus was not improper. *Monroe* v. *Huff* (1944, 145 F. 2d 249, 79 U.S. App. D.C. 246).

Failure of counsel to file appeal, not discovered by accused until after time for appeal had elapsed, was not alone ground for discharge on habeas corpus. *Council* v. *Clemmer* (1948, 165 F. 2d 249, 83 U.S. App. D.C. 42). See, also, *Council* v. *Clemmer* (1949, 177 F. 2d 22, 85 U.S. App. D.C. 74, certiorari denied 70 S. Ct. 150, 338 U.S. 880, 94 L. Ed. 540).

Trial proceedings

A petition for writ of "habeas corpus" may properly be used to challenge the jurisdiction of a court, but it cannot be used to review inconsistencies or even errors of law committed by a court of competent jurisdiction which are proper matters for review on appeal, but not on appeal from an order dismissing a petition for writ of habeas corpus. *Watkins* v. *Rives* (1942, 125 F. 2d 33, 75 U.S. App. D.C. 109).

Where petitioner, seeking writ of habeas corpus, had been adjudged guilty of contempt for failure to comply with order requiring him to turn over assets of deceased's estate, inconsistency, if any, between the turnover order which assumed that petitioner had possession of assets, and verdict of jury that petitioner had disposed of assets other than to the use of deceased, was not proper subject for review on habeas corpus. *Id.*

Where petitioner, seeking writ of habeas corpus, had been adjudged guilty of contempt for failure to comply with order requiring him to turn over assets of deceased's estate, alleged inconsistency between contempt decree and the turnover order, based on alternative nature of the turnover order, and the theory that a remedy at law was elected by entering judgment, with execution as at law, on the verdict evaluating the eloigned assets was not a proper subject for review on habeas corpus. *Id.*

Writ of habeas corpus cannot be used to inquire into official misconduct occurring prior to indictment and having no bearing on procedure of trial or upon jurisdiction of trial court. *Eury* v. *Huff* (1945, 146 F. 2d 17, 79 U.S. App. D.C. 289).

The use of writ of habeas corpus on ground that, during trial, defendant's constitutional rights were so far denied that court lost jurisdiction, is not justifiable unless circumstances are so exceptional that it is the only means of preserving those rights. *Fowler* v. *Gill* (1946, 156 F. 2d 565, 81 U.S. App. D.C. 167, certiorari denied 67 S. Ct. 352, 329 U.S. 791, 91 L. Ed. 677 rehearing denied 67 S. Ct. 488, 329 U.S. 832, 91 L. Ed. 705).

Waiver of counsel

In habeas corpus proceeding presenting issue whether 17 year old boy competently and intelligently waived right to counsel in criminal case, the District Court should have taken evidence and determined whether, in light of his age, education and information, and all other

pertinent facts, he sustained burden of proving that his waiver was not competently and intelligently made. *Williams* v. *Huff* (1944, 142 F. 2d 91, 79 U.S. App. D.C. 31).

Where record in prosecution for assault with dangerous weapon showed that accused was informed of his right to counsel and undertook to waive the right, but did not show that the waiver was competently and intelligently made, that issue was required to be determined in habeas corpus proceeding. *Id.*

Record of previous conviction which showed that accused was advised of his constitutional right to counsel which he expressly waived could not be attacked by oral testimony in habeas corpus proceeding. *Id.*

Where petitioner seeking writ of habeas corpus was seventeen years old at time of his plea of guilty, it created an inference of fact that his waiver of constitutional right to counsel was not intelligent, and corroborated testimony that he entered plea on advice of other prisoners who informed him that such a plea would give him a better chance for probation. *Id.*

Evidence of extreme nervousness and depression failed to establish, as ground for setting aside sentence on habeas corpus, incompetency of accused to waive indictment, trial by jury, and representation by counsel, and plead guilty to information charging housebreaking and grand and petit larceny. *Solis* v. *Clemmer* (1948, 168 F. 2d 155, 83 U.S. App. D.C. 113, certiorari denied 68 S. Ct. 1519, 334 U.S. 860, 92 L. Ed. 1781).

II. Under Present Law

Release of petitioner

Where accused was present within District of Columbia only because of his counsel's request that he be brought into District for interviews, habeas corpus challenging his detention in Virginia reformatory would not lie in the District. *Ginyard* v. *Clemmer* (1966, 357 F. 2d 291, 123 U.S. App. D.C. 100).

§ 16–1907. Traversing return; pleading; witnesses

A person at whose instance or in whose behalf a writ of habeas corpus has been issued may traverse the return thereto, or plead any matters showing that there is not a sufficient legal cause for his confinement or detention. The court of judge may issue process for witnesses or for the production of papers, which shall be served and enforced in like manner as similar process issued in a cause pending in the court, if the court or judge is satisfied as to the materiality of the testimony proposed to be adduced. (Dec. 23, 1963, 77 Stat. 584, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–807 (Mar. 3, 1901, ch. 854, § 1149, 31 Stat. 1373; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Minor changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Decree of state court

In habeas corpus proceeding in the District for the custody of a minor child, a decree, in a state court having jurisdiction, awarding divorce and the custody of the child, is conclusive. *Burrowes* v. *Burrowes* (1935, 78 F. 2d 742, 64 App. D.C. 392).

§ 16–1908. Right of other persons to writ

A person entitled to the custody of another person, unlawfuly confined or detained by a third person, as a parent, guardian, committee, or husband, entitled to the custody of a minor child, ward, lunatic, or wife, upon application to the court or a judge as provided by this chapter, and showing just cause therefor, under oath, is entitled to a writ of habeas corpus, directed to the person confining or detaining, requiring him forthwith to appear and produce before the court or judge the person so detained, and the same proceedings shall be had in relation thereto as provided for by this chapter. The court or judge, upon hearing the proofs, shall determine which of the contesting parties is entitled to the custody of the person so detained, and commit the custody of the person to the party legally entitled thereto. (Dec. 23, 1963, 77 Stat. 584, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., § 16–808 (Mar. 3, 1901, ch. 854, § 1150, 31 Stat. 1373; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Minor changes are made in phraseology.

Cross Reference

Custody of children in divorce cases, see § 16–911.

NOTES TO DECISIONS UNDER PRIOR LAW

Abuse of discretion

In habeas corpus proceeding brought by illegitimate child's mother who sought control and custody of child who was in control of nonparent, awarding of custody of child to mother was not an abuse of discretion, where mother had made persistent efforts to obtain child and evidence indicated that she was a presently fit mother. *Bell et al.* v. *Leonard* (1958, 251 F. 2d 890, 102 U.S. App. D.C. 179).

Child's welfare, determination of

Where only action taken because of mother's violation of order awarding custody to grandfather was to cut off meager sum of $5 a week alimony and $15 a week for support of children, neither the violation of the order nor the retaliation could be given weight in determining question of children's present welfare, in habeas corpus proceeding instituted by grandfather after the children had become accustomed to home their mother had established and to schools of city in which the mother resided. *Cook* v. *Cook* (1943, 135 F. 2d 945, 77 U.S. App. D.C. 388).

In habeas corpus proceeding by parent to obtain custody of child, what is best for the child, rather than the natural right of the parent, is the controlling factor. *Holtsclaw* v. *Mercer* (1944, 145 F. 2d 388, 79 U.S. App. D.C. 252).

The rights of parent to child are secondary to welfare of child and the child's well-being is the paramount consideration. *Id.*

When jurisdiction of court is invoked to determine custody of a minor child, the court acts, not as an arbiter between contesting parents determining adversary rights in human chattels, but as parens patriae, protecting the child whose custody is in dispute and making its award solely according to the interest and welfare of the child, regardless of the settled or transient character of the parents' residence, or even of a child abandoned by its parents. *Langan* v. *Langan* (1945, 150 F. 2d 979, 80 U.S. App. D.C. 189).

In proceeding involving custody of children, where the pleadings and evidence reveal a situation which required action, court must act on behalf of the children and for their protection, regardless of anything previously said or done by any court, and the function of the Court of Appeals is only to review the question whether the trial court properly exercised its discretion with a view to the present welfare of the children. *Boone* v. *Boone* (1945, 150 F. 2d 153, 80 U.S. App. D.C. 152).

In determining custody of children, the question for the court is the welfare of the children which overrides all other considerations, even where the proceeding is in habeas corpus, and the rights of the parents must yield to the interests and welfare of the children. *Id.*

Evidence

Evidence justified trial court in awarding custody of a minor child to its father as against the claims of the divorced mother who had been awarded the child's custody by decree in another state. *Langan* v. *Langan* (1945, 150 F. 2d 979, 80 U.S. App. D.C. 189).

Examination of parents' qualifications

In proceeding involving custody of children, the decision should not be based upon the adversary rights of the parents, but courts should require that the interest of the children be brought fully before it, and for this purpose the court should call to its aid experienced and disinterested persons, such as its probation officers or social workers in the Board of Public Welfare to make an unbiased examination of the qualifications of the parents and the circumstances which surround the children. *Boone* v. *Boone* (1945, 159 F. 2d 153, 80 U.S. App. D.C. 152).

Foreign decree

An order of the Maryland court awarding custody of a child to divorced mother, did not preclude a court of equity from assuming concurrent jurisdiction and passing subsequent orders relating to the custody of the child as its present welfare and happiness might warrant. *Langan* v. *Langan* (1945, 150 F. 2d 979, 80 U.S. App. D.C. 189).

A West Virginia order awarding custody of a minor to paternal grandmother, and adjudging the minor's mother in contempt for taking the child to the District of Columbia, was not binding on District of Columbia court in habeas corpus proceeding, although entitled to due weight, since ultimate question was the child's present and future welfare. *Kirk* v. *Kirk* (1945, 150 F. 2d 589, 80 U.S. App. D.C. 183).

Where order of West Virginia court awarding custody of minor to paternal grandmother was grounded on circumstance that the child could best recover from illness in the grandmother's home, but child had recovered from illness and was residing with the mother in the District of Columbia, the West Virginia order was not binding on the District of Columbia court which should determine, with the aid of whatever information might be obtainable from disinterested and experienced observers, what custody would best promote the child's welfare. *Id.*

Full faith and credit

A California decree determining custody of a child as between divorced parents, which decree was subject to modification at any time during minority of the child, was not entitled to full faith and credit in the District of Columbia in subsequent proceedings in which the paramount consideration was the child's welfare. *Langan* v. *Langan* (1945, 150 F. 2d 979, 80 U.S. App. D.C. 189).

The judgment is entitled to full faith and credit only as to issues considered and judicially determined, and in a custody case, such a judgment is entitled only to qualified consideration in another state where there are changes in circumstances. *Id.*

Guardianship proceedings

The United States District Court holding Probate Court has jurisdiction to grant custody of minors in guardianship cases. *Johnson* v. *Austin* (D.C. Mun. App. 1960, 162 A. 2d 495).

Jurisdiction over guardianship matters is given to United States District Court holding Probate Court, while Domestic Relations jurisdiction is vested in Domestic Relations Branch of the Municipal Court. *Id.*

Jurisdiction

Where grandfather to whom New York court had awarded custody of minor children, instituted habeas corpus proceeding to obtain custody from their mother who had established home for them in District of Columbia, court had jurisdiction and owed to the children who were in District of Columbia duty to protect them and do things which appeared to be best for them without regard to anything any other court had previously done. *Cook* v. *Cook* (1943, 135 F. 2d 945, 77 U.S. App. D.C. 388).

In habeas corpus proceeding for custody of a minor child, where the father had been for some time a government employee stationed in Washington, D.C., and the child had been living with him just over the district line in Maryland for a year and a half, they were in a real sense members of the District of Columbia community and district court had jurisdiction to determine question of custody notwithstanding that the father had taken possession of the child in violation of decree of another state. *Langan* v. *Langan* (1945, 150 F. 2d 979, 80 U.S. App. D.C. 189).

If the court of the jurisdiction in which a child is found concludes that its custodian is unfit, the child may be taken from him and given to another. *Id.*

Children in the District of Columbia are subject to the jurisdiction of its courts as to matters of custody. *Boone* v. *Boone* (1945, 150 F. 2d 153, 80 U.S. App. D.C. 152).

Where United States District Court holding Probate Court once assumed jurisdiction over parties to proceedings involving guardianship of child, that jurisdiction continued for all purposes, and if either party felt aggrieved by the orders of the court his remedy lay with that court or on appeal therefrom. *Johnson* v. *Austin, Guardian etc.* (D.C. Mun. App. 1960, 162 A. 2d 495).

Jurisdiction of the United States District Court holding Probate Court did not stop short of enforcing its own decrees in proceedings to remove guardian of child and appoint another guardian. *Id.*

Lunatic

The writ of habeas corpus in respect of lunacy is one of relief rather than of original adjudication. *Barry* v. *Hall* (1938, 98 F. 2d 222, 68 App. D.C. 850).

Parents as natural guardians

A mother is the natural guardian of her child, even though the child be illegitimate, and as mother and natural guardian she has right to writ of habeas corpus directed to any person unlawfully detaining her minor child to end that child be produced before court which shall determine which of parties is entitled to custody of child. *Bell et al.* v. *Leonard* (1958, 251 F. 2d 890, 102 U.S. App. D.C. 179).

Presumptions

The presumption that small children are better off with their mother is entitled to weight in determining their custody. *Boone* v. *Boone* (1945, 150 F. 2d 153, 80 U.S. App. D.C. 152).

Probate court decrees

Although recourse to District Court may be necessary to effectuate decrees of District Court holding Probate Court, Probate Court is but an arm of District Court and the full judicial machinery of the District Court is available to enforce lawful decrees of its component parts. *Johnson* v. *Austin, Guardian etc.* (D.C. Mun. App. 1960, 162 A. 2d 495).

Even if the United States District Court holding Probate Court were powerless to enforce a custody decree, other avenues are open in the District Court to give litigants relief through enforcement of such a decree. *Id.*

Res judicata

In habeas corpus proceeding by grandfather to obtain custody of three minor children from their mother, prior order of New York court awarding custody to the grandfather was not "res judicata" on question of present welfare of the children where the mother had provided an adequate home for them and they had become accustomed to schools of city in which mother resided. *Cook* v. *Cook* (1943, 135 F. 2d 945, 77 U.S. App. D.C. 388).

An order regarding custody of minor children is conclusive regarding all matters prior to its promulgation, but doctrine of "res judicata" cannot settle question of children's welfare for all time to come, and it cannot prevent a court at a subsequent time from determining what is best for the children at that time. *Id.*

Judgments adverse to the father, both in North Carolina and in the District of Columbia, which he had failed to obey, were not res judicata of subsequent action brought by the children by their next friend to determine their custody so as to deprive the District Court of jurisdiction. *Boone* v. *Boone* (1945, 150 F. 2d 153, 80 U.S. App. D.C. 152).

A custody award is subject to change, upon a proper showing, so long as the court has control of the child, and when the child comes under the control of another jurisdiction, its courts have equal power, and only to the extent that issues presented in the earlier case were judicially determined does the doctrine of res judicata and the full faith and credit clause apply. *Id.*

Father's removal, after Pennsylvania habeas corpus decree awarding him custody of child, from apartment in which he was living with sister and brother-in-law to

another apartment in which he lived alone with 7-year-old child who was without supervision during the day while father was engaged with his employment was such a substantial change in conditions surrounding child that Pennsylvania decree was not res judicata, and custody of child would be awarded to mother who was fit and proper person to care for child and who lived with parents in good residential district of Washington. *Matthews* v. *Matthews* (D.C.D.C. 1948, 80 F. Supp. 560).

Unlawfully confined or detained

Habeas corpus not the proper remedy where the child was not unlawfully confined or detained. *Church* v. *Church* (1921, 270 F. 359, 50 App. D.C. 237). See, also, *Burrowes* v. *Burrowes* (1935, 78 F. 2d 742, 64 App. D.C. 392).

Where father residing in Pennsylvania was awarded custody of child during school year by Pennsylvania decree, and mother residing in District of Columbia was awarded custody of child during Christmas and summer holidays, and mother refused to deliver child to father at end of summer holiday, habeas corpus in United States District Court for District of Columbia was the father's proper remedy. *Matthews* v. *Matthews* (D.C.D.C. 1948, 80 F. Supp. 560).

§ 16–1909. Construction of chapter

This chapter does not affect any provision of chapter 153 of Title 28, United States Code. (Dec. 23, 1963, 77 Stat. 585, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Section is new, and is inserted for the purpose of construction.

Chapter 153 of Title 28, United States Code, also relates to habeas corpus and applies to Federal courts generally, including the United States District Court for the District of Columbia. Upon the reenactment of the provisions carried into this chapter, they will constitute a later enactment than Title 28, United States Code, which was enacted in 1948. Considering the local character of the provisions carried into this chapter, there should not arise, as a general rule, even without this section, any question of conflict. However, this section is inserted as a precautionary measure.

Chapter 21.—JOINT CONTRACTS

Sec.

16–2101. Definition of joint and several contracts.
16–2102. Death of party to the contract.
16–2103. Extinguishment or merger of cause of action.
16–2104. Death after action brought; legal representatives.
16–2105. Proof of joint liability unnecessary; judgment.
16–2106. Separate composition or compromise.

§ 16–2101. Definition of joint and several contracts

For the purposes of action thereon, a contract or obligation entered into by two or more persons, whether:

(1) the persons are partners or joint contractors;

(2) the contract is under seal or not;

(3) it is written or verbal; or

(4) it is expressed to be joint and several or not—

is deemed to to be joint and several. (Dec. 23, 1963, 77 Stat. 585, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–901 (Mar. 3, 1901, ch. 854, § 1205, 31 Stat. 1380).

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS UNDER PRIOR LAW

In general

In the case of a joint and several contract, an unsatisfied judgment against one of the promisees is no bar to a subsequent action against the other, and the statute places a joint contract for the payment of money on the same footing as a several contract, with respect to the right of suit thereon. *Harris* v. *Leonhardt* (1894, 2 App. D.C. 318).

A creditor should not be allowed to sue jointly and separately at the same time, nor prosecute more than one suit, if all the parties bound by the contract can be proceeded against together in a single action. *Id.*

If the contract be joint or joint and several, and the parties be sued jointly, the recovery must be general against the parties, but as to the married woman defendant, the award of execution must be against her sole and separate estate acquired and held under the statute, at the date of the judgment if real estate, or at time of delivery of execution to the marshal, if personal. *Magruder* v. *Belt* (1895, 7 App. D.C. 303).

Executor of joint obligor

Executor of a deceased joint obligor may be sued at law with his co-obligor. *White* v. *Connecticut General Life Ins. Co.* (1910, 34 App. D.C. 460, error dismissed 31 S. Ct. 219, 218 U.S. 684, 54 L. Ed. 1208).

Joint liability

Under contract which called for members of creditor's committee of insolvent corporation to assume responsibility for payment of attorney's fee and under which members of committee were identified as promisors, each member was not bound by a separate promise to pay pro rata share but members were jointly liable for entire fee. *V. B. Welch* v. *R. W. Sherwin et al.* (1962, 300 F. 2d 716, 112 U.S. App. D.C. 124).

Nonsuit as to minors

In a suit against the owners of property, some of whom are minors, to recover a brokerage commission, it is proper, under this section and § 1209 (§ 16–905), after issue joined to enter a nonsuit as to the minors and proceed against the remaining defendants. *Rhees* v. *Morris* (1922, 280 F. 1001, 52 App. D.C. 27).

Issues having been joined a nonsuit may be entered as to the minors, and the suit proceeded against the remaining adult defendants. *Id.*

Remedial in effect

This section "merely affects the remedy. It releates wholly to procedure. It does not convert a joint instrument into a joint and several instrument, or change a joint obligor into a joint and several obligor. The contract and the relations of the obligations of the contractors remain unchanged." *White* v. *Connecticut General Life Ins. Co.* (1910, 34 App. D.C. 460, error dismissed 31 S. Ct. 219, 218 U.S. 684, 54 L. Ed. 1208).

Separate suit

Facts that judgment against some of several defendants, jointly and severally liable, does not extinguish or merge liability of those not served and that those not served may be sued separately under District of Columbia law does not require that those not served be sued separately if they have actually been named as defendants and served but service has been erroneously quashed. *Youpe* v. *Moses et al.* (1954, 213 F. 2d 613, 94 U.S. App. D.C. 21).

§ 16–2102. Death of party to the contract

If a person specified by section 16–2101 dies, his executors, administrators, or heirs are bound by the contract in the same manner and to the same extent as if the contract or obligation were expressed to be joint and several. (Dec. 23, 1963, 77 Stat. 585, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–902 (Mar. 3, 1901, ch. 854, § 1206, 31 Stat. 1380).

Changes are made in phraseology.

§ 16–2103. Extinguishment or merger of cause of action

Where, with respect to a contract specified by section 16–2101, an action is brought against:

(1) all the parties thereto, but service of process is had on some, only, of the defendants; or

(2) some, only, of the parties thereto, and service of process is had on them only—

a judgment against the parties so served does not work an extinguishment or merger of the cause of action on which the judgment is founded as respects the parties not so served. They shall remain liable to be sued separately. (Dec. 23, 1963, 77 Stat. 585 Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–903 (Mar. 3, 1901, ch. 854, § 1207, 31 Stat. 1380).

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS UNDER PRIOR LAW

In general

Where a woman borrowed money under false pretenses but conduct of her husband with regard to transactions was such he became obligated to repay the money borrowed, judgment rendered in action for money lent against the woman in Virginia was no bar to recovery in action for money lent against husband in District of Columbia. *Grimes* v. *Adams* (D.C.D.C. 1952, 105 F. Supp. 30).

Appeal

If, in action for breach of contract, plaintiff, after trial upon merits, secures judgment in his favor against the 12 defendants who answered, he may nevertheless appeal from such judgment upon ground that he was entitled to judgment against two other defendants because quashing of service upon such defendants was erroneous, and judgment against the 12 will not have worked an extinguishment or merger of cause of action against the other two defendants. *Youpe* v. *Moses* (1954, 213 F. 2d 613, 94 U.S. App. D.C. 21).

Separate suit

Facts that judgment against some of several defendants, jointly and severally liable, does not extinguish or merge liability of those not served and that those not served may be sued separately does not require that those not served be sued separately if they have actually been named as defendants and served but service has been erroneously quashed. *Youpe* v. *Moses* (1954, 213 F. 2d 613, 94 U.S. App. D.C. 21).

§ 16–2104. Death after action brought; legal representatives

When one of several defendants in an action dies after the commencement of the action, his legal representatives may be made parties to the action as directed by chapter 1 of Title 12. (Dec. 23, 1963, 77 Stat. 585, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–904 (Mar. 3, 1901, ch. 854, § 1208, 31 Stat. 1380).

Minor changes are made in phraseology.

§ 16–2105. Proof of joint liability unnecessary; judgment

In actions ex contractu against alleged joint debtors it is not necessary for the plaintiff to prove their joint liability as alleged in order to maintain his action. He is entitled to recover, as in actions ex delicto, against such of the defendants as are shown by the evidence to be jointly indebted to him, or against one only, if he alone is shown to be indebted to him, and judgment shall be rendered as if the others had not been joined in the action. (Dec. 23, 1963, 77 Stat. 585, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–905 (Mar. 3, 1901, ch. 854, § 1209, 31 Stat. 1380).

Minor changes are made in phraseology.

§ 16–2106. Separate composition or compromise

Any one of several joint debtors when their debt is overdue, may make a separate composition or compromise with their creditors, with the same effect as is provided in the case of parties by chapter 2 of Title 41. (Dec. 23, 1963, 77 Stat. 585, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–906 (Mar. 3, 1901, ch. 854, § 1210, 31 Stat. 1380).

The only change is the substitution, for the reference to "sections 41–101 to 41–131, 41–201 to 41–204", of a reference to the particular chapter in Title 41 relating to separate composition or compromise settlements with creditors, upon the dissolution of partnerships. Chapter 2 of Title 41 of D.C. Code, 1961 ed., embraces sections 41–201 to 41–204, cited above. The other sections cited above are not relevant.

NOTES TO DECISIONS UNDER PRIOR LAW

No release of other judgment debtors

Compromise with one of several judgment debtors, and an entry of a satisfaction of the judgment as to him, will not operate as a release of the other judgment debtors. *Bunch* v. *United States ex rel. Keppler* (1913, 40 App. D.C. 156).

Chapter 23.—JUVENILE COURT PROCEEDINGS

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SUBCHAPTER I.—JUVENILE DELINQUENCY PROCEEDINGS AND RELATED MATTERS

§ 16–2301. Definitions

As used in this subchapter:

"adult" means a person 18 years of age or older; and

"child" means a person under 18 years of age. (Dec. 23, 1963, 77 Stat. 586, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961, ed., § 11–906 (Mar. 19, 1906, ch. 960, § 5, 34 Stat. 73; June 1, 1938, ch. 309, 52 Stat. 596).

Section is based on subsec. (b) of section 11–906 of D.C. Code, 1961 ed. For remainder of that section, see tables.

The provisions defining "the court" as meaning the juvenile court of the District of Columbia, and "judge" as meaning the judge of the juvenile court, are omitted as unnecessary. Section 16–2302 gives the complete name of the court, and the other sections in this subchapter are reworded or related so that there is no question as to what court and judge are meant. Further, there are now three judges of the court. See, also, section 11–1551 vesting in the Juvenile Court jurisdiction of matters to which this subchapter relates, and other provisions in chapter 15 of Title 11.

Changes are made in phraseology.

The definitions contained in section 11–906 of D.C. Code, 1961 ed., also related to the same terms as used in provisions carried into chapter 15 of Title 11, which are from the same chapter in D.C. Code, 1961 ed. However, as carried into chapter 15 of Title 11, those provisions are reworded in such a way that it is not necessary to extend the reference in the opening clause in this section to that chapter, nor to define the terms as used therein. See revision note under section 11–1551.

§ 16–2302. Information regarding child; investigation; petition; contents

When a person gives to the Director of Social Work of the Juvenile Court of the District of Columbia, or other officer of the court duly designated as his representative, information in his possession that a child is within the provisions of section 11–1551, a duly designated officer of the court shall make preliminary investigation to determine whether the interests of the public or of the child require that further action be taken, and report his finding, together with a statement of the facts, to the Director of Social Work. When practicable, the inquiry shall include a preliminary investigation of the home and environmental situation of the child, his previous history, and the circumstances that were the subject of the information. When the Director of Social Work finds that jurisdiction should be acquired, he shall, after consultation with and approval by the corporation counsel or his assistant assigned to the court, authorize a petition to be filed. Where the Director fails so to find, the person giving information to the Director may present the facts to the corporation counsel or his assistant, who, after investigation by an officer of the court as herein provided, may authorize a petition to be filed. The proceedings shall be entitled, "In the matter of ————, a child under eighteen years of age."

The petition shall be verified by the officer making the investigation, or other person having personal knowledge of the case, and shall allege briefly the facts which bring the child within the provisions of section 11–1551, and shall state the name, age, and residence of—

(1) the child;

(2) his parents;

(3) his legal guardian, if there be one;

(4) the person or persons having custody or control of the child; and

(5) the nearest known relative, if no parent or guardian can be found.

When any of the facts herein required are not known by the petitioner the petition shall so state. (Dec. 23, 1963, 77 Stat. 586, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–908 (Mar. 19, 1906, ch. 960, § 7, 34 Stat. 73; June 1, 1938, ch. 309, 52 Stat. 596 (597)).

NOTES TO DECISIONS

I. UNDER PRIOR LAW

Applicability of Federal Rules

The Federal Rules of Criminal Procedure, 18 U.S.C. App., do not apply to proceedings in the Juvenile Court of the District of Columbia. *United States* v. *White* (D.C.D.C. 1957, 153 F. Supp. 809).

Rule of Criminal Procedure, 18 U.S.C. App., under which government may be required to divulge intent, identity of its informants has no applicability in Juvenile Court proceeding. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

Arraignment without unnecessary delay

Defendant who was 17 years of age at time of his arrest for murder and who was under jurisdiction of the Juvenile Court of the District of Columbia was not entitled to be taken before a committing magistrate without unnecessary delay. *United States* v. *White* (D.C.D.C. 1957, 153 F. Supp. 809).

Double jeopardy

Where purpose and effect of proceedings in juvenile court were to provide a prompt preliminary hearing in order to set a date for trial, if allegations of petitions were denied, or to continue case pending completion of full social study and recommendations for disposition of child, case had not reached stage at which juvenile's liberty had been placed in jeopardy by his acknowledgment that he held a toy gun during alleged robbery, and when trial judge subsequently waived jurisdiction to district court for trial, indictment was not subject to dismissal on ground of double jeopardy. *United States* v. *Dickerson* (1959, 271 F. 2d 487, 106 U.S. App. D.C. 221).

Investigation

Waiver of Juvenile Court's jurisdiction over accused depends on full investigation by Juvenile Court, and petition-summons procedure is required only when director of social work of Juvenile Court finds, after investigation that Juvenile Court jurisdiction should be acquired. *J. L. Green* v. *United States* (1962, 308 F. 2d 303, 113 U.S. App. D.C. 348).

Failure of Juvenile Court to order filing of petition followed by issuance and service of summons did not invalidate Juvenile Court's waiver of jurisdiction over accused where there had been a full investigation before waiver and director of social work of Juvenile Court recommended waiver of jurisdiction. *Id.*

Accused who claims that full investigation was not made by Juvenile Court before its waiver of jurisdiction could make that contention in District Court which upon

sufficient allegations should conduct necessary proceedings to determine whether such investigation was made and whether accused should nevertheless be afforded parens patriae treatment provided in Juvenile Court. *Id.*

Where accused's conviction was reversed for plain error and accused claimed that Juvenile Court's waiver of jurisdiction over him was invalid, on remand District Court should make available for inspection by accused's counsel all pertinent records of Juvenile Court with due regard to necessity of keeping secret any specific parts or sources thereof and such records could be sealed and included in record on any further appeal. *Id.*

"Full investigation" which § 11–914 requires before juvenile court can waive jurisdiction to district court includes informal hearings to determine whether to waive jurisdiction and jeopardy does not attach at that point. *United States* v. *Dickerson* (1959, 271 F. 2d 487, 106 U.S. App. D.C. 221).

Judicial notice

The United States District Court for the District of Columbia would take judicial notice that the procedure in Juvenile Court for District of Columbia provided for a preliminary ex parte investigation by Director of Social Service before determining whether Juvenile Court should take jurisdiction in a case where a juvenile was charged with a crime and that in the meantime, no hearing was held. *United States* v. *White* (D.C.D.C. 1957, 153 F. Supp. 809).

Jurisdiction

Where petition in Juvenile Court in District of Columbia to have infant children declared to be without adequate parental care and to have them committed to Board of Public Welfare, recited that children were then in custody of the Board, and there was no evidence that the children were not residents of the District, and their father was a resident of the District, Juvenile Court would be deemed to have had jurisdiction of children. *In re Lambert et al.* (1953, 203 F. 2d 607, 92 U.S. App. D.C. 104).

Nature of proceedings

Proceedings provided for by the Juvenile Court Act, this subchapter, are not criminal cases and the constitutional safeguards vouchsafed a juvenile in such proceedings are determined from the requirements of due process and fair treatment and not by the direct application of clauses of the Constitution which in terms apply to criminal cases and the Federal Rules of Criminal Procedure, 18 U.S.C. App., do not apply to such proceedings. *Pee* v. *United States* (1959, 274 F. 2d 556, 107 U.S. App. D.C. 47).

Right to counsel

Where minor's probation was revoked and there was no finding that child's commitment to an institution was required in their own best interests and as necessary for protection of society, and mother asked for appointment of an attorney but her request was rejected and liberty of child was in the balance, assistance of counsel was necessary and denial thereof vitiated the proceedings and district court erred in dismissing habeas corpus petition. *McDaniel, as parent etc.* v. *Shea, Director etc.* (1960, 278 F. 2d 460, 108 U.S. App. D.C. 15).

Right to be heard when personal liberty is at stake requires effective assistance of counsel in a juvenile court. *Id.*

A minor who in proceeding wherein his parents were charged with inadequate care of the minor was committed to board of public welfare was not entitled to habeas corpus on ground that he was not represented by counsel in such proceeding since the juvenile court process in effect makes Director of Social Work of juvenile court, who initiates the proceeding, the child's counsel. *In re Custody of a Minor* (1958, 250 F. 2d 419, 102 U.S. App. D.C. 94).

The right to be heard when personal liberty is at stake requires the effective assistance of counsel in a juvenile court as much as it does in a criminal court and juvenile has right to counsel in such a proceeding. *Shioutakon* v. *District of Columbia* (1956, 236 F. 2d 666, 98 U.S. App. D.C. 371, 60 A.L.R. 2d 686).

II. Under Present Law

Appeal

The District of Columbia is a party to a juvenile proceeding and may appeal where it is offended by a ruling of the court. *In re Rice* (D.C. App. 1966, 217 A. 2d 596).

Corporation counsel

For trial judge of juvenile court to call a private conference in chambers after it had been continued to another date, without the knowledge or participation of the legal counsel for District of Columbia for conceded purpose of exploring on judge's own the question of whether there was reasonable ground to believe that minor was involved in sexual assault alleged in petition and then sua sponte dismiss the petition, was in derogation of the right of assistant corporation counsel to fully represent and protect the interests of the municipality and of the public and constituted prejudicial error. *In re Rice* (D.C. App. 1966, 217 A. 2d 596).

The District of Columbia, for protection and best interests of the municipality and of the public, has an inherent role in proceedings of juvenile court; the office of corporation counsel, as duty constituted attorney and chief law officer of the district, is empowered to institute suit on behalf of municipality including all cases within jurisdiction of juvenile court. *Id.*

Intake officer

Judge of juvenile court misconceived functions and authority of intake officer when he took position that intake officer was proper person to consent to dismissal of petition charging a minor with rape rather than the assistant corporation counsel who had appeared on behalf of the District of Columbia and participated in proceedings up to that point since intake officer is but an investigative officer of the juvenile court not empowered by statute to act as legal representative of the District of Columbia or to conduct presentation of evidence and examination of witnesses. *In re Rice* (D.C. App. 1966, 217 A. 2d 596).

§ 16–2303. Summons; notice; custody of child

After a petition has been filed pursuant to section 16–2302, unless the parties hereinafter named voluntarily appear, the court shall issue a summons reciting briefly the substance of the petition, and requiring the person or persons who have custody or control of the child to appear personally and bring the child before the court at a time and place stated. Where the person so summoned is other than the parent or guardian of the child, the parent or guardian or both shall also be notified of the pendency of the case and of the time and place appointed, by personal service before the hearing, except as hereinafter provided. If the child is married, the other spouse shall also be so notified. Summons may be issued requiring the appearance of any other person whose presence is necessary.

Where it appears that the child is in such condition or surroundings that his welfare requires that his custody be immediately assumed by the court, the court may cause to be endorsed upon the summons an order that the officer serving it shall at once take the child into custody. (Dec. 23, 1963, 77 Stat. 587, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–909 (Mar. 19, 1906, ch. 960, § 8, 34 Stat. 73; June 1, 1938, ch. 309, 52 Stat. 596 (598)).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

General appearance

Attorney's entry of appearance for mother in proceeding in Juvenile Court in District of Columbia wherein infant children were found to be without adequate

parental care and were committed to Board of Public Welfare constituted waiver by mother of any question of proper service of process on her. *In re Lambert et al.* (1953, 203 F. 2d 607, 92 U.S. App. D.C. 104).

§ 16–2304. Service of summons; time of hearing

Service of summons issued pursuant to section 16–2303 shall be made personally by the delivery of a true and attested copy to the person summoned. Where reasonable, but unsuccessful efforts have been made to make personal service of summons or notice and it appears that it is impracticable to do so, the court may order service of summons or notice by registered mail to the last-known address or by publication, or both, as it deems necessary. It is sufficient to confer jurisdiction if service is effected at any time before the date fixed in the summons for the return thereof, but, on request of the parent or guardian or person having custody of the child, the hearing on the petition may not take place until three days after service of the summons.

The United States marshal for the District of Columbia or his deputy shall execute the orders and processes of the Court in the same manner as he executes those of the United States District Court for the District of Columbia, and shall designate at least one of his deputies to serve at the court, where he shall perform such services as the judge requires. (Dec. 23, 1963, 77 Stat. 587, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–910 (Mar. 19, 1906, ch. 960, § 9, 34 Stat. 74; June 1, 1938, ch. 309, 52 Stat. 596 (598); June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Waiver of service

Attorney's entry of his appearance for mother in proceeding wherein infant children were found to be without adequate parental care and were committed to Board of Public Welfare constituted waiver of any question of proper service of process on mother. *In re Lambert* (D.C. Mun. App. 1952, 86 A. 2d 411).

§ 16–2305. Failure to obey summons; contempt; warrant

When a person summoned as provided by sections 16–2303 and 16–2304, without reasonable cause, fails to appear, he may proceeded against for contempt of court. When the summons can not be served, or the parties served fail to obey it, or the welfare of the child requires that he be brought forthwith into the custody of the court, a warrant may be issued against the parent or guardian or against the child himself. (Dec. 23, 1963, 77 Stat. 588, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–911 (Mar. 19, 1906, ch. 960, § 10, 34 Stat. 75; June 1, 1938, ch. 309, 52 Stat. 596 (598)).

Changes are made in phraseology.

§ 16–2306. Taking child into custody; release to custody of parent, guardian, custodian, or probation officer; limitation on detention

(a) When an officer takes a child into custody, he shall, unless it is impracticable or has been otherwise ordered by the court, accept the written promise of the parent, guardian, or custodian to bring the child to the court at the time fixed. Thereupon, the child may be released in the custody of a parent, guardian, or custodian. If not so released, the child shall be placed in the custody of a probation officer or other person designated by the court, or taken immediately to the court or to a place of detention provided by the Board of Commissioners of the District of Columbia or its authorized representative, and the officer taking him shall immediately notify the court and shall file a petition when directed to do so by the court.

(b) A child whose custody has been assumed by the court may, pending final disposition of the case, be released by the court in the custody of a parent, guardian, or custodian, or of a probation officer or other person appointed by the court, to be brought before the court at the time designated. When not released as herein provided, the child, pending the hearing of the case, shall be detained in a place of detention provided by the Board of Commissioners of the District of Columbia or its authorized representative, subject to further order of the court.

(c) This subchapter does not forbid a peace officer, police officer, or probation officer from immediately taking into custody a child:

(1) who is found violating a law or ordinance; or

(2) who is reasonably believed to be a fugitive from his parents or from justice; or

(3) whose surroundings are such as to endanger his health, morals, or safety, unless immediate action is taken.

In a case specified by this subsection, the officer taking the child into custody shall immediately report the fact to the court and the case shall then be proceeded with as provided by this subchapter and chapter 15 of Title 11. A child so taken into custody may not be held in a place of detention for a period longer than five days, excluding Sundays and holidays, unless the court orders him detained for a further period. (Dec. 23, 1963, 77 Stat. 588, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–912 (Mar. 19, 1906, ch. 960, § 11, 34 Stat. 76; June 1, 1938, ch. 309, 52 Stat. 596 (598); June 12, 1952, ch. 417, § 1, 66 Stat. 134), and on Reorg. Plan No. 5, eff. July 1, 1952, 66 Stat. 824; Reorg. Ord. No. 58, June 30, 1953, as amended July 31, 1953, and Aug. 19, 1954; Reorg. Ord. No. 57–1027, June 6, 1957.

The Board of Public Welfare, referred to in section 11–912 of D.C. Code, 1961 ed., was, along with a number of other District agencies and offices, abolished, and its functions transferred to the Board of Commissioners of the District of Columbia, by Presidential Reorg. Plan No. 5, eff. July 1, 1952, 66 Stat. 824, which authorized the Board of Commissioners to create new agencies and offices and delegate its functions thereto. Pursuant to that Plan, the Board of Commissioners, after temporarily continuing the functions, so transferred, in the agencies and offices so abolished, by Reorg. Ord. No. 1, July 1, 1952, created the Department of Public Health by Reorg. Ord. No. 57, June 30, 1953, and the Department of Public Welfare by Reorg. Ord. No. 58, June 30, 1953, as amended, and abolished their predecessors, effective Aug. 15, 1953. Part V of Reorg. Ord. No. 58 transferred specified functions of the former Board of Public Welfare to the Department of Public Health and the Department of Public Welfare, so created. However, under Presidential Reorg. Plan No. 5, eff. July 1, 1952, referred to above, the ultimate responsibility to perform the delegated functions is in

the Board of Commissioners, which may change the present organization at any time. Therefore, in two places in this revised section, the reference, "Board of Public Welfare" is changed to "Board of Commissioners of the District of Columbia or its authorized representative".

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS

I. Under Prior Law

Applicability of Federal Rules

Where in a criminal prosecution against juveniles the district judge was proceeding under the regular procedure of the District Court, and the accused had been indicted and they were being tried by a jury, the trial was public and they were found guilty of the offenses and the court sentenced them to the penitentiary, act of the district judge in importing from the Juvenile Court a rule of evidence applicable in that court but not applicable in the regular procedure of the District Court was error, since the juveniles had been removed from the processes especially provided for juveniles and the proceedings as to them being "the regular procedure" of the District Court which were controlled by the federal rules. *Pee, Curtis, Johnson and Magruder* v. *United States* (1959, 274 F. 2d 556, 107 U.S. App. D.C. 47).

The Federal Rules of Criminal Procedure, U.S. Code, title 18, Appendix, do not apply to proceedings in the Juvenile Court of the District of Columbia. *United States* v. *White* (D.C.D.C. 1957, 153 F. Supp. 809).

Arraignment without unnecessary delay

Defendant who was 17 years of age at time of his arrest for murder and who was under jurisdiction of the Juvenile Court of the District of Columbia was not entitled to be taken before a committing magistrate without unnecessary delay. *United States* v. *White* (D.C.D.C. 1957, 153 F. Supp. 809).

Confessions

Statements elicited from 16-year-old minor by police while minor was subject to the jurisdiction of juvenile court were inadmissible in subsequent criminal prosecution. *M. A. Kent, Jr.* v. *United States* (1966, 86 S. Ct. 1045, 383 U.S. 541, 16 L. Ed. 2d 84).

Admissibility of statements made by minors involved in Juvenile Court proceeding should not be governed by strict rules of criminal evidence relating to confessions but by rules essentially used in getting at truth in civil trials. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

In Juvenile Court proceeding, adjudication of status of minor should rest only upon competent and reliable evidence and when evidence of government consists largely of statements of the minor, court is dutybound thoroughly to investigate circumstances under which such statements were made. *Id.*

Constitutional safeguards

The constitutional safeguards peculiar to criminal proceedings do not apply in proceedings in the juvenile court. *In re Robert McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

Detention without arrest record

The arrest of a juvenile by officers having reasonable grounds for belief that the juvenile had committed a felony, and the detention of the juvenile at police station for three hours without making any record of the arrest, was not a violation of this section. *Harper* v. *Strange* (1947, 158 F. 2d 408, 81 U.S. App. D.C. 349).

Double jeopardy

As constitutional guarantee against double jeopardy is applicable only in criminal prosecutions and does not operate in proceedings under Juvenile Court Act, this subchapter, it will not preclude rehearing in juvenile court, following dismissal of case and government's successful appeal. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

Judicial notice

The United States District Court for the District of Columbia would take judicial notice that the procedure in Juvenile Court for the District of Columbia provided for a preliminary ex parte investigation by Director of Social Service before determining whether Juvenile Court should take jurisdiction in a case where a juvenile was charged with a crime and that in the meantime, no hearing was held. *United States* v. *White* (D.C.D.C. 1957, 153 F. Supp. 809).

Nature of proceedings

Proceedings provided for by the Juvenile Court Act, this subchapter, are not criminal cases and the constitutional safeguards vouchsafed a juvenile in such proceedings are determined from the requirements of due process and fair treatment and not by the direct application of clauses of the Constitution which in terms apply to criminal cases and the Federal Rules of Criminal Procedure, 18 U.S.C. App., do not apply to such proceedings. *Pee, Curtis, Johnson and Magruder* v. *United States* (1959, 247 F. 2d 556, 107 U.S. App. D.C. 47).

The Juvenile Court Act, this subchapter, did not simply provide for same kind of trial as its criminal predecessor did, under a new label, but provided for new informal proceeding with rights and procedures of civil actions governing, and under it, innocence or guilt are not in issue but adjudication of child's status is, and protection and rehabilitation rather than retribution and punishment are not its purposes. *In re Robert McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

Procedure

If the District Court decides to pursue the normal criminal law processes with respect to juveniles, all the constitutional protections applicable to criminal cases and all the rules of criminal procedure in that court apply to such a case just as they apply to any other case of an alleged crime, but if the district judge decides to conduct the case under the powers conferred upon the Juvenile Court, the rights of the child and the rules applicable to the Juvenile Court procedure apply. *Pee, Curtis, Johnson and Magruder* v. *United States* (1959, 274 F. 2d 556, 107 U.S. App. D.C. 47).

Under the system provided for child offenders under the Juvenile Court Act, this subchapter, the District Court must make a clear choice between the procedure and the processes which it will apply in case of a juvenile as to whom the Juvenile Court has waived jurisdiction, and while it is not necessary that the court formally make such a choice its choice may be implicit in the manner in which it proceeds but it cannot proceed in part under its "regular procedure" and in part under the "powers conferred upon the Juvenile Court" and it must do one or the other. *Id.*

Rehearing after dismissal

Rule that Juvenile Court Act, this subchapter, itself requires fair treatment is limited in scope to guarantee those rights or procedures which are so vital to fairness and so strongly implied by acts that they may be supplied by judicial decision and rule does not bar rehearing in juvenile court following dismissal of case and successful appeal by government. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

Right to bail

Where this section authorizes juvenile court, pending arraignment and disposition of case, either to release the juvenile in the custody of a parent, guardian, custodian, or probation officer, or else to cause him to be detained in such place of detention as provided, and where this section is silent on the subject of bail, constitutional guarantees as to the right to bail are applicable and will prevail. *Trimble* v. *Stone, Supt. etc.* (D.C.D.C. 1960, 187 F. Supp. 483).

Even though proceedings in Juvenile Court are denominated civil and not criminal, and even though, theoretically, commitment by Juvenile Court to training school allegedly involves only treatment and not punishment, constitutional guarantees regarding bail are applicable to proceedings before Juvenile Court. *Id.*

Rights of juvenile upon arrest

Police upon arresting a juvenile must place him in custody of probation officer or other person designated by court to take him immediately to court or place of detention. *M. A. Kent, Jr.* v. *United States* (1965, 343 F. 2d 247, 119 U.S. App. D.C. 378, reversed on other grounds 86 S. Ct. 1045).

II. Under Present Law

Arrest

Action of police officer, who released defendant to custody of his mother upon learning that he was a juvenile, on understanding that she would bring him to police headquarters, constituted an "arrest." *United States* v. *Willis* (D.C.D.C. 1965, 248 F. Supp. 265).

§ 16–2307. Hearing; exclusion of public; jury trial

The court may conduct a hearing pursuant to this subchapter in an informal manner, and may adjourn the hearing from time to time. The general public shall be excluded from the hearing and only such persons as have a direct interest in the case and their representatives may be admitted except that the judge presiding at the hearing, by rule of court or special order, may admit such other persons as he deems to have a legitimate interest in the case or the work of the court. Cases involving children may be heard separately and apart from the trial of cases against adults. The court shall hear and determine all cases of children without a jury unless a jury is demanded by the child, his parent, guardian, or the court. (Dec. 23, 1963, 77 Stat. 588, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–915 (Mar. 19, 1906, ch. 960, § 14, 34 Stat. 75; June 1, 1938, ch. 309, 52 Stat. 596, (599); Aug. 3, 1951, ch. 291, § 4, 65 Stat. 154; June 12, 1952, ch. 417, § 2, 66 Stat. 134).

Section is based on first paragraph of section 11–915 of D.C. Code, 1961 ed. Remainder of that section is carried into section 16–2308 herein.

Words "the judge presiding at the hearing" are substituted for "the judge" for the purpose of clarification, since there are now three judges of the Juvenile Court. [See section 11–1502 herein.]

Changes are made in phraseology.

NOTES TO DECISIONS

I. Under Prior Law

Confessions

Admissibility of statements made by minors involved in Juvenile Court proceeding should not be governed by strict rules of criminal evidence relating to confessions but by rules essentially used in getting at truth in civil trials. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

In Juvenile Court proceeding, adjudication of status of minor should rest only upon competent and reliable evidence and when evidence of government consists largely of statements of the minor, court is dutybound thoroughly to investigate circumstances under which such statements were made. *Id.*

Constitutional safeguards

The constitutional safeguards peculiar to criminal proceedings do not apply in proceedings in the juvenile court. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

U.S. Code, title 18, § 4082, providing that persons convicted of an offense against the United States shall be committed for such term of imprisonment as court may direct to custody of Attorney General and that authority conferred upon Attorney General shall extend to all persons committed to National Training School for Boys, is directed to convictions of offenses against United States and in District Courts of the United States, and does not apply to persons committed under this section stating that no adjudication upon status of any child shall be deemed a conviction of a crime. *Cogdell* v. *Reid* (D.C.D.C. 1959, 183 F. Supp. 102).

Custody of infant

Under Juvenile Court Act, this subchapter, juvenile cannot be committed in civil or equitable proceedings to any institution designed for custody of persons convicted of crime. *White* v. *Reid et al.* (D.C.D.C. 1954, 126 F. Supp. 867).

Double jeopardy

Where purpose and effect of proceedings in juvenile court were to provide a prompt preliminary hearing in order to set a date for trial, if allegations of petitions were denied, or to continue case pending completion of full social study and recommendations for disposition of child, case had not reached stage at which juvenile's liberty had been placed in jeopardy by his acknowledgment that he held a toy gun during alleged robbery, and when trial judge subsequently waived jurisdiction to district court for trial, indictment was not subject to dismissal on ground of double jeopardy. *United States* v. *Dickerson* (1959, 271 F. 2d 487, 106 U.S. App. D.C. 221).

As constitutional guarantee against double jeopardy is applicable only in criminal prosecutions and does not operate in proceedings under Juvenile Court Act, this subchapter, it will not preclude rehearing in juvenile court, following dismissal of case and government's successful appeal. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

Evidence

Evidence sustained finding that five-year-old child and three-year-old child were without adequate parental care *In re F. E. Mullen and M. A. Mullen* (D.C. Mun. App. 1958, 144 A. 2d 919).

While juvenile courts are not bound by technical rules of evidence, police officer's testimony, on trial of minor for taking property without right, that defendant told witness that articles taken were on porch of defendant's home, and that witness then dispatched thereto another officer, who returned with articles, was insufficient, aside from defendant's confession, to establish his guilt. *In re Davis* (D.C. Mun. App. 1951, 83 A. 2d 590).

Exhibition of child to jury

In bastardy case, motion to exhibit child to jury to show lack of resemblance to defendant was properly denied in absence of a foundation of striking or peculiar nonresemblance. *Hassler* v. *District of Columbia* (D.C. Mun. App. 1956, 122 A. 2d 827).

Full investigation

"Full investigation" which § 11–914 requires before juvenile court can waive jurisdiction to district court includes informal hearings to determine whether to waive jurisdiction and jeopardy does not attach at that point. *United States* v. *Dickerson* (1959, 271 F. 2d 487, 106 U.S. App. D.C. 221).

Issue on appeal

On appeal from Juvenile Court's order denying motion to set aside its order committing a minor to Department of Public Welfare on his acknowledgment of allegations of his use of automobile without owner's consent and permit him to enter plea of not guilty on ground of violation of his constitutional rights by judge's failure to advise him of right to assistance of counsel, only determinations to be made by Municipal Court of Appeals are whether Juvenile Court proceedings were in conformity with statutory requirements and whether there was a denial of due process of law. *Shioutakon* v. *District of Columbia* (D.C. Mun. App. 1955, 114 A. 2d 896).

On appeal from order committing infant to National Training School for Boys until 21 years of age, the issue was whether there was sufficient evidence to support a finding that the boy's welfare or the safety and protection of the public required removal from the home of his parents. *In re Kroll* (D.C. Mun. App. 1945, 43 A. 2d 706).

Jurisdiction

That evidence failed to support petition in proceeding before juvenile court of District of Columbia involving a question of adequate parental care of a 15 year old girl did not affect the court's "jurisdiction" to hear the proceeding and to make an order adjudging that the girl was without adequate parental care and support and that she should be placed under guardianship of a person not related to her, although evidence made the court's action erroneous and subject to reversal on appeal. *In re Stuart* (1940, 114 F. 2d 825, 72 App. D.C. 389).

The juvenile court of the District of Columbia had "jurisdiction" to make an order adjudging that a 15 year old girl was without adequate parental care and support and that she should be placed under guardianship of a

person not related to her where parties were before the court, and case described in petition was within class of cases which this chapter gave the court power to deal with, and petition on its face stated a cause of action. *Id.*

Nature of proceeding

Proceedings provided for by the Juvenile Court Act, this subchapter, are not criminal cases and the constitutional safeguards vouchsafed a juvenile in such proceedings are determined from the requirements of due process and fair treatment and not by the direct application of clauses of the Constitution which in terms apply to criminal cases and the Federal Rules of Criminal Procedure, 18 U.S.C. App., do not apply to such proceedings. *Pee, Curtis, Johnson, and Magruder* v. *United States* (1959, 274 F. 2d 556, 707 U.S. App. D.C. 47).

The Juvenile Court Act, this subchapter, did not simply provide for same kind of trial as its criminal predecessor did, under a new label, but provided for new informal proceeding with rights and procedures of civil actions governing, and under it, innocence or guilt are not in issue but adjudication of child's status is, and protection and rehabilitation rather than retribution and punishment are not its purposes. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

Proceeding by mother to have daughter committed to psychiatric school on ground that daughter was habitually beyond mother's control was not a criminal or common law proceeding but was a statutory proceeding having for its purpose determination of best interest of daughter. *In re Sippy* (D.C. Mun. App. 1953, 97 A. 2d 455).

Preliminary hearing

Constitution does not guarantee right to preliminary hearing. *United States* v. *Dickerson* (D.C.D.C. 1958, 168 F. Supp. 899).

Procedure

Where in a criminal prosecution against juveniles the district judge was proceeding under the regular procedure of the District Court, and the accused had been indicted and they were being tried by a jury, the trial was public and they were found guilty of the offenses and the court sentenced them to the penitentiary, act of the district judge in importing from the Juvenile Court a rule of evidence applicable in that court but not applicable in the regular procedure of the District Court was error, since the juveniles had been removed from the processes especially provided for juveniles and the proceedings as to them being "the regular procedure" of the District Court which were controlled by the federal rules. *Pee, Curtis, Johnson, and Magruder* v. *United States* (1959, 274 F. 2d 556, 107 U.S. App. D.C. 47).

If the District Court decides to pursue the normal criminal law processes with respect to juveniles, all the constitutional protections applicable to criminal cases and all the rules of criminal procedure in that court apply to such a case just as they apply to any other case of an alleged crime, but if the district judge decides to conduct the case under the powers conferred upon the Juvenile Court, the rights of the child and the rules applicable to the Juvenile Court procedure apply. *Id.*

Under the system provided for child offenders under the Juvenile Court Act, this subchapter, the District Court must make a clear choice between the procedure and the processes which it will apply in case of a juvenile as to whom the Juvenile Court has waived jurisdiction, and while it is not necessary that the court formally make such a choice its choice may be implicit in the manner in which it proceeds but it cannot proceed in part under its "regular procedure" and in part under the "powers conferred upon the Juvenile Court" and it must do one or the other. *Id.*

Protection from parental neglect

The law will protect the child from parental neglect even as against natural parent where necessary. *In re Custody of a Minor* (1957, 250 F. 2d 419, 102 U.S. App. D.C. 94).

In proceeding wherein parents are charged with inadequate care of minor, public policy and right of child require that if charge of neglect is true the child be removed from control of parents and purpose of proceeding is not punishment of parents but protection of the child, and if liberty can be said to be restrained that is only an incident of, not the purpose of, the removal. *Id.*

Purpose

The objective of Juvenile Court Act, this subchapter, is rehabilitation, not punishment, and institution to which delinquent child is sent is not penal in nature, but one for rehabilitation and training purposes. *Shioutakon* v. *District of Columbia* (D.C. Mun. App. 1955, 114 A. 2d 896).

Rehearing after dismissal

Rule that Juvenile Court Act, this subchapter, itself requires fair treatment is limited in scope to guarantee those rights or procedures which are so vital to fairness and so strongly implied by acts that they may be supplied by judicial decision and rule does not bar rehearing in juvenile court following dismissal of case and successful appeal by government. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

Right of appeal

In proceeding by mother to have daughter committed to psychiatric school on ground that daughter was habitually beyond mother's control, daughter was the real party in interest and "party aggrieved" by order of commitment within statute providing that any "party aggrieved" by final order of Juvenile Court may appeal therefrom to the Municipal Court of Appeals. *In re Sippy* (D.C. Mun. App. 1953, 97 A. 2d 455).

Right to counsel

A minor who in proceeding wherein his parents were charged with inadequate care of the minor was committed to board of public welfare was not entitled to habeas corpus on ground that he was not represented by counsel in such proceeding since the juvenile court process in effect makes Director of Social Work of juvenile court, who initiates the proceeding, the child's counsel. *In re Custody of a Minor* (1957, 250 F. 2d 419, 102 U.S. App. D.C. 94).

Where the family of a juvenile concerning whom proceedings have been instituted in juvenile court is indigent, court is required to appoint counsel. *Shioutakon* v. *District of Columbia* (1956, 236 F. 2d 666, 98 U.S. App. D.C. 371, 60 A.L.R. 2d 686).

Since constitutional safeguards due accused in criminal proceeding are inapplicable in juvenile delinqeuncy hearing, Juvenile Court judge's failure to advise minor, charged with using automobile without owner's consent, of his right to assistance of counsel, was not error warranting reversal of court's order denying motion to set aside its order committing minor to Department of Public Welfare on his acknowledgment of such allegation and permit him to enter plea of not guilty. *Shioutakon* v. *District of Columbia* (D.C. Mun. App. 1955, 114 A. 2d 896).

Right to jury trial

In proceeding in Juvenile Court in the District of Columbia to have two infant children declared to be without adequate parental care and to have them committed to Board of Public Welfare, mother of the children was not entitled under statute to jury trial. *In re Lambert et al.* (1953, 203 F. 2d 607, 92 U.S. App. D.C. 104).

A statute providing that court shall hear and determine all cases of children without a jury, unless a jury be demanded by the child, his parent, or guardian or the court, does not enlarge the right to trial by jury in all cases of children, but only preserves it where a constitutional right to jury trial exists provided seasonable demand therefor is made. *In re Lambert* (D.C. Mun. App. 1952, 86 A. 2d 411).

Rules of Criminal Procedure

Rule of Criminal Procedure under which government may be required to divulge intent, identity of its informants has no applicability in Juvenile Court proceeding. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

Sufficiency of findings

A finding that infant's welfare and the safety and protection of the public could not be adequately safeguarded without removing infant from his home and parents was

not sustained by the evidence. *In re Kroll* (D.C. Mun. App. 1945, 43 A. 2d 706).

Transfer to other prison

Where petitioners while subject to jurisdiction of the Juvenile Court were committed to a training school and during their confinement there were transferred by Attorney General to federal institutions for adult offenders, motions by the petitioners requesting their discharge if treated as petitions for writs of habeas corpus could not be considered in view of the absence of petitioners from the geographic jurisdiction. *Thompson and Green, Jr.* v. *District of Columbia* (D.C. Mun. App. 1960, 158 A. 2d 687).

II. Under Present Law

Nature of proceedings

Investigation and court proceedings involving determination of a child's delinquency are directed to status and needs of child, and disposition thereof has as its goal not punishment but rehabilitation and restoration of child to useful citizenship, and end result is that child should not be labeled criminal, he is not punished as a criminal and proceedings against him should be far removed from characteristics of criminal trial. In the Matter of J. G. Elmore (D.C. App. 1966, 222 A. 2d 255).

Delinquent child is neither considered nor treated as a criminal but as a person needing guidance, care and protection, and safeguards which surround him do not inherently derive from constitution but from social welfare philosophy which forms historical background of Juvenile Court Act. *Id.*

Right to jury trial

Alleged delinquent was not entitled to jury trial in proceeding which was essentially a custody hearing wherein issue was directed to whether child was habitually beyond control of his mother, in absence of showing that right to trial by jury was customary in such a proceeding. *In the Matter of J. G. Elmore* (D.C. App. 1966, 222 A. 2d 255).

§ 16–2308. Determination and order of the Court

(a) When the court finds that the child comes within the provisions of this subchapter and section 11–1551, it may by order duly entered:

(1) place the child on probation or under supervision in his own home or in the custody of a relative or other fit person, upon such terms as the court determines;

(2) commit the child to the Board of Commissioners of the District of Columbia or its authorized representative; or to the National Training School for Boys if in need of such care as is given in the school; or to a qualified suitable private institution or agency willing and able to assume the education, care, and maintenance of the child without expense to the public; or

(3) make such further disposition of the child as may be provided by law and as the court deems to be best for the best interests of the child.

Paragraphs (1), (2), and (3) of this subsection do not authorize the removal of the child from the custody of his parents unless his welfare and the safety and protection of the public can not be adequately safeguarded without the removal.

(b) In committing a child to custody other than that of its parent, the court may, after giving the parent a reasonable opportunity to be heard, adjudge that the parent shall pay in such manner as the court directs a sum that will cover in whole or in part the support of the child. If the parents willfully fails or refuses to pay the sum, he may be proceeded against as provided by law for cases of desertion or failure to provide subsistence.

(c) When the court commits a child to an institution or agency, it shall transmit with the order of commitment a summary of its information concerning the child.

(d) An adjudication upon the status of a child in the jurisdiction of the court does not operate to impose any of the civil disabilities ordinarily imposed by conviction, and a child is not deemed a criminal by reason of an adjudication. An adjudication is not deemed a conviction of a crime, and a child may not be charged with or convicted of a crime in any court, except as provided by section 11–1553. The disposition made of a child, or evidence given in the court, is not admissible as evidence against the child in any case or proceeding in any other court, and the disposition, or evidence, or adjudication, does not operate to disqualify a child in any future civil-service examination, appointment, or application for public service under either the Government of the United States or of the District of Columbia. (Dec. 23, 1963, 77 Stat. 589, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–915 (Mar. 19, 1906, ch. 960, § 14, 34 Stat. 75; June 1, 1938, ch. 309, 52 Stat. 596 (599); Aug. 3, 1951, ch. 291, § 4, 65 Stat. 154; June 12, 1952, ch. 417, § 2, 66 Stat. 134).

Section is derived from all of section 11–915 of D.C. Code, 1961 ed., except the first paragraph thereof. The first paragraph is carried into section 16–2307 herein.

In subsec. (a)(2), the reference, "Board of Public Welfare" is changed to "Board of Commissioners of the District of Columbia or its authorized representative". See revision note under section 16–2306 herein.

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS

I. Under Prior Law

Nature of proceedings

Juvenile court proceedings are civil, and petition need only contain brief statement of facts giving court jurisdiction. *In the Matter of R. A. Nichols* (D.C. Mun. App. 1962, 179 A. 2d 915).

Disposition of child in Juvenile Court proceeding does not constitute "conviction of crime" within statute providing that fact of conviction may be given in evidence to affect credibility as witness. *R. R. Brown* v. *United States* (1964, 338 F. 2d 543, 119 U.S. App. D.C. 203).

It was error for prosecutor on cross-examination of defendant's juvenile companion to bring out that juvenile companion had been committed to "The National Training School", and such error was reversible error, where juvenile companion's testimony exculpating defendant comprised major portion of defense. *Id.*

II. Under Present Law

Findings

Record disclosed that, absent any proposal for a better solution, child's welfare and protection of public were best safeguarded by child's placement with Department of Public Welfare, where child was only 13, unable to help himself, and in tragic need of supervision and guidance which his parents were unable to provide. *In the Matter of J. G. Elmore* (D.C. App. 1966, 222 A. 2d 255).

Full and fair hearing

Alleged delinquent was not denied full and fair hearing on theory that probation officer's narrative report to trial judge defeated right to cross-examination and contained many unsubstantiated and conflicting remarks where, at both hearings, counsel then representing alleged delinquent had opportunity to cross-examine all witnesses, including probation officer, and to present his reasons why commitment to Department of Public Welfare was not valid or for best interests and welfare of child and of society, and where comments of probation officer objected

to were but a fraction of his testimony and presented but a small portion of overall picture of alleged delinquent's life. *In the Matter of J. G. Elmore* (D.C. App. 1966, 222 A. 2d 255).

Juvenile court commitment

Juvenile court commitment, unlike district court conviction, does not operate to impose any of civil disabilities ordinarily imposed by conviction, and child is not deemed a criminal by reason of an adjudication. *Black* v. *United States* (1965, 355 F. 2d 104, 122 U.S. App. D.C. 393).

Proof required

In juvenile proceedings, standard to be applied in determining involvement or jurisdiction is not proof beyond reasonable doubt, but proof by a preponderance of evidence. *In the Matter of J. G. Elmore* (D.C. App. 1966, 222 A. 2d 255).

Treatment of child

It is implicit in juvenile court scheme that noncriminal treatment is to be the rule and adult criminal treatment the exception which must be governed by particular factors of individual cases. *Black* v. *United States* (1965, 355 F. 2d 104, 122 U.S. App. D.C. 393).

§ 16–2309. Modification or revocation of order; petition; return of child, or other action

An order of commitment or probation made by the court in the case of a child may be modified or revoked by the court from time to time.

A parent, guardian, or next friend of a child who has been committed by the court to the custody of an institution, agency, or person, may at any time file with the court a verified petition, making application for modification or revocation of an order of commitment or probation, stating that the institution, agency, or person has denied application for the release of the child or has failed to act upon the application within a reasonable time. When the court is of the opinion that an investigation should be had, it may, upon due notice to all concerned, proceed to hear and determine the question at issue. It may thereupon order that the child be restored to the custody of its parent or guardian, or be retained in the custody of the institution, agency, or person; and may direct the institution, agency, or person to make such other arrangements for the child's care and welfare as the circumstances of the case require; or the court may make a further order or commitment. (Dec. 23, 1963, 77 Stat. 589, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–916 (Mar. 19, 1906, ch. 960, § 15, 34 Stat. 76; June 1, 1938, ch. 309, 52 Stat. 596(600)).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Double jeopardy

As constitutional guarantee against double jeopardy is applicable only in criminal prosecutions and does not operate in proceedings under Juvenile Court Act, this subchapter, it will not preclude rehearing in juvenile court, following dismissal of case and government's successful appeal. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

Rehearing after dismissal

Rule that Juvenile Court Act, this subchapter, itself requires fair treatment is limited in scope to guarantee those rights or procedures which are so vital to fairness and so strongly implied by acts that they may be supplied by judicial decision and rule does not bar rehearing in juvenile court following dismissal of case and successful appeal by government. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

Jurisdiction

Section 11–907 providing that when there is proper original jurisdiction, the Juvenile Court shall have continuing jurisdiction over children committed by it during their minority, and that the court from time to time upon petition of interested persons may modify or revoke its orders at any time, was intended to give that court continuing jurisdiction in all child commitment cases in which the court had original jurisdiction. *In the Matter of Cecelia Lem* (D.C. Mun. App. 1960, 164 A. 2d 345).

§ 16–2310. Appointment of guardian; custody as between parents

When in the course of a proceeding instituted pursuant to this subchapter it appears to the court that the welfare of a child will be promoted by the appointment of a relative or other suitable individual as guardian of its person, when the child is not committed to an institution or to the custody of an incorporated society, the court has jurisdiction to make the appointment either upon the application of the child or some relative or next friend or upon the court's own motion. The court may issue an order to show cause, which shall be served upon the parent or parents or custodian of the child in such manner and for such time prior to the hearing as the court deems reasonable. In a case arising pursuant to this subchapter, the court may also determine as between parents whether the father or the mother shall have the custody and control of the child. (Dec. 23, 1963, 77 Stat. 590, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–917 (Mar 19, 1906, ch. 960, § 16, 34 Stat. 76; June 1, 1938, ch. 309, 52 Stat. 596 (602)).

Changes are made in phraseology.

§ 16–2311. Protection of religious affiliations

In placing a child under guardianship or custody other than that of its parent, the court, when practicable, shall select a person, or an institution or agency governed by persons, of like religious faith as that of the parents of the child, or in case of a difference in the religious faith of the parents, then of the religious faith of the child, or if the religious faith of the child is not ascertained, then of either of the parents. (Dec. 23, 1963, 77 Stat. 590, Pub. L. 88–241, §1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–918 (Mar. 19, 1906, ch. 960, § 17, 34 Stat. 76; June 1, 1938, ch. 309, 52 Stat. 596 (601)).

Changes are made in phraseology.

§ 16–2312. Physical and mental examinations of children

The court may cause a child coming under its jurisdiction to be examined by a physician, psychiatrist, or psychologist appointed by it. (Dec. 23, 1963, 77 Stat. 590, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–926 (Mar. 19, 1906, ch. 960, § 25, 34 Stat. 78; June 1, 1938, ch. 309, 52 Stat. 596(602)).

Changes are made in phraseology.

CROSS REFERENCE

Services of a psychiatrist and psychologist, see § 24–106.

§ 16–2313. Place of detention of children

(a) Except as provided by subsection (b) of this section, a child may not be placed in or committed to any prison, jail, or lockup, or be taken into custody, detained, or transferred from place to place, where he may be brought in contact or communication with an adult convicted of crime or under arrest and charged with crime.

(b) A child 16 years of age or older, whose habits or conduct are deemed such as to constitute a menace to other children, may, with the consent of a judge or Director of Social Work, be placed in a jail or other place of detention for adults, but in a room or ward separate from adults.

(c) The Board of Commissioners of the District of Columbia or its authorized representative shall make adequate provision for the temporary detention of children within its jurisdiction in a detention home or in boarding homes selected for the purpose. (Dec. 23, 1963, 77 Stat. 590, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–927 (Mar. 19, 1906, ch. 960, § 26, 34 Stat. 78; June 1, 1938, ch. 309, 52 Stat. 596 (602); Mar. 9, 1962, Pub. L. 87–413, § 3(d), 76 Stat. 22).

Near the beginning of subsec. (a), "child" is substituted for "child under 18 years of age", as section 16–2301 herein defines "child" as meaning a person under 18 years of age.

The reference, "Board of Public Welfare of the District of Columbia", is changed to "Board of Commissioners of the District of Columbia or its authorized representative". See revision note under section 16–2306 herein.

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS UNDER PRIOR LAW

Terms and place of detention

Where infant was committed for his minority to the National Training School for Boys and was subsequently paroled and arrested for a parole violation under a warrant to await a hearing before the Board of Parole to determine whether his parole should be revoked, the infant could not be detained in the District Jail where he was not detained under a warrant or indictment charging him with committing a crime at time when he was more than 18 years of age, and the infant must be discharged from custody unless transferred to the training school or an institution with substantially similar facilities pending outcome of the hearing. *Kautter* v. *Reid* (D.C.D.C. 1960, 183 F. Supp. 352).

In view of this subchapter, U.S. Code title 18, § 4082, authorizing Attorney General to designate places of confinement limits his power in respect to juveniles to designating institutions where special facilities are provided for training and care. *White* v. *Reid* (D.C.D.C. 1954, 125 F. Supp. 647).

Under this subchapter, the term of commitment, the nature of commitment, and place thereof, within statutory limitations, are all within exclusive jurisdiction of the juvenile court. *Huff* v. *O'Bryant* (1941, 121 F. 2d 890, 74 App. D.C. 19).

§ 16–2314. Applicability to adult cases; offenses and penalties; jury trial

(a) All provisions of this subchapter relative to procedure in cases of children so far as practicable apply also to cases against adults arising under section 11–1511, 11–1554, 11–1555 or 11–1556, or any of the sections referred to in section 11–1557, with the consent of the defendant, or when not inconsistent with other provisions of law relating to the conduct of adult cases. Proceedings may be instituted upon complaint of an interested party or upon the court's own motion, and a reasonable opportunity to appear shall be afforded the respondent. The court may issue a summons, a warrant of arrest, or other process in order to secure or to compel the attendance of a necessary person.

(b) Whoever, by act or omission, willfully causes, encourages, or contributes to a condition which would bring a child within the provisions of section 11–1551 or tends to cause such a condition, is guilty of a misdemeanor, and shall be fined not more than $200 or imprisoned not more than one year, or both. Upon the trial, the court may impose such sentence as the law provides, or may suspend sentence and place on probation, and by order impose upon the adult such duty as is deemed to be for the best interests of the child or other persons concerned. If an adult is charged with an offense for which he is entitled to a trial by jury, he shall be so tried unless he expressly waives his right to jury trial. (Dec. 23, 1963, 77 Stat. 590, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–919 (Mar. 19, 1906, ch. 960, § 18, 34 Stat. 76; June 1, 1938, ch. 309, 52 Stat. 596 (601)).

Changes are made in phraseology and arrangement.

NOTES TO DECISIONS UNDER PRIOR LAW

Construction

The section making it an offense to willfully cause, encourage or contribute to any condition which would bring a child within provisions of this subchapter relating to Juvenile Court and the section making this subchapter applicable to children engaged in described conduct or way of life must be read together. *Slaughter* v. *District of Columbia* (D.C. Mun. App. 1957, 134 A. 2d 838).

Proof of age

In prosecution for willfully causing, encouraging and contributing to delinquency of female under age 18, the age of the female could be proved by her testimony and it was not required that there be documentary evidence of her age. *Slaughter* v. *District of Columbia* (D.C. Mun. App. 1957, 134 A. 2d 338).

Purpose

The purpose of the statutes relating to the Juvenile Court is to protect, so far as possible, the morals of minors. *Slaughter* v. *District of Columbia* (D.C. Mun. App. 1957, 134 A. 2d 338).

Sufficiency of evidence

In prosecution for causing, encouraging and contributing to delinquency of minor female, evidence warranted finding that defendant willfully contributed to female's delinquency by deliberately carrying on an illicit and immoral relationship with female, irrespective of her real age. *Slaughter* v. *District of Columbia* (D.C. Mun. App. 1957, 134 A. 2d 338).

"Willful"

In prosecution for willfully causing, encouraging and contributing to delinquency of minor female the court properly charged that the word "willful" meant more than voluntary and implied an evil mind or intent. *Slaughter* v. *District of Columbia* (D.C. Mun App. 1957, 134 A. 2d 338).

§ 16–2315. Finality of judgments

Except as provided by sections 11–741(a)(3), 11–741(b), 17–305(a), 17–306 and 17–307(a), in all cases tried before the court pursuant to this subchapter, the judgment of the court is final. (Dec. 23, 1963, 77 Stat. 591, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–938 (Mar. 19, 1906, ch. 960, § 37, as added June 1, 1938, ch. 309, 52 Stat. 596 (604)).

With respect to the exception, section 11–938 of D.C. Code, 1961 ed., referred to section 11–934 thereof. The latter section, which provided for appeals from judgments of the Juvenile Court to the United States Court of Appeals for the District of Columbia, and for the procedure thereon, was repealed by act May 24, 1949, ch. 139, § 142, 63 Stat. 110. Since 1942, the Municipal Court of Appeals for the District of Columbia, the name of which, by the Act of Oct. 23, 1962, Pub. L. 87–873, 6, 76 Stat. 1172, was changed to the District of Columbia Court of Appeals, has had jurisdiction of appeals from judgments of the Juvenile Court. Therefore, in this revised section, reference to the sections providing for such appeals, and the procedure thereon, are substituted for the reference to section 11–934. See, also, Rules of the District of Columbia Court of Appeals.

Minor changes are made in phraseology.

§ 16–2316. Construction and purpose

Sections 11–1551 to 11–1554, section 11–1583 (a) (1) and (a) (3), section 11–1584, section 11–1586 (a)—(d), and this subchapter shall be liberally construed so that, with respect to each child coming under the court's jurisdiction:

(1) the child shall receive such care and guidance, preferably in his own home, as will serve his welfare and the best interests of the District; and

(2) the child's family ties shall be conserved and strengthened whenever possible, and, except when his welfare or the safety and protection of the public can not be adequately safeguarded without his removal, he may not be removed from the custody of his parents; and

(3) when the child is removed from his own family, the court shall secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given him by his parents.

(Dec. 23, 1963, 77 Stat. 591, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–902, 11–903 (Mar. 19, 1906, ch. 960, pream., as added June 1, 1938, ch. 309, 52 Stat. 596; Mar. 19, 1906, ch. 960, § 2, 34 Stat. 73, as amended June 1, 1938, ch. 309, 52 Stat. 596).

Section consolidates sections 11–902 and 11–903 of D.C. Code, 1961 ed.

"District" is substituted for "state", to correct an obvious error.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Adequate parental care

A judgment of the juvenile court of the District of Columbia adjudging that a 15 year old girl was without adequate parental care and support and that she should be placed under guardianship of a person not related to her was inconsistent with constitutional principles concerning inherent right of parents to custody of their children and this subchapter, where evidence established that the girl's mother had given the girl continuous and devoted care which had resulted in a well developed, well educated, healthy child. *In re Stuart* (1940, 114 F. 2d 825, 72 App. D.C. 389).

"Adequate parental care," as used in this subchapter, means such care as is necessary to accomplish purpose thereof. *Id.*

Construction

This subchapter is not rendered ambiguous by use of the disjunctive and conjunctive in this section, and this chapter cannot be construed in the disjunctive throughout so as to authorize the court to remove a child from custody of its parents either when child's welfare requires such removal or when safety and protection of public demands it. *In re Stuart* (1940, 114 F. 2d 825, 72 App. D.C. 389).

Juvenile Court Act, this subchapter, should be construed liberally in favor of welfare of child. *In re John Lawrence Poff* (D.C.D.C. 1955, 135 F. Supp. 224).

—— With other laws

Drug Users' Act providing for commitment of all narcotics addicts to institutions for treatment, except persons charged with a criminal offense, does not impliedly repeal Juvenile Court Act, this subchapter, insofar as jurisdiction over juveniles who are addicted to narcotics is concerned. *In re Rene Whisaker* (D.C.D.C. 1955, 134 F. Supp. 864).

Drug Users' Act not criminal status

Drug Users' Act is not a criminal statute and when it places a juvenile under jurisdiction of Juvenile Court in an institution for treatment, it does no more than change custody of juvenile under commitment and does not impair Juvenile Court jurisdiction. *In re Rene Whisaker* (D.C.D.C. 1955, 134 F. Supp. 864).

Legislative intent

Legislative intent in enacting Juvenile Court Act, this subchapter, was to enlarge rather than diminish safeguards already possessed by juveniles. *In re John Lawrence Poff* (D.C.D.C. 1955, 135 F. Supp. 224).

Nature of proceedings

Proceedings in juvenile court, even where petition is filed, are meant to be noncriminal and nonformal in nature. *Shioutakon* v. *District of Columbia* (1956, 236 F. 2d 666, 98 U.S. App. D.C. 371, 60 A.L.R. 2d 686).

A hearing in the Juvenile Court is an adjudication upon status of child in nature of guardianship imposed by State as parens patriae to provide care and guidance that, under normal circumstances, would be furnished by natural parents. *In re John Lawrence Poff* (D.C.D.C. 1955, 135 F. Supp. 224).

The purpose of juvenile delinquency proceedings in Juvenile Court is not to determine question of child's guilt or innocence of crime, but to promote child's welfare and state's best interests by strengthening family ties, where possible, and removing child from his parents' custody, when necessary for his welfare or safety or protection of public, securing for him custody, care, and protection as nearly as possible equivalent to that which should be given him by his parents. *Shioutakon* v. *District of Columbia* (D.C. Mun. App. 1955, 114 A. 2d 896).

Purpose

Congressional intent in enacting provisions of this subchapter establishing juvenile court authorizing director of social work to investigate any complaint to determine whether interest of public or juvenile require further action was to encourage disposition of cases on social rather than on a legal basis. *Shioutakon* v. *District of Columbia* (1956, 236 F. 2d 666, 98 U.S. App. D.C. 371, 60 A.L.R. 2d 686).

Purpose of Juvenile Court Act of District of Columbia, this subchapter, is promotion of child's welfare and state's best interest by strengthening of family ties where possible, and, when necessary, removing of child from custody of parents for his welfare or safety or protection of public, securing for his custody, care and protection as nearly as possible equivalent to that which should have been given him by his parents. *White* v. *Reid et al.* (D.C.D.C. 1954, 126 F. Supp. 867).

The purpose of the statutes relating to the Juvenile Court is to protect, so far as possible, the morals of minors. *Slaughter* v. *District of Columbia* (D.C. Mun. App. 1957, 134 A. 2d 338).

Rehabilitation

The objective of legislation dealing with juvenile offenders is rehabilitation, not punishment. *In re Kroll* (D.C. Mun. App. 1945, 43 A. 2d 706).

Rules of Criminal Procedure

Rule of Criminal Procedure, U.S. Code, title 18, Appendix, under which government may be required to divulge intent, identity of its informants has no applicability in Juvenile Court proceeding. *In re McDonald et al.* (D.C. Mun. App. 1959, 153 A. 2d 651).

SUBCHAPTER II.—PATERNITY PROCEEDINGS

§ 16–2341. Definitions

As used in this subchapter:

"Corporation Counsel" has the meaning prescribed by section 11–1583(b).

"Director of Public Health" means the Board of Commissioners of the District of Columbia or the officer or agency designated by the Board to have jurisdiction of, control, direct, and supervise, matters relating to public health and vital statistics in the District; and

"Metropolitan Police Department" means the Board of Commissioners of the District of Columbia or the agency designated by the Board to serve as the law enforcement agency for the District. (Dec. 23, 1963, 77 Stat. 591, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Section is new, but does not make any new law.

Definition of "Corporation Counsel" is inserted. See section 11–1583(b), and revision note under section 11–1583.

Definitions of "Director of Public Health" and "Metropolitan Police Department" are inserted because of the reorganizational Plan No. 5, eff. July 1, 1952, 66 Stat. 824. That Plan abolished a number of offices and agencies in the District, including the Health Department and the Metropolitan Police Department, transferred their functions to the Board of Commissioners of the District of Columbia, and authorized the Board to create new offices and agencies and delegate functions thereto. The Board, after temporarily continuing, by Reorganization Order No. 1, July 1, 1952, the offices and agencies so abolished, including the Health Department and the Metropolitan Police Department, issued Reorganization Order No. 7, Sept. 16, 1952, which, by sections 1 and 3 thereof, abolished the office of Major and Superintendent of the Metropolitan Police Department and transferred the functions thereof to the Chief of Police, an office established by section 4(b) of the above-cited Presidential Reorganization Plan No. 5. Subsequently, the Board, by Reorganization Order No. 46, June 26, 1953, as amended by Orders of May 17, 1955 and Oct. 20, 1955 (eff. Dec. 1, 1955), and by Reorganization Order No. 56–214, Jan. 31, 1956, established a new Metropolitan Police Department, headed by the Chief of Police, transferred to that department the functions of the Metropolitan Police Department previously transferred to the Board by Presidential Reorganization Plan No. 5, referred to above, abolished the then existing Metropolitan Police Department, and repealed all previous orders of the Board in conflict therewith.

By Reorganization Order No. 57, June 30, 1953, as amended June 30, 1954, and as amended by Reorganization Orders Nos. 54–2546, Nov. 30, 1954; 56–1717, Aug. 23, 1956; 56–2541, Dec. 13, 1956, the Board created a new Department of Public Health, with a Director of Public Health at its head, transferred to that department the functions (which included those relating to vital statistics) of the former Health Department, abolished the then existing Health Department, and repealed all previous orders of the Board in conflict therewith.

However, under the above-mentioned Presidential Reorganization Plan No. 5, the ultimate responsibility to perform the functions transferred to the present Department of Public Health and the Metropolitan Police Department is in the Board of Commissioners, and the Board may change the present organization at any time. Therefore, the purpose of the definitions of "Director of Public Health" and "Metropolitan Police Department" in this section is to recognize this ultimate responsibility and to provide for changes in organization should they occur.

§ 16–2342. Party plaintiff; information

Proceedings pursuant to section 11–1555 and this subchapter shall be instituted in the Juvenile Court of the District of Columbia in the name of the District of Columbia, and prosecution upon information shall be by the Corporation Counsel for the District of Columbia or his assistants. (Dec. 23, 1963, 77 Stat. 591, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–951 (Jan. 11, 1951, ch. 1225, § 3, 64 Stat. 1240).

Section is based on the second sentence of section 11–951 of D.C. Code, 1961 ed. For remainder of that section, see tables.

Minor changes are made in phraseology.

§ 16–2343. Time of bringing complaint

Proceedings to establish paternity and provide for the support of a child born out of wedlock may be instituted after four months of pregnancy or within two years after the birth of the child, or within one year after the putative father has ceased making contributions for the support of the child. The time during which the defendant is absent from the jurisdiction shall be excluded from the computation of the time within which complaint may be filed. (Dec. 23, 1963, 77 Stat. 591, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–952 (Jan. 11, 1951, ch. 1225, § 4, 64 Stat. 1240).

Minor changes are made in phraseology.

NOTES TO DECISIONS

I. UNDER PRIOR LAW

Absence from jurisdiction

Where complainant and defendant in paternity action had been residents of Virginia and complainant moved to District of Columbia a few months before birth of child who was born within the District and defendant was a member of armed forces who came to District on military assignment 2½ years after birth of child, under provision of this section that time within which defendant should be absent from jurisdiction should be excluded from computation of the 2-year statute of limitations, statute of limitations was tolled as to defendant who had not previously been within the jurisdiction. *District of Columbia* v. *Franklin* (D.C. Mun. App. 1959, 154 A. 2d 550).

Accrual of claim

Where complainant was living in the District of Columbia at time child was born, cause of action under this subchapter had accrued as a fully matured claim in jurisdiction. *District of Columbia* v. *Franklin* (D.C. Mun. App. 1959, 154 A. 2d 550).

Construction

This subchapter conferring jurisdiction on Juvenile Court of District of Columbia of proceedings to establish paternity and provide for support of illegitimate child does not give such court jurisdiction to entertain a proceeding merely to determine paternity of such child. *Harrison* v. *District of Columbia* (D.C. Mun. App. 1953, 95 A. 2d 332).

Evidence

In paternity suit in which support previously furnished by defendant was in issue, testimony of complaining witness that defendant paid for delivery of milk for several months was admissible over objection that best evidence rule required production of records of milk company. *Ford* v. *District of Columbia* (D.C. Mun. App. 1954, 102 A. 2d 838).

Question of fact

In paternity suit under this subchapter providing that proceedings must be brought within 2 years after child is born, or within one year after putative father ceases to contribute to support of child, whether putative father had made contributions to support of children within

year prior to bringing of the action, was question for jury. *Ford* v. *District of Columbia* (D.C. Mun. App. 1954, 102 A. 2d 838).

II. Under Present Law

Statute of limitations

When complaint is filed in paternity proceeding, notice to accused, by way of summons, must be given without unreasonable delay. *H. A. Perry, Sr.* v. *District of Columbia* (D.C. App. 1965, 212 A. 2d 339).

Filing of complaint in paternity case is not sufficient to stop running of statutory time limitation unless such filing is followed by issuance of summons without unreasonable delay. *Id.*

Year's delay in issuing summons in paternity case was not reasonable and therefore filing of complaint did not stop running of two-year statute of limitations, and summons served when child was 28 months old was not timely and action was barred. *Id.*

§ 16–2344. Commencement of proceeding; complaint

An unmarried woman who is at least four months pregnant or who has been delivered of a child born out of wedlock, or a married woman who is at least four months pregnant with a child, which if born alive, may be born out of wedlock, or who has been delivered of a child born out of wedlock and who was not living with nor cohabiting with her husband during the period of time in which the child could have been conceived, may appear before the Corporation Counsel for the District of Columbia or his assistant at the Juvenile Court and accuse a man of being the father of her child and request his arrest. In case of death, disability, or incompetence of the mother, the complaint may be made by the custodian, guardian, or next friend of the child. The complainant shall be examined under oath by the Corporation Counsel or his assistant to determine the validity of the accusation. If, upon examination, there appears reasonable cause to believe that the accused person is the father of the child in question, the complaint shall be reduced to writing, verified by the complainant, and filed with the clerk of the court. The verified complaint may be introduced in evidence to impeach the complaining witness in any subsequent proceedings therein. (Dec. 23, 1963, 77 Stat. 592, Pub. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–953 (Jan. 11, 1951, ch. 1225, § 5, 64 Stat. 1240).

The references Corporation Counsel for the District of Columbia or his assistant at the Juvenile Court" and "Corporation Counsel or his assistant" are substituted for "Assistant Corporation Counsel at the juvenile court" and "Assistant Corporation Counsel", respectively, as more in conformity with Presidential Reorganization Plan No. 5, eff. July 1, 1952, and Reorganization Order No. 55–1029, June 6, 1955, as amended, of the Board of Commissioners. See, also, section 16–2341 herein, and revision note under section 11–1582 herein.

Changes are made in phraseology.

NOTES TO DECISIONS

Evidence

In bastardy proceeding, it was not error to permit complainant to testify that defendant had sexual relations with her prior to period of conception. *Moses* v. *District of Columbia* (D.C. Mun. App. 1957, 129 A. 2d 402).

In bastardy proceeding, evidence sustained jury's finding that defendant was the father of child born out of wedlock. *Id.*

The defendant is not entitled to examine the unsigned and unsworn statement made by the complainant to the Juvenile Court Clerk, since these affidavits are confidential and defendant has no absolute right to examine statements made in confidence to a prosecuting officer. *Fuller* v. *United States* (D.C. Mun. App. 1949, 65 A. 2d 589).

Examination by assistant corporation counsel

This section requiring examination of mother of illegitimate child by assistant corporation counsel to determine validity of her accusation that a certain man is father of child is mandatory, and failure to comply, if properly and promptly called to attention of court, vitiates the entire proceeding. *Kelly* v. *District of Columbia* (D.C. Mun. App. 1958, 139 A. 2d 512).

No information may be filed against any man accused by mother to be father of her child until mother is first examined under oath by an assistant corporation counsel to determine validity of accusation, and examination may not be made by some other employee of corporation counsel's office. *Id.*

Examination under oath

Statute requiring complainant to be examined under oath by assistant corporation counsel to determine validity of accusation that defendant is father of illegitimate children was sufficiently complied with where assistant corporation counsel personally examined complainant, although exact details of interviews were lacking because of lapse of six years between filing of informations and trial, and counsel administered oath at end of interview rather than beginning. *District of Columbia* v. *R. L. Dade* (D.C. Mun. App. 1961, 173 A. 2d 545).

Where mother of illegitimate child was interviewed by corporation counsel's clerical employee, who prepared complaint naming defendant as father of child, and subsequently assistant corporation counsel asked woman her name, whether she was single or married, and if complaint was true, and woman then put up her hand and swore to it, perfunctory making of oath to complaint before assistant corporation counsel did not constitute an "examination under oath" as required by this section. *Kelly* v. *District of Columbia* (D.C. Mun. App. 1958, 139 A. 2d 512).

Maintenance of action by married woman

A married woman who was not living with nor cohabiting with her husband during period of conception may maintain a bastardy action against the punative father. *Hassler* v. *District of Columbia* (D.C. Mun. App. 1956, 122 A. 2d 827).

Complainant could maintain bastardy proceeding, where it appeared that she had had sexual relations only with defendant during the possible period of conception, irrespective of whether she was in fact divorced from her husband at the time. *Id.*

Motion for new trial

In proceeding to establish paternity and to provide for support of illegitimate child, wherein defendant's motion for new trial was based on affidavits that defendant was seen in other places than Brooklyn, New York, on the day of alleged act of intercourse and that defendant had left Washington with his mother on automobile trip on such day, denial of motion was not abuse of discretion under the circumstances. *Lovinggood* v. *District of Columbia* (D.C. Mun. App. 1957, 134 A. 2d 336).

Nature of proceeding

Proceeding involving paternity determination was a civil action for support of child and procedure was neither criminal nor punitive in character. *A. Jackson* v. *District of Columbia* (D.C. App. 1964, 200 A. 2d 199).

Prejudicial error

In proceeding to establish paternity and to provide for support of illegitimate child, where defendant offered sales slip to show that defendant purchased suit in Washington on date of alleged act of intercourse in Brooklyn, New York, even if ruling that slip was inadmissible for lack of identification was erroneous, the error was not prejudicial inasmuch as other records of the store showing the alleged purchase were subsequently admitted. *Lovinggood* v. *District of Columbia* (D.C. Mun. App. 1957, 134 A. 2d 336).

Proof required

Proof necessary in proceedings in juvenile court for determination of paternity and support of child is still

by a preponderance of evidence, not beyond reasonable doubt. *A. Jackson* v. *District of Columbia* (D.C. App. 1964, 200 A. 2d 199).

Waiver

Where this section requiring examination of mother of illegitimate child under oath by assistant corporation counsel to determine whether there is reasonable cause to believe that accused person is father of child was not complied with, and defendant raised question at his first opportunity, defendant did not waive right to assert such noncompliance and verdict of jury finding defendant to be father of child did not eliminate necessity of proper examination. *Kelly* v. *District of Columbia* (D.C. Mun. App. 1958, 139 A. 2d 512).

§ 16–2345. Apprehension of accused

Upon the filing of a complaint pursuant to section 16–2344, the case shall be calendared forthwith for preliminary hearing. The clerk of the court shall issue a summons requiring the accused to appear in court on a day certain for that purpose, or, if deemed necessary by the court, a warrant for the arrest of the defendant may be issued, directed to the United States marshal or the Chief of Police or any other member of the Metropolitan Police Department of the District of Columbia, requiring the accused to be arrested and brought before the court. (Dec. 23, 1963, 77 Stat. 592, Pub. L. 83–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–954 (Jan. 11, 1951, ch. 1225, § 6, 64 Stat. 1241), and on Pres. Reorg. Plan No. 5, eff. July 1, 1952, 66 Stat. 824; Reorg. Ord. No. 7, §§ 1, 3, Sept. 16, 1952.

"Chief of Police" is substituted for "Major and Superintendent" in conformity with section 4(b) of Presidential Reorganization Plan No. 5, eff. July 1, 1952, 66 Stat. 824, which established the office of Chief of Police, and Reorg. Ord. No. 7, §§ 1, 3, Sept. 16, 1952, of the Board of Commissioners, which abolished the office of Major and Superintendent of the Metropolitan Police Department, and transferred the functions thereof to the Chief of Police. See section 16–2341 herein, and revision note thereunder.

Changes are made in phraseology.

NOTES TO DECISIONS

Preliminary hearing

Purpose of preliminary hearing on complaint which charged defendant with being the father of an illegitimate child was not to establish truth or falsity of charge but was to determine whether there existed reasonable ground for submitting charge to jury or judge for final determination. *District of Columbia* v. *Mock* (D.C. App. 1966, 217 A. 2d 113).

Reasonable cause for prosecuting complaint

Although statute concerned with paternity proceedings was silent on subject, practice of Juvenile Court, at preliminary hearing of complaint in paternity proceedings, to determine whether reasonable or probable cause exists for prosecuting complaint was without fault. *Id.*

Unrefuted testimony of child's mother that she was having intercourse with defendant and with no other man in months of September and October 1963 and that she gave birth to child on July 10, 1964 established reasonable cause for prosecuting complaint which charged defendant with being father of illegitimate child. *Distrfict of Columbia* v. *Mock* (D.C. App. 1966, 217 A. 2d 113).

§ 16–2346. Bond; commitment; right to jury trial

The court may require the person accused to enter into bond with surety in a sum not to exceed $2,500, guaranteeing his appearance on the date set for hearing or trial. If the defendant fails to appear, the security for his appearance shall be forfeited and shall be applied toward the support of the child if so ordered by the court. If the defendant fails to post bond fixed by the court he shall forthwith be committed to the District Jail, there to remain until the date set for hearing, or until he enters into the required bond or otherwise is discharged by due process of law. In all prosecutions under this subchapter, the defendant is entitled to, but may waive, trial by jury. A final hearing may not take place until after the birth of the child. (Dec. 23, 1963, 77 Stat. 592, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–955 (Jan. 11, 1951, ch. 1225, § 7, 64 Stat. 1241).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Cross-examination

In paternity proceeding, where complaining witness had previously denied having relations with second man or being out with him or entertaining him in home during conception period, trial court's refusal to allow question asking her when she was in home with second man did not constitute improper limitation of cross-examination of complaining witness. *Goodman* v. *District of Columbia* (D.C. Mun. App. 1952, 88 A. 2d 319).

Evidence

In District of Columbia, child should not be exhibited to jury in illegitimacy case for purpose of establishing resemblance unless there appear in child physical characteristics peculiar to father and unless resemblance is so striking as to leave no reasonable doubt as to its existence, and likewise child should not be exhibited unofficially to jurors or some of them outside the courtroom. *Harrison* v. *District of Columbia* (D.C. Mun. App. 1953, 95 A. 2d 332).

Instructions

In bastardy proceeding, it was proper for the trial judge to explain to the jury, on its voir dire examination, the history and purpose of the legislation under which the proceeding was instituted. *Moses* v. *District of Columbia* (D.C. Mun. App. 1957, 129 A. 2d 402).

In bastardy proceeding, charge was in strict accordance with the settled law of the jurisdiction. *Id.*

In paternity suit, failure of trial judge to instruct jury concerning defendant's failure to take stand was not error, in absence of request for such instruction by defense counsel. *Ford* v. *District of Columbia* (D.C. Mun. App. 1954, 102 A. 2d 838).

Plea of guilty without counsel

Where defendant probably understood that he was charged with paternity of child born out of wedlock and that his acknowledgment of the charge would result in his being ordered to pay something for support of the child but it was not clear that defendant was informed or understood that such payments would have to be made for 16 years and that he could be sent to jail for a year whenever he defaulted in payment, defendant's guilty plea, entered when he was not represented by counsel, would be set aside and he would be permitted to plead not guilty. *Huffman* v. *District of Columbia* (D.C. Mun. App. 1957, 133 A. 2d 144).

Right to counsel

Where defendant was without counsel only at his arraignment and preliminary hearing, and he pleaded not guilty and was represented by counsel at his trial, he was not deprived of any substantial rights, because the trial court refused to grant a second preliminary hearing because the defendant was not represented by counsel at the original hearing. *Ferguson* v. *District of Columbia* (D.C. Mun. App. 1957, 133 A. 2d 111).

Where 18 year old defendant in illegitimacy proceeding was asked, at preliminary hearing, if he wanted to get a lawyer before answering, and defendant replied that he did not, and, together with his mother, signed a waiver of right to counsel, but on day of trial no inquiry was made as to whether defendant desired attorney to represent him at that time, nor was he advised that he could have an attorney assigned to him if without

funds to retain one, and where judge never inquired as to defendant's education or familiarity with court proceedings, and charge against defendant was never explained to him in any detail, nor was defendant told the penalties that would attach if he were found to be the father of the child, defendant was not fully advised of his right to counsel and his motion for new trial should have been granted. *Johnson* v. *District of Columbia* (D.C. Mun. App. 1953, 101 A. 2d 251).

Trial procedure

In child support proceeding, putative father had right to make reasonable inquiry as to whether complaining witness had made charge against defendant at insistence of board of public welfare where she had sought financial assistance. *Ford* v. *District of Columbia* (D.C. Mun. App. 1953, 96 A. 2d 277).

Verdict of jury

Verdict of jury that defendant was father of child born out of wedlock was supported by evidence. *A. Jackson* v. *District of Columbia* (D.C. App. 1964, 200 A. 2d 199).

Fact that jury chose to believe mother instead of putative father in trial to determine paternity and for support of child furnished no basis for reversal of judgment. *Id.*

Voir dire examination

Where defendant was charged with being father of an illegitimate child, action of the trial court in explaining the history and purpose of this subchapter to the jury on a voir dire examination was proper. *Ferguson* v. *District of Columbia* (D.C. Mun. App. 1957, 133 A. 2d 111).

§ 16–2347. Blood tests

When it is relevant to the prosecution or defense of an illegitimacy action, the court may direct that the mother, child, and the defendant submit to one or more blood tests to determine whether or not the defendant can be excluded as being the father of the child, but the results of the test may be admitted as evidence only in cases where the defendant does not object to its admissibility. (Dec. 23, 1963, 77 Stat. 592, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–956 (Jan. 11, 1951, ch. 1225, § 8, 64 Stat. 1241).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Blood tests

Blood grouping tests showing that husband was excluded as father of child born to his wife were conclusive of nonpaternity. *Retzer, Jr.* v. *Retzer* (D.C. Mun. App. 1960, 161 A. 2d 469).

Where putative father made no request in bastardy proceeding for tests of himself, mother, and illegitimate child, until after trial and finding that putative father was the father of the illegitimate child, court did not abuse its discretion in denying the motion for the blood tests. *Adams* v. *District of Columbia* (D.C. Mun. App. 1954, 109 A. 2d 141).

In a bastardy proceeding, court has authority, in its discretion, to order blood tests for putative father, mother, and illegitimate child. *Id.*

Paternity evidence used in incest case

If government offers evidence of paternity of child to corroborate fact of sexual act alleged in incest prosecution, defendant should be afforded the same defenses as available in paternity suits, and may disprove paternity to attack credibility of prosecutrix. *United States* v. *J. G. Dildy* (1966, 39 F.R.D. 340).

In incest prosecution court has discretion to predicate introduction of paternity evidence by the prosecution upon condition that results of blood tests of prosecutrix and child be made available to defendant. *Id.*

Where rotation in assignments of judges made it unlikely that judge hearing pretrial motions for psychiatric examination and blood tests would hear the case when it came to trial, such judge would not make a definite evidentiary ruling to predicate introduction of paternity evidence at trial upon condition that results of blood tests be made available to defendant, but would suggest that if prosecution intended to offer paternity evidence, it should be prepared to provide defendant with such results. *Id.*

§ 16–2348. Exclusion of public

Upon the trial of proceedings pursuant to this subchapter, the court may exclude the general public, and shall do so at the request of either party. (Dec. 23, 1963, 77 Stat. 592, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–957 (Jan. 11, 1951, ch. 1225, § 9, 64 Stat. 1241).

Minor changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Time for request

Under this section providing that upon trial of proceedings to adjudge person to be father of child born out of wedlock the Court may exclude the general public and shall do so at the request of either party, there is no requirement that request must be made at outset of trial or be waived. *Hassler* v. *District of Columbia* (1956, 238 F. 2d 264, 99 U.S. App. D.C. 188).

In proceeding to adjudge defendant to be the father of a child born out of wedlock, trial court committed error in denying motion to exclude newspaper people from courtroom after counsel made such motion when during presentation of defense he observed reporter in courtroom. *Id.*

Demand to have public excluded from a bastardy proceeding must be made at the appropriate time. *Hassler* v. *District of Columbia* (D.C. Mun. App. 1956, 122 A. 2d 827).

Request by defendant in bastardy case, made after prosecution had concluded its case and after defense counsel had made opening statement and had called two witnesses, that public be excluded, was untimely. *Id.*

§ 16–2349. Judgment

(a) *Prenatal and Confinement Expenses; Maintenance.*—When the defendant in a proceeding pursuant to this subchapter, in open court acknowledges the paternity of a child born out of wedlock, or when, at the trial the finding of the court or jury is against the defendant, the court, in rendering judgment, may enter an order for the payment of the prenatal medical care and costs of the mother's confinement and expenses of childbirth in such amount or amounts as it deems reasonable, commensurate with defendant's ability to pay. The court may also order payments for the maintenance and education of the child, commensurate with defendant's ability to pay, to be made at such periods or intervals as the court directs. The court may order payments to be made by the defendant at a precinct of the Metropolitan Police Department of the District of Columbia. Payments shall continue until the child reaches the age of 16 years, unless, prior thereto, the child is legally adopted.

(b) *Petition for Modification of Judgment; Hearing.*—From time to time, the court, after a hearing, may change or modify its order directing the amount that defendant shall pay for the maintenance and support of the child. The hearing shall be held not less than ten days following notice in writing by the clerk of the court to the parties in interest, mailed to or left at their last known place of residence.

(c) *Death of Child.*—If a child dies before reaching the age of 16 years, the court upon proof thereof, may order the payment of reasonable funeral expenses, and shall terminate the order for mainte-

nance. Arrears that may be owing at the time of death may be canceled. (Dec. 23, 1963, 77 Stat. 593, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–958 (Jan. 11, 1951, ch. 1225, § 10, 64 Stat. 1241).

Words "in its discretion" and "in the discretion of the court", are omitted from subsec. (a) and subsec. (c) as surplusage. Any abuse of discretion would render the court's action subject to reversal.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Burden of proof

Burden was on government in paternity proceeding to prove by preponderance of the evidence that defendant was father of children born out of wedlock. *B. L. Hawkins* v. *District of Columbia* (D.C. App. 1964, 203 A. 2d 116).

Docket entry

Docket entry, in proceeding to establish paternity of an illegitimate child and to compel father to provide support, which read "Pts. and atty for deft. pres. Deft. adjudged G.", was sufficiently clear to show that defendant had been found to be the father of complainant's child, especially when defendant's counsel had admitted on oral argument that he clearly understood what the entry meant, but better practice would be for trial court to adopt form of finding or verdict adjudging defendant to be father or not father of child in question, in view of fact that proceeding is not criminal in nature. *Bragg* v. *District of Columbia* (D.C. Mun. App. 1953, 98 A. 2d 784).

Expert testimony

Proffered expert testimony as to results of tests which had excluded defendant as father of one of three children born out of wedlock to mother who at first charged defendant with being the father of the three children but later successfully sought support from him for only two of the children was admissible as affecting her credibility though not as probative on paternity, and exclusion of the evidence was prejudicial to the defendant. *B. L. Hawkins* v. *District of Columbia* (D.C. App. 1964, 203 A. 2d 116).

Evidence

In bastardy proceeding, in view that the determination of paternity and the support of a child are essentially civil proceedings although denominated quasi-criminal in their over-all nature, the court erred in requiring proof beyond a reasonable doubt but paternity could be proved by a preponderance of evidence. *District of Columbia* v. *Turner, Jr.* (D.C. Mun. App. 1959, 154 A. 2d 925).

In view of fact that this subchapter relating to a proceeding to establish paternity of an illegitimate child and to require father to provide for child's support, include no requirement that there be corroboration of mother's testimony in order to establish a finding of paternity, a defendant could be found to be the father of an illegitimate child, and the fact of birth could be established, by the uncorroborated testimony of the mother, where such testimony was credible, sufficiently clear and convincing. *Bragg* v. *District of Columbia* (D.C. Mun. App. 1953, 98 A. 2d 784).

Instructions

In paternity proceeding involving more than one child, jury should be instructed that paternity as to each child must be found separately and that jurors may find from all the evidence that defendant is the father of one although not the other. *B. L. Hawkins* v. *District of Columbia* (D.C. App. 1964, 203 A. 2d 116).

Judgment

Although the burden is on the government to prove all material allegations in information in a proceeding to establish paternity and to require father to provide for support of an illegitimate child, fact that government did not prove that the name of an illegitimate child was as charged in the information, or that the child was a male, did not invalidate judgment requiring defendant, as the child's father, to contribute to the child's support. *Bragg* v. *District of Columbia* (D.C. Mun. App. 1953, 98 A. 2d 784).

Judgment entered in Juvenile Court of District of Columbia against defendant charged with being father of illegitimate child and subsequent order of support together constituted the final and appealable judgment, and hence appeal which was timely with respect to order was timely with respect to the final and appealable judgment. *Harrison* v. *District of Columbia* (D.C. Mun. App. 1953, 95 A. 2d 332).

Order to support

Before Juvenile Court of District of Columbia can order man to support child either man must acknowledge his paternity or there must be an adjudication of paternity. *Harrison* v. *District of Columbia* (D.C. Mun. App. 1953, 95 A. 2d 332).

Paternity, issue for trier of facts

Where there is direct conflict in evidence, question whether defendant is father of minor children born out of wedlock is for trier of facts, not the court. *B. L. Hawkins* v. *District of Columbia* (D.C. App. 1964, 203 A. 2d 116).

Proof required by prosecution

Prosecution in bastardy case was not required to prove that child was born alive or was alive at time of trial. *Hassler* v. *District of Columbia* (D.C. Mun. App. 1956, 122 A. 2d 827).

Review

In proceeding charging the defendant with being the father of a child born to complainant, an unmarried woman, government's evidence made out a prima facie case. *District of Columbia* v. *Turner, Jr.* (D.C. Mun. App. 1959, 154 A. 2d 925).

Evidence supported finding that defendant was father of child born out of wedlock. *Stone* v. *District of Columbia* (D.C. Mun. App. 1956, 127 A. 2d 841).

The Municipal Court of Appeals is bound by rule that where there is substantial evidence to support a finding it has no right to reverse. *Id.*

Municipal Court of Appeals cannot decide appeals on basis of facts stated in brief unless such facts also appear in records brought up from trial court. *Id.*

Even though a proceeding to provide for support of an illegitimate child is regarded as quasi criminal in nature, failure of proof of immaterial allegations in the information does not require a reversal, especially when such points were not raised at trial. *Bragg* v. *District of Columbia* (D.C. Mun. App. 1953, 98 A. 2d 784).

Waiver

Where § 11–953 requiring examination of mother of illegitimate child under oath by assistant corporation counsel to determine whether there is reasonable cause to believe that accused person is father of child was not complied with, and defendant raised question at his first opportunity, defendant did not waive right to assert such noncompliance and verdict of jury finding defendant to be father of child did not eliminate necessity of proper examination. *Kelly* v. *District of Columbia* (D.C. Mun. App. 1958, 139 A. 2d 512).

§ 16–2350. Support payments

(a) *Security; Probation; Committment for Default.*—The court may require a defendant, against whom a judgment is rendered pursuant to this subchapter, to give security not to exceed $2,500 guaranteeing payments ordered by the court, or may suspend the requirement of security and place the defendant on probation to the court on condition that payments be made as ordered. In default of a payment as ordered, the court may revoke probation and commit the defendant to jail for a period of not more than one year at any one time. At the expiration of a term of commitment, the court may discharge the defendant, but his liability to make subsequent payments or any payments in arrears

at the time of commitment in accordance with the judgment or for commitment for further default is not thereby affected. In lieu of commitment or as a condition of his release from jail, the court may set aside commitment and again place the defendant on probation upon such terms as it directs. The amount of security, if forfeited, shall be disbursed as the court directs.

(b) *Judgment for Arrears; Execution.*—If there is a default of payments as ordered, the court, after notice by registered mail to the defendant at his last-known address, and after hearing, may reduce the amount of arrears to judgment. The court, after the notice and hearing, may reduce to judgment the arrears under any order hereafter entered for the support and maintenance of a child born out of wedlock, or any amounts ordered to be paid by the defendant under this subchapter. When the judgment is docketed in the clerk's office of the United States District Court for the District of Columbia, it has the same force and effect as judgments of that court, and execution thereon may be effected in the same manner as upon judgments of that court. (Dec. 23, 1963, 77 Stat. 593, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–959 (Jan. 11, 1951, ch. 1225, § 11, 64 Stat. 1242).

All references to "discretion" of the court are omitted as surplusage. See revision note under section 16–2349.

In third sentence of subsec. (a), words "at time of commitment" are inserted after "arrears" on recommendation of the Judge of the Juvenile Court.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Abuse of discretion

Where probationer, against whom judgment of paternity had been entered, was committed once for being in arrears in weekly payments for support of child, but was released and was warned of action which the court would take for defaults in the future, and the court waited some 8 months, during which period probationer fell at least 12 payments in arrears, before acting on its warning and committing probationer for 30 days, there was no arbitrary, capricious, or willful treatment of probationer at hands of court, and court did not abuse its discretion. *Stevens* v. *District of Columbia* (D.C. Mun. App. 1956, 127 A. 2d 147).

Corroboration

In bastardy proceeding, there is no requirement of corroboration of the prosecutrix where there is no statute requiring it and the defendant may be found to be the father on the uncorroborated testimony of the mother where such evidence is credible, sufficiently clear and convincing. *District of Columbia* v. *Turner, Jr.* (D.C. Mun. App. 1959, 154 A. 2d 925).

Jurisdiction

"Children," within statute providing that Domestic Relations Branch of Municipal Court shall have exclusive jurisdiction over actions to enforce support of minor children, includes illegitimate children and Domestic Relations Branch had jurisdiction of action to enforce order directing him to support minor children born out of wedlock, where natural father had acknowledged paternity. *C. Johnson* v. *E. Johnson et al.* (D.C. Mun. App. 1962, 183 A. 2d 916).

Rights of probationer

Probationer, against whom judgment of paternity has been entered, does not stand on equal footing with other citizens, and privilege of probation could be revoked by court in any procedural fashion authorized by this subchapter and, apart from this subchapter, probationer, committed summarily, has no recourse to the Constitution and may not insist on a trial in any strict or formal sense. *Stevens* v. *District of Columbia* (D.C. Mun. App. 1956, 127 A. 2d 147).

§ 16–2351. Voluntary agreement for support; approval; order of court; exclusion of other remedies

The putative father of a child born out of wedlock may enter into an agreement with the mother of the child, or with another person on behalf of the child, for the support and maintenance of the child, and the agreement may be submitted to the court for ratification and approval. Upon ratification and approval, the court shall issue an order incorporating the terms thereof, and payments thereunder may be received and disbursed by the court in the same manner as provided by section 16–2381. The faithful performance under the terms of the agreement bars other remedies of the mother or any other person on behalf of the child for the support of the child, subject to section 16–2349(b). (Dec. 23, 1963, 77 Stat. 594, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–960 (Jan. 11, 1951, ch. 1225, § 12, 64 Stat. 1242).

Changes are made in phraseology. See additional changes in text.

NOTES TO DECISIONS UNDER PRIOR LAW

Civil remedies

Where natural father acknowledges paternity, illegitimate children are entitled to civil remedies for support available in Domestic Relations Branch of Court of General Sessions, though they retain all remedies presently available to them in Juvenile Court. *C. Johnson* v. *E. Johnson et al.* (1963, 324 F. 2d 884, 117 U.S. App. D.C. 6).

Consideration

A mother's agreement not to assert her statutory right of action against her illegitimate child's putative father for child's maintenance constituted sufficient "consideration' for putative father's contract to pay mother weekly sum for child's support. *Williams* v. *Amann* (D.C. Mun. App. 1943, 33 A. 2d 633).

Duress

An illegitimate child's putative father's contract to pay mother weekly sum for child's support was not "void," but only "voidable," for duress, though signed by him in order to continue as student at university and obtain degree, as duress, if any, was mental only and when it ceased to exist, it was incumbent on him to repudiate contract or let it stand as valid subsisting agreement. *Williams* v. *Amann* (D.C. Mun. App. 1943, 33 A. 2d 633).

Offer of settlement

Defendant's unaccepted offer to pay in order to settle, prefaced by absolute denial of liability, was not a voluntary acknowledgment of paternity of child, and hence this section providing for ratification and approval by Juvenile Court of District of Columbia of agreement for support and maintenance of child by father voluntarily acknowledging paternity was inapplicable to lift offer out of rule against admissibility of offer of compromise. *Harrison* v. *District of Columbia* (D.C. Mun. App. 1953, 95 A. 2d 332).

Proper parties

An illegitimate child's mother is "proper plaintiff" in suit on putative father's contract to pay mother weekly sum for child's support. *Williams* v. *Amann* (D.C. Mun. App. 1943, 33 A. 2d 633).

Public policy

An illegitimate child's putative father's contract to pay mother weekly sum for child's support in consideration of mother's agreement not to assert her statutory right of action for child's maintenance is not void under rule of "public policy" condemning contracts grounded on promises to withhold commencement or prosecution of proceedings for criminal offenses. *Williams* v. *Amann* (D.C. Mun. App. 1943, 33 A. 2d 633).

Ratification

An illegitimate child's putative father's continuance of payments under contract with mother for child's support until after expiration of statutory time for mother's institution of action to determine child's parentage and fix father's responsibility for child's support constituted "ratification" of contract by putative father, so as to preclude him from maintaining defense of duress in mother's subsequent action for amount of overdue payments. *William* v. *Amann* (D.C. Mun. App. 1943, 33 A. 2d 633).

§ 16–2352. Death of defendant; liability of estate

If the defendant dies after paternity has been established and prior to the time the child reaches the age of 16 years, any sums due and unpaid under an order of the court at the time of his death constitute a valid claim against his estate. (Dec. 23, 1963, 77 Stat. 594, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–962 (Jan. 11, 1951, ch. 1225, § 14, 64 Stat. 1243).

Changes are made in phraseology.

§ 16–2353. New birth record upon marriage of natural parents

When a certified copy of a marriage certificate is submitted to the Director of Public Health, establishing that the previously unwed parents of a child born out of wedlock have intermarried subsequent to the birth of the child and the paternity of the child has been judicially determined or acknowledged by the husband before the Commissioners or their designated agent, or has been acknowledged in an affidavit sworn to by the husband before a judge or the clerk of a court of record, or before an officer of the Armed Forces of the United States authorized to administer oaths, or before a person authorized to administer oaths, and the affidavit is delivered to the Commissioners or their designated agent, a new certificate of birth bearing the original date of birth and the names of both parents shall be issued and substituted for the certificate of birth then on file. The original certificate of birth and all papers pertaining to the issuance of the new certificate shall be placed under seal, and opened for inspection only upon order of the United States District Court for the District of Columbia. (Dec. 23, 1963, 77 Stat. 594, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–963 (Jan. 11, 1951, ch. 1225, § 15, 64 Stat. 1243; Apr. 23, 1958, Pub. L. 85–382, § 1, 72 Stat. 97).

"Director of Public Health" is substituted for "Commissioners of the District of Columbia or their designated agent". See section 16–2341 herein and revision note thereunder.

Minor changes are made in phraseology.

§ 16–2354. Reports to Director of Public Health

(a) Upon entry of a final judgment determining the paternity of a child born out of wedlock, the clerk of the court shall forward a certificate to the Director of Public Health, or his authorized representative in the jurisdiction in which the child was born, giving the name of the person adjudged to be the father of the child.

(b) Upon receipt of the certificate provided by subsection (a) of this section, the Director of Public Health or his authorized representative shall file it with the original birth record, and thereafter may issue a certificate of birth registration including thereon the name of the person adjudged to be the father of the child. (Dec. 23, 1963, 77 Stat. 594, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–964 (Jan. 11, 1961, ch. 1225, § 16, 64 Stat. 1243; Apr. 23, 1958, Pub. L. 85–382, § 2, 72 Stat. 97).

Words "Director of Public Health, or his authorized representative in the jurisdiction" are substituted for "bureau of vital statistics of the jurisdiction", and "Director of Public Health or his authorized representative" is substituted for "Commissioners of the District of Columbia or their designated agent". See section 16–2341 herein and revision note thereunder.

Minor changes are made in phraseology.

§ 16–2355. Applicability of sections relating to desertion or nonsupport

The provisions of sections 22–903 to 22–905, making it a misdemeanor to abandon or willfully neglect to provide for the support and maintenance of minor children in destitute or necessitous circumstances, and providing the proceedings and punishment therefor, also apply to a person who abandons or fails to support his illegitimate child when paternity has been established judicially or when paternity has been directly acknowledged by the putative father under oath, or indirectly acknowledged by voluntarily making contributions to the support of the child. (Dec. 23, 1963, 77 Stat. 594, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–961 (Jan. 11, 1951, ch. 1255, § 13, 64 Stat. 1242).

Section is based on subsec. (b) of section 11–961 of D.C. Code, 1961 ed. Remainder of section 11–961 is carried into sections 11–1556 and 16–2381.

Section "22–905" is substituted for "22–906", to correct a typographical error. Section 13 of act Jan. 11, 1951, ch. 1255, 64 Stat. 1242, from which section 11–961 of D.C. Code, 1961 ed., was derived, refers only to act Mar. 23, 1906, ch. 1131, 34 Stat. 86, as amended, which is classified to sections 22–903 to 22–905 of D.C. Code, 1961 ed. Section 22–906 is from an act of 1910 (May 18, 1910, ch. 248, 36 Stat. 403), and relates to deposits by the clerk of the Juvenile Court of all moneys paid by order of the court under sections 22–903 to 22–905 that are collected and disbursed by the clerk. It seems unnecessary to include section 22–906 in the reference in this section.

Words, "and providing the proceedings and punishment therefor," are inserted for the purpose of completeness.

Minor changes are made in phraseology.

§ 16–2356. Construction

Section 11–1555, section 11–1583(a)(2), section 11–1586(e), and this subchapter shall be so interpreted as to effectuate the protection and welfare of the child involved in any proceedings thereunder. (Dec. 23, 1963, 77 Stat. 595, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–966 (Jan. 11, 1951, ch. 1225, § 18, 64 Stat. 1243).

The provision that authorized appropriations to carry out the purposes of the sections cited in section 11–966 of D.C. Code, 1961 ed., is omitted as covered in a separate section of the bill to enact this revision.

The citation of sections 11–951 to 11–967 of D.C. Code, 1961 ed., is changed to refer to this subchapter and other sections in this revised part in which the pertinent provisions of sections 11–951 to 11–967 are carried.

A minor change is made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Nature of proceeding

A proceeding in Juvenile Court of District of Columbia to establish paternity and provide for support of illegitimate child is not criminal proceeding intended to punish father but ultimate object of proceeding is to provide support for child. *Harrison* v. *District of Columbia* (D.C. Mun. App. 1953, 95 A. 2d 332).

SUBCHAPTER III.—MISCELLANEOUS PROVISIONS

§ 16–2381. Payments for support and maintenance under section 22–903 to 22–905; voluntary payments; disbursement

(a) In all cases arising pursuant to sections 22–903 to 22–905, that, pursuant to section 11–1556, are brought in the Juvenile Court of the District of Columbia, the court may order payments to be made by the defendant, including a defendant to which section 16–2355 relates, at a precinct of the Metropolitan Police Department of the District of Columbia. As used in this subsection, "Metropolitan Police Department" has the same meaning as that prescribed in section 16–2341.

(b) The Juvenile Court may accept voluntary payments for the support and maintenance of wife or minor children and disburse the moneys to the persons for whom the contributions are paid, in the same manner as the payments are accepted and disbursed pursuant to sections 22–903 to 22–905. (Dec. 23, 1963, 77 Stat. 595, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–961 (Jan. 11, 1951 ch. 1225, § 13, 64 Stat. 1242).

Section is based on part of subsec. (a) and all of subsec. (c), of section 11–961 of D.C. Code, 1961 ed. The provision of subsec. (a) of section 11–961 vesting jurisdiction in the Juvenile Court, concurrently with the District Court, of cases arising under sections 22–903 et seq., of the Code, relating to desertion and nonsupport, is carried into section 11–1566 herein. Subsec. (b) of section 11–961 is carried into section 16–2355 herein.

As some of the provisions of section 11–961 of D.C. Code 1961 ed., are, as stated above, carried into sections 11–1556 and 16–2355 herein, words "which, under section 11–1556, are brought in the Juvenile Court of the District of Columbia," are inserted near the beginning of subsec. (a), and words ", including a defendant to which section 16–2355 relates," are inserted after "defendant" in that subsection, for the purpose of clarification and completeness.

The second sentence of subsec. (a) providing that, as used in that subsection, "Metropolitan Police Department" has the same meaning as that prescribed in section 16–2341, is inserted for the same reason as stated in the revision note under section 16–2341.

The citation to section "22–906" of the Code, is changed to section "22–905" to correct a typographical error. See revision note under section 16–2355 herein.

Words ", in its discretion,", which, in the provisions carried into subsec. (a), followed "the court" and preceded "may order", are omitted as surplusage. See revision note under section 16–2349.

Changes are made in phraseology.

§ 16–2382. Jury

The jury for service in the Juvenile Court shall consist of twelve persons. (Dec. 23, 1963, 77 Stat. 595, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–936 (Mar. 19, 1906, ch. 960, § 35, as added June 1, 1938, ch. 309, 52 Stat. 596 (604)).

Section is based on the first clause of section 11–936 of D.C. Code, 1961 ed. For remainder of section 11–936, see tables.

§ 16–2383. Suspension of imposition or execution of sentence

In all cases in the Juvenile Court, the court may, upon conviction, suspend the imposition of sentence or impose sentence and suspend the execution thereof, it if appears to the satisfaction of the court that the ends of justice and the best interests of the public and of the defendant would be served thereby. In the imposition of sentence and the suspension of the execution thereof, the court may place the defendant on probation as provided by section 16–2314, 22–903, or 31–207, as the case may be. (Dec. 23, 1963, 77 Stat. 595, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–942a (June 18, 1953, ch. 128, § 1, 67 Stat. 65).

The provisions from which section 11–942a of D.C. Code, 1961 ed., was derived (the above-cited section 1 of act June 18, 1953) were also set out in that Code as section 11–757 thereof because they referred, not only to the Juvenile Court, but also to the Municipal Court, now the Court of General Sessions. In this section, the provisions relating to the Court of General Sessions are omitted, as they are set out in section 16–710 herein.

Changes are made in phraseology.

CROSS REFERENCE

Probation and suspension of sentences in United States District Court, see 18 U.S.C. § 3651.

§ 16–2384. Fees prohibited

A fee may not be charged for any service rendered by the clerk of the Juvenile Court or by any officer of the court. (Dec. 23, 1963, 77 Stat. 595, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–935 (Mar. 19, 1906, ch. 960, § 34, as added June 1, 1938, ch. 309, 52 Stat. 596(604)).

Minor changes are made in phraseology.

Chapter 25.—CHANGE OF NAME

Sec.
16–2501. Application; persons who may file.
16–2502. Notice; contents.
16–2503. Decree.

§ 16–2501. Application; persons who may file

Whoever, being a resident of the District and desiring a change of name, may file an application in the United States District Court for the District of Columbia setting forth the reasons therefor and also the name desired to be assumed. If the applicant is an infant, the application shall be filed by his parent, guardian, or next friend. (Dec. 23, 1963, 77 Stat. 595, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1101 (Mar. 3, 1901, ch. 854 § 1298, 31 Stat. 1394; June 30, 1902, ch. 1329, 32 Stat. 543; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Words "holding an equity term", which followed the reference to the District Court, are omitted as obsolete. See revision note under section 11–502 herein.

The third (final) sentence of section 16–1101 of D.C. Code, 1961 ed., read as follows: "The Court shall have power, in its discretion, to grant the prayer of such petition". This sentence is omitted as covered by section 16–2503 herein.

Reference to "petition" are changed to "application", as the latter term is perhaps more in consonance with the Federal Rules of Civil Procedure. There is nothing in those rules indicating that they do not apply to change of name proceedings in the District Court in the District of Columbia. This type of proceeding is not listed in rule 81(a) among the proceedings in that court to which the rules do not apply.

Changes are made in phraseology.

CROSS REFERENCE

Change of name upon adoption, see § 16–312.

NOTES TO DECISIONS UNDER PRIOR LAW

Not applicable to corporations

Sections 16–1101 to 16–1103 do not apply to corporations. *American Elementary Elec. Co.* v. *Normandy* (1917, 46 App. D.C. 329).

§ 16–2502. Notice; contents

Prior to a hearing pursuant to this chapter, notice of the filing of the application, containing the substance and prayer thereof, shall be published once a week for three consecutive weeks in a newspaper in general circulation published in the District. (Dec. 23, 1963, 77 Stat. 595, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1102 (Mar. 3, 1901, ch. 854, § 1299, 31 Stat. 1394; June 30, 1902, ch. 1329, 32 Stat. 543).

Word "application" is substituted for "petition". See revision note under section 16–2501 herein.

Changes are made in phraseology.

§ 16–2503. Decree

On proof of the notice prescribed by section 16–2502, and upon a showing that the court deems satisfactory, the court may change the name of the applicant according to the prayer of the application. (Dec. 23, 1963, 77 Stat. 595, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1103 (Mar. 3, 1901, ch. 854; § 1300, 31 Stat. 1394; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991, May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Words "or the judge holding an equity term thereof", which followed "court", are omitted as obsolete. See revision note under section 11–502 herein.

Word "application" is substituted for "petition". See revision note under section 16–2501 herein.

Changes are made in phraseology.

Chapter 27.—NEGLIGENCE CAUSING DEATH

Sec.
16–2701. Liability; damages; prior recovery as precluding action.
16–2702. Party plaintiff; statute of limitations.
16–2703. Distribution of damages.

§ 16–2701. Liability; damages; prior recovery as precluding action

When, by an injury done or happening within the limits of the District, the death of a person is caused by the wrongful act, neglect, or default of a person or corporation, and the act, neglect, or default is such as will, if death does not ensue, entitle the person injured, or if the person injured is a married woman, entitle her husband, either separately or by joining with the wife, to maintain an action and recover damages, the person who or corporation that is liable if death does not ensue is liable to an action for damages for the death, notwithstanding the death of the person injured, even though the death is caused under circumstances that constitute a felony.

The damages shall be assessed with reference to the injury resulting from the act, neglect, or default causing the death, to the spouse and the next of kin of the deceased person; and shall include the reasonable expenses of last illness and burial. Where there is a surviving spouse, the jury shall allocate the portion of its verdict payable to the spouse and next of kin, respectively, according to the finding of damage to the spouse and next of kin. If, in a particular case, the verdict is deemed excessive the trial judge or the United States Court of Appeals for the District of Columbia Circuit, on appeal of the cause, may order a reduction of the verdict. An action may not be maintained pursuant to this chapter if the party injured by the wrongful act, neglect, or default has recovered damages therefor during his life. (Dec. 23, 1963, 77 Stat. 596, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1201 (Mar. 3, 1901, ch. 854, § 1301, 31 Stat. 1394; June 19, 1948, ch. 507, § 1, 62 Stat. 487).

Word "judge" is substituted for "justice". See sections 88, 132, and 133 of Title 28, United States Code, and act June 25, 1948, ch, 646, § 32(a), 62 Stat. 991, as amended by act May 24, 1949, ch. 139. § 127, 63 Stat. 107.

Changes are made in phraseology.

CROSS REFERENCES

Abatement and revivor in general, see § 12–101 et seq.

Liability for death of employee under Longshoremen's and Harbor Workers' Compensation Act, see §§ 36–501, 36–502.

Liability of common carrier for death of employee, Employers' Liability Act, see § 44–401 et seq.

NOTES TO DECISIONS UNDER PRIOR LAW

Decisions under prior law

Under act of February 17, 1885 (23 Stat. 307), see *McGraw* v. *District of Columbia* (1894, 3 App. D.C. 405, 25 L.R.A. 691).

In action for wrongful death under act of Congress of February 17, 1885 (23 Stat. 307), it was not necessary for the plaintiff to allege special pecuniary loss due to death of the deceased. *District of Columbia* v. *Wilcox* (1894, 4 App. D.C. 90).

Under act of Congress of February 17, 1885 (23 Stat. 307), an administrator may sue for killing of his intestate whether the intestate left goods and chattels or not. *Washington Asphalt Block & Tile Co.* v. *Mackey* (1899, 15 App. D.C. 410).

Abuse of discretion

In action for wrongful death, record disclosed District Court did not abuse its discretion in denying application of plaintiffs for additional time to qualify as personal representatives within meaning of wrongful death statute. *Paris et al.* v. *Braden, M.D., Casualty Hosp., and Travelers Ins. Co.* (1956, 234 F. 2d 40, 98 U.S. App. D.C. 219).

Amendment of complaint

Where an act of negligence causing death gives rise simultaneously to two separate and independent claims, one under the Wrongful Death Act, §§ 16–1201 to 16–1203, and the other under the Survival Act, § 12–101 et seq the District Court erred in denying plaintiff's motion to amend her complaint to include a demand for damages under the Survival Act over and above the initial demand under the Wrongful Death Act on the ground that the remedies were mutually exclusive. *Sornberger, Executrix, etc.* v. *District Dental Laboratory Inc. et ano.* (1959, 266 F. 2d 694, 105 U.S. App. D.C. 290).

In administrator's action to recover for death of decedent and to recover for decedent's injuries sustained and loss of potential earning capacity, administrator

would be allowed to amend complaint to increase damages claimed from $46,500 to $71,500. *Mitchell* v. *Gundlach* (D.C.D.C. 1956, 136 F. Supp. 169).

Beneficiaries

Action for wrongful death caused by negligence in Maryland can be maintained in District of Columbia court for the benefit of the persons designated in the statute of Maryland. *Stewart* v. *Baltimore & O. R. Co.* (1897, 18 S. Ct. 105, 168 U.S. 445, 42 L. Ed. 537).

Fact that the deceased had his domicile in Virginia, and that he had no estate here, at the time of his death are not conclusive against the right to obtain letters of administration in District of Columbia. *Western Union Tel. Co.* v. *Lipscomb* (1903, 22 App. D.C. 104).

If the action cannot be maintained by the personal representative of the intestate for the ultimate benefit of the father, who is next of kin, and alone has been shown to have sustained any injury by the death of the son, the judgment ought to be arrested, for the remedy goes no further. *United States Elec. Lighting Co.* v. *Sullivan* (1903, 22 App. D.C. 115).

Action is maintainable for benefit of illegitimate brother of the half blood of the decedent, a woman. *Southern R. Co.* v. *Hawkins* (1910, 35 App. D.C. 313, 21 Ann. Cas. 926).

Necessity for declaration to allege existence of beneficiaries, and right to amend a declaration failing so to allege. *Neubeck* v. *Lynch* (1911, 37 App. D.C. 576, 37 L.R.A., N.S., 813).

A husband, as administrator, has a proper action for death of wife, within meaning of the words "next of kin." *Calvert* v. *Terminal Taxicab Co.* (1918, 48 App. D.C. 119).

Burden of proof

In wrongful death action by pedestrian's administratrix against motorist whose automobile struck pedestrian, administratrix had burden of proving that motorist should have seen pedestrian in time to avoid accident. *Skinner* v. *Koontz* (1960, 284 F. 2d 207, 109 U.S. App. D.C. 73).

Executor of estate of passenger who sustained fatal injuries in fall through open vestibule doors on fast moving train had, as part of his burden of proof, in action against railroad, obligation, as element in showing negligence of railroad in failing to inspect vestibule doors to see to it that they remained closed, to introduce sufficient evidence to permit conclusion that there was opportunity for further inspections than those made. *Pennsylvania R.R. Co.* v. *Pomeroy* (1956, 239 F. 2d 435, 99 U.S. App. D.C. 272, certiorari denied 77 S. Ct. 861, 353, U.S. 950, 1 L. Ed. 2d 859).

A passenger or his representative has the burden, if he is to succeed in a suit for negligence against a railroad, of producing sufficient evidence to warrant inferences required to support verdict in his favor; plaintiff, who relies on an alleged act of specific negligence, is not relieved of burden of making prima facie proof of that act, nor is jury free to make any guess or conjecture it likes, without any evidentiary basis therefor. *Id.*

Change of venue

Under 28 U.S.C. § 1404(a), providing for change of venue for convenience of parties and witnesses in interest of justice to other district or division where action might have been brought, United States District Court for District of Maryland could not transfer case to District of Columbia by administrator who was resident of District of Columbia, brought under §§ 12–101 et seq., and 16–1201 to 16–1203, against single defendant who was Maryland resident, and who was not amenable to personal service in district and who would not consent to transfer. *Mitchell* v. *Gundlach* (D.C.D.C. 1956, 136 F. Supp. 169).

In District of Columbia's administrator's action against individual defendant who was resident of Maryland, based on injury sustained by decedent allegedly due to defective commodity manufactured and sold by defendant, evidence on interest of justice did not require that venue be transferred from Baltimore, Maryland, to Washington, D.C. *Id.*

Concurring negligence

In action for taxicab passenger's wrongful death sustained in intersection collision with streetcar, evidence sustained implied findings that streetcar had entered intersection against traffic light and that taxi driver had failed to slow down so that death was caused by concurring negligence. *Coleman* v. *Moore et al.* (D.C.D.C. 1952, 108 F. Supp. 425).

Construction

Wrongful Death Act creates a new right of action in next of kin of decedent, derived from cause of action which stems from wrongful cause of the death. *N. L. Jones, Administratrix, etc.* v. *A. Pledger, Sr., Administrator, etc.* (1966, 363 F. 2d 986, 124 U.S. App. D.C. 254).

Statute giving damages on account of death resulting from wrongful act of another is remedial, and as such should be liberally construed. *Id.*

There is only one cause of action for wrongful death and it arises under §§ 16–1201—16–1203 of this title. *Webster* v. *Clodfelter* (1942, 130 F. 2d 434, 76 U.S. App. D.C. 171, 143 A.L.R. 280, certiorari denied 63 S. Ct. 261, 317 U.S. 689, 87 L. Ed. 552).

Congress did not, by enactment of wrongful death statute (§§ 16–1201 to 16–1203) and compensation act (U.S. Code, title 33, § 901 et seq.) applicable to District of Columbia, intend to create two separate and independent causes of action for wrongful death, and there was no intention to allow a widow of an injured employee to recover from the employer under both acts. *Ciarricchi* v. *James Kane Co. et al.* (D.C.D.C. 1953, 116 F. Supp. 848).

Statute is remedial and as such must be liberally construed. *Calvert* v. *Terminal Taxicab Co.* (1918, 48 App. D.C. 119).

—— With other laws

Plaintiff, who recovered against one joint tort-feasor under the Virginia Wrongful Death Act, and in a separate action against another tort-feasor under the District of Columbia Wrongful Death Act, was not entitled to recover against the joint tort-feasors collectively an amount greater than the amount of the larger judgment, the judgment against party responsible under the District of Columbia Act, since loss of consortium and solatium, recovery for which was allowable only under the Virginia Act, was not considered in computing damages so that judgments against both tort-feasors were for the same damages. *J. A. St. Clair, as Executrix etc.* v. *Eastern Airlines Inc., and United States* (1962, 302 F. 2d 477, U.S. App. 2d Ct.).

New York law applied in determining right of plaintiff to interest on judgment for wrongful death of her decedent, where jurisdiction of suit, which was brought in the Southern District of New York was based on diversity of citizenship. *Id.*

Under New York law, plaintiff, who sued for wrongful death of her decedent who was killed in an accident in the District of Columbia, was entitled only to interest from date of judgment, and was not entitled to interest on the judgment from date of decedent's death. *Id.*

Federal court, for New York District, whose jurisdiction rested upon diversity of citizenship, would apply New York conflict of laws rules to death action arising out of airplane crash occurring over District of Columbia; and, accordingly, plaintiff's right to recover damages was governed by Wrongful Death Act of District of Columbia. *J. A. St. Clair, as Executrix etc.* v. *Eastern Airlines, Inc.* (D.C.D.C. 1961, 194 F. Supp. 623).

New York statute requiring that judgment include interest from date of decedent's death was inapplicable to wrongful death action in which substantive right of recovery was based upon laws of District of Columbia. *Id.*

In wrongful death action against United States under Federal Tort Claims Act on ground that negligence of government employees in control tower at Washington National Airport in Virginia was contributing cause of collision, in District of Columbia, of Bolivian plane with commercial airline plane in which decedent was passenger, while both planes were attempting to land at airport, the applicable Virginia Wrongful Death Act limiting total recovery to $15,000 did not permit recovery of additional damages for loss of society and solatium, where plaintiffs had already recovered, under District of Columbia

Wrongful Death Act, a greater sum from the commercial airline, a joint tort-feasor. *Cook et al.* v. *United States* (C.A. Conn. 1960, 274 F. 2d 689).

Action brought in District under wrongful death act of Nebraska is subject to the two-year limitation of that act and not the one-year limitation of § 16–1202. The law of the state where the death occurred should govern unless the public policy of the forum is clearly opposed. This section is confined to deaths within its jurisdiction. *Lewis* v. *Reconstruction Finance Corp.* (1949, 177 F. 2d 654, 85 U.S. App. D.C. 339).

Damages

Brazil's limitation on damages recoverable for death sustained in airplane collision occurring there was properly applied, in suit brought in District of Columbia, under Brazilian aviation accident death statute, against Brazilian corporation, as assignee of owner of one aircraft involved, for death of Maryland resident while a passenger in other aircraft involved, in view of dominant interest of Brazil in accident. *Tramontana* v. *S. A. Empresa De Viacao Aerea Rio Grandense* (1965, 350 F. 2d 445, 121 U.S. App. D.C. 338).

Marked decline in dollar value of Brazilian money was not cause for disregarding Brazil's limitation on damages recoverable for death sustained in airplane collision occurring there, as applied in suit instituted in District of Columbia, under Brazilian aviation accident death statute, against Brazilian corporation, as assignee of owner of one aircraft involved, for death of Maryland resident while a passenger in other aircraft involved. *Id.*

Rate of exchange prevailing on date of entry of judgment was properly applied, in suit instituted in District of Columbia, under Brazilian aviation accident death statute, against Brazilian corporation, as assignee of owner of one aircraft involved in collision, for death of Maryland resident while a passenger in other aircraft involved, in converting Brazilian ceiling on recovery into dollars. *Id.*

Employers' Liability Act

This section is not repealed by the Employers' Liability Act (sections 44–401 to 44–405); but each act applies to cases arising under it and to none other. *Hyde* v. *Southern R. Co.* (1908, 31 App. D.C. 466).

Evidence

In action by pedestrian's administratrix against motorist for wrongful death of pedestrian who was struck by motorist's automobile shortly after midnight at or near intersection of two streets, evidence, which failed to establish that motorist should have seen pedestrian in time to avoid accident, to reveal pedestrian's direction of travel or the point of impact, or to show that motorist's speed was unreasonable under the circumstances, was not sufficient to warrant jury, on issue of negligence, in finding verdict for administratrix. *Skinner* v. *Koontz* (1960, 284 F. 2d 207, 109 U.S. App. D.C. 73).

In action for wrongful death, evidence as to personal habits and qualities of decedent is to some degree relevant in determining decedent's earning ability and support that family would have received but for his death. *St. Clair as Executrix etc.* v. *Eastern Air Lines, Inc.* (C.A.N.Y. 1960, 279 F. 2d 119).

In action for wrongful death, defendant should not be permitted to put in evidence, on question of pecuniary loss suffered by decedent's family, everything that defendant may unearth and that reflects unfavorably on decedent. *Id.*

In action for wrongful death, except as details of decedent's personal life may show propensity of descendant to spend his income in ways which do not inure to benefit of family, such details are not in issue, and evidence as to such details is not admissible. *Id.*

In absence of some preliminary showing to contrary in action for wrongful death, a court ought not to suppose, for purpose of ascertaining pecuniary loss suffered by decedent's family, that evidence of manner in which decedent chooses to conduct his personal life is of utility in determining way he manages his business affairs. *Id.*

In action against railroad for death of passenger who fell through open vestibule doors of fast moving train, theory that railroad was negligent because fact that doors were later found by ticket collector to be swinging freely justified inference that they were not fully closed at time of last inspection or that there were defects in the latching mechanisms, was not supported by evidence, in view of uncontradicted testimony of ticket collector, who was plaintiff's witness, that doors were closed at last inspection and were not defective, and in view of other reasonable explanations for fact of doors swinging freely. *Pennsylvania R.R.* v. *Pomeroy* (1956, 239 F. 2d 435, 99 U.S. App. D.C. 272, certiorari denied 77 S. Ct. 861, 353 U.S. 950, 1 L. Ed. 2d 859).

In action against transit company for wrongful death of passenger as alleged result of his having been dragged or thrown under bus when his clothing caught in rear door of bus from which he was alighting there was no such insufficiency of evidence as would justify granting of defendant's motion for judgment non obstante verdicto and verdict was not so contrary to clear weight of evidence as to justify new trial. *Howard* v. *Capital Transit Co.* (D.C.D.C. 1951, 97 F. Supp. 578, affirmed 196 F. 2d 593, 90 U.S. App. D.C. 359).

In action against transit company for wrongful death of passenger as alleged result of his having been dragged or thrown under bus when his clothing caught in rear door of bus from which he was alighting, where there were no witnesses who could positively identify deceased as having been passenger, trial court did not err in permitting introduction of evidence of bus schedules, on night in question, on routes from points near decedent's place of employment to point near his home and evidence that decedent possessed weekly bus pass. *Id.*

Federal Employees' Compensation Act

Where government employee traveling on government business in commercial airline plane was killed in airplane accident due in part to negligence of commercial airline's pilot and widow sued commercial airline and agreed to a settlement, United States was entitled to statutory refund of compensation paid to widow under Federal Employees' Compensation Act, 5 U.S.C. § 751 et seq., to extent that refund did not exceed widow's share of the settlement, and this was so even though the negligence of control tower operator employed by United States also contributed to the accident. *Randall* v. *United States* (1960, 282 F. 2d 287, 108 U.S. App. D.C. 317, certiorari denied 81 S. Ct. 693, 365 U.S. 813, 5 L. Ed. 2d 692).

Where decedent's aunt petitioned for appointment as administratrix of estate of decedent, who died as result of injuries sustained in course of his employment as custodian at Howard University, on theory that estate had a valid cause of action for wrongful death against the university which decedent's widow was unwilling to assert, but petitioner, so far as record showed, presented no challenge to administrative determination of Bureau of Employees' Compensation that deceased was a federal employee and that decedent's widow was entitled to compensation under Federal Employees' Compensation Act (5 U.S.C. § 751 et seq.), a determination which precluded any wrongful death action, petitioner was properly denied appointment as administratrix. *Tomlin* v. *Irvine* (1954, 212 F. 2d 635, 94 U.S. App. D.C. 101).

Instructions

In action for death of boy who was struck by truck traveling allegedly at 35 miles per hour in 25 miles per hour zone, where plaintiff did not offer expert testimony that at speed of 25 miles per hour accident would have been avoidable, and uncontradicted testimony established that accident occurred the moment boy stepped on roadway, there was no evidentiary basis for trial court's instruction on proximate cause that a "slow rate of speed" child would have been able to flee the truck's path or at least to escape death. *Gulf Oil Corp.* v. *E. E. Reed, as Administrator etc.* (1964, 334 F. 2d 960, 118 U.S. App. D.C. 212).

In wrongful death action, wherein there was no evidence that decedent's former business associate, who denied stating that he had seen decedent unable to sign checks because of alcoholic condition and that decedent had left associate's employ because decedent might have been alcoholic, had made such statements to government agent, and defense counsel had been erroneously permitted to read into record questions from associate's deposition purportedly reciting such statements, instruction that it was entirely up to jury whether associate had made the statements to the agent was erroneous, and

judge's observation that failure to produce agent lent credibility to associate's denial did not cure the harm, but only instruction to take associate's deposition testimony to the contrary as wholly uncontradicted would have sufficed. *St. Clair* v. *Eastern Air Lines, Inc.* (C.A.N.Y. 1960, 279 F. 2d 119).

Interspousal immunity

Action against husband's estate by administratrix of estate of wife who was murdered by husband was not barred by doctrine of interspousal immunity. *N. L. Jones, Administratrix, etc.* v. *A. Pledger, Sr., Administrator, etc.* (1966, 363 F. 2d 986, 124 U.S. App. D.C. 254).

Jurisdiction

The Municipal Court for the District of Columbia does not have jurisdiction of an action under this section, though recovery sought is limited to $3,000, the maximum jurisdictional amount of an action in the Municipal Court, since the United States Court of Appeals is the only court to which appeals may be taken in such an action, and therefore the trial of such an action must be had exclusively in the United States District Court. *Eatmon* v. *Driggers* (D.C. Mun. App. 1956, 125 A. 2d 847).

Measure of damages

In action for wrongful death of 9-week-old child, where the trial court properly instructed jury on measure of damages in event defendant was liable, and upon inquiry repeated the instruction, even though there was evidence to support substantial damages, trial court did not abuse its discretion in refusing to grant a new trial on ground of inadequacy of an award of $129.90. *Rankin etc.* v. *Shayne Brothers* (1956, 234 F. 2d 35, 98 U.S. App. D.C. 214).

Death action under this section, being in derogation of the common law, cannot be liberalized by judicial construction to extend a right of action to widow for loss of consortium due to death of husband, but such extension of the common-law doctrine, if it is to be made, must be done by express provisions of statute. *Ciarrocchi* v. *James Kane Co., et al.* (D.C.D.C. 1953, 116 F. Supp. 848).

Damages in death case must be measured in light of situation existing as of date of death and are not affected by subsequent events. *Coleman* v. *Moore et al.* (D.C.D.C. 1952, 108 F. Supp. 425).

For wrongful death of wage-earning wife, husband was entitled to recover wife's potential financial contributions to maintenance of household and reasonable value of her services during their joint life expectancy, and therefore award of $5,000 to husband was not excessive, and fact that he remarried two years after wife's death could not be considered. *Id.*

Award of $3,000 to son for wrongful death of mother was not excessive where mother had helped to finance son's education, and fact that son abandoned school some time after mother's death had no significance. *Id.*

In damage suit for wrongful death, where deceased leaves a widow and four sons, one of whom is a minor, an instruction to the jury is erroneous which includes damages for reasonable expectations of prospective inheritance, prospective support, gifts, guidance, paternal advice and maintenance. *Baltimore & P. R. Co.* v. *Golway* (1895, 6 App. D.C. 143).

At common law, the right of a parent to recover for loss of the services of his minor child, like that of the husband for the services of the wife, is limited to the time that may have elapsed, if any, between the time of the injury giving rise to the action, and the resulting death. *United States Elec. Lighting Co.* v. *Sullivan* (1903, 22 App. D.C. 115).

Father as administrator is entitled to recover more than nominal damages for death of child between eight and nine years of age. *Id.* See, also, *Smith* v. *Cissel* (1903, 22 App. D.C. 318).

"Section 1301, D.C. 1901 (this section), in effect, provides that the measure of damages shall be the injury resulting to the widow and next of kin. While section 1302 (§ 16–1202) requires the action to be brought in the name of the personal representative, section 1303 (§ 16–1203) in terms sets aside the damages recovered for the benefit of the family of the decedent. It will thus be seen that the duty of the administrator is simply to bring the suit allowed by the statute, and, in the event of a recovery, distribute the damages according to the provisions of the statute of distributions in force in this District." *Southern R. Co.* v. *Hawkins* (1910, 35 App. D.C. 313, 21 Ann. Cas. 926).

In action for death of sister, the amount of pecuniary loss is for the jury. *Ramsey* v. *Ross* (1936, 85 F. 2d 685, 66 App. D.C. 186).

The only damages recoverable in an action for wrongful death are those which constitute pecuniary loss to widow and next of kin for whose benefit action by administrator is brought. *Tate* v. *Nelson* (D.C.D.C. 1947, 71 F. Supp. 465).

The pecuniary loss to widow and next of kin for whose benefit action for wrongful death is brought by administrator is not dependent upon any legal liability of deceased to beneficiaries, but there must appear some reasonable expectation of pecuniary assistance or support of which they have been deprived. *Id.*

Parties defendant

No right of recovery exists where an officer kills one engaged in the commission of a felony and who draws a gun on the officer. *Harris* v. *Embrey* (1939, 105 F. 2d 111, 70 App. D.C. 232).

These sections apply to action for death of seaman on board a vessel owned by the Fleet Corporation occurring on the coast of Africa; and they also apply to the operator of the vessel joined as a defendant with the owner. *United States Shipping Board Emergency Fleet Corporation* v. *Greenwald* (C.C.A. 2, 1927, 16 F. 2d 948).

Where original complaint in wrongful death action was timely filed and process was timely placed in hands of marshal, but complaint did not properly name the defendants against whom relief was sought and process was not directed to such defendants, amended complaint which properly named defendants and which was filed after expiration of time for bringing wrongful death action, and process issued pursuant to amended complaint, did not relate back to filing of original complaint and to placing of first process in hands of marshal, and hence action was not commenced within time provided for bringing such action. *Harris* v. *Stone et al.* (D.C.D.C. 1953, 115 F. Supp. 531).

Action may be maintained in this District against a druggist whose negligent filling of a prescription in the District results in death beyond the District. *Moore* v. *Pywell* (1907, 29 App. D.C. 312, 9 L.R.A., N.S., 1078).

Personal representative

Surviving children of decedent were not personal representatives within meaning of wrongful death statute (§§ 16–1201 to 16–1203), in the absence of appointment as such and consequently could not maintain action for wrongful death of decedent, notwithstanding Federal Rule of Civil Procedure 17(a), 28 U.S.C. App., providing that every action shall be prosecuted in the name of the real party in interest and specifying exceptions thereto. *Paris et al.* v. *Braden, M.D., Casualty Hosp., and Travelers Ins. Co.* (1956, 234 F. 2d 40, 98 U.S. App. D.C. 219).

Action under wrongful death act may only be maintained by personal representative if the wrongful act was one which would have entitled decedent to maintain it had death not ensued. *Brown* v. *Curtin & Johnson, Inc.* (1955, 221 F. 2d 106, 95 U.S. App. D.C. 234).

Reduction of verdict

Amount of award for death of child of tender years is matter which must be left to good sense of jury. *E. E. Reed, as Administrator, etc.* v. *Gulf Oil Corporation* (D.C.D.C. 1963, 217 F. Supp. 370).

Verdict of $8,000 for "pecuniary loss" from death of 11 year old boy was not excessive. *M. E. Hankins, Administratix etc.* v. *Southern Foundation Corp., et al.* (D.C.D.C. 1963, 216 F. Supp. 554).

Award of $17,000 for death of new-born baby as result of fall through hole in delivery table at time of birth was not so extreme as to cause appellate court to act of own motion to reduce award, under this section. *National Homeopathic Hospital* v. *Hord* (1953, 204 F. 2d 397, 92 U.S. App. D.C. 204).

Rehearing

Where request was made on petition for rehearing to have complaint, which had previously been considered only as one for wrongful death, considered as setting out cause of action for negligence, damages and malpractice, prior judgment dismissing complaint, which judgment had been affirmed by Court of Appeals, was modified so as to affirm dismissal only insofar as complaint set forth claim for death by wrongful act. *Paris et al.* v. *Braden, M.D., Casualty Hosp., and Travelers Ins. Co.* (1956, 234 F. 2d 40, 98 U.S. App. D.C. 219).

Res ipsa loquitur

Doctrine of res ipsa loquitur did not apply to case where passenger fell fatally through open vestibule doors of moving train, in view of accessibility of doors to all passengers and fact that doors could have been opened freely by anyone. *Pennsylvania R.R. Co.* v. *Pomeroy* (1956, 239 F. 2d 435, 99 U.S. App. D.C. 272, certiorari denied 77 S. Ct. 861, 353 U.S. 950, 1 L. Ed. 2d 859).

Witnesses, examination of

In wrongful death action, although plaintiff's counsel had not requested court to inqure whether defense counsel intended to proffer government agent as witness for purpose of impeaching decedent's business associate, who denied stating that he had seen decedent unable to sign checks because of alcoholic condition and that decedent had left his employ because decedent might have been alcoholic, where defense counsel had given no assurance that questions reciting the alleged statements were needed as foundation for contradiction of associate, and agent was not called, it was error to permit such question. *St. Clair* v. *Eastern Air Lines, Inc.* (C.A.N.Y. 1960, 279 F. 2d 119).

Cross-examination testimony of widow, which concerned initial acquaintanceship between her and decedent, her knowledge, when she began seeing him, that he was married to another, her familiarity with progress of divorce suit by the other, and whether or not she and decedent had been living at his apartment prior to their marriage, was irrelevant to question of pecuniary loss suffered by widow and by decedent's child and should not have been admitted in widow's and child's wrongful death action. *Id.*

Workmen's Compensation Act

Section 36–501 et seq. creates a right of action against employer on account of death of employee arising out of and in course of employment, but it does not create a cause of action for wrongful death against any other person. *Webster* v. *Clodfelter* (1942, 130 F. 2d 434, 76 U.S. App. D.C. 171, 143 A.L.R. 280, certiorari denied 63 S. Ct. 261, 317 U.S. 689, 87 L. Ed. 552).

Workmen's Compensation Act, 33 U.S.C. § 901 et seq., applicable to District of Columbia, providing in part that liability of an employer under act shall be exclusive and in place of all other liability, would have precluded employee from maintaining action for heart injury suffered while moving a piano in the course of his employment by defendant, if the injury had not resulted in death, and thus his widow and children, who had accepted benefits of Compensation Act, could not maintain action under this section making right of action dependent on whether decedent would have been able to maintain action for injury if death had not ensued. *O'Neil* v. *Shelton Bros. Trucking Co.* (D.C.D.C. 1953, 116 F. Supp. 654).

Where widow has elected to receive compensation under Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq. but widow is not the only person for whose benefit an action for wrongful death may be maintained, any moneys paid or to be paid as compensation to the widow may not be shown in the action for wrongful death in extinguishment or reduction of her pecuniary loss. *Tate* v. *Nelson* (D.C.D.C. 1947, 71 F. Supp. 465).

§ 16–2702. Party plaintiff; statute of limitations

An action pursuant to this chapter shall be brought by and in the name of the personal representative of the deceased person, and within one year after the death of the person injured. (Dec. 23, 1963, 77 Stat. 596, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §16–1202 (Mar. 3, 1901, ch. 854, § 1302, 31 Stat. 1394; June 30, 1902, ch. 1329, 32 Stat. 543).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

In general

Action for wrongful death must fail if not brought by personal representative. *Harris* v. *Embrey* (1939, 105 F. 2d 111, 70 App. D.C. 232).

Abuse of discretion

In action for wrongful death, record disclosed District Court did not abuse its discretion in denying application of plaintiff for additional time to qualify as personal representatives within meaning of this section. *Paris et al.* v. *Braden, M.D., Casualty Hosp., and Travelers Ins. Co.* (1956, 234 F. 2d 40, 98 U.S. App. D.C. 219).

Actions against United States

An action against the United States for death by wrongful act or negligence in the District was not barred by the one-year statute of limitations under this section, but was governed by the Federal Court of Claims Act. The attention and precision devoted by Congress to the question of limitations require that effect be given to the period which it prescribes notwithstanding the fact that the cause of action against the United States may not, in a local jurisdicion, be the same in duration as therein authorized against a private individual. *Young* v. *United States* (1950, 184 F. 2d 857, 87 U.S. App. D.C. 145, 21 A.L.R. 2d 1458).

Aliens, action by

That decedent's daughter was a national of Greece and an alleged alien enemy did not toll this section for bringing wrongful death action where such daughter was a resident of Michigan at time of accident, and it was upon her petition that administrator of the estate of decedent was appointed, and there was no reason why daughter could not have instituted such suit within the year following death of decedent. *Summar* v. *Besser Mfg. Co.* (1945, 17 N.W. 2d 209, 310 Mich. 347).

This section was not tolled because decedent's widow, daughter, and son were nationals and residents of Greece, and allegedly alien enemies because of German occupation of Greece, since suit might have been prosecuted in their behalf notwithstanding the Trading With the Enemy Act, 50 U.S.C. App., § 1 et seq. *Id.*

Amendment

Where original complaint in wrongful death action was timely filed and process was timely placed in hands of marshal, but complaint did not properly name the defendants against whom relief was sought and process was not directed to such defendants, amended complaint which properly named defendants and which was filed after expiration of time for bringing wrongful death action, and process issued pursuant to amended complaint, did not relate back to filing of original complaint and to placing of first process in hands of marshal, and hence action was not commenced within time provided for bringing such action. *Harris* v. *Stone et al.* (D.C.D.C. 1953, 115 F. Supp. 531).

—— Of complaint

Where plaintiff sought to recover under wrongful death statute and, after being given leave to amend, amended complaint without indicating her intent to rely on survival statute, alleged error of District Court in dismissing her complaint seeking recovery under survival statute could not be raised for first time on appeal. *G. E. Meyers, Administratix etc.* v. *Alvey-Ferguson Co., et al.* (1964, 326 F. 2d 590, U.S. App. Sixth Circuit).

Construction with other laws

Federal court, for New York District, whose jurisdiction rested upon diversity of citizenship, would apply New York conflict of laws rules to death action arising out of airplane crash occurring over District of Columbia; and,

accordingly, plaintiff's right to recover damages was governed by Wrongful Death Act of District of Columbia. *J. A. St. Clair as Executrix etc.* v. *Eastern Airlines, Inc.* (D.C.D.C. 1961, 194 F. Supp. 623).

New York statute requiring that judgment include interest from date of decedent's death was inapplicable to wrongful death action in which substantive right of recovery was based upon laws of District of Columbia. *Id.*

Section 36–501 does not alter the period of limitations in this section. *Webster* v. *Clodfelter* (1942, 130 F. 2d 434, 76 U.S. App. D.C. 171, 143 A.L.R. 280, certiorari denied 63 S. Ct. 261, 317 U.S. 689, 87 L. Ed. 552).

Where defendant caused death of employee of another under such circumstances that, if death had not ensued, the employee would have been entitled to maintain action against defendant or to recover compensation under § 36–501, death action instituted under this section within one year after appointment of guardian for employee's infant son but more than one year after death was barred by limitation of this section, notwithstanding employees' compensation act provision that one year limitation on right to compensation for death should not be applicable to infants until appointment of guardian. *Id.*

This section was not inapplicable to action for death caused by automobile in the District on ground that application of such limitation would contravene the Michigan statute, Comp. Laws 1929, providing for suspending of running of limitations when any person is disabled to prosecute an action, where it was not shown that decedent's administrator might not have brought the action in Michigan within one year following death. *Summar* v. *Besser Mfg. Co.* (1945, 17 N. W. 2d 209, 310 Mich. 347).

Action brought in District under wrongful death act of Nebraska is subject to the two-year limitation of that act, and not the one-year limitation of this section. The law of the state where the death occurred should govern unless the public policy of the form is clearly opposed. This section is confined to deaths within its jurisdiction. *Lewis* v. *Reconstruction Finance Corp.* (1949, 177 F. 2d 654, 85 U.S. App. D.C. 339).

Where workmen's compensation carrier brought action against airline for wrongful death of deceased for whose death it had paid compensation to widow, and such death occurred in District of Columbia which barred actions for wrongful death commenced more than one year after death, action begun in New York more than one year after death was barred. *Hartford Accident & Indemnity Co.* v. *Eastern Air Lines Inc.* (D.C.D.C. 1957, 155 F. Supp. 263).

An action brought by the State of Maryland where the death occurred in accordance with a Maryland statute is entitled to be maintained within the District as one for wrongful death. *State of Maryland* v. *Eastern Airlines* (D.C.D.C. 1949, 81 F. Supp. 345).

Diligence of plaintiff

Where action was brought within this section's period against nonresident of District of Columbia for death caused by automobile, and over three years after the death and two years and one month after action had been filed service was made on the nonresident, but during the intervening period five summonses had been issued at less than six-month intervals for personal service on the nonresident, there was a sufficient showing of "diligence," so that ruling that there had been a "discontinuance" of the action because of undue delay was improper. *Seymour* v. *Hawkins* (1943, 133 F. 2d 15, 76 U.S. App. D.C. 376, 167 A.L.R. 1055).

Executor, administrator or representative

Surviving children of decedent, were not personal representatives within meaning of §§ 16–1201 to 16–1203, in the absence of appointment as such and consequently could not maintain action for wrongful death of decedent, notwithstanding Federal Civil Procedure Rule 17(a), 28 U.S.C. App., providing that every action shall be prosecuted in the name of the real party in interest and specifying exceptions thereto. *Paris et al.* v. *Braden, M.D., Casualty Hosp., Travelers Ins. Co.* (1956, 234 F. 2d 40, 98 U.S. App. D.C. 219).

The term "legal representative" is not necessarily restricted to personal representatives of deceased, but is sufficiently broad to cover all persons who, with respect to deceased's property, stand in deceased's place and represent deceased's interest, whether transferred to them by deceased's act or by operation of law. *Thomas* v. *Doyle et al.* (1951, 187 F. 2d 207, 88 U.S. App. D.C. 95).

The term "legal representative" has been held to mean either the executor or administrator of the deceased. *Ferguson* v. *Washington & R. G. Co.* (1895, 6 App. D.C. 525). See, also, *Southern R. Co.* v. *Hawkins* (1910, 35 App. D.C. 313, 21 Ann. Cas. 926).

Words "personal representative" have been held to refer either to the executor or administrator, and hence, as the right of the action is statutory, no person other than those upon whom authority is expressly conferred may maintain action. *Fleming* v. *Capital Trac. Co.* (1913, 40 App. D.C. 489).

Measure of damages

In action for wrongful death of nine-week-old child where the trial court properly instructed jury on measure of damages in event defendant was liable, and upon inquiry repeated the instruction, even though there was evidence to support substantial damages, trial court did not abuse its discretion in refusing to grant a new trial on ground of inadequacy of an award of $129.90. *Rankin* v. *Shayne Brothers* (1956, 234 F. 2d 35, 98 U.S. App. D.C. 214).

Residency

This section was not inapplicable to action for death caused by automobile in the District because some of decedent's heirs did not reside in the District during the year following the death, where two of the heirs resided in the District, and by operating a motor vehicle in the District, nonresident owner and his agent subject themselves to jurisdiction of the courts of the District of Columbia. *Summar* v. *Besser Mfg. Co.* (1945, N. W. 2d 209, 310 Mich. 347).

Statute, a limitation of right

This section is a limitation of the right and not merely of the remedy. *Hartford Accident & Indemnity Co.* v. *Eastern Air Lines Inc.* (D.C.D.C. 1957, 155 F. Supp. 263).

Tolling of statute

Pendency of action for personal injuries did not toll statute of limitations on death claim. *Hudson* v. *Lazarus* (1954, 217 F. 2d 344, 95 U.S. App. D.C. 16).

Workmen's Compensation Act

An employer or an insurance carrier who has paid compensation to the only beneficiary or beneficiaries entitled to receive the same and who has a right of subrogation, may bring the subrogation action against the third person who caused the death of the employee, and the action need not be brought by the personal representative of the decedent. *Aetna Life Ins. Co.* v. *Moses* (1933, 53 S. Ct. 231, 287 U.S. 530, 77 L. Ed. 477, 88 A.L.R. 647).

In case there is more than one dependent and one only elects to accept workmen's compensation and the other dependent or dependents elect to bring an action under §§ 16–1201 to 16–1203, then the employer is not entitled to sue as a subrogee but the action must be brought by the personal representative of the decedent, the employee having the right to demand that such action be brought and that he share in the recovery. *Doleman* v. *Levine* (1935, 55 S. Ct. 741, 295 U.S. 221, 79 L. Ed. 1402).

§ 16–2703. Distribution of damages

The damages recovered in an action pursuant to this chapter, except the amount specified by the verdict or judgment covering the reasonable expenses of last illness and burial, may not be appropriated to the payment of the debts or liabilities of the deceased person, but inure to the benefit of his or her family and shall be distributed to the spouse and next of kin according to the allocation made by the verdict or judgment, or in the absence of an allocation, according to the provisions of the statute of distribution in force in the District. (Dec. 23, 1963, 77 Stat. 596, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1203 (Mar. 3, 1901, ch. 854, § 1303, 31 Stat. 1395; June 19, 1948, ch. 507, § 2, 62 Stat. 487).

Minor changes are made in phraseology.

CROSS REFERENCES

Hospital lien on proceeds, see § 38–301.

Law of descents, see § 19–301 et seq.

NOTES TO DECISIONS UNDER PRIOR LAW

Duty of administrator

Recovery not liable for debts of deceased, but, nevertheless, it is the duty of administrator to institute suit, if facts warrant it. *Fleming* v. *Capital Trac. Co.* (1913, 40 App. D.C. 489).

Measure of damages

In action for wrongful death of nine-week-old child, where the trial court properly instructed jury on measure of damages in event defendant was liable, and upon inquiry repeated the instruction, even though there was evidence to support substantial damages, trial court did not abuse its discretion in refusing to grant a new trial on ground of inadequacy of an award of $129.90. *Rankin* v. *Shayne Brothers* (1956, 234 F. 2d 35, 98 U.S. App. D.C. 214).

Chapter 29.—PARTITION AND ASSIGNMENT OF DOWER

SUBCHAPTER I.—PARTITION GENERALLY

Sec.
16–2901. Parties; accounting by tenant in common.

SUBCHAPTER II.—ASSIGNMENT OF DOWER; PARTIES TO PARTITION PROCEEDINGS; SALE OF PROPERTY DISCHARGED FROM DOWER OR SPOUSE'S INTESTATE SHARE

16–2921. Appointment of commissioners; cases of partition.
16–2922. Widow or widower of tenant in common.
16–2923. Wife or husband as a party to partition proceeding.
16–2924. Sale of land encumbered by dower; lack of widow's or widower's consent; written consent; portion of proceeds.
16–2925. Sale of indivisible property; discharged from dower or intestate share.

SUBCHAPTER I.—PARTITION GENERALLY

§ 16-2901. Parties; accounting by tenant in common

The United States District Court for the District of Columbia may decree a partition of lands, tenements, or hereditaments on the complaint of a tenant in common, claiming by descent or purchase, or of a joint tenant; or when it appears that the property can not be divided without loss or injury to the parties interested, the court may decree a sale thereof and a division of the money arising from the sale among the parties, according to their respective rights.

(b)[1] This section applies to cases where:

(1) all the parties are of full age;

(2) all the parties are infants;

(3) some of the parties are of full age and some are infants;

(4) some or all of the parties are non compos mentis; and

(5) all or any of the parties are non-residents—

and a party, whether of full age, infant, or non compos mentis, may file a complaint pursuant to this section, an infant by his guardian or next friend, and a person non compos mentis by his committee.

(c) In a case of partition, when a tenant in common has received the rents and profits of the property to his own use, he may be required to account to his cotenants for their respective shares of the rents and profits. Amounts found to be due on the accounting may be charged against the share of the party owing them in the property, or its proceeds in case of sale.

(d) This section does not affect section 21–213. (Dec. 23, 1963, 77 Stat. 597, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1301 (Mar. 3, 1901, ch. 854, § 93, 31 Stat. 1203; June 30, 1902, ch. 1329, 32 Stat. 523).

Reference to "coparcener", which followed the reference to "joint tenant", is omitted from subsec. (a) of this section, as there are no estates in coparcenary in the District of Columbia. See section 45–817 of D.C. Code, 1961 ed.

"United States District Court for the District of Columbia" is substituted for "equity court", as the latter term is obsolete. See revision note under section 11–502 herein.

The term "real property" is substituted for "lands, tenements, or hereditaments" in conformity with modern usage.

The term "complaint" is substituted for "bill or petition", in view of rule 2 of the Federal Rules of Civil Procedure. There is nothing in those rules indicating that they do not apply to partition proceedings in the District Court in the District of Columbia. This type of proceeding is not listed in rule 81(a) among the proceedings in that court to which the rules do not apply.

Subsec. (d) is added for the purpose of clarification. Both section 21–213, referred to therein, and section 16–1301 of D.C. Code, 1961 ed., on which this revised section is based, are derived from section 93 of act Mar. 3, 1901, ch. 854, cited above. Probably, the provisions should be read together.

Changes are made in phraseology and arrangement.

CROSS REFERENCES

Dower rights, see § 19–102 et seq.

Estates in coparcenary abolished, see § 45–817.

NOTES TO DECISIONS UNDER PRIOR LAW

Historical

For history of partition of District of Columbia among original proprietors, see *Bursey* v. *Lyon* (1908, 30 App. D.C. 597).

Accounting

Statute creates equitable lien against the interest of a cotenant to the amount found to be due from him on accounting permitted by statute. *Loving* v. *Moore* (1911, 37 App. D.C. 214).

Quaere: Whether common-law action of account lies by one tenant in common against the other who has secured more than his just share, in view of provisions of this section. *Lyon* v. *Bursey* (1914, 42 App. D.C. 519).

When one of tenants in common occupied property without payment of rent, an accounting under this section would not be allowable inasmuch as this section presupposes a subletting. *Allen* v. *Jones* (1926, 12 F. 2d 186, 56 App. D.C. 245).

Community of interest

Where greater part of a market building was held by the plaintiff except two market stalls held by the defendants under purported leases containing provisions for perpetual renewal, parties were not "tenants in common" so as to entitle the plaintiff to partition notwithstanding there was a community of interest in the entrances and exits of the building and other elements, where as to the stall holders such elements were in the nature of easements if the basic grants were considered fees or constituted implied conditions in the leases, if the basic

[1] So in original. First par. is not designated "(a)".

documents were deemed leases. *Second Realty Corp.* v. *Krogmann* (1956, 235 F. 2d 510, 98 U.S. App. D.C. 283).

Cotenants

A tenancy by the entireties shares with a joint tenancy the right of the survivor to take all, but it is only in a tenancy by the entireties that it is impossible for one cotenant to sell or pledge his interest or to compel a partition of the property. *Coleman* v. *Jackson* (1960, 286 F. 2d 98, 109 U.S. App. D.C. 242, 83 A.L.R. 2d 1043, certiorari denied 81 S. Ct. 1656, 366 U.S. 933, 6 L. Ed. 2d 391).

Mere acquiescence by one tenant in common in upkeep and improvements by his cotenant, who has complete possession of the common property, is not sufficient to establish partition in pais, without proof of some agreement between the parties to that end. *Addison* v. *Barnes* (1916, 45 App. D.C. 284).

A cotenant is not liable to his cotenants for use and occupation, unless there has been an actual or constructive ouster of the cotenants. *Allen* v. *Jones* (1926, 12 F. 2d 186, 56 App. D.C. 245).

Where marriage relationship was dissolved at suit of wife by Florida court, full faith and credit being given Florida judgment, the estate of which husband and wife were seised as tenants by the entireties on date of that decree became a "tenancy in common," and hence complaint for seeking partition of the property would be treated as one between tenants in common. *Scholl* v. *Scholl* (D.C.D.C. 1947, 72 Supp. 823).

Counsel fees

In partition, the fees of plaintiff's attorney cannot be charged against all the parties when in good faith they retain and are represented by other counsel. *Fletcher* v. *Coomes* (1923, 285 F. 893, 52 App. D.C. 159, certiorari denied 43 S. Ct. 363, 261 U.S. 619, 67 L. Ed. 830).

Definitions

The terms "parties" and "rights" mentioned in this section are defined and limited by the provisions of §§ 16–1305 and 16–1306. *Devlin* v. *Esher* (1922, 280 F. 1004, 52 App. D.C. 30).

Dower

Inchoate dower right of a wife of a tenant in common is not to be set off to the wife on sale of the property for partition, but the husband is entitled to entire distributive share. *Devlin* v. *Esher* (1922, 280 F. 1004, 52 App. D.C. 30).

Laches

Where will devised property of testatrix to her daughter and grandson as tenants in common, and grandson attained majority in 1939 and was in military service between 1940 and 1941, action by grandson in 1950 for partition and accounting was not barred by laches. *Greene* v. *Murphy* (D.C.D.C. 1952, 103 F. Supp. 585).

Law governing

To the extent that statutory law does not cover subject of dower completely, the common law still controls. *Magruder* v. *Magruder* (1944, 141 F. 2d 537, 78 U.S. App. D.C. 378, certiorari denied 65 S. Ct. 37, 323 U.S. 711, 89 L. Ed. 572).

Order of sale

Where the property is susceptible of division in kind, a sale will not be ordered against the will of one of the parties. *Walker* v. *Lyon* (1895, 6 App. D.C. 484).

In partition proceeding where widow requests assignment of dower, after assignment is made court has power to proceed to order a sale and division of proceeds. *Magruder* v. *Magruder* (1944, 141 F. 2d 537, 78 U.S. App. D.C. 378, certiorari denied 65 S. Ct. 37, 323 U.S. 711, 89 L. Ed. 572).

Parties

"No one is entitled to maintain partition who has not an estate that entitles him to immediate possession." *Sis* v. *Boarman* (1897, 11 App. D.C. 116).

Purpose

This chapter regarding partition and assignment of dower was intended to achieve a comprehensive plan for partition and sale of property held in common subject to right of dower as well as other situations of common and joint ownership. *Magruder* v. *Magruder* (1944, 141 F. 2d 537, 78 U.S. App. D.C. 378, certiorari denied 65 S. Ct. 37, 323 U.S. 711, 89 L. Ed. 572).

Remedies

This section recognizes two distinct remedies: partition in kind and partition through sale and division of the proceeds, but a person entitled to either remedy must be a tenant in common, a joint tenant or a coparcener. *Second Realty Corp.* v. *Krogmann* (1956, 235 F. 2d 510, 98 U.S. App. D.C. 283).

Res judicata

Decisions of courts of Michigan, in which testator resided at time of his death, that share of his residuary estate, devised by will to a remainderman who died before deaths of testator and last surviving life beneficiary, should be divided equally between deceased remainderman's sister and half-brother as deceased's sole legal heirs on date of last surviving life beneficiary's death, were not res judicata in suit for partition of portion of residuary realty in District of Columbia, but courts of District had exclusive jurisdiction to decide what disposition should be made of such share. *Greenwood* v. *Page* (1944, 138 F. 2d 921, 78 U.S. App. D.C. 166).

Surety

In action on bond of trustee for sale of infant's property, the surety cannot be heard to question validity of the bond. *United States ex rel. Hine* v. *Morse* (1912, 31 S. Ct. 37, 218 U.S. 493, 54 L. Ed. 1123).

Title

A mere averment of title in defendant is not sufficient to make a question of title: "proof is required to show that the claim of title is fair and reasonable, and not a mere sham intended to delay and embarrass the complainant." *Smith* v. *Butler* (1899, 15 App. D.C. 345).

While the jurisdiction of a court of equity to decree partition, or sale for partition, is undoubted in cases where there is no serious question of legal title as between the parties, it is equally well settled that the court does not sustain a bill for partition unless the legal title be clear and where the legal title is disputed, the court will retain the bill to give the plaintiff an opportunity to establish his title at law. *Roller* v. *Clarke* (1902, 19 App. D.C. 539, modified on other ground 26 S. Ct. 141, 199 U.S. 641, 50 L. Ed. 300).

"A bill of partition can not be made the means of trying a disputed title." *Staub* v. *Staub* (1918, 47 App. D.C. 180) citing *Jordan* v. *O'Brien* (1909, 33 App. D.C. 189); *Hasler* v. *Williams* (1910, 34 App. D.C. 319), distinguishing *Taylor* v. *Leesnitzer* (1911, 37 App. D.C. 356) where rights were determined because no motion to dismiss was made. See, also, *Goodman* v. *Wren* (1910, 34 App. D.C. 516) re rights of equitable owners to maintain partition.

Where title to property purchased by husband and wife was taken in their names as tenants by the entireties, and both parties obligated themselves for balance due on a first trust, as of date of divorce decree obtained by wife in Florida, the parties became "tenants in common" and were equally bound by terms of contract of purchase and equally liable on the trust, so that wife was entitled to one-half of net value of the estate as of date of divorce decree, less any monies that either had paid on the property for benefit of other since date of the last accounting. *Scholl* v. *Scholl* (D.C.D.C. 1947, 72 F. Supp. 823).

SUBCHAPTER II.—ASSIGNMENT OF DOWER; PARTIES TO PARTITION PROCEEDING; SALE OF PROPERTY DISCHARGED FROM DOWER OR SPOUSE'S INTESTATE SHARE

§ 16–2921. Appointment of commissioners; cases of partition

When real property is held by a person or persons, by descent or purchase, in the whole of which a widow or widower is entitled to dower, either the widow or widower or a person entitled to the property or an undivided share therein may apply to the United States District Court for the District

of Columbia to have the dower therein assigned. Thereupon, the court shall appoint three commissioners to lay off and assign the dower, if practicable. The report of the commissioners is subject to ratification by the court. In all cases of partition between two or more joint tenants or tenants in common of real property, in the whole or which a widow or widower is entitled to dower, the dower shall be laid off and assigned, in like manner, before the partition is decreed. When an estate of which a woman or man is dowable is entire, and the dower can not be set off therefrom by metes and bounds, it may be assigned by the court as of a third part of the net rents, issues, and profits thereof. (Dec. 23, 1963, 77 Stat. 597, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1302 (Mar. 3, 1901, ch. 854, § 86, 31 Stat. 1202).

The provisions are revised to refer to dower or dower rights of both the wife and the husband, to conform with act Sept. 14, 1961, Pub. L. 87–246, § 3, 75 Stat. 515 (D.C. Code, 1961 ed., § 18–201a), which restored the wife's right of dower (previously abolished by act Aug. 31, 1957, Pub. L. 85–244, § 3, 71 Stat. 560, with respect to persons who intermarried on or after Nov. 29, 1957), and created a statutory right of dower in both wives and husbands. It provided further that all laws relating to dower and its incidents should, on and after March 15, 1962 (effective date of the act), be construed to be applicable to both husband and wife.

Changes are made in phraseology.

CROSS REFERENCES

Release of dower, see § 30–216.

NOTES TO DECISIONS UNDER PRIOR LAW

Assignment, effect of

After assignment of dower has been made, the widow's estate is in the nature of "tenements and hereditaments" within this chapter authorizing partition and is then subject to partition sale since it is, then, just as divestible a property right as if the division had been by metes and bounds of the land itself. *Magruder* v. *Magruder* (1944, 141 F. 2d 537, 78 U.S. App. D.C. 378, certiorari denied 65 S. Ct. 37, 323 U.S. 711, 89 L. Ed. 572).

After assignment of dower and entry into possession, widow becomes seized for her lifetime of a freehold estate. *Id.*

Condition precedent

Assignment of dower is condition precedent to partition. *Hasler* v. *Williams* (1910, 34 App. D.C. 319).

Right to assignment

Upon death of husband, a widow's right to dower is in the nature of a chose in action, including the right to have the dower assigned. *Magruder* v. *Magruder* (1944, 141 F. 2d 537, 78 U.S. App. D.C. 378, certiorari denied 65 S. Ct. 37, 323 U.S. 711, 89 L. Ed. 572).

Specifically

Construing the word "specifically" it is said: "The act undoubtedly requires explicitness and certainty; it requires that the owner of the property * * * should have full and accurate notice of the claims of those who deal with the latter upon the faith of the legal liability of the property. For that purpose it requires that 'the amount claimed' should be set forth specifically; but it is the amount claimed, not the items that go to make up that amount, that is required to be so stated." *Emack* v. *Campbell* (1899, 14 App. D.C. 186).

§ 16–2922. Widow or widower of tenant in common

When a widow or widower of a tenant in common of real property is entitled to dower in his or her undivided share of the property, and a partition is decreed between his or her heirs or devisees and the other tenants in common, the dower attaches to, and may, in the manner provided by section 16–2921, be assigned and laid out in, the shares assigned in severalty to the heirs or devisees, and the shares of the other tenants in common shall be assigned to them, respectively, in severalty, free from the dower. (Dec. 23, 1963, 77 Stat. 597, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1951 ed., § 16–1303 (Mar. 3, 1901, ch. 854, § 87, 31 Stat. 1202).

The provisions are revised to refer to dower or dower rights of both the wife and the husband. See revision note under section 16–2921 herein.

Changes are made in phraseology.

§ 16–2923. Wife or husband as party to partition proceeding

On an application to the District Court to decree a partition of real property between tenants in common, it shall not be necessary to make the wife or husband of any of the persons a party to the proceedings, but the right of dower, or the wife's or husband's intestate share, as the case may be, shall attach to whatever part of the property is assigned in severalty to the wife or husband, and the other parts thereof shall be assigned free of the right of dower or intestate share. (Dec. 23, 1963, 77 Stat. 598, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1951 ed., § 16–1304 (Mar. 3, 1901, ch. 854, § 88, 31 Stat. 1202).

The provisions are revised to refer to dower or dower rights of both the wife and the husband, and to the intestate share of either, in view of later developments in the law. See revision note under section 16–2921 herein; and see, also, D.C. Code, 1961 ed., §§ 18–101, 18–201a, 18–204, 18–210, 18–211, 18–212, 18–215a.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

In general

Under this section and sections 89, 90 and 93, Code of 1901 (§§ 16–1301, 16–1305, 16–1306), property may be sold by way of partition, free of a wife's inchoate right of dower, and the husband is entitled to his entire distributive share. *Devlin* v. *Esher* (1922, 280 F. 1004, 52 App. D.C. 30).

§ 16–2924. Sale of land encumbered by dower; lack of widow's or widower's consent; written consent; portion of proceeds

When a decree is rendered for the sale of real property, in the whole of which a widow or widower is entitled to dower, if she or he will not consent to a sale of the property free of the dower, the District Court may, if it appears advantageous to the parties, cause the dower to be laid off and assigned as provided by this subchapter. If she or he will consent in writing to the sale of the property free of the dower, the court shall order that it be sold free of the dower, and shall allow her or him, in commutation of the dower, such portion of the net proceeds of sale as may be just and equitable, not exceeding one-sixth nor less than one-twentieth, according to the age, health, and condition of the widow or widower. (Dec. 23, 1963, 77 Stat. 598, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1951 ed., § 16–1305 (Mar. 3, 1901, ch. 854, § 89, 31 Stat. 1202).

The provisions are revised to refer to dower or dower rights of both the wife and the husband. See revision note under section 16–2921 herein.

Minor changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Duty of court

Where dower interest of widow is involved in partition proceeding, the court must first determine, in its discretion, whether it appears advantageous to parties including widow to cause her dower to be laid off and assigned, and only after assignment has been made can court proceed with sale without consent of widow. *Magruder* v. *Magruder* (1944, 141 F. 2d 537, 78 U.S. App. D.C. 378, certiorari denied 65 S. Ct. 37, 323 U.S. 711, 89 L. Ed. 572).

Formula for division

Where widow refuses to consent to partition sale but requests assignment of dower and court after making assignment proceeds to order sale and division of proceeds, in making division of proceeds it is proper for court to use statutory formula applicable to situation in which widow consents to sale, but it is equally proper for court to apply common law formula. *Magruder* v. *Magruder* (1944, 141 F. 2d 537, 78 U.S. App. D.C. 378, certiorari denied 65 S. Ct. 37, 323 U.S. 711, 89 L. Ed. 572).

§ 16–2925. Sale of indivisible property; discharge from dower of intestate share

When real property is decreed to be sold for the purpose of division of the proceeds between tenants in common because the property is incapable of being divided between them in specie, the District Court may decree a sale of the property free and discharged from any right of dower or from any intestate share of the wife or husband, as the case may be, of any of the parties in her or his undivided share. (Dec. 23, 1963, 77 Stat. 598, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1951 ed., § 16–1306 (Mar. 3, 1901, ch. 854, § 90, 31 Stat. 1203).

The provisions are revised to refer to dower or dower rights of both the wife and the husband, and to the intestate share of either, in view of later developments in the law. See revision note under section 16–2921 herein; and see, also, D.C. Code, 1961 ed., §§ 18–101, 18–120a, 18–204, 18–210, 18–211, 18–212, 18–215a.

Changes are made in phraseology.

Chapter 31.—PROBATE COURT PROCEEDINGS

Sec.

16–3101. Definition.
16–3102. Settlement of accounts as prima facie evidence only.
16–3103. Summons; failure to appear or give evidence.
16–3104. Sequestration where person fails to appear.
16–3105. Plenary proceeding; refusal to answer as required.
16–3106. Issues to be made up in plenary proceeding; jury; compelling payment of costs.
16–3107. Enforcement of judgments, orders and decrees; application of property sequestrated.
16–3108. Ordering investment of funds; revocation of letters for noncompliance.
16–3109. Compelling performance of duties by executors, administrators, etc.; revocation of letters.
16–3110. Accounting and delivering of property after revocation of letters; compelling performance.
16–3111. Order admitting will to probate as conclusive evidence.
16–3112. Arbitration; exceptions.
16–3113. Costs and execution.

§ 16–3101. Definition

As used in this chapter, "Probate Court" means the United States District Court for the District of Columbia. (Dec. 23, 1963, 77 Stat. 598, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Section is new, but states no new law, and is inserted for the purpose of clarification and completeness. See section 11–522 herein, particularly subsec. (d) thereof.

§ 16–3102. Settlement of accounts as prima facie evidence only

Except as provided by section 16–3112, in actions:

(1) for an accounting, by legatees or next to kin against executors or administrators, or wards against their guardians; or

(2) to subject the real estate of decedents to the payment of their debts, by creditors against executors or administrators, or against heirs or devisees—

a prior settlement of accounts in the Probate Court is only prima facie evidence as to the correctness of the accounts. (Dec. 23, 1963, 77 Stat. 598, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–504 (Mar. 3, 1901, ch. 854, § 119, 31 Stat. 1208; June 30, 1902, ch. 1329, 32 Stat. 525).

Section is based on part of section 11–504 of D.C. Code, 1961 ed. For remainder of section 11–504, see tables.

Changes are made in phraseology and arrangement.

§ 16–3103. Summons; failure to appear or give evidence

A summons issued by the Probate Court to a person concerned in the affairs of a deceased person, or to a witness or other person whose appearance in the court is deemed necessary or proper, is returnable at the discretion of the court. When it is necessary or proper, on the return of the "summoned", and failure of the person to appear, to enforce his appearance, or when a witness before the court refuses to give evidence, the court may exercise its powers of enforcement and punishment as provided by section 401 of Title 18, United States Code, or it may have his estate, or a part thereof attached and sequestered as provided by section 16–3104. (Dec. 23, 1963, 77 Stat. 599, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–506 (Act of Maryland, 1798, ch. 101, subch. 15, § 13; Mar. 3, 1901, ch. 854, § 116, 31 Stat. 1208).

The provision empowering the probate court to issue the summons referred to is omitted as covered by section 1651 of Title 28, United States Code. That section provides that the Supreme Court of the United States "and all courts established by Act of Congress" may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

As alternatives to the methods of enforcement provided for in this section, section 11–506 of D.C. Code, 1961 ed., provided (1) that the probate court might, on return of the "summoned", and failure of the party to appear, issue an attachment, and, when he appeared or was brought in, fine him a maximum of $30; and (2) that if a witness before the court refused to give evidence, the court might commit him to the custody of the marshal or coroner "(if the case may require)", there to remain until he gave evidence, or was discharged according to law. These provisions are omitted as covered

by provisions in Title 28, United States Code. The United States District Court for the District of Columbia, which in the exercise of its probate jurisdiction, is known as the Probate Court (see section 11–522 herein), has been, since the enactment of Title 28, United States Code, into law, in 1948, a United States district court, and has the same powers as those of other district courts. See sections 88 and 132 of that title. It is included within the definition of "court of the United States" (as used in that title) contained in section 451 of that title. Section 401 of Title 18, United States Code, which title was also enacted into law in 1948, provides for contempt powers of a "court of the United States", and while the term is not defined in that title, the bills to enact Titles 18 and 28 of that Code into law were companion bills. They were approved on the same date and became effective on the same date, and, considering the changed status of the United States District Court for the District of Columbia since the enactment of Title 28, the term "court of the United States", as used in Title 18, embraces that court. Therefore, section 401 of Title 18, United States Code, and the above cited section 1651 of Title 28 thereof, cover or supersede the above-mentioned provisions relating to attachment of the person and punishment for contempt, which, as stated, are omitted. However, for the purpose of clarification and completeness, words "may exercise its powers of enforcement and punishment as provided by section 401 of Title 18, United States Code," are inserted.

Changes are made in phraseology.

§ 16–3104. Sequestration where person fails to appear

(a) If two summonses issued to a person by the Probate Court are regularly returned non est by the United States marshal and it is necessary to proceed further to compel the person's attendance, the court may order and issue an attachment against his real and personal property. On return of the attachment, to which a schedule of the attached property, if any, shall be annexed, the court, by order, or commission under seal, may authorize a person or persons to take into his or their care and custody the property returned in the schedule, or a part thereof, and receive the profits thereof, to be accounted for, until the person summoned appears and obeys the order of the court, or until further order. If the marshal or other officer does not deliver the property accordingly, he is liable to be proceeded against as provided by this subsection.

(b) The persons authorized pursuant to subsection (a) of this section to take into their care and custody the property referred to shall first give bond to the United States with such security, and in such penalty, as the court directs. The bond shall be recorded, may be sued on, shall be on a footing with an administration bond, and shall be conditioned for rendering a true account of the estate or property, and of the profits thereof, and to deliver the property according to the order of the court, after deducting such allowance for loss, and such commission, not exceeding 5 per centum of the whole, as the court deems proper.

(c) When the purpose for which property sequestered under this section is answered, the court shall direct that the estate or property, and the profits, after making the deductions authorized by subsection (b) of this section, be restored to the person from whom the care and custody of the property were taken. When the person is dead, the court shall order the property to be delivered to his heirs, devisees or legal representatives, as soon as the purpose of the sequestration is answered, or immediately, on application, and on satisfying the court of the person's right, if the purpose, after the death of the original person, can not be answered. (Dec. 23, 1963, 77 Stat. 599; Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–508 (Act of Maryland, 1798, ch. 101, subch. 15, § 15; Mar. 3, 1901, ch. 854, § 116, 31 Stat. 1208).

Changes are made in phraseology and arrangement.

§ 16–3105. Plenary proceeding; refusal to answer as required

When either of the parties having a contest in the Probate Court requires, the court may direct a plenary proceeding, by bill or petition, to which there shall be an answer, on oath or affirmaton. If the party, refuses to answer on oath or affirmation, as the case may require, to any matter alleged in the bill or petition, and proper for the court to decide upon, the court may exercise its powers of enforcement and punishment as provided by section 401 of Title 18, United States Code, or it may have his property attached and sequestered as provided by section 16–3104. (Dec. 23, 1963, 77 Stat. 599, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–509 (Act of Maryland, 1798, ch. 191, subch. 15, § 16; Mar. 3, 1901, ch. 854, § 116, 31 Stat. 1208).

Words "the Court may exercise its powers of enforcement and punishment as provided by section 401 of Title 18, United States Code," are substituted for "the said party may be attached, fined, and committed". See revision note under section 16–3103 herein.

Changes are made in phraseology.

§ 16–3106. Issues to be made up in plenary proceeding; jury; compelling payment of costs

In a plenary proceeding provided for by section 16–3105, the Probate Court shall give judgment, or decree upon the bill an answer, or upon bill, answer, depositions, or finding of the jury. In all cases of contest, the court may award costs to the party deemed entitled thereto, and may compel payment by exercising its powers of enforcement and punishment as provided by section 401 of Title 18, United States Code, or by attachment and sequestration of the property as provided by section 16–3104. (Dec. 23, 1963, 77 Stat. 600, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

Revision Notes

Based on D.C. Code, 1961 ed., § 11–510 (Act of Maryland, 1798, ch. 101, subch. 15, § 17; Mar. 3, 1901, ch. 854, § 116, 31 Stat. 1208).

Words "by exercising its powers of enforcement and punishment as provided in section 401 of Title, United States Code", are substituted for "by attachment of the body, and fine,". See revision note under section 16–3103 herein.

Changes are made in phraseology.

§ 16–3107. Enforcement of judgments, orders and decrees; application of property sequestrated

The Probate Court may enforce its judgments, orders, decrees, and decisions in the manner provided by sections 16–3103 and 16–3104. When a judgment, order, decree, or decision is for the payment of money, the court may apply the property sequestrated to the purpose for which the judgment, order, decree, or decision is given. (Dec. 23, 1963, 77 Stat. 600, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–512 (Act of Maryland, 1798, ch. 101, subch. 15, § 20; Mar. 3, 1901, ch. 854, § 116, 31 Stat. 1208).

The provision at the beginning of section 11–512 of D.C. Code, 1961 ed., "The probate court shall not, under pretext of incidental power, or constructive authority, exercise any jurisdiction whatever not expressly given by this Code", is omitted as obsolete, or, in any event, unnecessary. See revision note under section 11–502 herein. There are no longer statutory special terms of the District Court designated as probate court, equity court, etc., and there is no more reason to enact such a provision as this, with respect to the District Court in the exercise of its probate jurisdiction and powers (see section 11–522 herein), than there would be to enact similar provisions with respect to its other jurisdiction.

Words "at the discretion of the court,", which related to the Court's application of the property sequestrated to the purpose for which the judgment, order, etc., is given, are omitted as surplusage. See revision note under section 16–2349 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Application of statutes

As the powers of the probate court are strictly limited, the statutes are equally applicable, at least so far as they are pertinent to the administration of all estates in the District, whether domiciliary or ancillary. *Duehay* v. *Acacia Mut. Life Ins. Co.* (1939, 105 F. 2d 768, 70 App. D.C. 245, 124 A.L.R. 1268).

Continuance of jurisdiction

Where United States District Court holding Probate Court once assumed jurisdiction over parties to proceedings involving guardianship of child, that jurisdiction continued for all purposes, and if either party felt aggrieved by the orders of the court his remedy lay with that court or on appeal therefrom. *Johnson* v. *Austin, Guardian etc.* (D.C. Mun. App. 1960, 162 A. 2d 495).

Jurisdiction of the United States District Court holding Probate Court did not stop short of enforcing its own decrees in proceedings to remove guardian of child and appoint another guardian. *Id.*

Custody of minors

The United States District Court holding Probate Court has jurisdiction to grant custody of minors in guardianship cases. *Johnson* v. *Austin, Guardian etc.* (D.C. Mun. App. 1960, 162 A. 2d 495).

Jurisdiction over guardianship matters is given to United States District Court holding Probate Court, while Domestic Relations jurisdiction is vested in Domestic Relation Branch of the Municipal Court. *Id.*

Enforcement of decrees

Although recourse to District Court may be necessary to effectuate decrees of District Court holding Probate Court, Probate Court is but an arm of District Court and the full judicial machinery of the District Court is available to enforce lawful decrees of its component parts. *Johnson* v. *Austin, Guardian etc.* (D.C. Mun. App. 1960, 162 A. 2d 495).

Even if the United States District Court holding Probate Court were powerless to enforce a custody decree, other avenues are open in the District Court to give litigants relief through enforcement of such a decree. *Id.*

Jurisdiction

The bankruptcy court had exclusive jurisdiction to determine title to decedent's liquor store which administratrix had allowed bankrupt to control and operate, and such determination would not interefere with jurisdiction of probate court. *N. M. White, Personally etc.* v. *M. F. Schwartz, Trustee etc.* (1962, 302 F. 2d 916, 112 U.S. App. D.C. 331).

Power to remove administrator

Like its predecessor, the orphan's court of Maryland, the Probate Court is a court of special jurisdiction with limited powers, and consequently, unless power to remove an executor for a particular cause can be found in the statute, or by necessary inference therefrom, it does not exist. *Hawley* v. *Hawley* (1940, 114 F. 2d 505, 72 App. D.C. 357).

Unless power of probate court to remove an administratrix for a particular cause can be found in this chapter or by necessary inference therefrom, it does not exist. D.C. Code. *Perkins* v. *Berger* (1944, 145 F. 2d 856, 79 U.S. App. D.C. 286).

The fact that administratrix asserted a stale claim against deceased's estate did not authorize removal of administratrix. *Id.*

§ 16–3108. Ordering investment of funds; revocation of letters for noncompliance

The Probate Court may order an executor, administrator, collector, or guardian, whom it has appointed, to bring into court or invest in securities, to be approved by the court, any funds received by the executor, administrator, collector, or guardian. If the party does not, within a reasonable time, to be fixed by the court, comply with the order, the court may revoke his letters. (Dec. 23, 1963, 77 Stat. 600, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–513 (Mar. 3, 1901, ch. 854, § 123, 31 Stat. 1209).

Changes are made in phraseology.

CROSS REFERENCE

Investments of funds held by direction of will, see § 20–362.

NOTES TO DECISIONS UNDER PRIOR LAW

Commingling of funds by executor

Where money was deposited in bank by executor, mingled with his own and subject to his check at all times, it renders both him and his coexecutor, who acquiesced in this disposition, liable for legal interest on the fund during the whole time of his possession. *Mades* v. *Miller* (1894, 2 App. D.C. 455).

§ 16–3109. Compelling performance of duties by executors, administrators, etc.; revocation of letters

The Probate Court may order an executor, administrator, collector, guardian, or testamentary trustee, who appears to be in default in respect to the rendering of an inventory or account or the fulfillment of a duty in the court, to be summoned to appear therein and fulfill his duty in the premises, on pain of revocation of his power to act. On his appearance, the court may make such order as is just. On his failure to appear, after having been duly summoned, the court may revoke his power to act and make such further order and other appointment as justice requires. If the summons to appear is returned by the marshal "not to be found," an alias summons shall be mailed to the last-known post-office address of the fiduciary or served upon his attorney of record, if he is within the jurisdiction of the court. On the failure of the fiduciary to appear, the court may revoke his power to act and make such further order and other appointment as justice requires. (Dec. 23, 1963, 77 Stat. 600, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–514 (Mar. 3, 1901, ch. 854, § 126, 31 Stat. 1210; Apr. 19, 1920, ch. 153, 41 Stat. 557).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Removal of administrator

Where executor has made improper payment of claims but has not disposed of salable property unauthorizedly,

court's only direct sanction is to order executor to correct or protect against his impropriety, and if executor fails to comply, then to remove him. *C. P. Henry* v. *J. A. Grimes, Jr.* (1964, 334 F. 2d 550, 118 U.S. App. D.C. 160).

An executor or administrator can be removed only for legal causes specified in the statute, which confers power upon the probate court. *Hawley* v. *Hawley* (1940, 114 F. 2d 505, 72 App. D.C. 357).

§ 16–3110. Accounting and delivering of property after revocation of letters; compelling performance

When the Probate Court revokes letters testamentary or of administration, collection, or guardianship, the party whose letters are revoked shall render forthwith an account of his administration or guardianship up to the period of the rendition of the account and deliver and turn over to the person appointed in his place all the estate, money, and effects remaining in his hands that were received and held by him by virtue of his appointment so revoked. All moneys in the hands of an executor, administrator, or collector realized by him by the sale of the specific property are unadministered assets and shall be turned over in like manner. The court may direct the bond of the executor, administrator, or collector whose letters are revoked to be put in suit for the use of the new administrator or collector appointed in his place. (Dec. 23, 1963, 77 Stat. 600, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–515 (Mar. 3, 1901, ch. 854, § 127, 31 Stat. 1210).

The provision in section 11–515 of D.C. Code, 1961 ed., that, with respect to the duties prescribed in this section, empowered the court to "compel the performance of said duty in the manner hereinafter mentioned", is omitted as unnecessary and covered by section 401 of Title 18, United States Code. See revision note under section 16–3103 herein. As set out in chapter 5 of Title 11 of D.C. Code, 1961 ed., the only section in that chapter, or in the 1901 act, to which the above-quoted words in section 11–515 of D.C. Code, 1961 ed., "in the manner hereinafter mentioned", apparently could have related, was section 11–516 thereof (section 129 of the 1901 act, as amended by act June 30, 1902, ch. 1329, 32 Stat. 526), which provided that "The said court [Probate Court], in addition to the powers herein specially conferred, shall have power to enforce its judgments, orders and decrees in like manner as orders and decrees may be enforced in the equity court", and that section is omitted from this revision as obsolete. See revision note under section 11–502 herein.

Changes are made in phraseology.

CROSS REFERENCE

Distribution before discovery of will or before will is declared invalid, see §§ 20–354, 20–355.

NOTES TO DECISIONS UNDER PRIOR LAW

Removal without notice and trial

When executors and administrators are once regularly appointed and qualified they can not be removed without notice and a trial. *Brosnan* v. *Brosnan* (1923, 289 F. 547, 53 App. D.C. 149).

§ 16–3111. Order admitting will to probate as conclusive evidence

With respect to the trial of issues in the Probate Court, including the taking and use of testimony of non-resident witnesses, the Federal Rules of Civil Procedure, unless otherwise provided by law, are applicable thereto. A final order or decree admitting a will to probate, unless and until it is reversed, is conclusive evidence of the validity of the will in a collateral proceeding in which the will is brought into question, and a transcript of the record of the will, and of the decree admitting it to probate, is sufficient proof thereof. (Dec. 23, 1963, 77 Stat. 601, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–519 (Mar. 1901, ch. 854, § 144, 31 Stat. 1214; June 30, 1902, ch. 1329, 32 Stat. 526; June 7, 1934, ch. 426, 48 Stat. 926).

The first sentence is substituted for the first two sentences of section 11–519 of D.C. Code, 1961 ed., which at least in part are obsolete, and which read as follows: "The said court shall have authority to take the testimony of nonresident witnesses, and such depositions, as well as depositions de bene esse, taken according to law, may be read at the trial of any issue in said court. On the trial of any such issue exceptions may be taken to the rulings of the court, and the said court may set aside the verdict and grant a new trial for the same causes and in the same manner as in case of a trial in the United States Court of Appeals for the District of Columbia."

Regarding the above-quoted second sentence of section 11–519 of D.C. Code, 1961 ed., it is assumed that the substitution in the 1961 edition of the Code of the reference to the court of appeals for the former reference therein to the "Circuit Court", a former special term of the district court, at which "common-law" civil causes were heard, was merely a typographical error. See revision note under section 11–502 herein.

The Federal Rules of Civil Procedure are applicable to civil actions in the District of Columbia district court, and Rule 46 thereof abolished formal exceptions in the trial thereof.

The sentence substituted for the first two sentences of section 11–519 of D.C. Code, 1961 ed., brings the procedure more into harmony with that provided by the Federal Civil Rules for civil actions. However, the exception clause, "unless otherwise provided by law" is included, in recognition of other statutes relating to the trial of issues in probate matters. See, for example, section 19–312 of D.C. Code, 1961 ed.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Unprobated will as evidence

Where plaintiff sought to enjoin obstruction of right of way easement on theory that plaintiff and her predecessors in title continuously, openly, notoriously, and adversely used right of way for more than 20 years, unprobated will of plaintiff's predecessor which had been filed in probate court was properly received to prove privity, a transfer of possession, and continuity of interest. *Bonds* v. *Smith* (1944, 143 F. 2d 369, 79 U.S. App. D.C. 118).

§ 16–3112. Arbitration; exceptions

The Probate Court may, with the consent in writing of both parties, arbitrate between a complainant and an executor or administrator, or between an executor or administrator and a person against whom the estate represented by him has a claim, or, with like consent, may refer the matter in dispute to an arbitrator. If reserved by the parties in their submission, exception as to matters of law may be filed to the award of the arbitrator, and the court may confirm or overrule the award. The award when confirmed is conclusive between the parties. (Dec. 23, 1963, 77 Stat. 601, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–520 (Mar. 3, 1901, ch. 854, § 145, 31 Stat. 1215).

Minor changes are made in phraseology.

§ 16–3113. Costs and execution

The Probate Court may render judgment for costs against the unsuccessful party in any proceeding

conducted in the court, and issue execution thereof. (Dec. 23, 1963, 77 Stat. 601, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–518 (Mar. 3, 1901, ch. 854, § 143, 31 Stat. 1214; June 30, 1902, ch. 1329, 32 Stat. 526).

Minor changes are made in phraseology.

CROSS REFERENCE

Fees and costs, see § 15–701 et seq.

NOTES TO DECISIONS UNDER PRIOR LAW

Costs in probate proceedings

Commission of Collector of assets of estate, who was appointed on request of unsuccessful caveators in will contest, was not chargeable against the caveators as part of the collectible costs, in absence of fraud or unconscionable conduct on part of caveators. *Adlung, Executor, etc.* v. *Gotthardt et al.* (1958, 257 F. 2d 199, 103 U.S. App. D.C. 195).

Assessment of costs is, in part, a matter governed by statute and, in part, a matter governed by usage. *Id.*

Discretion

Court has discretionary power, notwithstanding this section, to award costs to the party in their opinion entitled thereto. *Hutchins* v. *Hutchins* (1919, 48 App. D.C. 286). See, also, *Manning* v. *Childress* (1919, 48 App. D.C. 256).

Chapter 33.—QUIETING TITLE OBTAINED BY ADVERSE POSSESSION

Sec.

16–3301. Complaint; allegations; parties; service; decree.

§ 16–3301. Complaint; allegations; parties; service; decree

When title to real property in the District of Columbia has become vested in a person by adverse possession, the holder thereof may file a complaint in the United States District Court for the District of Columbia to have the title perfected. In the complaint, it is sufficient to allege that the plaintiff holds the title to the property, and that it has vested in him, or in himself and in those under whom he claims, by adverse possession. In the action, it is not necessary to make any person a party defendant except those persons who appear to have a claim or title adverse to that of the plaintiff. Upon the trial of the cause, proof of the facts showing title in the plaintiff by adverse possession entitles him to a decree of the court declaring his title by adverse possession, and a copy of the decree may be entered of record in the office of the Recorder of Deeds for the District.

(b) In an action pursuant to this section, if process is returned not to be found, notice by publication may be substituted as in the case of nonresident defendants. Subject to subsection (c) of this section, if it is known whether one who, if living, would be an adverse party, is living or dead, or, in the case of a decedent, whether he died testate or left heirs, or his heirs or devisees are unknown, the cause may be proceeded with pursuant to section 13–341.

(c) The rights of infants or others under legal disability shall be saved for a period of two years after the removal of their disabilities, but the entire period during which they shall be preserved may not exceed twenty-two years from the time they accrued, either in the plaintiff or in the persons under whom he claims. (Dec. 23, 1963, 77 Stat. 601, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1501 (Mar. 3, 1901, ch. 854, § 111, 31 Stat. 1207; June 30, 1902, ch. 1329, 321 Stat. 524; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

The term "complaint" is substituted for "bill," and "plaintiff" is substituted for "complainant", in conformity with the Federal Rules of Civil Procedure. See rules 3 and 4 thereof.

Changes are made in phraseology and arrangement.

CROSS REFERENCES

Adverse possession as a defense, see § 16–1113.

Periods of limitation, see § 12–301.

NOTES TO DECISIONS UNDER PRIOR LAW

In general

"A great deal of indulgence has always been extended to one in the undisturbed possession of property, in respect of proceedings to quiet or perfect a title that had not been assailed." *Myers* v. *Mayhew* (1908, 32 App. D.C. 205).

"A title is good (as distinguished from good of record) if it has been acquired by adverse possession under such circumstances, and for such length of time, as to render it indefeasible at law or in equity." *Marsh* v. *Kenyon* (1911, 37 App. D.C. 574).

Cotenant

One cotenant may hold adversely to his co-owner, although ouster or disseisin is not to be presumed from the mere fact of sole possession. *Henderson* v. *Mann* (1917, 47 App. D.C. 174).

Duration of possession

Where plaintiff's possession for 31-year period of realty in which she was cotenant with others was admittedly actual, exclusive, and continuous, and, in the court's view, hostile, open and notorious, she was entitled to decree establishing title in her by adverse possession. *Welch* v. *Unknown Heirs, Lipscomb et al.* (1955, 226 F. 2d 776, 96 U.S. App. D.C. 412).

Adverse possession held clearly shown by 30 years' possession of lot with clearly defined boundaries which extended beyond the line as surveyed. *Brumbaugh* v. *Gompers* (1921, 269 F. 472, 50 App. D.C. 130).

Ejectment

This section has no application to action in ejection based upon title by adverse possession. *McMillan* v. *Fuller* (1914, 41 App. D.C. 384).

Evidence

Evidence held sufficient to be submitted to the jury on the question of adverse possession. *Davis* v. *Coblens* (1899, 19 S. Ct. 832, 174 U.S. 719, 43 L. Ed. 1147).

Inclosure

"Actual inclosure is not necessary to prove possession; that while inclosure is the most tangible evidence of possession, a continuous, uninterrupted, open, actual, exclusive, and adverse possession is in law equally as satisfactory." *Howison* v. *Masson* (1907, 29 App. D.C. 338).

Limitation of actions

There is an apparent conflict between § 111 (this section) and § 1265 (§ 12–201) of the 1929 edition, as to the extent of the principal limitation of actions, and also as to the extent of the saving to parties under disabilities. But in order to give effect to both sections, the former section being the act of Congress of March 3, 1899, must be read as an exception to the latter more general provision. *Gwin* v. *Brown* (1903, 21 App. D.C. 295).

Possession to be adverse

Possession, to become adverse, and effectual to defeat a clear pre-existing legal title, must be actual, continuous, and exclusive, attended with such manifest intention of holding and continuing the possession as will make that possession notorious to every one interested in reclaiming the property to the rightful ownership. *Reid* v. *Anderson* (1898, 13 App. D.C. 30).

Possession under mistake

Title by adverse possession may be secured although possession was had under mistake (whether the mistake

was honest or deliberate). *Rudolph* v. *Peters* (1910, 35 App. D.C. 438, Ann. Cas. 1912A, 446).

Purpose of statute

This section is a statute of repose and is designed to prevent further litigation and to settle a title which parties have suffered to remain unquestioned long enough to assume their acquiescence therein. *Welch* v. *Unknown Heirs, Lipscomb et al.* (1955, 226 F. 2d 776, 96 U.S. App. D.C. 412).

Remedy

A bill in equity is the proper remedy to perfect title by adverse possession, and not ejectment, where defendants have not entered into possession or attempted to oust the plaintiff. *Myers* v. *Mayhew* (1908, 32 App. D.C. 205).

Subsequent abandonment

Title acquired by adverse possession is not loss by subsequent abandonment of possession. *Myers* v. *Mayhew* (1908, 32 App. D.C. 205).

Chapter 35.—QUO WARRANTO

Sec.

16–3501. Persons against whom issued; civil action.
16–3502. Parties who may institute; ex rel. proceedings.
16–3503. Refusal of Attorney General or United States attorney to act; procedure.
16–3504. Allegations in petition of relator claiming office.
16–3505. Notice to defendant.
16–3506. Proceedings on default.
16–3507. Pleading; jury trial.
16–3508. Verdict and judgment.
16–3509. Usurping corporate franchise; judgment.
16–3510. Proceedings against corporate directors and trustees; judgment and order; enforcement.
16–3511. Recovery of damages from usurper; limitation.

§ 16–3501. Persons against whom issued; civil action

A quo warranto may be issued from the United States District Court for the District of Columbia in the name of the United States against—

(1) a person who usurps, intrudes into, or unlawfully holds or exercises within the District a franchise or public office, civil or military, or an office in a domestic corporation; or

(2) one or more persons who act as a corporation within the District without being duly authorized, or exercise within the District corporate rights, privileges, or franchises not granted them by law in force in the District.

The proceedings shall be deemed a civil action. (Dec. 23, 1963, 77 Stat. 602, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1601 (Mar. 3, 1901, ch. 854, § 1538, 31 Stat. 1419; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107).

Changes are made in phraseology.

CROSS REFERENCE

Proceedings for a forfeiture of all rights and privileges of institutions of learning, see § 29–413.

NOTES TO DECISIONS UNDER PRIOR LAW

Common-law principles

Sections 16–1601 to 16–1604 of this chapter regarding writ of quo warranto leave the former common-law principles governing the issuance of writs of quo warranto in full force. *United States ex rel. Noel* v. *Carmody* (1945, 148 F. 2d 684, 80 U.S. App. D.C. 58).

Nature and scope of remedy

Quo warranto is only available against a person who unlawfully holds a public office or an office in a domestic corporation, or against a person or persons who unwarrantedly claim corporate status, and is not an appropriate remedy for attempted revocation of corporate charter of bar association on ground of alleged abuse and misuse of its charter. *United States ex rel. Robinson* v. *Bar Association of District of Columbia* (1952, 197 F. 2d 408, 91 U.S. App. D.C. 5).

§ 16–3502. Parties who may institute; ex rel. proceedings

The Attorney General or the United States attorney may institute a proceeding pursuant to this chapter on his own motion, or on the relation of a third person. The writ may not be issued on the relation of a third person except by leave of the court, to be applied for by the relator, by a petition duly verified, setting forth the grounds of the application, or until the relator files a bond with sufficient surety, to be approved by the clerk of the court, in such penalty as the court prescribes, conditioned for the payment by him of all costs incurred in the prosecution of the writ if costs are not recovered from and paid by the defendant. (Dec. 23, 1963, 77 Stat. 602, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1602 (Mar. 3, 1901, ch. 854, § 1539, 31 Stat. 1420; June 25, 1948, ch. 646, § 1, 62 Stat. 909).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Claimant to office

A citizen and taxpayer who makes no claim to the office can not make application for quo warranto. *Newman* v. *United States ex rel. Frizzell* (1915, 35 S. Ct. 881, 238 U.S. 537, 59 L. Ed. 1446). See also, *Hayes* v. *Burns* (1905, 25 App. D.C. 242, appeal dismissed 26 S. Ct. 744, 201 U.S. 650, 50 L. Ed. 905).

A writ of quo warranto may issue against an officer of a private corporation on complaint of one of its members or stockholders, even though the relator does not himself seek the same office. *United States ex rel. Noel* v. *Carmody* (1945, 148 F. 2d 684, 80 U.S. App. D.C. 58).

Complaint, sufficiency

Where by-law of Bar Association provided for committee on nominations which was directed to nominate at least two and not more than three names for each of offices to be filled, at ensuing election, committee nominated only one individual for office of president because of committee's inability to find another member who was both qualified for office and willing to be considered, another nominee was presented by petition, but the committee's nominee received overwhelming majority of votes, quo warranto complaint to remove committee's nominee from office of president was properly dismissed. *United States ex rel. Noel* v. *Carmody* (1945, 148 F. 2d 684, 80 U.S. App. D.C. 58).

Not an adequate remedy at law

Quo warranto is not an adequate remedy at law because the right to bring such action is not absolute, but lies within the discretion of the Attorney General or of the district attorney or of the court. *Columbian Cat Fanciers* v. *Koehne* (1938, 96 F. 2d 529, 68 App. D.C. 257).

Third person

Congress used the words "third person" in the sense of "any person." *Newman* v. *United States ex rel. Frizzell* (1914, 35 S. Ct. 881, 238 U.S. 537, 59 L. Ed. 1446).

§ 16–3503. Refusal of Attorney General or United States attorney to act; procedure

If the Attorney General or United States attorney refuses to institute a quo warranto proceeding on the request of a person interested, the interested person may apply to the court by certified petition for leave to have the writ issued. When, in the opinion of the court, the reasons set forth in the petition are sufficient in law, the writ shall be allowed to be issued by any attorney, in the name of

the United States, on the relation of the interested person, on his compliance with the condition prescribed by section 16–3502 as to security for costs. (Dec. 23, 1963, 77 Stat. 602, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1603 (Mar. 3, 1901, ch. 854, § 1540, 31 Stat. 1420; June 25, 1948, ch. 646, § 1, 62 Stat. 909).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Attorney General's discretion

The institution of quo warranto proceeding in District Court for the District of Columbia is within discretion of Attorney General, and federal District Court has no power to compel its exercise by Attorney General. *Application of E. James, Petitioner, etc., against A. C. Powell, Jr., etc.* (D.C.D.C. 1965, 241 F. Supp. 858).

Person interested

Judgment creditor of member of House of Representatives could not maintain quo warranto proceeding to determine right or title of member to office merely because of her status as judgment creditor who was unable to obtain arrest of member because of his congressional immunity. *Application of E. James, Petitioner, etc., against A. C. Powell, Jr., etc.* (D.C.D.C. 1965, 241 F. Supp. 858).

The interest which will justify such a proceeding by a private individual must be more than that of a taxpayer; it must be an interest in the office itself, and must be peculiar to the applicant. *Newman* v. *United States ex rel. Frizzell* (1914, 35 S. Ct. 881, 238 U.S. 537, 59 L. Ed. 1446).

The action must be brought by a person claiming title to the office in question and out of possession thereof. *Columbian Cat Fanciers* v. *Koehne* (1938, 96 F. 2d 529, 68 App. D.C. 257).

§ 16–3504. Allegations in petition of relator claiming office

When a quo warranto proceedings is against a person for usurping an office, on the relation of a person claiming the same office, the relator shall set forth in his petition the facts upon which he claims to be entitled to the office. (Dec. 23, 1963, 77 Stat. 602, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1604 (Mar. 3, 1901, ch. 854, § 1541, 31 Stat. 1420).

A minor change is made in phraseology.

§ 16–3505. Notice to defendant

On the issuing of a writ of quo warranto the court may fix a time within which the defendant may appear and answer the writ. When the defendant can not be found in the District, the court may direct notice to be given to him by publication as in other cases of proceedings against nonresident defendants, and upon proof of publication, if the defendant does not appear, judgment may be rendered as if he had been personally served. (Dec. 23, 1963, 77 Stat. 602, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1605 (Mar. 3, 1901, ch. 854, § 1542, 31 Stat. 1420; June 30, 1902, ch. 1329, 32 Stat. 544).

Minor changes are made in phraseology.

§ 16–3506. Proceedings on default

If the defendant does not appear as required by a writ of quo warranto, after being personally served, the court may proceed to hear proof in support of the writ, and render judgment accordingly. (Dec. 23, 1963, 77 Stat. 603, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1606 (Mar. 3, 1901, ch. 854, § 1543, 31 Stat. 1420).

Minor changes are made in phraseology.

§ 16–3507. Pleading; jury trial

In a quo warranto proceeding, the defendant may demur or plead specially or plead "not guilty" as the general issue, and the United States may reply as in other actions of a civil character. Issues of fact shall be tried by a jury if either party requests it. Otherwise they shall be determined by the court. (Dec. 23, 1963, 77 Stat. 603, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1607 (Mar. 3, 1901, ch. 854, § 1544, 31 Stat. 1420).

Minor changes are made in phraseology.

§ 16–3508. Verdict and judgment

Where a defendant in a quo warranto proceeding is found by the jury to have usurped or intruded into or unlawfully held or exercised an office or franchise, the verdict shall be that he is guilty of the act or acts in question, and judgment shall be rendered that he be ousted and excluded therefrom and that the relator recover his costs. (Dec. 23, 1963, 77 Stat. 603, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1608 (Mar. 3, 1901, ch. 854, § 1545, 31 Stat. 1420).

Minor changes are made in phraseology.

§ 16–3509. Usurping corporate franchise; judgment

Where a quo warranto proceeding is against persons acting as a corporation without being legally incorporated, the judgment against the defendants shall be that they be perpetually restrained and enjoined from the commission or continuance of the acts complained of. (Dec. 23, 1963, 77 Stat. 603, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1609 (Mar. 3, 1901, ch. 854, § 1546, 31 Stat. 1420).

A minor change is made in phraseology.

§ 16–3510. Proceedings against corporate directors and trustees; judgment and order; enforcement

Where a quo warranto proceeding is against a director or trustee of a corporation and the court finds that at his election either illegal votes were received or legal votes rejected, or both, sufficient to change the result if the error is corrected, the court may render judgment that the defendant be ousted, and that the relator, if entitled to be declared elected, be admitted to the office, and the court may issue an order to the proper parties, being officers or members of the corporation, to admit him to the office. The judgment may require the defendant to deliver to the relator all books, papers, and other things in his custody or control pertaining to the office, and obedience to judgment may be enforced by attachment. (Dec. 23, 1963, 77 Stat. 603, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1610 (Mar. 3, 1901, ch. 854, § 1547, 31 Stat. 1420).

Reference to court order is substituted for reference to mandamus, in conformity with the Federal Rules of Civil Procedure. Rule 81(b) thereof abolished the writ of mandamus and provides that the relief theretofore available under mandamus may be obtained by appropriate action or motion under the practice prescribed in those rules.

Changes are made in phraseology.

§ 16–3511. Recovery of damages from usurper; limitation

At any time within a year after a judgment in a quo warranto proceeding, the relator may bring an action against the party ousted and recover the damages sustained by the relator by reason of the ousted party's usurpation of the office to which the relator was entitled. (Dec. 23, 1963, 77 Stat. 603, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1611 (Mar. 3, 1901, ch. 854, § 1548, 31 Stat. 1421).

Changes are made in phraseology.

Chapter 37.—REPLEVIN

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SUBCHAPTER I.—GENERAL PROVISIONS

§ 16–3701. Demand prior to action; costs

In an action of replevin brought to recover personal property to which the plaintiff is entitled, that is alleged to have been wrongfully taken by or to be in the possession of and wrongfully detained by the defendant, it is not necessary to demand possession of the property before bringing the action; but the costs of the action may be awarded as the court orders. (Dec. 23, 1963, 77 Stat. 604, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1801 (Mar. 3, 1901, ch. 854, § 1549, 31 Stat. 1421).

Changes are made in phraseology.

CROSS REFERENCES

Replevin,
Attachment suits, see § 16–517.
Court of General Sessions, see §§ 16–3731 to 16–3740.

NOTES TO DECISIONS UNDER PRIOR LAW

Common law applicable

Common-law rules prevail as to powers of officers in executing a writ of replevin. "The rule of the common law * * * seems to be that an officer, in executing a writ of replevin, may not break an outer door or window of a dwelling to gain entrance to seize the property of the occupant or of a person rightfully domiciled therein. He may enter either an open outer door or window, provided it can be accomplished without committing a breach of the peace; he may then, after a request and refusal, break open any inner doors belonging to the defendant, in order to take the goods. We think a further reasonable rule is deducible from the cases, that when an officer, in the execution of a writ, finds an outer door or window slightly ajar, but not sufficiently so to admit him, he may open the door or window, provided he does not find it obstructed, but if it is fastened or obstructed so as to require force to overcome the obstruction, he may not use such force for such an entrance would constitute a breaking." *Palmer* v. *King* (1914, 41 App. D.C. 419, L.R.A. 1916 D, 278, Ann. Cas. 1915 C, 1139).

Fraudulent purchase

When vendor replevies goods on ground that the purchase was fraudulent and it appears that the value of the goods was in excess of balance due the vendor, it is proper to tender the excess to the defendant and upon his refusal to receive tender, pay the amount into court. *Samaha* v. *Mason* (1906, 27 App. D.C. 470).

Goods taken by police

Replevy of goods taken by police from person accused of crime, see *Mutual Comm. & Stock Co.* v. *Moore* (1898, 13 App. D.C. 78).

Nature of action

It is fundamental that the gist of the action of replevin is plaintiff's right to immediate possession and defendant's wrongful taking or wrongful or unlawful detention. *Daime* v. *Price* (D.C. Mun. App. 1949, 63 A. 2d 767).

Promissory notes

Replevin action is proper against a bank to recover possession of overdue promissory notes received by it from a private bank to secure a payment of an overdraft, when it is apparent the notes evidenced a debt secured by deed of trust on property that was owned by plaintiff and her sister, that the debt was paid on maturity of the notes and they were left with banking firm for safekeeping but the bank used them to pay overdraft without plaintiff's authority. *District Nat. Bank* v. *Trimble* (1917, 46 App. D.C. 319).

Right to possession

The plaintiff in replevin action cannot recover on the weakness of defendant's title; to recover the plaintiff must have a right to immediate possession of the property at the commencement of the action. *Smith, Kirkpatrick & Co., Inc., et al.* v. *Continental Autos, Ltd., et al.* (D.C.D.C. 1960, 184 F. Supp. 764).

Sufficiency of bill in equity

Equity will not require a specific delivery of art collection when the bill does not disclose what, if any, disposition of the art collection was made or attempted to be made in the will. *Dante* v. *Hutchins* (1920, 265 F. 988, 49 App. D.C. 348, certiorari denied 41 S. Ct. 9, 254 U.S. 635, 65 L. Ed 450).

§ 16–3702. Form of complaint

A complaint in replevin shall be in the following or equivalent form:

"The plaintiff sues the defendant for (wrongly taking and detaining) (unjustly detaining) the plaintiff's goods and chattels, to wit: (describe them) of the value of ——— dollars. And the plaintiff claims that the same be taken from the defendant and delivered to him; or, if they are eloigned, that he may have judgment of their value and all mesne profits and damages, which he estimates at ——— dollars, besides costs." (Dec. 23, 1963, 77 Stat. 604, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1802 (Mar. 3, 1901, ch. 854, § 1550, 31 Stat. 1421).

Reference to "declaration" is changed to "complaint", in conformity with rules 2, 3, 7, and 64 of the Federal Rules of Civil Procedure.

A minor change is made in phraseology.

§ 16–3703. Affidavit; contents

At the time of filing a complaint in replevin, the plaintiff, his agent, or attorney shall file an affidavit stating that—

(1) according to affiant's information and belief, the plaintiff is entitled to recover possession of chattels proposed to be replevied, being the same described in the complaint;

(2) the defendant has seized and detained or detains the chattels; and

(3) the chattels were not subject to the seizure or detention and were not taken upon a writ of replevin between the parties.

(Dec. 23, 1963, 77 Stat. 604, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1803 (Mar. 3, 1901, ch. 854, § 1551, 31 Stat. 1421; June 30, 1902, ch. 1329, 32 Stat. 544).

"Complaint" is substituted for "declaration", in conformity with rules 2, 3, 7, and 64 of the Federal Rules of Civil Procedure.

Changes are made in phraseology.

§ 16–3704. Undertaking to abide judgment of the court

At the time of filing a complaint in replevin, the plaintiff shall enter into an undertaking by himself or his agent with surety, approved by the clerk, to abide by and perform the judgment of the court. (Dec. 23, 1963, 77 Stat. 604, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1804 (Mar. 3, 1901, ch. 854, § 1552, 31 Stat. 1421; June 30, 1902, ch. 1329, 32 Stat. 544).

Changes are made in phraseology.

CROSS REFERENCE

General provision concerning bonds, see § 28–2501 et seq.

§ 16–3705. Failure of officer to obtain possession; procedure

When the officer's return of a writ of replevin issued pursuant to this subchapter is that he has served the defendant with copies of the complaint, affidavit, and summons, but that he could not obtain possession of the goods and chattels sued for, the plaintiff may prosecute the action for the value of the property and damages for detention, or he may renew the writ in order to obtain possession of the goods and chattels themselves. (Dec. 23, 1963, 77 Stat. 604, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1805 (Mar. 3, 1901, ch. 854, § 1553, 31 Stat. 1421).

"Complaint" is substituted for "declaration", in conformity with rules 2, 3, 7, and 64 of the Federal Rules of Civil Procedure.

Words "notice to plead,", which related, also, to service, are omitted as covered by the word "summons". See rule 4(b) of the Federal Rules of Civil Procedure.

Reference to "affidavit" is inserted, in view of section 16–3703 herein. See, also, section 11–726 of D.C. Code, 1961 ed., which related to replevin in the Municipal Court (now the Court of General Sessions), and which is carried into section 11–3734 herein.

Minor changes are made in phraseology.

CROSS REFERENCE

Replevin in attachment proceedings, see § 16–517.

NOTES TO DECISIONS UNDER PRIOR LAW

Damages for value and detention

Where writ in action to replevy an alleged irreplaceable fender shield was returned "not executed" and plaintiff did not renew the writ by prosecuted action without seizure of the shield, plaintiff was properly given judgment merely for value of shield and damages for its detention rather than for recovery of shield, though defendant had voluntarily produced shield and had put it in evidence, and court thereafter ordered shield to be turned over to the marshal pending decision. *Byrne* v. *Tabet* (D.C. Mun. App. 1947, 50 A. 2d 815).

§ 16–3706. Publication against defendant

When the officer's return of a writ of replevin is that he has taken possession of the goods and chattels sued for, but indicates that personal service on the defendant could not be made, the court, subject to the provisions of section 13–340 as to mailing notice, may order that the defendant appear to the action by a fixed day. The plaintiff shall cause notice of the order to be given by publication in a newspaper published in the District at least three times, the first publication to be at least twenty days before the day fixed for the defendant's appearance. (Dec. 23, 1963, 77 Stat. 605, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1806 (Mar. 3, 1901, ch. 854, § 1554, 31 Stat. 1421; June 30, 1902, ch. 1329, 32 Stat. 544).

Changes are made in phraseology.

§ 16–3707. Default

If, after notice as provided by section 16–3706, the defendant fails to appear, the court may proceed as in case of default after personal service. (Dec. 23, 1963, 77 Stat. 605, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1807 (Mar. 3, 1901, ch. 854, § 1555, 31 Stat. 1421).

Changes are made in phraseology.

§ 16–3708. Motion for return of property; procedure; objection to sufficiency of security

(a) On the taking possession of the goods and chattels by the marshal by virtue of a writ of replevin, the defendant may, on one day's notice to the plaintiff or his attorney, move for a return of the property to his possession. Thereupon, the

court may inquire into the circumstances and manner of the defendant's obtaining possession of the property, and, if it seems just, may order the property to be returned to the possession of the defendant, to abide the final judgment in the action. The court may require the defendant to enter into an undertaking with surety or sureties, similar to that required of the plaintiff upon the commencement of the action. In such case, the court shall render judgment against the surety or sureties, as well as against the defendant.

(b) When it appears that the possession of the property was forcibly or fraudulently obtained by the defendant, or that the possession, being first in the plaintiff, was procured or retained by the defendant without authority from the plaintiff, the court may refuse to order the return of the property to the possession of the defendant. The defendant may also, on similar notice, object to the sufficiency of the security in the undertaking of the plaintiff, and the court may require additional security, in default of which the property shall be returned to the defendant, but the action may proceed as if the property had not been taken. (Dec. 23, 1963, 77 Stat. 605, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1809 (Mar. 3, 1901, ch. 854, § 1557, 31 Stat. 1422; June 30, 1902, ch. 1329, 32 Stat. 544; Mar. 3, 1921, ch. 125, § 9, 41 Stat. 1312).

The last sentence of section 16–1809 of D.C. Code, 1961 ed., which made that section applicable to the Municipal Court (now the Court of General Sessions), is omitted as covered by section 16–3738 herein.

Changes are made in phraseology and arrangement.

§ 16–3709. Notice to officer of intention to move for return; duty of officer; time of motion

If the defendant in an action of replevin notifies the officer taking possession of the property, in writing, of his intention to make either of the motions specified by section 16–3708, the officer shall retain possession of the property until the motion is disposed of, if the motion is filed and notice given, as provided by section 16–3708, to the plaintiff or his attorney, within two days thereafter. (Dec. 23, 1963, 77 Stat. 605, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1810 (Mar. 3, 1901, ch. 854, § 1558, 31 Stat. 1422).

Changes are made in phraseology.

§ 16–3710. Determination and measure of plaintiff's damages

Whether, in an action of replevin, the defendant answers and the issue thereon joined is found against him, or judgment is rendered against him on proper motion under rules of court, or he makes default after personal service or publication, the plaintiff's damages shall be ascertained by the jury trying the issue, where one is joined, or by a jury of inquest, where jury trial had been waived or there is no issue of fact, and the damages shall be the full value of the goods, if eloigned by the defendant, including, in every case, the loss sustained by the plaintiff by reason of the detention, and the judgment shall be rendered for the plaintiff accordingly. (Dec. 23, 1963, 77 Stat. 605, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1811 (Mar. 3, 1901, ch. 854, § 1559, 31 Stat. 1422).

Words "the defendant answers and the issue thereon joined is found against him, or judgment is rendered against him on proper motion under rules of court," are substituted for "the defendant plead and the issue thereon joined is found against him, or his plea is held bad on demurrer,"; and words "jury trial had been waived or" are inserted after "or by a jury of inquest, where", for the purpose of conforming the provisions, or rendering them more in consonance, with the Federal Rules of Civil Procedure. See, particularly, rules 7 (a), (c), 12, 38, 39, 41, 56, and 64 thereof. See, also, the latter part of rule 55(b)(2) thereof, which, with respect to default judgments entered by the court, provided that the amount of damages shall be determined by a jury if "required by any statute of the United States". Under rule 81(e) of those rules, section 1599 of the act of 1901, cited above, from which section 16–1811 of the D.C. Code, 1961 ed., was derived, and on which this section is based, is a "statute of the United States".

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Evidence

Testimony of witness that, when he took check drawn by defendant's husband, now deceased, to order of cash to bank and had it cashed for him, defendant's husband stated that he intended to use the money to buy furniture from third party was inadmissible as part of "res gestae". *Jackson* v. *Goode* (D.C. Mun. App. 1946, 49 A. 2d 913).

Instructions

Defendant's instruction that question for jury to determine was whether plaintiff had shown by a fair preponderance of evidence that on date she brought replevin suit she was entitled as against all the world to immediate and exclusive possession of the furniture which was subject of the suit was properly modified by substituting for the words "all the world" the words "the defendant." *Jackson* v. *Goode* (D.C. Mun App. 1946, 49 A. 2d 913).

Right to possession

Testimony as to statements made by defendant's deceased husband that he bought the property in controversy in replevin suit from certain person was not admissible as part of the "res gestae". *Jackson* v. *Goode* (D.C. Mun. App. 1946, 49 A. 2d 913).

In replevin suits it is not necessarily the title which is in issue but merely the right to possession as between the parties. *Id.*

Subsequent action

A buyer who brings replevin for the possession of an automobile repossessed by the seller, with nominal damages for detention, is not thereby barred from subsequent action for illegal and malicious seizure. *Wardman-Justice Motors* v. *Petrie* (1930, 39 F. 2d 512, 59 App. D.C. 262, 69 A.L.R. 648).

§ 16–3711. Judgment for defendant and determination of damages

When, in an action of replevin, the issue is found for the defendant, or the plaintiff dismisses or fails to prosecute his suit, or judgment is rendered against the plaintiff on proper motion under rules of court, the judgment shall be that the goods, if delivered to the plaintiff, be returned to the defendant with damages for their detention, or, on failure, that the defendant recover against the plaintiff and his surety the damages sustained by him. The damages shall be assessed by the jury trying the issue; or, where jury trial had been waived, or judgment is rendered against the plaintiff prior to trial on proper motion under rules of court, or he dismisses or fails to prosecute his suit, by a jury of inquest. (Dec. 23, 1963, 77 Stat. 606, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1812 (Mar. 3, 1901, ch. 854, § 1560, 31 Stat. 1422).

Near the beginning, words "or judgment is rendered against the plaintiff on proper motion under rules of court," are inserted after "prosecute his suit,"; and, near the end, words "jury trial had been waived, or judgment is rendered against the plaintiff prior to trial on proper motion under rules of court, or" are inserted after "or, where", for the purpose of conforming the provisions, or rendering them more in consonance, with the Federal Rules of Civil Procedure. See, particularly, rules 12, 38, 39, 41, 56, and 64 thereof.

Changes are made in phraseology.

§ 16–3712. Verdict where goods are eloigned

If the defendant in an action of replevin has eloigned the things sued for, the court may instruct the jury, if they find for the plaintiff, to assess such damages as may compel the defendant to return the things. (Dec. 23, 1963, 77 Stat. 606, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1813 (Mar. 3, 1901, ch. 854, § 1561, 31 Stat. 1422).

Minor changes are made in phraseology.

§ 16–3713. Judgment where goods are eloigned

The judgment in a case where the defendant has eloigned the goods sued for, shall be that the plaintiff recover against the defendant the value of the goods as found and the damages so assessed, to be discharged by the return of the things, within ten days after the judgment, with damages for detention, which the jury shall also assess. (Dec. 23, 1963, 77 Stat. 606, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–1814 (Mar. 3, 1901, ch. 854, § 1562, 31 Stat. 1422).

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Where goods not recovered

If the goods are not recovered in the replevin proceeding, or returned within ten days after judgment, the plaintiff shall be entitled to judgment for the value of the goods as damages, and also damages for the detention. *Wardman-Justice Motors* v. *Petrie* (1930, 39 F. 2d 512, 59 App. D.C. 262, 69 A.L.R. 648).

SUBCHAPTER II.—REPLEVIN IN COURT OF GENERAL SESSIONS

§ 16–3731. Jurisdiction; form of complaint

The District of Columbia Court of General Sessions may issue a writ of replevin when a plaintiff files a complaint in replevin, in the following or an equivalent form:

"The plaintiff sues the defendant for wrongfully taking and detaining (or wrongfully detaining) the plaintiff's, goods and chattels, to wit (here describe them), of the value of ——— dollars. And the plaintiff claims that the same may be taken and delivered to him, or, if they are eloigned, that he may have judgment for their value and all mesne profits and damages, which he estimates at ——— dollars, besides costs." (Dec. 23, 1963, 77 Stat. 606, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–725, 11–751a, 11–755 (Mar. 3, 1901, ch. 854, § 13, 31 Stat. 1192; June 30, 1902, ch. 1329, 32 Stat. 521; Feb. 17, 1909, ch. 134, 35 Stat. 623; Mar. 3, 1921, ch. 125, § 1, 41 Stat. 1310; Apr. 1, 1942, ch. 207, § 4, 56 Stat. 192; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Sept. 14, 1961, Pub. L. 87–242, § 1, 75 Stat. 513; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 2, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, §§ 1, 2, 77 Stat. 77, 78).

Section is based on the first part of section 11–725 of D.C. Code, 1961 ed. Remainder of section 11–725 is carried into sections 16–3732 and 16–3733 herein. Section 11–755 of D.C. Code, 1961 ed., is also cited as one of the sources of this section because, with respect to the merger, by the act of 1942, of the Municipal Court of the District of Columbia and the Police Court, to form the Municipal Court for the District of Columbia, subsec. (a) of that section provided, prior to its amendment by the act of Oct. 23, 1962, that the court thus established, and the judges thereof, should have and exercise the same powers and jurisdiction as were theretofore had and exercised by the former two courts, and the judges thereof. After the 1962 amendment, subsec. (a) of section 11–755 provided that the District of Columbia Court of General Sessions and the judges thereof should have and exercise the same powers and jurisdiction as were previously vested in the Municipal Court for the District of Columbia and the judges thereof.

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

The term "complaint" is substituted for "declaration", in conformity with rules 2, 3, and 7(a) of the Civil Rules of the Court.

Changes are made in phraseology.

CROSS REFERENCE

Procedure, see § 13–101.

NOTES TO DECISIONS UNDER PRIOR LAW

Burden of proof

In replevin to recover household goods which defendant claimed as a gift from plaintiff and which, it was not disputed, had originally been plaintiff's property, defendant had burden of establishing a gift of such goods. *Imhoff* v. *Walker* (D.C. Mun. App. 1947, 51 A. 2d 309).

In replevin to recover household goods which plaintiff claimed defendant had bought for plaintiff with his money and which defendant claimed to have bought with her own money, burden of proof upon such issue was upon plaintiff, and, if no evidence were produced on either side, plaintiff would have been out of court. *Id.*

Value of goods

Phrase "value of the goods" within statute relating to damages in replevin is not synonoymous with balance due under a contract. *P. Becton* v. *Walker-Thomas etc.* (D.C. App. 1963, 192 A. 2d 125).

§ 16–3732. Affidavits; contents

At the time of filing a complaint pursuant to section 16–3731, the plaintiff, his agent, or attorney shall file an affidavit stating that—

(1) according to affiant's information and belief, the plaintiff is entitled to recover possession of the chattels described in the complaint;

(2) the defendant has seized and detains or detains the chattels;

(3) the chattels were not subject to the seizure or detention, and were not taken under a writ of replevin between the parties; and

(4) the chattels are not of the value of more than $10,000.

(Dec. 23, 1963, 77 Stat. 606, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–725 (Mar. 3, 1901, ch. 854, § 13, 31 Stat. 1192; June 30, 1902, ch. 1329, 32

Stat. 521; Feb. 17, 1909, ch. 134, 35 Stat. 623; Mar. 3, 1921, ch. 125, § 1, 41 Stat. 1310).

Section is based on part of section 11–725 of D.C. Code, 1961 ed. Remainder of section 11–725 is carried into sections 16–3731 and 16–3733 herein.

The term "complaint" is substituted for "declaration", in conformity with rules, 2, 3, and 7(a) of the Civil Rules of the Court.

In clause (4), "$10,000" is substituted for "$1,000", to conform the provision with the present civil jurisdiction of the Court of General Sessions. See section 11–961 herein.

Changes are made in phraseology and arrangement.

§ 16–3733. Undertaking to abide judgment of the Court

At the time of filing a complaint pursuant to section 16–3731, the plaintiff shall enter into an undertaking, with surety approved by the court, submitting to the jurisdiction of the court, to abide by and perform the judgment of the court. (Dec. 23, 1963, 77 Stat. 606, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–725 (Mar. 3, 1901, ch. 854, § 13, 31 Stat. 1192; June 30, 1902, ch. 1329, 32 Stat. 521; Feb. 17, 1909, ch. 134, 35 Stat. 623; Mar. 3, 1921, ch. 125, § 1, 41 Stat. 1310).

Section is based on part of section 11–725 of D.C. Code, 1961 ed. Remainder of section 11–725 is carried into sections 16–3731 and 16–3733 herein.

Changes are made in phraseology.

§ 16–3734. Failure of officer to obtain possession

When the officer's return of a writ of replevin issued pursuant to this subchapter is that he has served the defendant with copies of the complaint, affidavit, and summons, but that he could not obtain possession of the goods and chattels sued for, the plaintiff may prosecute the action for the value of the property and damages for the detention, not to exceed in all $10,000 or he may renew the writ, in order to obtain possession of the goods and chattels themselves. (Dec. 23. 1963, 77 Stat. 607, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–726 (Mar. 3, 1901, ch. 854, § 14, 31 Stat. 1192; Mar. 3, 1921, ch. 125, § 1, 41 Stat. 1310).

The term "complaint" is substituted for "declaration", in conformity with rules 2, 3, and 7 of Civil Rules of the Court.

The maximum figure, with respect to prosecution, by the plaintiff, for the value of the property and damages for the detention, where the return indicates that the officer could not get possession of the goods and chattels, is changed from "$1,000" to "$10,000", to conform the provision with section 11–961 herein, relating to civil jurisdiction of the Court of General Sessions.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Damages for value and detention

Judgment giving seller under lease-purchase contract for household furnishings possession of furnishings or their value at designated figure was invalid, where writ of replevin had been returned "No personal property found thereon to levy", and evidence as to value of the property was insufficient. *P. Becton* v. *Walker-Thomas etc.* (D.C. App. 1963, 192 A. 2d 125).

Where writ in action to replevy an alleged irreplaceable fender shield was returned "not executed" and plaintiff did not renew the writ but prosecuted action without seizure of the shield, plaintiff was properly given judgment merely for value of shield and damages for its detention rather than for recovery of shield, though defendant had voluntarily produced shield and had put it in evidence, and court thereafter ordered shield to be turned over to the marshal pending decision. *Byrne* v. *Tabet* (D.C. Mun. App. 1947, 50 A. 2d 815).

§ 16–3735. Publication against defendant

When the officer's return of a writ of replevin issued pursuant to this subchapter is that he has taken possession of the goods and chattels sued for, but that the defendant is not to be found, the court, subject to section 13–340 as to mailing notice, may order that the defendant appear to the action by a fixed day, and cause notice of the order to be given by publication in a newspaper published in the District at least three times, the first publication to be at least twenty days before the day fixed for defendant's appearance. (Dec. 23, 1963, 77 Stat. 607, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–727 (Mar. 3, 1901, ch. 854, § 15, 31 Stat. 1192).

Section is based on part of section 11–727 of D.C. Code, 1961 ed. Remainder of section 11–727 is carried into section 16–3736 herein.

Words "subject to section 13–340 as to mailing notice," are inserted, because there was nothing in section 13–111 of D.C. Code, 1961 ed., from which section 13–340 herein was derived, which indicated that that section did not also apply to civil actions in the Municipal Court (now the Court of General Sessions). See section 16–1806 of D.C. Code, 1961 ed., which is carried into section 16–3706 herein.

Changes are made in phraseology.

§ 16–3736. Default

If, after notice as provided by section 16–3735, the defendant fails to appear, the court may proceed, as in the case of default after personal service, to render judgment for the property in favor of the plaintiff. (Dec. 23, 1963, 77 Stat. 607, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–727 (Mar. 3, 1901, ch. 854, § 15, 31 Stat. 1192).

Section is based on part of section 11–727 of D.C. Code, 1961 ed. Remainder of section 11–727 is carried into section 16–3735 herein.

Changes are made in phraseology.

§ 16–3737. Retention of property by marshal; sufficiency of undertaking, quashing writ, and return of property

Property taken by the marshal under a writ of replevin issued pursuant to this subchapter shall be retained by him for three days, exclusive of Sundays and legal holidays, before delivering it to the plaintiff, in order that the defendant or other persons claiming an interest in the property may present objections to the court to the sufficiency of the security on the undertaking or the jurisdiction of the court. If the court deems the undertaking insufficient, it may direct the marshal to retain the property for a further short time, to be designated by the court, until an undertaking to be approved by it is filed, in default of which the marshal shall return the property to the person from whom it was taken. If it appears to the court that the property is of the value of over $10,000, the court shall quash the writ of replevin and direct the property to be returned to the party out of whose possession it was taken. (Dec. 23, 1963, 77 Stat. 607, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–729 (Mar. 3, 1901, ch. 854, § 17, 31 Stat. 1192; Feb. 17, 1909, ch. 134, 35 Stat. 623; Mar. 3, 1921, ch. 125, § 1, 41 Stat. 1310).

The amount of "$1,000" is changed to "$10,000". See section 11–961 herein.

Changes are made in phraseology.

§ 16–3738. Motion for return of property; procedure; objection to sufficiency of security

Section 16–3708 is also applicable to actions of replevin brought pursuant to this subchapter. (Dec. 23, 1963, 77 Stat. 607, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–730 (Mar. 3, 1921, ch. 125, § 9, 41 Stat. 1312).

Changes are made in phraseology.

§ 16–3739. Determination and measure of plaintiff's damages

Whether, in an action of replevin pursuant to this subchapter, the defendant answers and the issue thereon joined is found against him, or judgment is rendered against him on proper motion under rules of court, or he makes default after personal service, the plaintiff's damages shall be the full value of the goods, not to exceed $10,000, if eloigned by the defendant, and damages for the detention thereof, and judgment shall be rendered for the plaintiff accordingly. (Dec. 23, 1963, 77 Stat. 607, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §11–731 (Mar. 3, 1901, ch. 854, § 18, 31 Stat. 1192; Mar. 3, 1921, ch. 125, § 1, 41 Stat. 1310).

Words "the defendant answers and the issue thereon joined is found against him, or judgment is rendered against him on proper motion under rules of court," are substituted for "the defendant plead and the issue joined be found against him, or his plea be held bad,", for the purpose of conforming the provisions, or rendering them more in consonance, with the Civil Rules of the Court. See, particularly, rules, 7, 12, 41, and 55 thereof. For jury trials in civil cases in the Court of General Sessions, waiver thereof, determination of damages in cases tried without a jury, etc., see section 13–502 herein, and rules 38 and 53 of the Civil Rules of the Court.

The amount of "$1,000", with respect to maximum damages, is changed to "$10,000", in view of the present civil jurisdiction of the Court of General Sessions. See section 11–961 herein.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Evidence

Testimony of witness that, when he took check drawn by defendant's husband, now deceased, to order of cash to bank and had it cashed for him, defendant's husband stated that he intended to use the money to buy furniture from third party was inadmissible as part of "res gestae". *Jackson* v. *Goode* (D.C. Mun. App. 1947, 49 A. 2d 913).

Evidence failed to show that refrigerating equipment was sold and installed by plaintiff upon false representations by owner of one of defendant companies concerning his own credit standing or that of his company or as to leasing business to other defendant company, so as to authorize plaintiff to recover the equipment in replevin suit. *Premier Poultry Co.* v. *Wm. Bornstein & Son* (D.C Mun. App. 1948, 61 A. 2d 632).

Instructions

Defendant's instruction that question for jury to determine was whether plaintiff had shown by a fair preponderance of evidence that on date she brought replevin suit she was entitled as against all the world to immediate and exclusive possession of the furniture which was subject of the suit was properly modified by substituting for the words "all the world" the words "the defendant." *Jackson* v. *Goode* (D.C. Mun. App. 1947, 49 A. 2d 913).

Judgment for value and detention

Judgment giving seller under lease-purchase contract for household furnishings possession of furnishings or their value at designated figure was invalid, where writ of replevin had been returned "No personal property found thereon to levy", and evidence as to value of the property was insufficient. *P. Becton* v. *Walker-Thomas etc.* (D.C. App. 1963, 192 A. 2d 125).

Where writ in action to replevy an alleged irreplaceable fender shield was returned "not executed" and plaintiff did not renew the writ but prosecuted action without seizure of the shield, plaintiff was properly given judgment merely for value of shield and damages for its detention rather than for recovery of shield, though defendant had voluntarily produced shield and had put it in evidence, and court thereafter ordered shield to be turned over to the marshal pending decision. *Byrne* v. *Tabet* (D.C. Mun. App. 1947, 50 A. 2d 815).

Right to possession

Testimony as to statements made by defendant's deceased husband that he bought the property in controversy in replevin suit from certain person was not admissible as part of the "res gestae". *Jackson* v. *Goode* (D.C. Mun. App. 1947, 49 A. 2d 913).

In replevin suit it is not necessarily the title which is in issue but merely the right to possession as between the parties. *Id.*

If buyer obtains by fraud the seller's assent to transfer ownership of goods the seller may sue for value thereof or at his election may rescind and sue to regain title or possession, and replevin is a proper procedural remedy to test issue of the right to possession. *Premier Poultry Co.* v. *Wm. Bornstein & Son* (D.C. Mun. App. 1948, 61 A. 2d 632).

§ 16–3740. Judgment for defendant and determination of damages

If the issue in an action of replevin pursuant to this subchapter is found for the defendant, or the plaintiff dismisses or fails to prosecute his suit, or judgment is rendered against plaintiff on proper motion under rules of court, the judgment shall be that the goods, if delivered to the plaintiff, be returned to the defendant, with damages for their detention, or, on failure, that the defendant recover from the plaintiff and his surety the damages sustained by him. (Dec. 23, 1963, 77 Stat. 607, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–732 (Mar. 3, 1901, ch. 854, § 19, 31 Stat. 1193).

Words "or judgment is rendered against plaintiff on proper motion under rules of court," are inserted after "prosecute his suit,", for the purpose of conforming the provisions, or rendering them more in consonance, with the Civil Rules of the Court. See, particularly, rules 12, 41, and 56 thereof.

With respect to damages, words at end of section 11–732 of D.C. Code, 1961 ed., "to be assessed by the court" are omitted, as there are jury trials in the Court of General Sessions, unless waived. See section 13–502 herein, and rule 38 of the Civil Rules of the Court. For determination, by reference, of damages in cases tried with or without a jury, see rules 53 thereof.

Changes are made in phraseology.

Chapter 39.—SMALL CLAIMS AND CONCILIATION PROCEDURE IN COURT OF GENERAL SESSIONS

Sec.

16–3901. Practice; applicability of other laws and rules of court.

16–3902. Commencement of action; form of statement; preparation by clerk; notice and service; costs; default; memorandum to plaintiff.

Sec.
16–3903. Fees and costs; waiver.
16–3904. Set-off or counterclaim; pleading; retention of jurisdiction.
16–3905. Jury trial; demand; assignment to regular branch.
16–3906. Pre-trial settlement; trial; procedure; default; dismissal or nonsuit; other disposition.
16–3907. Judgment; stay; installment payments; enforcement.
16–3908. Judgment for wages; oral examination; payment.
16–3909. Award of costs.
16–3910. Other rights of judgment creditor.

§ 16–3901. Practice; applicability of other laws and rules of court

All provisions of law relating to the District of Columbia Court of General Sessions and the rules of court apply to the practice in the Small Claims and Conciliation Branch of the court as far as they may be made applicable and are not in conflict with this chapter or chapter 13 of Title 11, or with the rules prescribed pursuant to section 13–101(c). In case of conflict, this chapter and chapter 13 of Title 11 and the rules so prescribed control. (Dec. 23, 1963, 77 Stat. 608, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 17–751a, 11–814 (Mar. 5, 1938, ch. 43, § 14, 52 Stat. 106; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., is also cited as one of the sources of this section, as section 11–751a, enacted by the act of Oct. 23, 1962, changed the name of the Municipal Court for the District of Columbia to District of Columbia Court of General Sessions.

Changes are made in phraseology.

For jurisdiction of the Small Claims and Conciliation Branch of the Court of General Sessions, see section 11–1341 herein. For the Branch's authority to settle disputes by arbitration and conciliation, irrespective of the amount involved, see section 11–1342 herein.

The provisions of section 11–814 of D.C. Code, 1961 ed., on which this revised section is based, are substantially repeated in rule 27 of the Rules of the Court of General Sessions governing its Small Claims and Conciliation Branch.

§ 16–3902. Commencement of action; form of statement; preparation by clerk; notice and service; costs; default; memorandum to plaintiff

(a) Actions shall be commenced in the Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions by the filing of a statement of claim, in concise form and free of technicalities. The plaintiff or his agent shall verify the statement of claim by oath or affirmation in the form herein provided, or its equivalent, and shall affix his signature thereto. The clerk of the Branch shall, at the request of an individual, prepare the statement of claim and other papers required to be filed in an action in the Branch, but his services are not available to a corporation, partnership, or association, in the preparation of the statements or other papers. A copy of the statement of claim and verification shall be made a part of the notice to be served upon the defendant named therein. The mode of service shall be by the United States marshal, as provided by law, or by registered mail or by certified mail with return receipt, or by a person not a party to or otherwise interested in the action especially appointed by the judge for that purpose.

(b) When notice is to be served by registered mail or by certified mail, the clerk shall inclose a copy of the statement of claim, verification, and notice in an envelope addressed to the defendant, prepay the postage with funds obtained from plaintiff, and mail the papers forthwith, noting on the records the day and hour of mailing. When the receipt is returned, the clerk shall attach it to the original statement of claim, and it constitutes prima facie evidence of service upon the defendant.

(c) When notice is served by a private individual, as provided by subsection (a) of this section, he shall make proof of service by affidavit before the clerk, showing the time and place of the service.

(d) When notice is served by the marshal, or by registered mail or by certified mail, the actual cost of service is taxable as costs. When notice is served by an individual, the cost of service, if any, is not taxable as costs.

(e) The statement of claim, verification, and notice shall be in the following or equivalent form:

DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS

SMALL CLAIMS AND CONCILIATION BRANCH

(Location of room in courthouse) (Address of court)

Washington, D.C.

_____
Plaintiff
_____
Address
vs.
_____
Defendant
} No. _____

STATEMENT OF CLAIM

(Here the plaintiff, or at his request the clerk, will insert a statement of the plaintiff's claim, and the original, to be filed with the clerk, may, if action is on a contract, express or implied, be verified by the plaintiff or his agent, as follows:)

DISTRICT OF COLUMBIA, *ss:*

_____ being first duly sworn on oath says the foregoing is a just and true statement of the amount owing by defendant to plaintiff, exclusive of all set-offs and just grounds of defense.

_____.
Plaintiff (or agent)

Subscribed and sworn to before me this _____ day of _____, 19—.

_____.
Clerk (or notary public)

NOTICE

To: _____
Defendant
_____
Home address
_____
Business address

You are hereby notified that_____ has made a claim and is requesting judgment against

you in the sum of ———— dollars ($———— ————), as shown by the foregoing statement. The Court will hold a hearing upon this claim on ———— at ——m. in the Small Claims and Conciliation Branch (address of Court).

You are required to be present at the hearing in order to avoid a judgment by default.

If you have witnesses, books, receipts, or other writings bearing on this claim, you should bring them with you at the time of the hearing.

If you wish to have witnesses summoned, see the clerk at once for assistance.

If you admit the claim, but desire additional time to pay, you must come to the hearing in person and state the circumstances to the court.

You may come with or without an attorney.

[SEAL] ————————————

Clerk of the Small Claims and Conciliation Branch, Court of General Sessions.

(f) The foregoing verification entitles the plaintiff to a judgment by default, without further proof, upon failure of defendant to appear, if the claim of the plaintiff is for a liquidated amount. If the amount is unliquidated, the plaintiff shall be required to present proof of his claim.

(g) The clerk shall furnish the plaintiff with a memorandum of the day and hour set for the hearing, not less than 5 nor more than 15 days from the date of the filing of the action. Where, in a case controlled by another statute, a greater or lesser time for hearing is specified by the other statute, that specified time is controlling. All actions filed in the Branch shall be made returnable therein. (Dec. 23, 1963, 77 Stat. 608, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–805 (Mar. 5, 1938, ch. 43, § 5, 52 Stat. 103; June 11, 1960, Pub. L. 86–507, § 1(46), 74 Stat. 203; Apr. 1, 1942, ch. 207, § 1, 56 Stat. 190; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77, August 5, 1963, Pub. L. 88–85, §§ 1, 2, 77 Stat. 117).

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

In subsec. (e) words ", and shall be in lieu of any forms now employed and of any form of summons now provided by law", which followed "form", are omitted as obsolete and no longer necessary.

Changes are made in phraseology.

For supplemental provisions relating to the filing of actions, preparation of statement of claim, verification, notice, addresses of parties and attorneys, determination by judge of method of service, service and cost of service, see rules 3–9 of Rules of the Court of General Sessions governing its Small Claims and Conciliation Branch (Section III). For supplemental provisions relating to methods of personal service, see rule 4(c) (1), (2), (3) of that court's regular civil rules (Section I), which is made applicable to actions in the Small Claims and Conciliation Branch by rule 28 of its rules for that branch. See, also, rule 30 of the court's rules for the branch, which repeats the forms of statement of claim, verification, and notice, and contains the forms of return of service, and rule 15 thereof, relating to pleading in that branch.

CROSS REFERENCE

Use of certified mail, see, § 14–506.

NOTES TO DECISIONS UNDER PRIOR LAW

Appearance to quash service

Where motion to vacate judgment and quash attachment rested on claim that service on defendant had not been made and that Small Claims Branch of District of Columbia Municipal Court acquired no jurisdiction over defendant, motion was sufficiently broad to include by implication an attack on service of process, and irregularity was cured by subsequent filing of motion to quash service, and filing of motion to vacate judgment and quash attachment was "special" and not "general appearance", and going to trial on merits after denial of such motion did not preclude defendant from raising jurisdictional question on appeal. *Ellerbe* v. *Goldberg* (D.C. Mun. App. 1948, 60 A. 2d 232).

Practice of law

Filling out and filing of blank forms necessary to commence an action in the small claims court by lay employees of an automobile association for its members does not constitute the unauthorized "practice of law", this section being intended to help layman in presenting small claims informally and providing that complaint may be verified by the plaintiff or his agent, who is not required to be an attorney. *American Automobile Ass'n* v. *Merrick* (1941, 117 F. 2d 23, 73 App. D.C. 151).

Purpose

The purpose of legislation establishing small claims court was to secure prompt and inexpensive adjudication of small claims free from technicalities of procedural law, and Congress did not intend to deprive litigants of their lawful claims or defenses, or to substitute the abstract conception of justice of an individual judge for recognized rules of substantive law. *Interstate Bankers Corporation* v. *Kennedy* (D.C. Mun. App. 1943, 33 A. 2d 165).

Process can only be served as provided by this section or by rules adopted pursuant to this section and registered mail may only be employed as a means of serving process when specifically authorized by law. *Craig* v. *Heil* (D.C. Mun. App. 1946, 47 A. 2d 871).

Service by mail

The presumption must be that Congress intended service by registered mail to be so made as to insure due process of law. *Wise* v. *Herzog* (1940, 114 F. 2d 486, 72 App. D.C. 335).

Service, sufficiency of

Where record showed that registered letter intended to constitute service of process under rule of Small Claims and Conciliation Branch of Municipal Court was delivered by postman to defendant's wife, service was valid and justified a refusal to vacate default judgment, notwithstanding that defendant testified that his wife failed to either deliver or inform him of the registered letter. *Maktos* v. *Hill* (D.C. Mun. App. 1943, 32 A. 2d 706).

Notice by registered mail delivered to wife of defendant, who was then serving in United States Army in time of war and who had been out of country for four months prior thereto, was not calculated to give reasonable notice or any notice to defendant, and attempted service was invalid and should have been quashed. *Ellerbe* v. *Goldberg* (D.C. Mun. App. 1948, 60 A. 2d 232).

Soldiers' and Sailors' Civil Relief Act

The Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. App. § 520, does not exempt defendant soldier from service of civil process. *Ellerbe* v. *Goldberg* (D.C. Mun. App. 1948, 60 A. 2d 232).

Who may serve

The act permits service by persons designated for that purpose by the court. *Wise* v. *Herzog* (1940, 114 F. 2d 486, 72 App. D.C. 335).

§ 16–3903. Fees and costs; waiver

The fee for issuing summons and copies, trial, judgment, and satisfaction in an action in the Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions shall be not more than $1. Other fees shall be as the court prescribes. The judge sitting in the Branch may waive

the prepayment of costs or the payment of costs accruing during the action upon the sworn statement of the plaintiff or upon other satisfactory evidence of his inability to pay the costs. When costs are so waived the notation to be made on the records of the Branch shall be "Prepayment of costs waived," or "Costs waived." The term "pauper" or "in forma pauperis" may not be employed in the Branch. If a party fails to pay accrued costs, though able to do so, the judge may deny him the right to file a new case in the Branch while the costs remain unpaid, and likewise deny him the right to proceed further in any case pending in the Branch. (Dec. 23, 1963, 77 Stat. 610, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–807 (Mar. 5, 1938, ch. 43, § 7, 52 Stat. 105).

Section is based on all of section 11–807 of the D.C. Code, 1961 ed., except the last sentence thereof. That sentence is carried into section 16–3909 herein.

Changes are made in phraseology.

For supplemental provisions relating to fees and costs and waiver and award of costs, see rules 12, 13, and 29 of the Rules of the Court of General Sessions governing its Small Claims and Conciliation Branch (Section III), and rule 85 of the Court's regular civil rules (Section I).

CROSS REFERENCE

Fees and costs, generally, see § 15–701 et seq.

§ 16–3904. Set-off or counterclaim; pleading; retention of jurisdiction

If the defendant, in an action pursuant to this chapter, asserts a set-off or counterclaim, the judge may require a formal plea of set-off to be filed, or may waive the requirement. If the plaintiff requires time to prepare his defense against the counterclaim or set-off, the judge may continue the case for that purpose. When the set-off or counterclaim is for more than the jurisdictional limit of the Small Claims and Conciliation Branch as provided by section 11–1341 but within the jurisdictional limit of the court as provided by section 11–961, the action shall nevertheless remain in the Branch and be tried therein in its entirety. (Dec. 23, 1963, 77 Stat. 610, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–809 (Mar. 5, 1938, ch. 43, § 9, 52 Stat. 105).

For supplemental provisions relating to set-off or counterclaim, see rule 15 of the Rules of the Court of General Sessions governing its Small Claims and Conciliation Branch.

Changes are made in phraseology.

NOTES TO DECISIONS UNDER PRIOR LAW

Motion to strike

Where plaintiff in action on wage claim in small claims branch of Municipal Court filed a counterclaim seeking damages of $3,000 for libel and slander, counterclaim became subject to motion to strike for want of jurisdiction, or court on its own motion should have noticed its lack of jurisdiction and should have stricken the counterclaim. *1425 F St. Corp.* v. *Jardin* (D.C. Mun. App. 1947, 53 A. 2d 278).

§ 16–3905. Jury trial; demand; assignment to regular branch

In a case filed or pending in the Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions in which a party entitled to a trial by jury files a demand therefor, the case shall be assigned to and tried in the regular branch of the civil division of the Court under the procedure provided for jury trials. (Dec. 23, 1963, 77 Stat. 610, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–818 (Mar. 5, 1938, ch. 43, § 18, 52 Stat. 107; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Words "the regular branch of the civil division" are substituted for "one of the regular branches", to follow more closely the present organization of the Court of General Sessions. See section 11–901 herein and revision note thereunder.

Changes are made in phraseology.

For supplemental provisions relating to demands for jury trials in actions brought in the Small Claims and Conciliation Branch of the Court of General Sessions, see rule 17 of the court's rules governing that branch (Section III). For provisions relating to jury trials in the regular branch of the civil division of the court, see section 13–702 herein, and rule 38 of the court's regular civil rules. See, also, chapter 23 of Title 11 herein.

§ 16–3906. Pre-trial settlement; trial; procedure; default; dismissal or nonsuit; other disposition

(a) On the return day specified by subsection (g) of section 16–3902, or at such later time as the judge sets, the trial shall be had. Immediately prior to the trial of a case pursuant to this chapter, the judge shall make an earnest effort to settle the controversy by conciliation. If he fails to induce the parties to settle their differences without a trial, he shall proceed with the hearing on the merits pursuant to subsection (b) of this section.

(b) The parties and witnesses shall be sworn. The judge shall conduct the trial in such manner as to do substantial justice between the parties according to the rules of substantive law, and is not bound by the statutory provisions or rules of practice, procedure, pleading, or evidence, except provisions relating to privileged communications.

(c) If the defendant fails to appear, judgment shall be entered for the plaintiff by default as provided by section 16–3902(f), or under rules of court, or on ex-parte proof. If the plaintiff fails to appear, the action may be dismissed for want of prosecution, or a nonsuit may be ordered, or defendant may proceed to a trial on the merits, or the case may be continued or returned to the files for further proceedings on a later date, as the judge directs. If both parties fail to appear, the judge may return the case to the files, or order the action dismissed for want of prosecution, or make any other just and proper disposition thereof, as justice requires. (Dec. 23, 1963, 77 Stat. 610, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–808 (Mar. 5, 1938, ch. 43, § 8, 52 Stat. 105).

Changes are made in phraseology.

For supplemental provisions relating to trial procedure in the Small Claims and Conciliation Branch of the Court of General Sessions, see rule 14 of the court's rules governing that branch (Section III).

NOTES TO DECISIONS UNDER PRIOR LAW

Generally

In small claims branch of Municipal Court, trial judge is not bound by statutory provisions or rules of practice, procedure, pleading, or evidence except those relating to privileged communications. *Hodgkins* v. *Beckner* (D.C. Mun. App. 1943, 32 A. 2d 113).

Default judgment, setting aside

Where at time plaintiff obtained default judgment for purchase price of a fur coat, there was withheld from the court the information that purchaser's action in Small Claims Court against plaintiff to recover payments made on the coat had been continued that same day, setting aside the default judgment even after expiration of the term was proper. *Marvin's Credit* v. *Kitching* (D.C. Mun. App. 1944, 34 A. 2d 866).

The determination of a motion to vacate a default judgment on basis of affidavits instead of taking testimony in open court is a matter resting largely in the discretion of the trial court. *Id.*

Discretion

In action in Small Claims Branch of Municipal Court, presiding judge abused his discretion in refusing to grant counsel for plaintiff a 30-minute continuance to obtain attendance of witness and dismissing action for want of prosecution upon refusal of counsel to take a nonsuit. *Potomac Small Loan Co.* v. *Myles* (D.C. Mun. App. 1943, 34 A. 2d 609).

Dismissal

Summary dismissals in the small claims branch of Municipal Court without a full hearing from both sides are not justified save in exceptional cases. *Hodgkins* v. *Beckner* (D.C. Mun. App. 1943, 32 A. 2d 113).

Where each plaintiff sought recovery of $50 on theory that each had delivered $50 to defendant on his undertaking to acquire title to an apartment house, and that defendant's resale of apartment house obligated him to return the sums received from plaintiffs, dismissal of the action by small claims branch of Municipal Court without hearing defendant's testimony was not justified by record. *Id.*

Duty of judge

The trial judge of small claims branch of Municipal Court is required, prior to trial, to make earnest effort to settle controversy by conciliation, and to elicit from defendant or his attorney a statement regarding nature of defense, but, if such effort fails judge must conduct trial in manner as to do substantial justice. *Hodgkins* v. *Beckner* (D.C. Mun. App. 1943, 32 A. 2d 113).

Small Claims Court, by ordering action on a note for trial without ascertaining whether defendants claimed a defense, and without making any effort to settle controversy by conciliation, violated § 11–801 et seq. establishing and prescribing procedure in such court and Small Claims Rule 14c. *Potomac Small Loan Co.* v. *Myles* (D.C. Mun. App. 1943, 34 A. 2d 609).

Under this section providing for conduct of trial so as to do "substantial justice" in small claims and conciliation branch of Municipal Court, where payee on note given for horseback riding instructions failed to perform, in action on notes judge of small claims court could not limit recovery by holders in due course to unpaid balance less discount charged by holders for purchase of notes, by ignoring substantive law rule that holder in due course of negotiable instrument was entitled to payment of full amount. *Id.*

An order of the Municipal Court for the District of Columbia, Civil Division, dismissing plaintiff's second amended particulars of demand on ground that relief demanded was less than minimum jurisdiction of court, was improper, where amount claimed by plaintiff in good faith in bill of particulars exceeded jurisdictional amount. *Goldberg* v. *Roumel* (D.C. Mun. App. 1945, 40 A. 2d 253).

Summary dismissal by Municipal Court of Class B debt actions, which are claims for more than $50 but not more than $500, and which may be brought by filing a bill of particulars, is not to be encouraged. *Id.*

Conciliation procedure in small claims cases is made mandatory by this section and court rules, and, before ordering any such case for trial, presiding judge is required to elicit from defendant the nature of his defense, and make a real, and not merely a perfunctory, effort to settle controversy by conciliation. *Id.*

Evidence

Even though this section provided that judge should not be bound by statutory provisions or rules of practice, procedure, pleading, or evidence, police report, which contained conclusions of reporting officers and was highly prejudicial to plaintiff, was not admissible in evidence. *Levin* v. *Green* (D.C. Mun. App. 1954, 106 A. 2d 136).

Where tenant was compelled to pay water bill which accrued during a prior tenancy, and thereafter sought reimbursement from prior tenant, water bill prepared by official charged with duty of keeping records and collecting charges for water services was admissible under this section providing for conduct of trial in small claims and conciliation branch of Municipal Court so as to do substantial justice, and made a prima facie case. *Simmons* v. *Quick* (D.C. Mun. App. 1944, 37 A. 2d 656).

Substantial justice

Under this section providing that judge of small claims conciliation branch of Municipal Court should conduct trial so as to administer substantial justice between the parties, "substantial justice" is justice administered according to the rules of substantive law, notwithstanding errors of procedure which do not deprive litigants of substantive rights. *Interstate Bankers Corporation* v. *Kennedy* (D.C. Mun. App. 1943, 33 A. 2d 165).

§ 16–3907. Judgment; stay; installment payments; enforcement

When judgment is to be rendered in an action pursuant to this chapter and the party against whom it is to be entered requests it, the judge shall inquire fully into his earnings and financial status and may stay the entry of judgment, and stay execution, except in cases involving wage claims, and order partial payments in such amounts, over such periods, and upon such terms, as seems just in the circumstances and as will assure a definite and steady reduction of the judgment until it is finally and completely satisfied. Upon a showing that the party has failed to meet an installment payment without just excuse, the stay of execution shall be vacated. When a stay of execution has not been ordered or when a stay of execution has been vacated as provided by this section, the party in whose favor the judgment has been entered may avail himself of all remedies otherwise available in the District of Columbia Court of General Sessions for the enforcement of the judgment. (Dec. 23, 1963, 77 Stat. 611, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–811 (Mar. 5, 1938, ch. 43, § 11, 52 Stat. 106; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

For supplemental provisions relating to entry of judgment, stay, installment payments, exemptions, and oral examination of garnishee, see rules 18–23 of the Rules of the Court of General Sessions governing its Small Claims and Conciliation Branch (Section III).

NOTES TO DECISIONS UNDER PRIOR LAW

Stay of execution

Power granted to Small Claims Branch of Municipal Court for the District of Columbia to stay execution on a judgment and permit installment or periodical payments is limited to the time when judgment is to be rendered and cannot be exercised after judgment has been

rendered and execution issued. *Royal Credit Co., Inc.* v. *Wabash Jr.* (D.C. Mun. App. 1960, 162 A. 2d 493).

Where seller obtained an attachment based on a default judgment from Small Claims Branch against buyer for price of merchandise and, under attachment, seized credits in the hands of buyer's employer, Small Claims Branch had no authority to quash attachment and order a conditional stay of execution. *Id.*

§ 16–3908. Judgment for wages; oral examination; payment

When a judgment rendered in an action pursuant to this chapter is founded in whole or in part on a claim for wages or personal services, the judge shall, upon motion of the party obtaining judgment, order the appearance of the party against whom the judgment has been entered, but not more often than once each week for four weeks, for oral examination under oath as to his financial status and his ability to pay the judgment, and the judge shall make such supplementary orders as seems just and proper to effectuate the payment of the judgment upon reasonable terms. (Dec. 23, 1963, 77 Stat. 611, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–812 (Mar. 5, 1938, ch. 43, § 12, 52 Stat. 106).

Changes are made in phraseology.

For supplemental provisions relating to judgments for wages, oral examination, etc., see rule 25 of the Rules of the Court of General Sessions governing its Small Claims and Conciliation Branch (Section III).

NOTES TO DECISIONS UNDER PRIOR LAW

Personal services

Under rule 19 of the small claims branch of Municipal Court that the judge shall, upon motion, order the appearance of judgment debtor for examination as to financial ability to pay judgment based on claim for wages or personal services, the expression "personal services" should not be given a wider meaning than the word "wages" and does not include professional services rendered by a dentist, a physician, or an attorney at law. *Price* v. *Quill* (D.C. Mun. App. 1946, 46 A. 2d 311).

§ 16–3909. Award of costs

In the action pursuant to this chapter, the award of costs is in the discretion of the judge, who may include therein the reasonable cost of bonds and undertakings, and other reasonable expenses incident to the action, incurred by either party. (Dec. 23, 1963, 77 Stat. 611, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 11–807 (Mar. 5, 1938, ch. 43, § 7, 52 Stat. 105).

Section is based on last sentence of section 11–807 of D.C. Code, 1961 ed. Remainder of section 11–807 is carried into section 16–3903 herein.

Changes are made in phraseology.

For supplemental provisions relating to the award of costs, and limitations on allowance of attorney fees, see rules 16 and 24 of the Rules of the Court of General Sessions governing its Small Claims and Conciliation Branch (Section III).

§ 16–3910. Other rights of judgment creditor

Except as otherwise provided by this chapter, or in the rules prescribed pursuant to section 13–101(c), a party obtaining a judgment in the Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions is entitled to the the same remedies, processes, costs, and benefits as are given or inure to other judgment creditors in the court. (Dec. 23, 1963, 77 Stat. 611, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–819 (Mar. 5, 1938, ch. 43, § 19, 52 Stat. 107; Oct. 23, 1962, Pub. L. 87–873, § 1, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77).

Section 11–751a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions.

Changes are made in phraseology.

Chapter 41.—SURETIES

Sec.
16–4101. Relief from suretyship; counter security, or bond; removal of officer or fiduciary from office.
16–4102. Subrogation of surety satisfying judgment.

§ 16–4101. Relief from suretyship; counter security, or bond; removal of officer or fiduciary from office

When the surety, or his personal representatives, of an officer, commissioner, receiver, or trustee appointed under a decree of court and required to give bond apprehends himself to be in danger of suffering from the suretyship, and petitions the court to be relieved from the suretyship, or that the court require the officer, commissioner, receiver, or trustee to give counter security, the court may, on reasonable notice to the trustee or other officer, require him to give counter security or to give a new bond in the same manner as if none had been given by him. If he fails to do so by a day named, the court may remove him from his office or trust and appoint a new trustee or other officer in his stead to complete the duties of his office or trust, and may thereupon, order him to deliver over to his successor all the trust property, including moneys, books, papers, bonds, notes, and evidences of debt, and may compel compliance with the order by attachment. (Dec. 23, 1963, 77 Stat. 612, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–2001 (Mar. 3, 1901, ch. 854, § 1572, 31 Stat. 1424).

Minor changes are made in phraseology.

CROSS REFERENCES

Bonds generally, see § 28–2501 et seq.

Counter security by executors and administrators, see § 20–358.

Counter security by guardians, see § 21–118.

§ 16–4102. Subrogation of surety satisfying judgment

Where a person recovers a judgment or money decree against the principal debtor and a surety or indorser, and the judgment is satisfied by the surety or indorser, the latter may have the judgment or money decree entered by the clerk to his use and have execution in his own name against the principal, and where a judgment or money decree is rendered against several sureties and one of them satisfies the whole debt, the surety satisfying the judgment may have the judgment or decree entered to his use, have execution against each of the other sureties in the judgment or decree for a proportionate part of the debt so paid by him. On the motion of the surety so paying the entire debt and notice to the other sureties, the court may determine for what amount

execution shall issue against each of the other sureties. (Dec. 23, 1963, 77 Stat. 612, Pub. L. 88–241. § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–2002 (Mar. 3, 1901, ch. 854, § 1573, 31 Stat. 1424).

Changes are made in phraseology.

CROSS REFERENCE

Setoff, see § 13–503.

NOTES TO DECISIONS UNDER PRIOR LAW

Foreign judgments

In action by surety, which had given New York cost bond, against principal to recover loss sustained by surety because of payment of judgment for costs against principal, where New York court had jurisdiction of subject matter and of parties, final judgment awarding costs was required to be given complete effect under the "full faith and credit" clause of U.S. Const. Art. 4, § 1. *Lloyd* v. *U.S. Fidelity & Guaranty Co.* (D.C. Mun. App. 1943, 31 A. 2d 669, certiorari denied 64 S. Ct. 88, 320 U.S. 780, 88 L. Ed. 468, rehearing denied 64 S. Ct. 204, 320 U.S. 814, 88 L. Ed. 491, rehearing denied 64 S. Ct. 1148, 322 U.S. 770, 88 L. Ed. 1595).

In action by surety, which had given New York cost bond, to recover loss sustained because of payment of judgment against principal for costs, trial court did not err in receiving in evidence certified copy of New York judgment for costs and canceled check evidencing payment of judgment by surety. *Id.*

In action by surety, which had given New York cost bond, against principal to recover loss sustained because of payment of judgment for costs against principal, record did not sustain defense of fraud and collusion in obtaining the judgment for costs. *Id.*

TITLE 17.—REVIEW

Title 17 was enacted by Pub. L. 88–241

For disposition of former sections of this title, see table following Title 49

Chap. Sec.

1. United States Court of Appeals for the District of Columbia Circuit..... 17–101
3. District of Columbia Court of Appeals.... 17–301

Chapter 1.—UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Sec.

17–101. Appeal from District of Columbia Court of Appeals; filing, form and contents of petition.
17–102. Procedure, generally, on appeal from District of Columbia Court of Appeals; record, rules of court.
17–103. Time for petitioning for allowance of appeal from District of Columbia Court of Appeals.
17–104. Determination of appeal from District of Columbia Court of Appeals.

§ 17–101. Appeal from District of Columbia Court of Appeals; filing, form and contents of petition

The petition for the allowance of an appeal from a judgment of the District of Columbia Court of Appeals shall be in writing and shall be filed with the clerk of the United States Court of Appeals for the District of Columbia Circuit. The contents of the petition shall conform with requirements that the United States Court of Appeals prescribes by rule. (Dec. 23, 1963, 77 Stat. 612, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–771a, 11–772, 11–773 (Apr. 1, 1942, ch. 207, §§ 7, 8, 56 Stat. 195, 196; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Oct. 23, 1962, Pub. L. 87–873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88–60, § 6, 77 Stat. 78).

The text is actually taken, with changes in phraseology, from the second sentence of section 11–773 of D.C. Code, 1961 ed. The last sentence of section 11–772 thereof, cited above, made the procedure prescribed in section 11–773 applicable to petitions for the allowance of appeals from judgments of the Municipal Court of Appeals (now, District of Columbia Court of Appeals) given on appeals from orders and decisions of certain administrative agencies.

Section 11–771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

The provisions of section 11–773 of D.C. Code, 1961 ed., fixing the time during which petitions for allowance of appeals may be filed is carried into section 17–103 herein. For remainder of sections 11–772 and 11–773, see other sections in this title, and tables.

NOTES TO DECISIONS UNDER PRIOR LAW

Frivolous questions

Briefs, arguments and record on appeal at government expense from convictions for transporting female in interstate commerce for prostitution, and for accepting money from earnings of female engaged in prostitution for which defendant furnished a place, presented no legally non-frivolous questions, and required that convictions be affirmed. *N. Wisnick* v. *United States* (1963, 311 F. 2d 775, 114 U.S. App. D.C. 89).

§ 17–102. Procedure, generally, on appeal from District of Columbia Court of Appeals; record; rules of court

The United States Court of Appeals for the District of Columbia Circuit may prescribe rules governing the:

(1) practice and procedure on petitions specified by section 17–101; and

(2) preparation of, and time for filing, the transcript of the record in such cases—

and may generally regulate all matters relating to appeals in such cases. (Dec. 23, 1963, 77 Stat. 612, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–772, 11–773 (Apr. 1, 1942, ch. 207, §§ 7, 8, 56 Stat. 195, 196; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048).

The text is actually taken, with changes in phraseology, from the third sentence of section 11–773 of D.C. Code, 1961 ed. For the reason for also citing section 11–772 thereof, see revision note under section 17–101 herein.

For remainder of sections 11–772 and 11–773 of D.C. Code, 1961 ed., see other sections in this title, and tables.

NOTES TO DECISIONS UNDER PRIOR LAW

Appeals by Government

Criminal appeals by the government in District of Columbia are not limited to categories set forth in special jurisdictional statute, although as to cases of the type covered by that statute, its explicit directions will prevail over general terms of District of Columbia Code. *Carroll* v. *United States* (1957, 77 S. Ct. 1332, 354 U.S. 394, 1 L. Ed. 2d 1442).

Pretrial order

Pretrial order suppressing evidence of a recording and a transcription of a telephone conversation, did not have a final and irreparable effect on rights of party in prosecution for perjury nor was it a "final disposition" of a claimed right and order was not appealable. *United States* v. *Stephenson* (1955, 223 F. 2d 336, 96 U.S. App. D.C. 44).

§ 17–103. Time for petitioning for allowance of appeal from District of Columbia Court of Appeals

Petitions for the allowance of appeals from judgments of the District of Columbia Court of Appeals shall, in each case, be filed, as provided by this chapter, within ten days after entry of the judgment from which an appeal is desired. (Dec. 23, 1963, 77 Stat. 613, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–771a, 11–772, 11–773 (Apr. 1, 1942, ch. 207, §§ 7, 8, 56 Stat. 195, 196; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Oct. 23, 1962, Pub. L. 87–873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88–60, § 6, 77 Stat. 78).

The text is actually taken, with changes in phraseology, from part of the second sentence of section 11–773 of D.C. Code, 1961 ed. For reason for also citing section 11–772 thereof, see revision note under section 17–101 herein.

Section 11–771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

For remainder of section 11–772 and 11–773 of D.C. Code, 1961 ed., see other sections in this title, and tables.

§ 17–104. Determination of appeal from District of Columbia Court of Appeals

If the United States Court of Appeals for the District of Columbia Circuit allows an appeal pursuant to section 11–321 and this chapter, it shall review the record on appeal, and shall affirm, modify, vacate, set aside, or reverse the judgment, and may remand the cause and direct the entry of such appropriate judgment or order, or require such further proceedings to be had, as is just in the circumstances. (Dec. 23, 1963, 77 Stat. 613, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–772, 11–773 (Apr. 1, 1942; ch. 207, §§ 7, 8, 56 Stat. 195, 196; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048).

The text is actually taken from the fourth sentence of section 11–773 of D.C. Code, 1961 ed., and is reworded to follow the broader and more comprehensive language of section 2106 of Title 28, United States Code, which in all probability already embraces within its scope the determination, by the United States Court of Appeals for the District of Columbia, of appeals from the District of Columbia Court of Appeals.

For reason for also citing, above, section 11–772 of D.C. Code, 1961 ed., see revision note under section 17–101 herein, and for remainder of section 11–772 and 11–773, see other sections in this title, and tables.

Chapter 3.—DISTRICT OF COLUMBIA COURT OF APPEALS

Sec.

17–301. Applications for allowance of appeals from certain Court of General Sessions judgments; hearing; effect of denial.
17–302. Regulations of appeals; record; costs.
17–303. Appeals from administrative orders and decisions; petition; record; procedure.
17–304. Stay upon application for review of, or pending appeal from, administrative order or decision.
17–305. Scope of review.
17–306. Determination of appeals.
17–307. Time for taking or applying for allowance of appeals.

§ 17–301. Applications for allowance of appeals from certain Court of General Sessions judgments; hearing; effect of denial

(a) The application for the allowance of an appeal from a judgment of the Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions, or from a judgment of the criminal division of that court where the penalty imposed is less than $50, provided for by section 11–741(c), shall be on a standard form, in simple language, prescribed by the Court of General Sessions. If the appellant is not represented by counsel, the clerk of the Court of General Sessions shall prepare the application in his behalf.

(b) The application provided for by subsection (a) of this section shall be filed in the District of Columbia Court of Appeals within the time limit prescribed by section 17–307(b), and shall be promptly presented by the clerk of that court to the chief judge and the associate judges thereof for their consideration. When any one of them is of the opinion that the appeal should be allowed, the appeal shall be recorded as granted, and the case set down for hearing on appeal. It shall be given a preferred status on the calendar, and heard in the same manner as other appeals in the court. When all the judges are of the opinion that an appeal should be denied, the denial shall stand as an affirmance of the judgment of the trial court, and there shall be no further appeal. (Dec. 23, 1963, 77 Stat. 613, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961, ed., §§ 11–771a, 11–772 (Apr. 1, 1942, ch. 207, § 7, 56 Stat. 195; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Oct. 23, 1962, Pub. L. 87–873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88–60, § 6, 77 Stat. 78).

Section is derived from part of subsec. (a) of section 11–772 of D.C. Code, 1961 ed., with changes in phraseology and arrangement.

Section 11–771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

In subsec. (a), "criminal division" is substituted for "criminal branch". See section 11–901 herein and revision note thereunder.

A second paragraph of subsec. (a) of section 11–772 provided that "After the effective date of this subchapter [subchapter III of chapter 7 of Title 11 of that Code, in which said section 11–772 was set out], no writs of error or appeals, except in respect of judgments theretofore rendered, shall be granted by the United States Court of Appeals for the District of Columbia to the said Municipal Court or to the said Juvenile Court". This paragraph is omitted as obsolete.

For remainder of section 11–772 of D.C. Code, 1961 ed., see other sections in this title, and tables.

§ 17–302. Regulation of appeals; record; costs

The District of Columbia Court of Appeals may regulate, generally, all matters relating to appeals, whether in the District of Columbia Court of Appeals or in the court below. It may prescribe by rules what part of the proceedings in the court below shall constitute the record on appeal, and may require that the original papers, instead of copies thereof, be sent to it. It may not require that the record or briefs on appeal be printed. If they are printed, the cost of printing may not be taxed as costs in the case. (Dec. 23, 1963, 77 Stat. 613, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–767, 11–771a, 11–772 (Apr. 1, 1942, ch. 207, § 7, 56 Stat. 1095; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Apr. 11, 1956, ch. 204, § 111, 70 Stat. 113; Oct. 23, 1962, Pub. L. 87–873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88–60, § 6, 77 Stat. 78).

Section consolidates subsec. (b) of section 11–772 of D.C. Code; 1961 ed., with section 11–767 thereof which extended the right of appeal to parties aggrieved by orders or judgments of the Domestic Relations Branch of the Municipal Court (now, the District of Columbia Court of General Sessions). See revision note under section 11–741 herein. For remainder of section 11–772, see other sections in this title, and tables.

Section 11–771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources

of this section, as section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

Changes are made in phraseology.

NOTES TO DECISIONS

Record on appeal

Record in juvenile court proceeding for determination of paternity and support of child disclosed no reason requiring reversal of judgment because of several years' delay in trial due to congested court calendar, where no application was made to advance case for hearing and at no time was appellant in custody. *A. Jackson* v. *District of Columbia* (D.C. App. 1964, 200 A. 2d 199).

§ 17–303. Appeals from administrative orders and decisions; petition; record; procedure

(a) An appeal from an order or decision of an administrative agency, as provided for by section 11–742, is commenced by filing in the District of Columbia Court of Appeals, within the time prescribed pursuant to section 17–307(a), the written petition for review provided by section 11–742(c). Upon the filing of the petition, the clerk of the court shall forthwith, by mail, serve a copy thereof upon the agency affected by the petition. After receipt of the copy of the petition, the agency shall certify and file in the court the original papers comprising the record or any supplementary record, or certified copies of the papers. Upon the filing of the papers, the clerk shall immediately notify the petitioner of the filing.

(b) The District of Columbia Court of Appeals may by rule prescribe:

(1) the form and contents of the petition provided for by this section; and

(2) the time within which the agency affected by the petition shall certify and file the original papers or certified copies thereof as provided by this section—

and regulate generally all matters relating to proceedings on an appeal referred to in this section. (Dec. 23, 1963, 77 Stat. 614, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–771a, 11–772 (Apr. 1, 1942, ch. 207, § 7, 56 Stat. 1095; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Oct. 23, 1962, Pub. L. 87–873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88–60, § 6, 77 Stat 78).

Section is derived, with changes in phraseology and arrangement, from the second sentence, part of the third sentence, and the fourth sentence, of subsec. (f) of section 11–772 of D.C. Code, 1961 ed.

Section 11–711a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

For remainder of section 11–772, see other sections in this title, and tables.

§ 17–304. Stay upon application for review of, or pending appeal from, administrative order or decision

(a) An application for review, or pendency of an appeal, provided for by section 17–303, does not operate as a stay of the order or decision from which the appeal is taken:

(1) in any case where, under existing law, a stay may not be granted; or

(2) in any other case unless so ordered by the Board of Commissioners of the District of Columbia, or by the District of Columbia Court of Appeals as provided by subsection (b) of this section.

(b) For good cause shown, and upon such conditions as may be required and to the extent necessary to prevent irreparable injury, the court may take appropriate and necessary action to preserve the status or rights pending conclusion of the review proceedings provided for by section 17–303. (Dec. 23, 1963, 77 Stat. 614, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–771a, 11–772 (Apr. 1, 1942, ch. 207, § 7, 56 Stat. 1095; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Oct. 23, 1962, Pub. L. 87–873, § 6, 76 Stat. 1172; July 8, 1963, Pub. L. 88–60, § 7, 77 Stat. 78).

Section is derived, with changes in phraseology and arrangement, from the proviso in subsec. (f) of section 11–772 of D.C. Code, 1961 ed., down to the second semicolon. For remainder of section 11–772, see other sections in this title, and tables.

Section 11–771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

§ 17–305. Scope of review

(a) In considering an order or judgment of a lower court or any of its branches, brought before it for review, the District of Columbia Court of Appeals shall review the record on appeal. When the issues of fact were tried by jury, the court shall review the case only as to matters of law. When the case was tried without a jury, the court may review both as to the facts and the law, but the judgment may not be set aside except for errors of law unless it appears that the judgment is plainly wrong or without evidence to support it.

(b) The District of Columbia Court of Appeals shall hear and determine appeals from orders or decisions of administrative agencies upon the record of proceedings before the appropriate agency to be certified to the court under rules or instructions as the court from time to time prescribes. In such cases, it shall limit its review to those issues of law or fact that are subject to review on appeal under applicable provisions of existing law. If there is no statutory limitation, the court shall determine the appeal by rules of law which define the scope and limitations of review of administrative proceedings. Under the rules, by way of elaboration and not limitation, the court may:

(1) as far as necessary to decision and where presented to decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action; and

(2) hold unlawful and set aside agency action findings and conclusions found to be:

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence or facts in the record of the proceedings before the court; or

(F) unwarranted by the facts.

In making the determinations as provided by this subsection, the court shall take account of prejudicial error. (Dec. 23, 1963, 77 Stat. 614, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–767, 11–771a, 11–772 (Apr. 1, 1942, ch. 207, § 7, 56 Stat. 195; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Apr. 11, 1956, ch. 204, § 111, 70 Stat. 113; Oct. 23, 1962, Pub. L. 87–873, § 6, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 6, 77 Stat. 78).

Section consolidates part of the second sentence and all of the third sentence of subsec. (c) of section 11–772 of D.C. Code, 1961 ed., and part of subsec. (f) of section 11–772, with section 11–767 of the Code which extended the right of appeal to parties aggrieved by orders or judgments of the Domestic Relations Branch of the Municipal Court (now, the District of Columbia Court of General Sessions). See revision note under section 11–741 herein. For remainder of section 11–772, see other sections in this title, and tables.

Section 11–771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

Changes are made in phraseology.

NOTES TO DECISIONS

Evidence—Sufficiency of

Evidence was sufficient to establish identity of defendant as operator of vehicle involved in high speed chase through city streets. *H. O'Bryant* v. *District of Columbia* (D.C. App. 1966, 223 A. 2d 799).

Questions of fact

Whether defendant had guaranteed corporate obligation to pay for printing of pamphlet relating to history of a nonprofit corporation founded by defendant's wife or whether defendant and his wife had made oral contract to pay for printing were questions for trier of facts, in suit by printer for goods sold and delivered and services rendered. *W. M. Dawson* v. *H. Drazin, etc.* (D.C. App. 1966, 223 A. 2d 375).

§ 17–306. Determination of appeals

The District of Columbia Court of Appeals may affirm, modify, vacate, set aside or reverse any order or judgment of a court or any branch thereof, or any order or decision of an administration agency, lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate order, judgment, or decision, or require such further proceedings to be had, as is just in the circumstances. (Dec. 23, 1963, 77 Stat. 615, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–767, 11–771a, 11–772 (Apr. 1, 1942, ch. 207, § 7, 56 Stat. 195; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Apr. 11, 1956, ch. 204, § 111, 70 Stat. 113; Oct. 23, 1962, Pub. L. 87–873, § 6, 76 Stat. 1171; July 8, 1963, Pub. L. 88–60, § 6, 77 Stat. 78).

Section consolidates part of the second sentence of subsec. (c) of section 11–772 of D.C. Code, 1961 ed., and part of the fifth sentence of subsec. (f) of section 11–772, with section 11–767, of the Code which extended the right of appeal to parties aggrieved by orders or judgments of the Domestic Relations Branch of the Municipal Court (now, the District of Columbia Court of General Sessions). See, revision note under section 11–741 herein.

Section 11–771a of D.C. Code, 1961 ed., enacted by the act of Oct. 23, 1962, is also cited as one of the sources of this section, as section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

In connection with the review of orders or judgments of lower courts, subsec. (c) of section 11–772 of D.C. Code, 1961 ed., provided that the Municipal Court of Appeals (now, the District of Columbia Court of Appeals) "shall affirm, reverse, or modify the order or judgment in accordance with law". In connection with the review of orders or decisions of certain administrative agencies (see section 11–742 herein), subsec. (f) of section 11–772 provided that the Court "shall have the power to affirm, modify, or set aside the decision or order complained of, in whole or in part, and, if need be, to remand the case for further proceedings, as justice may require". The provisions, as consolidated in this section, are patterned upon 28 U.S.C. § 2106, and are more comprehensive of the Court's powers in the determination of appeals.

Subsec. (d) of section 11–772 of D.C. Code, 1961 ed., provided that section 11–772 "shall not apply to any judgments rendered prior to the effective date of this subchapter [subchapter III of chapter 7 of Title 11 of the Code, in which section 11–772 was set out]". This provision is omitted as obsolete. For remainder of section 11–772, see other sections in this title, and tables.

§ 17–307. Time for taking or applying for allowance of appeals

(a) Except as provided by subsection (b) of this section, the time during which an appeal may be taken pursuant to section 11–741 or 11–742 may be fixed by rules of the District of Columbia Court of Appeals.

(b) Applications for the allowance of appeals from judgments of the Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions, and from judgments in the criminal division of that court where the penalty imposed is less than $50, specified by section 11–741(c), shall, in each case, be filed in the District of Columbia Court of Appeals within three days from the date of judgment. (Dec. 23, 1963, 77 Stat. 615, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., §§ 11–751a, 11–767, 11–771a, 11–772 (Apr. 1, 1942, ch. 207, § 7, 56 Stat. 195; Aug. 31, 1954, ch. 1173, § 1, 68 Stat. 1048; Apr. 11, 1956, ch. 204, § 111, 70 Stat. 113; Oct. 23, 1962, Pub. L. 87–873, §§ 1, 6, 76 Stat. 1171, 1172; July 8, 1963, Pub. L. 88–60, §§ 1, 6, 77 Stat, 78).

Section consolidates with changes in phraseology, part of the fifth sentence of subsec. (a) of section 11–772 of D.C. Code, 1961 ed., and part of the third sentence of subsec. (f) of section 11–722, with section 11–767 of the Code which extended the right of appeal to parties aggrieved by orders or judgments of the Domestic Relations Branch of the Municipal Court (now, the District of Columbia Court of General Sessions). See revision note under section 11–741 herein.

Sections 11–751a and 11–771a of D.C. Code, 1961 ed., both enacted by the act of Oct. 23, 1962, are also cited as sources of this section, as (1) section 11–751a changed the name of the Municipal Court for the District of Columbia to the District of Columbia Court of General Sessions, and (2) section 11–771a changed the name of the Municipal Court of Appeals for the District of Columbia to the District of Columbia Court of Appeals.

The fifth sentence of subsec. (a) of section 11–772 of D.C. Code, 1961 ed., which related to applications for the allowance of appeals from judgments of the Small Claims and Conciliation Branch of the Municipal Court (now, the Court of General Sessions), and from judgments of the Criminal Branch of that court where the penalty imposed is less than $50, is carried into subsec. (b) of this section.

Section 11–772 of D.C. Code, 1961 ed., contained no specific provision prescribing the time during which appeals from other judgments or orders of the Municipal

Court (now, the Court of General Sessions) may be taken, or empowering the Municipal Court of Appeals (now, the District of Columbia Court of Appeals) to fix the time by rule. However, the power of the latter court to fix the time by rule was implied in subsec. (b) of section 11–772, which is carried into section 17–302 herein. Therefore, this power is specifically provided for in subsec. (a) of this section, along with the power of the court to fix the time, by rule, during which appeals may be taken from orders or decisions of certain administrative agencies (section 11–742 herein). The latter power was specifically provided for in the third sentence of subsec. (f) of section 11–772.

In subsec. (b), "criminal division" is substituted for "Criminal Branch". See section 11–901 herein and revision note thereunder.

For remainder of section 11–772 of D.C. Code, 1961 ed., see other sections in this title, and tables.

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